

Title 1 GENERAL PROVISIONS

Chapters

- 1.16 General definitions.
1.20 General provisions.

Chapter 1.16 RCW GENERAL DEFINITIONS

Sections

- 1.16.050 "Legal holidays and legislatively recognized days."

1.16.050 "Legal holidays and legislatively recognized days." The following are legal holidays: Sunday; the first day of January, commonly called New Year's Day; the third Monday of January, being celebrated as the anniversary of the birth of Martin Luther King, Jr.; the third Monday of February to be known as Presidents' Day and to be celebrated as the anniversary of the births of Abraham Lincoln and George Washington; the last Monday of May, commonly known as Memorial Day; the fourth day of July, being the anniversary of the Declaration of Independence; the first Monday in September, to be known as Labor Day; the eleventh day of November, to be known as Veterans' Day; the fourth Thursday in November, to be known as Thanksgiving Day; the day immediately following Thanksgiving Day; and the twenty-fifth day of December, commonly called Christmas Day.

Employees of the state and its political subdivisions, except employees of school districts and except those non-classified employees of institutions of higher education who hold appointments or are employed under contracts to perform services for periods of less than twelve consecutive months, shall be entitled to one paid holiday per calendar year in addition to those specified in this section. Each employee of the state or its political subdivisions may select the day on which the employee desires to take the additional holiday provided for herein after consultation with the employer pursuant to guidelines to be promulgated by rule of the appropriate personnel authority, or in the case of local government by ordinance or resolution of the legislative authority.

If any of the above specified state legal holidays are also federal legal holidays but observed on different dates, only the state legal holidays shall be recognized as a paid legal holiday for employees of the state and its political subdivisions except that for port districts and the law enforcement and public transit employees of municipal corporations, either the federal or the state legal holiday, but in no case both, may be recognized as a paid legal holiday for employees.

Whenever any legal holiday, other than Sunday, falls upon a Sunday, the following Monday shall be the legal holiday.

Whenever any legal holiday falls upon a Saturday, the preceding Friday shall be the legal holiday.

Nothing in this section shall be construed to have the effect of adding or deleting the number of paid holidays provided for in an agreement between employees and employers of political subdivisions of the state or as established by ordi-

nance or resolution of the local government legislative authority.

The legislature declares that the thirteenth day of January shall be recognized as Korean-American day but shall not be considered a legal holiday for any purposes.

The legislature declares that the twelfth day of October shall be recognized as Columbus day but shall not be considered a legal holiday for any purposes.

The legislature declares that the ninth day of April shall be recognized as former prisoner of war recognition day but shall not be considered a legal holiday for any purposes.

The legislature declares that the twenty-sixth day of January shall be recognized as Washington army and air national guard day but shall not be considered a legal holiday for any purposes.

The legislature declares that the seventh day of August shall be recognized as purple heart recipient recognition day but shall not be considered a legal holiday for any purposes.

The legislature declares that the second Sunday in October be recognized as Washington state children's day but shall not be considered a legal holiday for any purposes.

The legislature declares that the sixteenth day of April shall be recognized as Mother Joseph day and the fourth day of September as Marcus Whitman day, but neither shall be considered legal holidays for any purpose.

The legislature declares that the seventh day of December be recognized as Pearl Harbor remembrance day but shall not be considered a legal holiday for any purpose.

The legislature declares that the twenty-seventh day of July be recognized as national Korean war veterans armistice day but shall not be considered a legal holiday for any purpose.

The legislature declares that the nineteenth day of February be recognized as civil liberties day of remembrance but shall not be considered a legal holiday for any purpose.

The legislature declares that the nineteenth day of June be recognized as Juneteenth, a day of remembrance for the day the slaves learned of their freedom, but shall not be considered a legal holiday for any purpose.

The legislature declares that the thirtieth day of March be recognized as welcome home Vietnam veterans day but shall not be considered a legal holiday for any purpose. [2013 c 5 § 1; 2012 c 11 § 1. Prior: 2007 c 61 § 2; 2007 c 19 § 2; 2003 c 68 § 2; 2000 c 60 § 1; 1999 c 26 § 1; 1993 c 129 § 2; 1991 sp.s. c 20 § 1; 1991 c 57 § 2; 1989 c 128 § 1; 1985 c 189 § 1; 1979 c 77 § 1; 1977 ex.s. c 111 § 1; 1975-'76 2nd ex.s. c 24 § 1; 1975 1st ex.s. c 194 § 1; 1973 2nd ex.s. c 1 § 1; 1969 c 11 § 1; 1955 c 20 § 1; 1927 c 51 § 1; RRS § 61; prior: 1895 c 3 § 1; 1891 c 41 § 1; 1888 p 107 § 1.]

Finding—Declaration—2007 c 61: "The legislature recognizes that on June 19, 1865, Union soldiers landed at Galveston, Texas with news that the Civil War had ended and the slaves were now free; that this was two and a half years after President Lincoln signed the Emancipation Proclamation on January 1, 1863; that the end of slavery brought on new challenges and realities in establishing a previously nonexistent status for African-Americans in the United States; that racism and continued inequality is the legacy of slavery and acknowledging it is the first step in its eradication; and that since 1980 June 19th has been celebrated as Juneteenth across the United States as a day for people to come together in the spirit of reconciliation to commemorate the contributions of African-Americans to this country's history and culture.

The legislature declares that an annual day of recognition be observed

in remembrance of the day the slaves realized they were free as a reminder that individual rights and freedoms must never be denied." [2007 c 61 § 1.]

Findings—2007 c 19: "The legislature finds that in the more than one hundred years that Koreans have immigrated to the United States, these immigrants and their descendants have made an invaluable contribution to our state and nation. Korean-Americans have worked for many years to better not only their community, but the communities in which they live and the state as a whole. The legislature further finds that due to the close friendship between the people of Korea and the United States, it is fitting to recognize Korean-American contributions to our society in a dignified and fitting manner, and to encourage Korean-Americans to honor the sacrifices made by American citizens during the Korean War." [2007 c 19 § 1.]

Finding—1993 c 129: "The legislature finds that Washington's children are one of our most valuable assets, representing hope for the future. Children today are at risk for many things, including drug and alcohol abuse, child abuse, suicide, peer pressure, and the economic and educational challenges of a changing world. It is increasingly important for families, schools, health professionals, caregivers, and workers at state agencies charged with the protection and help of children to listen to them, to support and encourage them, and to help them build their dreams for the future.

To increase recognition of children's issues, a national children's day is celebrated in October, with ceremonies and activities devoted to children. Washington state focuses special attention on its children by establishing a Washington state children's day." [1993 c 129 § 1.]

Finding—Declaration—1991 c 57: "The legislature finds that the Washington army and air national guard comprise almost nine thousand dedicated men and women who serve the state and nation on a voluntary basis. The legislature also finds that the state of Washington benefits from that dedication by immediate access to well-prepared resources in time of natural disasters and public emergency. The national guard has consistently and frequently responded to state and local emergencies with people and equipment to provide enforcement assistance, medical services, and overall support to emergency management services.

The legislature further declares that an annual day of commemoration should be observed in honor of the achievements, sacrifices, and dedication of the men and women of the Washington army and air national guard." [1991 c 57 § 1.]

Court business on legal holidays: RCW 2.28.100, 2.28.110.

School holidays: RCW 28A.150.050.

Chapter 1.20 RCW GENERAL PROVISIONS

Sections

1.20.017 Display of national league of families' POW/MIA flag.

1.20.017 Display of national league of families' POW/MIA flag. (1) Each public entity shall display the national league of families' POW/MIA flag along with the flag of the United States and the flag of the state upon or near the principal building of the public entity on the following days: (a) Welcome Home Vietnam Veterans Day on March 30; (b) Armed Forces Day on the third Saturday in May; (c) Memorial Day on the last Monday in May; (d) Flag Day on June 14; (e) Independence Day on July 4; (f) National Korean War Veterans Armistice Day on July 27; (g) National POW/MIA Recognition Day on the third Friday in September; and (h) Veterans' Day on November 11. If the designated day falls on a Saturday or Sunday, then the POW/MIA flag will be displayed on the preceding Friday.

(2) The governor's veterans affairs advisory committee shall provide information to public entities regarding the purchase and display of the POW/MIA flag upon request.

(3) As used in this section, "public entity" means every state agency, including each institution of higher education, and every county, city, and town. [2013 c 5 § 2; 2012 c 11 § 2; 2002 c 293 § 1.]

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Title 2 COURTS OF RECORD

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- 2.08 Superior courts.
- 2.24 Court commissioners and referees.
- 2.28 Powers of courts and general provisions.
- 2.36 Juries.
- 2.48 State bar act.
- 2.68 Judicial information system.

Chapter 2.08 RCW SUPERIOR COURTS

Sections

- 2.08.063 Judges—Lincoln, Skagit, Walla Walla, Whitman, Yakima, Adams, and Whatcom counties.
- 2.08.064 Judges—Benton, Franklin, Clallam, Jefferson, Snohomish, Asotin, Columbia, Garfield, Cowlitz, Klickitat, and Skamania counties.

2.08.063 Judges—Lincoln, Skagit, Walla Walla, Whitman, Yakima, Adams, and Whatcom counties.

There shall be in the county of Lincoln one judge of the superior court; in the county of Skagit, four judges of the superior court; in the county of Walla Walla, two judges of the superior court; in the county of Whitman, one judge of the superior court; in the county of Yakima, eight judges of the superior court; in the county of Adams, one judge of the superior court; in the county of Whatcom, four judges of the superior court. [2013 c 210 § 1; 2005 c 95 § 1; 1998 c 270 § 2; 1992 c 189 § 3; 1988 c 66 § 1; 1975 1st ex.s. c 49 § 1; 1973 1st ex.s. c 27 § 2; 1971 ex.s. c 83 § 1; 1963 c 48 § 3; 1955 c 19 § 1; 1951 c 125 § 5. Prior: 1949 c 237 §§ 2, 4; 1945 c 20 § 1, part; 1927 c 135 § 1, part; 1917 c 97 § 5, part; 1911 c 62 § 1; 1911 c 129 § 2, part; 1907 c 79 § 1, part; 1895 c 89 § 1, part; 1891 c 68 § 3, part; 1890 p 341 § 1, part; Rem. Supp. 1949 §§ 11045-1j, 11045-1i; Rem. Supp. 1945 § 11045-1d, part; RRS § 11045-1, part.]

Additional judicial position in Whatcom county subject to approval and agreement—2013 c 210: "The additional judicial position created by section 1 of this act in Whatcom county becomes effective only if the county, through its duly constituted legislative authority, documents its approval of the additional position and its agreement that it will pay out of county funds, without reimbursement from the state, the expenses of the additional judicial position as provided by statute." [2013 c 210 § 2.]

Contingency of additional judicial position—2005 c 95: "The additional judicial position created by section 1 of this act in Skagit county shall be effective only if the county through its legislative authority documents its approval by January 1, 2007, of the additional position and its agreement that it will pay out of county funds, without reimbursement from the state, the expenses of the additional judicial position as provided by statute. The additional expenses include, but are not limited to, expenses incurred for court facilities." [2005 c 95 § 2.]

Additional notes found at www.leg.wa.gov

2.08.064 Judges—Benton, Franklin, Clallam, Jefferson, Snohomish, Asotin, Columbia, Garfield, Cowlitz, Klickitat, and Skamania counties. There shall be in the counties of Benton and Franklin jointly, seven judges of the superior court; in the county of Clallam, three judges of the superior court; in the county of Jefferson, one judge of the superior court; in the county of Snohomish, fifteen judges of the superior court; in the counties of Asotin, Columbia and

Garfield jointly, one judge of the superior court; in the county of Cowlitz, five judges of the superior court; in the counties of Klickitat and Skamania jointly, one judge of the superior court. [2013 c 142 § 1; 2006 c 20 § 1; 2003 c 96 § 2; 1997 c 347 § 1; 1993 sp.s. c 14 § 1; 1992 c 189 § 4; 1989 c 328 § 3; 1985 c 357 § 3; 1982 c 139 § 2; 1981 c 65 § 1; 1979 ex.s. c 202 § 3; 1977 ex.s. c 311 § 3; 1974 ex.s. c 192 § 1; 1971 ex.s. c 83 § 3; 1969 ex.s. c 213 § 2; 1967 ex.s. c 84 § 3; 1963 c 35 § 1; 1961 c 67 § 2; 1955 c 19 § 2; 1951 c 125 § 6. Prior: 1945 c 20 § 1, part; 1927 c 135 § 1, part; 1925 ex.s. c 132 § 1; 1917 c 97 §§ 1-3; 1911 c 40 § 1; 1911 c 129 §§ 1, 2, part; 1907 c 79 § 1, part; 1905 c 36 § 1, part; 1895 c 89 § 1, part; 1891 c 68 §§ 1, 3, part; 1890 p 341 § 1, part; Rem. Supp. 1945 § 11045-1d, part; RRS § 11045-1, part.]

Additional judicial position in Benton and Franklin counties subject to approval and agreement—2013 c 142: "The additional judicial position created by section 1 of this act in Benton and Franklin counties jointly becomes effective only if the counties, through their duly constituted legislative authority, document their approval of the additional position and their agreement that they will pay out of county funds, without reimbursement from the state, the expenses of the additional judicial position as provided by statute." [2013 c 142 § 2.]

Additional judicial positions in Clallam and Cowlitz counties subject to approval and agreement—2006 c 20: "The additional judicial positions created by section 1 of this act in Clallam and Cowlitz counties are effective only if each county through its duly constituted legislative authority documents its approval of the additional position and its agreement that it will pay out of county funds, without reimbursement from the state, the expenses of the existing and additional judicial positions as provided by statute and the state Constitution." [2006 c 20 § 2.]

Effective dates for additional judicial positions—2003 c 96: See note following RCW 2.08.062.

Intent—Additional judicial positions subject to approval and agreement—Effective dates for additional judicial positions—1989 c 328: See notes following RCW 2.08.061.

Additional notes found at www.leg.wa.gov

Chapter 2.24 RCW

COURT COMMISSIONERS AND REFEREES

Sections

2.24.010 Appointment of court commissioners, criminal commissioners—Qualifications—Term of office.

2.24.010 Appointment of court commissioners, criminal commissioners—Qualifications—Term of office. (1) There may be appointed in each county or judicial district, by the judges of the superior court having jurisdiction therein, one or more court commissioners for said county or judicial district. Each such commissioner shall be a citizen of the United States and shall hold the office during the pleasure of the judges making the appointment.

(2)(a) There may be appointed in counties with a population of more than four hundred thousand, by the presiding judge of the superior court having jurisdiction therein, one or more attorneys to act as criminal commissioners to assist the superior court in disposing of adult criminal cases. Such criminal commissioners shall have power, authority, and jurisdiction, concurrent with the superior court and the judges thereof, in adult criminal cases, to preside over arraignments, preliminary appearances, initial extradition hearings, and noncompliance proceedings pursuant to RCW 9.94A.6333 or 9.94B.040; accept pleas if authorized by local court rules; appoint counsel; make determinations of probable cause; set,

amend, and review conditions of pretrial release; set bail; set trial and hearing dates; authorize continuances; accept waivers of the right to speedy trial; and authorize and issue search warrants and orders to intercept, monitor, or record wired or wireless telecommunications or for the installation of electronic taps or other devices to include, but not be limited to, vehicle global positioning system or other mobile tracking devices with all the powers conferred upon the judge of the superior court in such matters.

(b) The county legislative authority must approve the creation of criminal commissioner positions. [2013 c 27 § 3; 2009 c 140 § 1; 1990 c 191 § 1; 1979 ex.s. c 54 § 1; 1967 ex.s. c 87 § 1; 1961 c 42 § 1; 1909 c 124 § 1; RRS § 83. Prior: 1895 c 83 § 1.]

Chapter 2.28 RCW

POWERS OF COURTS AND GENERAL PROVISIONS

Sections

2.28.165 Specialty and therapeutic courts—Establishment—Principles of best practices—Limitations.
 2.28.166 Definition of "specialty court" and "therapeutic court."
 2.28.170 Drug courts.
 2.28.175 DUI courts.
 2.28.180 Mental health courts.
 2.28.190 DUI court, drug court, and mental health court may be combined.
 2.28.200 Signage.

2.28.165 Specialty and therapeutic courts—Establishment—Principles of best practices—Limitations. (1) The legislature respectfully encourages the supreme court to adopt any administrative orders and court rules of practice and procedure it deems necessary to support the establishment of effective specialty and therapeutic courts.

(2) Any jurisdiction may establish a specialty or therapeutic court under this section and may seek state or federal funding as it becomes available for the establishment, maintenance, and expansion of specialty and therapeutic courts and for the provision by participating agencies of treatment to participating defendants.

(3) Any jurisdiction establishing a specialty court shall endeavor to incorporate the treatment court principles of best practices as recognized by state and national treatment court agencies and organizations in structuring a particular program, which may include:

- (a) Determine the population;
- (b) Perform a clinical assessment;
- (c) Develop the treatment plan;
- (d) Supervise the offender;
- (e) Forge agency, organization, and community partnerships;
- (f) Take a judicial leadership role;
- (g) Develop case management strategies;
- (h) Address transportation issues;
- (i) Evaluate the program;
- (j) Ensure a sustainable program.

(4) No therapeutic or specialty court may be established specifically for the purpose of applying foreign law, including foreign criminal, civil, or religious law, that is otherwise not required by treaty.

(5) Specialty and therapeutic courts shall continue to: (a) Obtain the consent of the prosecuting authority in order to

remove a charged offender from the regular course of prosecution and punishment; and (b) comply with sentencing requirements as established in state law.

(6) No specialty or therapeutic court established by court rule shall enforce a foreign law, if doing so would violate a right guaranteed by the Constitution of this state or of the United States. [2013 c 257 § 2.]

Findings—2013 c 257: "The legislature finds that in the state of Washington, there exists a type of court administered by the judiciary commonly called a specialty or therapeutic court. Judges in the trial courts throughout the state effectively utilize specialty and therapeutic courts to remove defendants with their consent and the consent of the prosecuting authority from the normal criminal court system and allow those defendants the opportunity to obtain treatment services to address particular issues that may have contributed to the conduct that led to their arrest in exchange for dismissal of the charges. Trial courts have proved adept at creative approaches in fashioning a wide variety of specialty and therapeutic courts addressing the spectrum of social issues that can contribute to criminal activity.

The legislature also finds that there are presently more than seventy-four specialty and therapeutic courts operating in the state of Washington that save costs to both the trial courts and law enforcement by strategic focus of resources within the criminal justice system. There are presently more than fifteen types of specialty and therapeutic courts in the state including: Veterans treatment court, adult drug court, juvenile drug court, family dependency treatment court, mental health court, DUI court, community court, reentry drug court, tribal healing to wellness court, truancy court, homeless court, domestic violence court, gambling court, and Back on TRAC: Treatment, responsibility, accountability on campus.

The legislature recognizes the inherent authority of the judiciary under Article IV, section 1 of the state Constitution to establish specialty and therapeutic courts. The legislature recognizes the outstanding contribution to the state and a local community made by the establishment of specialty and therapeutic courts and desires to provide a general provision in statute acknowledging and encouraging the judiciary to provide for such courts to address the particular needs within a given judicial jurisdiction." [2013 c 257 § 1.]

Effective date—2013 c 257: "This act takes effect August 1, 2013." [2013 c 257 § 9.]

2.28.166 Definition of "specialty court" and "therapeutic court." For the purposes of chapter 257, Laws of 2013, "specialty court" and "therapeutic court" both mean a specialized pretrial or sentencing docket in select criminal cases where agencies coordinate work to provide treatment for a defendant who has particular needs. [2013 c 257 § 4.]

Findings—Effective date—2013 c 257: See notes following RCW 2.28.165.

2.28.170 Drug courts. (1) Jurisdictions may establish and operate drug courts.

(2) For the purposes of this section, "drug court" means a court that has special calendars or dockets designed to achieve a reduction in recidivism and substance abuse among nonviolent, substance abusing felony and nonfelony offenders, whether adult or juvenile, by increasing their likelihood for successful rehabilitation through early, continuous, and intense judicially supervised treatment; mandatory periodic drug testing; and the use of appropriate sanctions and other rehabilitation services.

(3)(a) Any jurisdiction that seeks a state appropriation to fund a drug court program must first:

(i) Exhaust all federal funding that is available to support the operations of its drug court and associated services; and

(ii) Match, on a dollar-for-dollar basis, state moneys allocated for drug court programs with local cash or in-kind resources. Moneys allocated by the state must be used to supplement, not supplant, other federal, state, and local funds for

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drug court operations and associated services. However, from July 26, 2009, until June 30, 2015, no match is required for state moneys expended for the administrative and overhead costs associated with the operation of a drug court pursuant to RCW 70.96A.350.

(b) Any jurisdiction that establishes a drug court pursuant to this section shall establish minimum requirements for the participation of offenders in the program. The drug court may adopt local requirements that are more stringent than the minimum. The minimum requirements are:

(i) The offender would benefit from substance abuse treatment;

(ii) The offender has not previously been convicted of a serious violent offense or sex offense as defined in RCW 9.94A.030; and

(iii) Without regard to whether proof of any of these elements is required to convict, the offender is not currently charged with or convicted of an offense:

(A) That is a sex offense;

(B) That is a serious violent offense;

(C) During which the defendant used a firearm; or

(D) During which the defendant caused substantial or great bodily harm or death to another person. [2013 2nd sp.s. c 4 § 952; 2013 2nd sp.s. c 4 § 951; 2013 c 257 § 5; 2009 c 445 § 2; 2006 c 339 § 106; 2005 c 504 § 504; 2002 c 290 § 13; 1999 c 197 § 9.]

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

Findings—Effective date—2013 c 257: See notes following RCW 2.28.165.

Intent—Part headings not law—2006 c 339: See notes following RCW 70.96A.325.

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

Intent—2002 c 290: See note following RCW 9.94A.517.

Additional notes found at www.leg.wa.gov

2.28.175 DUI courts. (1) Jurisdictions and municipalities may establish and operate DUI courts. Municipalities may enter into cooperative agreements with counties or other municipalities that have DUI courts to provide DUI court services.

(2) For the purposes of this section, "DUI court" means a court that has special calendars or dockets designed to achieve a reduction in recidivism of impaired driving among nonviolent, alcohol abusing offenders, whether adult or juvenile, by increasing their likelihood for successful rehabilitation through early, continuous, and intense judicially supervised treatment; mandatory periodic testing for alcohol use and, if applicable, drug use; and the use of appropriate sanctions and other rehabilitation services.

(3)(a) Any jurisdiction that seeks a state appropriation to fund a DUI court program must first:

(i) Exhaust all federal funding that is available to support the operations of its DUI court and associated services; and

(ii) Match, on a dollar-for-dollar basis, state moneys allocated for DUI court programs with local cash or in-kind resources. Moneys allocated by the state must be used to sup-

plement, not supplant, other federal, state, and local funds for DUI court operations and associated services. However, until June 30, 2014, no match is required for state moneys expended for the administrative and overhead costs associated with the operation of a DUI court established as of January 1, 2011.

(b) Any jurisdiction that establishes a DUI court pursuant to this section shall establish minimum requirements for the participation of offenders in the program. The DUI court may adopt local requirements that are more stringent than the minimum. The minimum requirements are:

- (i) The offender would benefit from alcohol treatment;
- (ii) The offender has not previously been convicted of a serious violent offense or sex offense as defined in RCW 9.94A.030, vehicular homicide under RCW 46.61.520, vehicular assault under RCW 46.61.522, or an equivalent out-of-state offense; and

(iii) Without regard to whether proof of any of these elements is required to convict, the offender is not currently charged with or convicted of an offense:

- (A) That is a sex offense;
- (B) That is a serious violent offense;
- (C) That is vehicular homicide or vehicular assault;
- (D) During which the defendant used a firearm; or
- (E) During which the defendant caused substantial or great bodily harm or death to another person. [2013 2nd sp.s. c 35 § 2; 2013 c 257 § 6; 2012 c 183 § 1; 2011 c 293 § 10.]

Findings—Effective date—2013 c 257: See notes following RCW 2.28.165.

Effective date—2012 c 183: "This act takes effect August 1, 2012." [2012 c 183 § 17.]

2.28.180 Mental health courts. (1) Jurisdictions may establish and operate mental health courts.

(2) For the purposes of this section, "mental health court" means a court that has special calendars or dockets designed to achieve a reduction in recidivism and symptoms of mental illness among nonviolent, felony and nonfelony offenders with mental illnesses and recidivism among nonviolent felony and nonfelony offenders who have developmental disabilities as defined in RCW 71A.10.020 or who have suffered a traumatic brain injury by increasing their likelihood for successful rehabilitation through early, continuous, and intense judicially supervised treatment including drug treatment for persons with co-occurring disorders; mandatory periodic reviews, including drug testing if indicated; and the use of appropriate sanctions and other rehabilitation services.

(3)(a) Any jurisdiction that seeks a state appropriation to fund a mental health court program must first:

(i) Exhaust all federal funding that is available to support the operations of its mental health court and associated services; and

(ii) Match, on a dollar-for-dollar basis, state moneys allocated for mental health court programs with local cash or in-kind resources. Moneys allocated by the state must be used to supplement, not supplant, other federal, state, and local funds for mental health court operations and associated services.

(b) Any jurisdiction that establishes a mental health court pursuant to this section shall establish minimum requirements for the participation of offenders in the program. The

mental health court may adopt local requirements that are more stringent than the minimum. The minimum requirements are:

(i) The offender would benefit from psychiatric treatment or treatment related to his or her developmental disability or traumatic brain injury;

(ii) The offender has not previously been convicted of a serious violent offense or sex offense as defined in RCW 9.94A.030; and

(iii) Without regard to whether proof of any of these elements is required to convict, the offender is not currently charged with or convicted of an offense:

- (A) That is a sex offense;
- (B) That is a serious violent offense;
- (C) During which the defendant used a firearm; or
- (D) During which the defendant caused substantial or great bodily harm or death to another person. [2013 c 257 § 7; 2011 c 236 § 1; 2005 c 504 § 501.]

Findings—Effective date—2013 c 257: See notes following RCW 2.28.165.

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

2.28.190 DUI court, drug court, and mental health court may be combined. Any jurisdiction that has established a DUI court, drug court, and a mental health court under this chapter may combine the functions of these courts into a single therapeutic court. [2013 c 257 § 8; 2011 c 293 § 11; 2005 c 504 § 502.]

Findings—Effective date—2013 c 257: See notes following RCW 2.28.165.

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

2.28.200 Signage. (1) Signage shall be posted notifying the public of the possible enhanced penalties under chapter 256, Laws of 2013.

(2) The signage shall be prominently displayed at any public entrance to a courtroom.

(3) The administrative office of the courts shall develop a standard signage form notifying the public of the possible enhanced penalties under chapter 256, Laws of 2013. [2013 c 256 § 3.]

Chapter 2.36 RCW JURIES

Sections

2.36.095 Summons to persons selected.

2.36.095 Summons to persons selected. (1) Persons selected to serve on a petit jury, grand jury, or jury of inquest shall be summoned by mail or personal service. The county clerk shall issue summons and thereby notify persons selected for jury duty. The clerk may issue summons for any jury term, in any consecutive twelve-month period, at any

time thirty days or more before the beginning of the jury term for which the summons are issued. However, when applicable, the provisions of RCW 2.36.130 apply.

(2) In courts of limited jurisdiction summons shall be issued by the court. Upon the agreement of the courts, the county clerk may summon jurors for any and all courts in the county or judicial district. [2013 c 246 § 1; 1993 c 408 § 8; 1992 c 93 § 4; 1990 c 140 § 1; 1988 c 188 § 9.]

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

Additional notes found at www.leg.wa.gov

Chapter 2.48 RCW STATE BAR ACT

Sections

2.48.210 Oath on admission.

2.48.210 Oath on admission. Every person before being admitted to practice law in this state shall take and subscribe the following oath:

I do solemnly swear:

I am a citizen of the United States and owe my allegiance thereto;

I will support the Constitution of the United States and the Constitution of the state of Washington;

I will maintain the respect due to courts of justice and judicial officers;

I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land, unless it be in defense of a person charged with a public offense; I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law;

I will maintain the confidence and preserve inviolate the secrets of my client, and will accept no compensation in connection with his or her business except from him or her or with his or her knowledge and approval;

I will abstain from all offensive personality, and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged;

I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay any person's cause for lucre or malice. So help me God. [2013 c 23 § 1; 1921 c 126 § 12; RRS § 139-12. Prior: 1917 c 115 § 14.]

Rules of court: Admission—APR 5(c) and (d).

Chapter 2.68 RCW JUDICIAL INFORMATION SYSTEM

Sections

2.68.020 Judicial information system account.

2.68.020 Judicial information system account. There is created an account in the custody of the state treasurer to be known as the judicial information system account. The

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administrative office of the courts shall maintain and administer the account, in which shall be deposited all moneys received from in-state noncourt users and any out-of-state users of the judicial information system and moneys as specified in RCW 2.68.040 for the purposes of providing judicial information system access to noncourt users and providing an adequate level of automated services to the judiciary. The legislature shall appropriate the funds in the account for the purposes of the judicial information system. The account shall be used for the acquisition of equipment, software, supplies, services, and other costs incidental to the acquisition, development, operation, and administration of information services, telecommunications, systems, software, supplies, and equipment, including the payment of principal and interest on items paid in installments. During the 2011-2013 fiscal biennium, the judicial information system account may be appropriated to support the state law library. During the 2013-2015 fiscal biennium, the judicial information system account may be appropriated to support the information systems and other activities in the administrative office of the courts. [2013 2nd sp.s. c 4 § 950; 2012 2nd sp.s. c 7 § 913. Prior: 2009 c 564 § 1802; 2009 c 564 § 918; 2005 c 282 § 11; 1994 c 8 § 1; 1989 c 364 § 2.]

Effective dates—2013 2nd sp.s. c 4: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 30, 2013]; except for section 952 of this act which takes effect August 1, 2013, section 968 of this act which takes effect June 30, 2013; sections 978 and 996 of this act which take effect July 28, 2013; and sections 991 and 992 of this act which take effect July 1, 2013." [2013 2nd sp.s. c 4 § 1904.]

Effective date—2012 2nd sp.s. c 7: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 2, 2012]." [2012 2nd sp.s. c 7 § 938.]

Effective date—2009 c 564: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 19, 2009]." [2009 c 564 § 1812.]

Title 3

DISTRICT COURTS— COURTS OF LIMITED JURISDICTION

Chapters

- 3.50 Municipal courts—Alternate provision.**
- 3.62 Income of court.**
- 3.66 Jurisdiction and venue.**
- 3.74 Miscellaneous.**

Chapter 3.50 RCW

MUNICIPAL COURTS—ALTERNATE PROVISION (Formerly: Municipal departments—Alternate provision)

Sections

- 3.50.320 Suspension or deferral of sentence—Change of plea—Dismissal.
- 3.50.330 Suspension or deferral of sentence—Continuing jurisdiction of court.

3.50.320 Suspension or deferral of sentence—Change of plea—Dismissal. After a conviction, the court may impose sentence by suspending all or a portion of the

defendant's sentence or by deferring the sentence of the defendant and may place the defendant on probation for a period of no longer than two years and prescribe the conditions thereof. A defendant who has been sentenced, or whose sentence has been deferred, and who then fails to appear for any hearing to address the defendant's compliance with the terms of probation when ordered to do so by the court, shall have the term of probation tolled until such time as the defendant makes his or her presence known to the court on the record. During the time of the deferral, the court may, for good cause shown, permit a defendant to withdraw the plea of guilty, permit the defendant to enter a plea of not guilty, and dismiss the charges. A court shall not defer sentence for an offense sentenced under RCW 46.61.5055. [2013 2nd sp.s. c 35 § 5; 2001 c 94 § 4; 1984 c 258 § 116; 1983 c 156 § 5; 1961 c 299 § 81.]

Additional notes found at www.leg.wa.gov

3.50.330 Suspension or deferral of sentence—Continuing jurisdiction of court. (1) A court has continuing jurisdiction and authority to suspend the execution of all or any part of its sentence upon stated terms, including installment payment of fines for a period not to exceed:

(a) Five years after imposition of sentence for a defendant sentenced for a domestic violence offense or under RCW 46.61.5055; and

(b) Two years after imposition of sentence for all other offenses.

(2)(a) Except as provided in (b) of this subsection, a court shall have continuing jurisdiction and authority to defer the execution of all or any part of the sentence upon stated terms, including installment payment of fines for a period not to exceed:

(i) Five years after imposition of sentence for a defendant sentenced for a domestic violence offense; and

(ii) Two years after imposition of sentence for all other offenses.

(b) A court shall not defer sentence for an offense sentenced under RCW 46.61.5055.

(3) A defendant who has been sentenced, or whose sentence has been deferred, and who then fails to appear for any hearing to address the defendant's compliance with the terms of probation when ordered to do so by the court, shall have the term of probation tolled until such time as the defendant makes his or her presence known to the court on the record.

(4) However, the court's jurisdiction period in this section does not apply to the enforcement of orders issued under RCW 46.20.720.

(5) Any time before entering an order terminating probation, the court may modify or revoke its order suspending or deferring the imposition or execution of the sentence.

(6) For the purposes of this section, "domestic violence offense" means a crime listed in RCW 10.99.020 that is not a felony offense. [2013 2nd sp.s. c 35 § 6; 2010 c 274 § 406; 2001 c 94 § 5; 1999 c 56 § 1; 1984 c 258 § 117; 1983 c 156 § 6; 1961 c 299 § 82.]

Intent—2010 c 274: See note following RCW 10.31.100.

Additional notes found at www.leg.wa.gov

Chapter 3.62 RCW INCOME OF COURT

Sections

3.62.060 Filing fees in civil cases—Surcharge—Fees allowed as court costs.

3.62.060 Filing fees in civil cases—Surcharge—Fees allowed as court costs. (1) Clerks of the district courts shall collect the following fees for their official services:

(a) In any civil action commenced before or transferred to a district court, the plaintiff shall, at the time of such commencement or transfer, pay to such court a filing fee of forty-three dollars plus any surcharge authorized by RCW 7.75.035. Any party filing a counterclaim, cross-claim, or third-party claim in such action shall pay to the court a filing fee of forty-three dollars plus any surcharge authorized by RCW 7.75.035. No party shall be compelled to pay to the court any other fees or charges up to and including the rendition of judgment in the action other than those listed.

(b) For issuing a writ of garnishment or other writ, or for filing an attorney issued writ of garnishment, a fee of twelve dollars.

(c) For filing a supplemental proceeding a fee of twenty dollars.

(d) For demanding a jury in a civil case a fee of one hundred twenty-five dollars to be paid by the person demanding a jury.

(e) For preparing a transcript of a judgment a fee of twenty dollars.

(f) For certifying any document on file or of record in the clerk's office a fee of five dollars.

(g) At the option of the district court:

(i) For preparing a certified copy of an instrument on file or of record in the clerk's office, for the first page or portion of the first page, a fee of five dollars, and for each additional page or portion of a page, a fee of one dollar;

(ii) For authenticating or exemplifying an instrument, a fee of two dollars for each additional seal affixed;

(iii) For preparing a copy of an instrument on file or of record in the clerk's office without a seal, a fee of fifty cents per page;

(iv) When copying a document without a seal or file that is in an electronic format, a fee of twenty-five cents per page;

(v) For copies made on a compact disc, an additional fee of twenty dollars for each compact disc.

(h) For preparing the record of a case for appeal to superior court a fee of forty dollars including any costs of tape duplication as governed by the rules of appeal for courts of limited jurisdiction (RALJ).

(i) At the option of the district court, for clerk's services such as processing ex parte orders, performing historical searches, compiling statistical reports, and conducting exceptional record searches, a fee not to exceed twenty dollars per hour or portion of an hour.

(j) For duplication of part or all of the electronic recording of a proceeding ten dollars per tape or other electronic storage medium.

(k) For filing any abstract of judgment or transcript of judgment from a municipal court or municipal department of a district court organized under the laws of this state a fee of forty-three dollars.

(l) At the option of the district court, a service fee of up to three dollars for the first page and one dollar for each additional page for receiving faxed documents, pursuant to Washington state rules of court, general rule 17.

(2)(a) Until July 1, 2017, in addition to the fees required to be collected under this section, clerks of the district courts must collect a surcharge of thirty dollars on all fees required to be collected under subsection (1)(a) of this section.

(b) Seventy-five percent of each surcharge collected under this subsection (2) must be remitted to the state treasurer for deposit in the judicial stabilization trust account.

(c) Twenty-five percent of each surcharge collected under this subsection (2) must be retained by the county.

(3) The fees or charges imposed under this section shall be allowed as court costs whenever a judgment for costs is awarded. [2013 2nd sp.s. c 7 § 1; 2012 c 199 § 1; 2011 1st sp.s. c 44 § 4. Prior: 2009 c 572 § 1; 2009 c 372 § 1; 2007 c 46 § 3; 2005 c 457 § 9; 2003 c 222 § 15; 1992 c 62 § 8; 1990 c 172 § 2; 1987 c 382 § 2; 1984 c 258 § 309; 1981 c 330 § 1; 1980 c 162 § 9; 1969 c 25 § 1; 1965 c 55 § 1; 1961 c 299 § 110.]

Effective date—2013 2nd sp.s. c 7: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2013." [2013 2nd sp.s. c 7 § 4.]

Effective date—2011 1st sp.s. c 44: See note following RCW 3.62.020.

Effective date—2009 c 572: See note following RCW 43.79.505.

Intent—2005 c 457: See note following RCW 43.08.250.

Intent—1984 c 258: See note following RCW 3.34.130.

Additional notes found at www.leg.wa.gov

Chapter 3.66 RCW JURISDICTION AND VENUE

Sections

- 3.66.067 Assessment of punishment—Suspension or deferral of sentence—Dismissal of charges.
3.66.068 Assessment of punishment—Suspension or deferral of sentence—Terms.

3.66.067 Assessment of punishment—Suspension or deferral of sentence—Dismissal of charges. After a conviction, the court may impose sentence by suspending all or a portion of the defendant's sentence or by deferring the sentence of the defendant and may place the defendant on probation for a period of no longer than two years and prescribe the conditions thereof. A defendant who has been sentenced, or whose sentence has been deferred, and who then fails to appear for any hearing to address the defendant's compliance with the terms of probation when ordered to do so by the court, shall have the term of probation tolled until such time as the defendant makes his or her presence known to the court on the record. During the time of the deferral, the court may, for good cause shown, permit a defendant to withdraw the plea of guilty and to enter a plea of not guilty, and the court may dismiss the charges. A court shall not defer sentence for an offense sentenced under RCW 46.61.5055. [2013 2nd sp.s. c 35 § 3; 2001 c 94 § 1; 1984 c 258 § 46; 1983 c 156 § 1; 1969 c 75 § 1.]

Rules of court: ER 410.

Additional notes found at www.leg.wa.gov

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3.66.068 Assessment of punishment—Suspension or deferral of sentence—Terms. (1) A court has continuing jurisdiction and authority to suspend the execution of all or any part of its sentence upon stated terms, including installment payment of fines for a period not to exceed:

(a) Five years after imposition of sentence for a defendant sentenced for a domestic violence offense or under RCW 46.61.5055; and

(b) Two years after imposition of sentence for all other offenses.

(2)(a) Except as provided in (b) of this subsection, a court has continuing jurisdiction and authority to defer the execution of all or any part of its sentence upon stated terms, including installment payment of fines for a period not to exceed:

(i) Five years after imposition of sentence for a defendant sentenced for a domestic violence offense; and

(ii) Two years after imposition of sentence for all other offenses.

(b) A court shall not defer sentence for an offense sentenced under RCW 46.61.5055.

(3) A defendant who has been sentenced, or whose sentence has been deferred, and who then fails to appear for any hearing to address the defendant's compliance with the terms of probation when ordered to do so by the court, shall have the term of probation tolled until such time as the defendant makes his or her presence known to the court on the record.

(4) However, the court's jurisdiction period in this section does not apply to the enforcement of orders issued under RCW 46.20.720.

(5) For the purposes of this section, "domestic violence offense" means a crime listed in RCW 10.99.020 that is not a felony offense. [2013 2nd sp.s. c 35 § 4; 2010 c 274 § 405; 2001 c 94 § 2; 1999 c 56 § 2; 1983 c 156 § 2; 1969 c 75 § 2.]

Intent—2010 c 274: See note following RCW 10.31.100.

Chapter 3.74 RCW MISCELLANEOUS

Sections

- 3.74.030 Mandatory retirement for district judges.

3.74.030 Mandatory retirement for district judges. A district judge shall retire from judicial office at the expiration of the judge's term of office in which he or she has attained the age of seventy-five years. This provision shall not affect the term to which any such judge shall have been elected or appointed prior to August 11, 1969. [2013 c 22 § 1; 1984 c 258 § 56; 1969 ex.s. c 6 § 1.]

Additional notes found at www.leg.wa.gov

Title 4 CIVIL PROCEDURE

Chapters

- 4.24 Special rights of action and special immunities.
4.92 Actions and claims against state.
4.100 Wrongly convicted persons.

Chapter 4.24 RCW
SPECIAL RIGHTS OF ACTION
AND SPECIAL IMMUNITIES

Sections

4.24.545 Electronic monitoring or 24/7 sobriety program participation—Limitation on liability.

4.24.545 Electronic monitoring or 24/7 sobriety program participation—Limitation on liability. Local governments, their subdivisions and employees, the department of corrections and its employees, and the Washington association of sheriffs and police chiefs and its employees are immune from civil liability for damages arising from incidents involving offenders who are placed on electronic monitoring or who are participating in the 24/7 sobriety program, unless it is shown that an employee acted with gross negligence or bad faith. [2013 2nd sp.s. c 35 § 33; 2006 c 130 § 3.]

Chapter 4.92 RCW
ACTIONS AND CLAIMS AGAINST STATE

Sections

4.92.100 Tortious conduct of state or its agents—Claims—Presentment and filing—Contents.

4.92.100 Tortious conduct of state or its agents—Claims—Presentment and filing—Contents. (1) All claims against the state, or against the state's officers, employees, or volunteers, acting in such capacity, for damages arising out of tortious conduct, must be presented to the office of risk management. A claim is deemed presented when the claim form is delivered in person or by regular mail, registered mail, or certified mail, with return receipt requested, or as an attachment to electronic mail or by fax, to the office of risk management. For claims for damages presented after July 26, 2009, all claims for damages must be presented on the standard tort claim form that is maintained by the office of risk management. The standard tort claim form must be posted on the department of enterprise services' web site.

(a) The standard tort claim form must, at a minimum, require the following information:

(i) The claimant's name, date of birth, and contact information;

(ii) A description of the conduct and the circumstances that brought about the injury or damage;

(iii) A description of the injury or damage;

(iv) A statement of the time and place that the injury or damage occurred;

(v) A listing of the names of all persons involved and contact information, if known;

(vi) A statement of the amount of damages claimed; and

(vii) A statement of the actual residence of the claimant at the time of presenting the claim and at the time the claim arose.

(b)(i) The standard tort claim form must be signed either:

(A) By the claimant, verifying the claim;

(B) Pursuant to a written power of attorney, by the attorney in fact for the claimant;

(C) By an attorney admitted to practice in Washington state on the claimant's behalf; or

(D) By a court-approved guardian or guardian ad litem on behalf of the claimant.

(ii) For the purpose of this subsection (1)(b), when the claim form is presented electronically it must bear an electronic signature in lieu of a written original signature. An electronic signature means a facsimile of an original signature that is affixed to the claim form and executed or adopted by the person with the intent to sign the document.

(iii) When an electronic signature is used and the claim is submitted as an attachment to electronic mail, the conveyance of that claim must include the date, time the claim was presented, and the internet provider's address from which it was sent. The attached claim form must be a format approved by the office of risk management.

(iv) When an electronic signature is used and the claim is submitted via a facsimile machine, the conveyance must include the date, time the claim was submitted, and the fax number from which it was sent.

(v) In the event of a question on an electronic signature, the claimant shall have an opportunity to cure and the cured notice shall relate back to the date of the original filing.

(c) The amount of damages stated on the claim form is not admissible at trial.

(2) The state shall make available the standard tort claim form described in this section with instructions on how the form is to be presented and the name, address, and business hours of the office of risk management. The standard tort claim form must not list the claimant's social security number and must not require information not specified under this section. The claim form and the instructions for completing the claim form must provide the United States mail, physical, and electronic addresses and numbers where the claim can be presented.

(3) With respect to the content of claims under this section and all procedural requirements in this section, this section must be liberally construed so that substantial compliance will be deemed satisfactory. [2013 c 188 § 1; 2012 c 250 § 1; 2009 c 433 § 2; 2006 c 82 § 1; 2002 c 332 § 12; 1986 c 126 § 7; 1979 c 151 § 3; 1977 ex.s. c 144 § 2; 1967 c 164 § 2; 1963 c 159 § 3.]

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

Purpose—Severability—1967 c 164: See notes following RCW 4.96.010.

Puget Sound ferry and toll bridge system, claims against: RCW 47.60.250.

Chapter 4.100 RCW

WRONGLY CONVICTED PERSONS

Sections

4.100.010 Intent.
 4.100.020 Claim for compensation—Definitions.
 4.100.030 Procedure for filing of claims.
 4.100.040 Claims—Evidence, determinations required—Dismissal of claim.
 4.100.050 Appeals.
 4.100.060 Compensation awards—Amounts—Proof required—Reentry services.
 4.100.070 Provision of information—Statute of limitations.
 4.100.080 Remedies and compensation exclusive—Admissibility of agreements.
 4.100.090 Actions for compensation.

4.100.010 Intent. The legislature recognizes that persons convicted and imprisoned for crimes they did not commit have been uniquely victimized. Having suffered tremendous injustice by being stripped of their lives and liberty, they are forced to endure imprisonment and are later stigmatized as felons. A majority of those wrongly convicted in Washington state have no remedy available under the law for the destruction of their personal lives resulting from errors in our criminal justice system. The legislature intends to provide an avenue for those who have been wrongly convicted in Washington state to redress the lost years of their lives, and help to address the unique challenges faced by the wrongly convicted after exoneration. [2013 c 175 § 1.]

4.100.020 Claim for compensation—Definitions. (1) Any person convicted in superior court and subsequently imprisoned for one or more felonies of which he or she is actually innocent may file a claim for compensation against the state.

(2) For purposes of this chapter, a person is:

(a) "Actually innocent" of a felony if he or she did not engage in any illegal conduct alleged in the charging documents; and

(b) "Wrongly convicted" if he or she was charged, convicted, and imprisoned for one or more felonies of which he or she is actually innocent.

(3)(a) If the person entitled to file a claim under subsection (1) of this section is incapacitated and incapable of filing the claim, or if he or she is a minor, or is a nonresident of the state, the claim may be filed on behalf of the claimant by an authorized agent.

(b) A claim filed under this chapter survives to the personal representative of the claimant as provided in RCW 4.20.046. [2013 c 175 § 2.]

4.100.030 Procedure for filing of claims. (1) All claims under this chapter must be filed in superior court. The venue for such actions is governed by RCW 4.12.020.

(2) Service of the summons and complaint is governed by RCW 4.28.080. [2013 c 175 § 3.]

4.100.040 Claims—Evidence, determinations required—Dismissal of claim. (1) In order to file an actionable claim for compensation under this chapter, the claimant must establish by documentary evidence that:

(a) The claimant has been convicted of one or more felonies in superior court and subsequently sentenced to a term of imprisonment, and has served all or part of the sentence;

(b)(i) The claimant is not currently incarcerated for any offense; and

(ii) During the period of confinement for which the claimant is seeking compensation, the claimant was not serving a term of imprisonment or a concurrent sentence for any crime other than the felony or felonies that are the basis for the claim;

(c)(i) The claimant has been pardoned on grounds consistent with innocence for the felony or felonies that are the basis for the claim; or

(ii) The claimant's judgment of conviction was reversed or vacated and the charging document dismissed on the basis of significant new exculpatory information or, if a new trial

was ordered pursuant to the presentation of significant new exculpatory information, either the claimant was found not guilty at the new trial or the claimant was not retried and the charging document dismissed; and

(d) The claim is not time barred by RCW 4.100.090.

(2) In addition to the requirements in subsection (1) of this section, the claimant must state facts in sufficient detail for the finder of fact to determine that:

(a) The claimant did not engage in any illegal conduct alleged in the charging documents; and

(b) The claimant did not commit or suborn perjury, or fabricate evidence to cause or bring about the conviction. A guilty plea to a crime the claimant did not commit, or a confession that is later determined by a court to be false, does not automatically constitute perjury or fabricated evidence under this subsection.

(3) Convictions vacated, overturned, or subject to resentencing pursuant to *In re: Personal Detention of Andress*, 147 Wn.2d 602 (2002) may not serve as the basis for a claim under this chapter unless the claimant otherwise satisfies the qualifying criteria set forth in RCW 4.100.020 and this section.

(4) The claimant must verify the claim unless he or she is incapacitated, in which case the personal representative or agent filing on behalf of the claimant must verify the claim.

(5) If the attorney general concedes that the claimant was wrongly convicted, the court must award compensation as provided in RCW 4.100.060.

(6)(a) If the attorney general does not concede that the claimant was wrongly convicted and the court finds after reading the claim that the claimant does not meet the filing criteria set forth in this section, it may dismiss the claim, either on its own motion or on the motion of the attorney general.

(b) If the court dismisses the claim, the court must set forth the reasons for its decision in written findings of fact and conclusions of law. [2013 c 175 § 4.]

4.100.050 Appeals. Any party is entitled to the rights of appeal afforded parties in a civil action following a decision on such motions. In the case of dismissal of a claim, review of the superior court action is de novo. [2013 c 175 § 5.]

4.100.060 Compensation awards—Amounts—Proof required—Reentry services. (1) In order to obtain a judgment in his or her favor, the claimant must show by clear and convincing evidence that:

(a) The claimant was convicted of one or more felonies in superior court and subsequently sentenced to a term of imprisonment, and has served all or any part of the sentence;

(b)(i) The claimant is not currently incarcerated for any offense; and

(ii) During the period of confinement for which the claimant is seeking compensation, the claimant was not serving a term of imprisonment or a concurrent sentence for any conviction other than those that are the basis for the claim;

(c)(i) The claimant has been pardoned on grounds consistent with innocence for the felony or felonies that are the basis for the claim; or

(ii) The claimant's judgment of conviction was reversed or vacated and the charging document dismissed on the basis

of significant new exculpatory information or, if a new trial was ordered pursuant to the presentation of significant new exculpatory information, either the claimant was found not guilty at the new trial or the claimant was not retried and the charging document dismissed;

(d) The claimant did not engage in any illegal conduct alleged in the charging documents; and

(e) The claimant did not commit or suborn perjury, or fabricate evidence to cause or bring about his or her conviction. A guilty plea to a crime the claimant did not commit, or a confession that is later determined by a court to be false, does not automatically constitute perjury or fabricated evidence under this subsection.

(2) Any pardon or proclamation issued to the claimant must be certified by the officer having lawful custody of the pardon or proclamation, and be affixed with the seal of the office of the governor, or with the official certificate of such officer before it may be offered as evidence.

(3) In exercising its discretion regarding the weight and admissibility of evidence, the court must give due consideration to difficulties of proof caused by the passage of time or by release of evidence pursuant to a plea, the death or unavailability of witnesses, the destruction of evidence, or other factors not caused by the parties.

(4) The claimant may not be compensated for any period of time in which he or she was serving a term of imprisonment or a concurrent sentence for any conviction other than the felony or felonies that are the basis for the claim.

(5) If the jury or, in the case where the right to a jury is waived, the court finds by clear and convincing evidence that the claimant was wrongly convicted, the court must order the state to pay the actually innocent claimant the following compensation award, as adjusted for partial years served and to account for inflation from July 28, 2013:

(a) Fifty thousand dollars for each year of actual confinement including time spent awaiting trial and an additional fifty thousand dollars for each year served under a sentence of death pursuant to chapter 10.95 RCW;

(b) Twenty-five thousand dollars for each year served on parole, community custody, or as a registered sex offender pursuant only to the felony or felonies which are grounds for the claim;

(c) Compensation for child support payments owed by the claimant that became due and interest on child support arrearages that accrued while the claimant was in custody on the felony or felonies that are grounds for the compensation claim. The funds must be paid on the claimant's behalf in a lump sum payment to the department of social and health services for disbursement under Title 26 RCW;

(d) Reimbursement for all restitution, assessments, fees, court costs, and all other sums paid by the claimant as required by pretrial orders and the judgment and sentence; and

(e) Attorneys' fees for successfully bringing the wrongful conviction claim calculated at ten percent of the monetary damages awarded under subsection (5)(a) and (b) of this section, plus expenses. However, attorneys' fees and expenses may not exceed seventy-five thousand dollars. These fees may not be deducted from the compensation award due to the claimant and counsel is not entitled to receive additional fees from the client related to the claim. The court may not award

any attorneys' fees to the claimant if the claimant fails to prove he or she was wrongly convicted.

(6) The compensation award may not include any punitive damages.

(7) The court may not offset the compensation award by any expenses incurred by the state, the county, or any political subdivision of the state including, but not limited to, expenses incurred to secure the claimant's custody, or to feed, clothe, or provide medical services for the claimant. The court may not offset against the compensation award the value of any services or reduction in fees for services to be provided to the claimant as part of the award under this section.

(8) The compensation award is not income for tax purposes, except attorneys' fees awarded under subsection (5)(e) of this section.

(9)(a) Upon finding that the claimant was wrongly convicted, the court must seal the claimant's record of conviction.

(b) Upon request of the claimant, the court may order the claimant's record of conviction vacated if the record has not already been vacated, expunged, or destroyed under court rules. The requirements for vacating records under RCW 9.94A.640 do not apply.

(10) Upon request of the claimant, the court must refer the claimant to the department of corrections or the department of social and health services for access to reentry services, if available, including but not limited to counseling on the ability to enter into a structured settlement agreement and where to obtain free or low-cost legal and financial advice if the claimant is not already represented, the community-based transition programs and long-term support programs for education, mentoring, life skills training, assessment, job skills development, mental health and substance abuse treatment.

(11) The claimant or the attorney general may initiate and agree to a claim with a structured settlement for the compensation awarded under subsection (5) of this section. During negotiation of the structured settlement agreement, the claimant must be given adequate time to consult with the legal and financial advisor of his or her choice. Any structured settlement agreement binds the parties with regard to all compensation awarded. A structured settlement agreement entered into under this section must be in writing and signed by the parties or their representatives and must clearly state that the parties understand and agree to the terms of the agreement.

(12) Before approving any structured settlement agreement, the court must ensure that the claimant has an adequate understanding of the agreement. The court may approve the agreement only if the judge finds that the agreement is in the best interest of the claimant and actuarially equivalent to the lump sum compensation award under subsection (5) of this section before taxation. When determining whether the agreement is in the best interest of the claimant, the court must consider the following factors:

(a) The age and life expectancy of the claimant;

(b) The marital or domestic partnership status of the claimant; and

(c) The number and age of the claimant's dependants. [2013 c 175 § 6.]

4.100.070 Provision of information—Statute of limitations. (1) On or after July 28, 2013, when a court grants judicial relief, such as reversal and vacation of a person's conviction, consistent with the criteria established in RCW 4.100.040, the court must provide to the claimant a copy of RCW 4.100.020 through 4.100.090, 28B.15.395, and 72.09.750 at the time the relief is granted.

(2) The clemency and pardons board or the indeterminate sentence review board, whichever is applicable, upon issuance of a pardon by the governor on grounds consistent with innocence on or after July 28, 2013, must provide a copy of RCW 4.100.020 through 4.100.090, 28B.15.395, and 72.09.750 to the individual pardoned.

(3) If an individual entitled to receive the information required under this section shows that he or she was not provided with the information, he or she has an additional twelve months, beyond the statute of limitations under RCW 4.100.090, to bring a claim under this chapter. [2013 c 175 § 7.]

4.100.080 Remedies and compensation exclusive—Admissibility of agreements. (1) It is the intent of the legislature that the remedies and compensation provided under this chapter shall be exclusive to all other remedies at law and in equity against the state or any political subdivision of the state. As a requirement to making a request for relief under this chapter, the claimant waives any and all other remedies, causes of action, and other forms of relief or compensation against the state, any political subdivision of the state, and their officers, employees, agents, and volunteers related to the claimant's wrongful conviction and imprisonment. This waiver shall also include all state, common law, and federal claims for relief, including claims pursuant to 42 U.S.C. Sec. 1983. A wrongfully convicted person who elects not to pursue a claim for compensation pursuant to this chapter shall not be precluded from seeking relief through any other existing remedy. The claimant must execute a legal release prior to the payment of any compensation under this chapter. If the release is held invalid for any reason and the claimant is awarded compensation under this chapter and receives a tort award related to his or her wrongful conviction and incarceration, the claimant must reimburse the state for the lesser of:

(a) The amount of the compensation award, excluding the portion awarded pursuant to RCW 4.100.060(5) (c) through (e); or

(b) The amount received by the claimant under the tort award.

(2) A release dismissal agreement, plea agreement, or any similar agreement whereby a prosecutor's office or an agent acting on its behalf agrees to take or refrain from certain action if the accused individual agrees to forgo legal action against the county, the state of Washington, or any political subdivision, is admissible and should be evaluated in light of all the evidence. However, any such agreement is not dispositive of the question of whether the claimant was wrongfully convicted or entitled to compensation under this chapter. [2013 c 175 § 8.]

4.100.090 Actions for compensation. Except as provided in RCW 4.100.070, an action for compensation under this chapter must be commenced within three years after the

grant of a pardon, the grant of judicial relief and satisfaction of other conditions described in RCW 4.100.020, or release from custody, whichever is later. However, any action by the state challenging or appealing the grant of judicial relief or release from custody tolls the three-year period. Any persons meeting the criteria set forth in RCW 4.100.020 who was wrongfully convicted before July 28, 2013, may commence an action under this chapter within three years after July 28, 2013. [2013 c 175 § 9.]

Title 6

ENFORCEMENT OF JUDGMENTS

Chapters

6.13 Homesteads.

6.23 Redemption.

Chapter 6.13 RCW HOMESTEADS

Sections

6.13.080 Homestead exemption, when not available.

6.13.080 Homestead exemption, when not available.

The homestead exemption is not available against an execution or forced sale in satisfaction of judgments obtained:

(1) On debts secured by mechanic's, laborer's, construction, maritime, automobile repair, material supplier's, or vendor's liens arising out of and against the particular property claimed as a homestead;

(2) On debts secured (a) by security agreements describing as collateral the property that is claimed as a homestead or (b) by mortgages or deeds of trust on the premises that have been executed and acknowledged by both spouses or both domestic partners or by any claimant not married or in a state registered domestic partnership;

(3) On one spouse's or one domestic partner's or the community's debts existing at the time of that spouse's or that domestic partner's bankruptcy filing where (a) bankruptcy is filed by both spouses or both domestic partners within a six-month period, other than in a joint case or a case in which their assets are jointly administered, and (b) the other spouse or other domestic partner exempts property from property of the estate under the bankruptcy exemption provisions of 11 U.S.C. Sec. 522(d);

(4) On debts arising from a lawful court order or decree or administrative order establishing a child support obligation or obligation to pay maintenance;

(5) On debts owing to the state of Washington for recovery of medical assistance correctly paid on behalf of an individual consistent with 42 U.S.C. Sec. 1396p;

(6) On debts secured by a condominium's or homeowner association's lien. In order for an association to be exempt under this provision, the association must have provided a homeowner with notice that nonpayment of the association's assessment may result in foreclosure of the association lien and that the homestead protection under this chapter shall not apply. An association has complied with this notice requirement by mailing the notice, by first-class mail, to the address of the owner's lot or unit. The notice required in this subsec-

tion shall be given within thirty days from the date the association learns of a new owner, but in all cases the notice must be given prior to the initiation of a foreclosure. The phrase "learns of a new owner" in this subsection means actual knowledge of the identity of a homeowner acquiring title after June 9, 1988, and does not require that an association affirmatively ascertain the identity of a homeowner. Failure to give the notice specified in this subsection affects an association's lien only for debts accrued up to the time an association complies with the notice provisions under this subsection; or

(7) On debts owed for taxes collected under chapters 82.08, 82.12, and 82.14 RCW but not remitted to the department of revenue. [2013 c 23 § 2; 2008 c 6 § 635; 2007 c 429 § 2; 2005 c 292 § 4; 1993 c 200 § 4. Prior: 1988 c 231 § 3; 1988 c 192 § 1; 1987 c 442 § 208; 1984 c 260 § 16; 1982 c 10 § 1; prior: 1981 c 304 § 17; 1981 c 149 § 1; 1909 c 44 § 1; 1895 c 64 § 5; RRS § 533. Formerly RCW 6.12.100.]

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

Additional notes found at www.leg.wa.gov

Chapter 6.23 RCW REDEMPTION

Sections

6.23.010 Redemption from sale—Who may redeem—Terms include successors.

6.23.010 Redemption from sale—Who may redeem—Terms include successors. (1) Real property sold subject to redemption, as provided in RCW 6.21.080, or any part thereof separately sold, may be redeemed by the following persons, or their successors in interest:

(a) The judgment debtor, in the whole or any part of the property separately sold.

(b) A creditor having a lien by judgment, decree, deed of trust, or mortgage, on any portion of the property, or any portion of any part thereof, separately sold, subsequent in priority to that on which the property was sold. The persons mentioned in this subsection are termed redemptioners.

(2) As used in this chapter, the terms "judgment debtor," "redemptioner," and "purchaser" refer also to their respective successors in interest. [2013 c 53 § 1; 1987 c 442 § 701; 1899 c 53 § 7; RRS § 594. Prior: 1897 c 50 § 15. Formerly RCW 6.24.130.]

Title 7

SPECIAL PROCEEDINGS AND ACTIONS

Chapters

7.04A Uniform arbitration act.
7.16 Certiorari, mandamus, and prohibition.
7.68 Victims of crimes—Compensation, assistance.
7.70 Actions for injuries resulting from health care.
7.71 Health care peer review.
7.77 Uniform collaborative law act.
7.80 Civil infractions.
7.90 Sexual assault protection order act.

7.92 Jennifer Paulson stalking protection order act.
7.96 Uniform correction or clarification of defamation act.

Chapter 7.04A RCW UNIFORM ARBITRATION ACT

Sections

7.04A.090 Initiation of arbitration.

7.04A.090 Initiation of arbitration. (1) A person initiates an arbitration proceeding by giving notice in a record to the other parties to the agreement to arbitrate in the agreed manner between the parties or, in the absence of agreement, by mail certified or registered, return receipt requested and obtained, or by service as authorized for the initiation of a civil action. The notice must describe the nature of the controversy and the remedy sought.

(2) Unless a person interposes an objection as to lack or insufficiency of notice under RCW 7.04A.150(3) not later than the commencement of the arbitration hearing, the person's appearance at the hearing waives any objection to lack of or insufficiency of notice.

(3) A claim sought to be arbitrated is subject to the same limitations of time for the commencement of actions as if the claim had been asserted in a court. [2013 c 92 § 1; 2005 c 433 § 9.]

Chapter 7.16 RCW CERTIORARI, MANDAMUS, AND PROHIBITION

Sections

7.16.370 Repealed.

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

Chapter 7.68 RCW VICTIMS OF CRIMES— COMPENSATION, ASSISTANCE

Sections

7.68.031 Sending notices, orders, payments to claimants.
 7.68.033 Protection of payments—Payment after death—Time limitations for filing—Confinement in institution.
 7.68.034 Direct deposit or electronic payment of benefits.
 7.68.801 Commercially sexually exploited children statewide coordinating committee. (*Expires June 30, 2015.*)

7.68.031 Sending notices, orders, payments to claimants. On all claims under this chapter, claimants' written or electronic notices, orders, or payments must be forwarded directly to the claimant until such time as there has been entered an order on the claim appealable to the department. Claimants' written or electronic notices, orders, or payments may be forwarded to the claimant in care of a representative before an order has been entered if the claimant sets forth in writing the name and address of the representative to whom the claimant desires this information to be forwarded. [2013 c 125 § 1; 2011 c 346 § 201.]

Intent—Retroactive application—Effective date—2011 c 346: See notes following RCW 7.68.020.

7.68.033 Protection of payments—Payment after death—Time limitations for filing—Confinement in institution. (1) Except as provided in RCW 43.20B.720, 72.09.111, 74.20A.260, and 51.32.380, no money paid or payable under this chapter shall, before the issuance and delivery of the payment, or disbursement of electronic funds or electronic payment, be assigned, charged, or taken in execution, attached, garnished, or pass or be paid to any other person by operation of law, any form of voluntary assignment, or power of attorney. Any such assignment or charge is void unless the transfer is to a financial institution at the request of a victim or other beneficiary and made in accordance with RCW 7.68.034.

(2)(a) If any victim suffers an injury and dies from it before he or she receives payment of any monthly installment covering financial support for lost wages for any period of time before his or her death, the amount of the monthly payment shall be paid to the surviving spouse or the child or children if there is no surviving spouse. If there is no surviving spouse and no child or children, the amount of the monthly payment shall be paid by the department and distributed consistent with the terms of the decedent's will or, if the decedent dies intestate, consistent with the terms of RCW 11.04.015.

(b) Any application for compensation under this subsection (2) shall be filed with the department within one year of the date of death. The department may satisfy its responsibilities under this subsection (2) by sending any payment due in the name of the decedent and to the last known address of the decedent.

(3) Any victim or beneficiary receiving benefits under this chapter who is subsequently confined in, or who subsequently becomes eligible for benefits under this chapter while confined in, any institution under conviction and sentence shall have all payments of the compensation canceled during the period of confinement. After discharge from the institution, payment of benefits due afterward shall be paid if the victim or beneficiary would, except for the provisions of this subsection (3), otherwise be eligible for them. [2013 c 125 § 2; 2011 c 346 § 203.]

Intent—Retroactive application—Effective date—2011 c 346: See notes following RCW 7.68.020.

7.68.034 Direct deposit or electronic payment of benefits. Any victim or other recipient of benefits under this chapter may elect to have any payments due paid by debit card or other electronic means or transferred to such person's account in a financial institution for either: (1) Credit to the recipient's account in such financial institution; or (2) immediate transfer therefrom to the recipient's account in any other financial institution. A single payment may be drawn in favor of such financial institution, for the total amount due the recipients involved, and written directions provided to such financial institution of the amount to be credited to the account of a recipient or to be transferred to an account in another financial institution for such recipient. The issuance and delivery by the disbursing officer of a payment in accordance with the procedure set forth in this section and proper endorsement thereof by the financial institution shall have the same legal effect as payment directly to the recipient.

For the purposes of this section, "financial institution" shall have the meaning given in RCW 41.04.240 as now or hereafter amended. [2013 c 125 § 3; 2011 c 346 § 204.]

Intent—Retroactive application—Effective date—2011 c 346: See notes following RCW 7.68.020.

7.68.801 Commercially sexually exploited children statewide coordinating committee. (Expires June 30, 2015.) (1) The commercially sexually exploited children statewide coordinating committee is established to address the issue of children who are commercially sexually exploited, to examine the practices of local and regional entities involved in addressing sexually exploited children, and to make recommendations on statewide laws and practices.

(2) The committee is convened by the office of the attorney general and consists of the following members:

(a) One member from each of the two largest caucuses of the house of representatives appointed by the speaker of the house;

(b) One member from each of the two largest caucuses of the senate appointed by the speaker of the senate;

(c) A representative of the governor's office appointed by the governor;

(d) The secretary of the children's administration or his or her designee;

(e) The secretary of the juvenile rehabilitation administration or his or her designee;

(f) The attorney general or his or her designee;

(g) The superintendent of public instruction or his or her designee;

(h) A representative of the administrative office of the courts appointed by the administrative office of the courts;

(i) The executive director of the Washington association of sheriffs and police chiefs or his or her designee;

(j) The executive director of the Washington state criminal justice training commission or his or her designee;

(k) A representative of the Washington association of prosecuting attorneys appointed by the association;

(l) The executive director of the office of public defense or his or her designee;

(m) Three representatives of community service providers that provide direct services to commercially sexually exploited children appointed by the attorney general;

(n) Two representatives of nongovernmental organizations familiar with the issues affecting commercially sexually exploited children appointed by the attorney general;

(o) The president of the superior court judges' association or his or her designee;

(p) The president of the juvenile court administrators or his or her designee;

(q) Any existing chairs of regional task forces on commercially sexually exploited children;

(r) A representative from the criminal defense bar;

(s) A representative of the center for children and youth justice;

(t) A representative from the office of crime victims advocacy; and

(u) The executive director of the Washington coalition of sexual assault programs.

(3) The duties of the committee include, but are not limited to:

(a) Overseeing and reviewing the implementation of the Washington state model protocol for commercially sexually exploited children at pilot sites;

(b) Receiving reports and data from local and regional entities regarding the incidence of commercially sexually exploited children in their areas as well as data information regarding perpetrators, geographic data and location trends, and any other data deemed relevant;

(c) Receiving reports on local coordinated community response practices and results of the community responses;

(d) Reviewing recommendations from local and regional entities regarding policy and legislative changes that would improve the efficiency and effectiveness of local response practices;

(e) Making recommendations regarding policy and legislative changes that would improve the effectiveness of the state's response to and promote best practices for suppression of the commercial sexual exploitation of children;

(f) Making recommendations regarding data collection useful to understanding or addressing the problem of commercially sexually exploited children; and

(g) Reviewing and making recommendations regarding strategic local investments or opportunities for federal and state funding to address the commercial sexual exploitation of children.

(4) The committee must meet no less than annually.

(5) The committee shall report its findings to the appropriate committees of the legislature and to any other known statewide committees addressing trafficking or the commercial sex trade by June 30th of each year.

(6) This section expires June 30, 2015. [2013 c 253 § 1.]

Chapter 7.70 RCW

ACTIONS FOR INJURIES RESULTING FROM HEALTH CARE

Sections

7.70.100 Mandatory mediation of health care claims—Procedures.

7.70.100 Mandatory mediation of health care claims—Procedures. (1) Before a superior court trial, all causes of action, whether based in tort, contract, or otherwise, for damages arising from injury occurring as a result of health care provided after July 1, 1993, shall be subject to mandatory mediation prior to trial except as provided in subsection (4) of this section.

(2) The supreme court shall by rule adopt procedures to implement mandatory mediation of actions under this chapter. The implementation contemplates the adoption of rules by the supreme court which will require mandatory mediation without exception unless subsection (4) of this section applies. The rules on mandatory mediation shall address, at a minimum:

(a) Procedures for the appointment of, and qualifications of, mediators. A mediator shall have experience or expertise related to actions arising from injury occurring as a result of health care, and be a member of the state bar association who has been admitted to the bar for a minimum of five years or who is a retired judge. The parties may stipulate to a nonlawyer mediator. The court may prescribe additional qualifications of mediators;

(b) Appropriate limits on the amount or manner of compensation of mediators;

(c) The number of days following the filing of a claim under this chapter within which a mediator must be selected;

(d) The method by which a mediator is selected. The rule shall provide for designation of a mediator by the superior court if the parties are unable to agree upon a mediator;

(e) The number of days following the selection of a mediator within which a mediation conference must be held;

(f) A means by which mediation of an action under this chapter may be waived by a mediator who has determined that the claim is not appropriate for mediation; and

(g) Any other matters deemed necessary by the court.

(3) Mediators shall not impose discovery schedules upon the parties.

(4) The mandatory mediation requirement of subsection (2) of this section does not apply to an action subject to mandatory arbitration under chapter 7.06 RCW or to an action in which the parties have agreed, subsequent to the arising of the claim, to submit the claim to arbitration under chapter 7.04A or 7.70A RCW.

(5) The implementation also contemplates the adoption of a rule by the supreme court for procedures for the parties to certify to the court the manner of mediation used by the parties to comply with this section. [2013 c 82 § 1; 2007 c 119 § 1; 2006 c 8 § 314; 1993 c 492 § 419.]

Findings—Intent—Part headings and subheadings not law—Severability—2006 c 8: See notes following RCW 5.64.010.

Findings—Intent—1993 c 492: See notes following RCW 43.72.005.

Additional notes found at www.leg.wa.gov

Chapter 7.71 RCW

HEALTH CARE PEER REVIEW

Sections

7.71.030 Actions by health care peer review body—Exclusive remedy.

7.71.030 Actions by health care peer review body—Exclusive remedy. (1) If the limitation on damages under RCW 7.71.020 and P.L. 99-660 Sec. 411(a)(1) does not apply, this section shall provide the exclusive remedies in any lawsuit by a health care provider for any action taken by a professional peer review body of health care providers as defined in RCW 7.70.020.

(2) Remedies shall be limited to appropriate injunctive relief, and damages shall be allowed only for lost earnings directly attributable to the action taken by the professional peer review body, incurred between the date of such action and the date the action is functionally reversed by the professional peer review body.

(3) Reasonable attorneys' fees and costs shall be awarded if approved by the court under RCW 7.71.035.

(4) The statute of limitations for actions under this section shall be one year from the date of the action of the professional peer review body. [2013 c 301 § 1; 2012 c 165 § 1; 1987 c 269 § 3.]

Chapter 7.77 RCW
UNIFORM COLLABORATIVE LAW ACT

Sections

7.77.010	Definitions.
7.77.020	Applicability.
7.77.030	Collaborative law participation agreement—Requirements.
7.77.040	Beginning and concluding collaborative law process.
7.77.050	Proceedings pending before tribunal—Status report.
7.77.060	Emergency order.
7.77.070	Approval of agreement by tribunal.
7.77.080	Disqualification of collaborative lawyer and lawyers in associated law firm.
7.77.090	Governmental entity as party.
7.77.100	Disclosure of information.
7.77.110	Standards of professional responsibility and mandatory reporting not affected.
7.77.120	Appropriateness of collaborative law process.
7.77.130	Coercive or violent relationship among parties.
7.77.140	Confidentiality of collaborative law communication.
7.77.150	Privilege against disclosure for collaborative law communication—Admissibility—Discovery.
7.77.160	Waiver and preclusion of privilege.
7.77.170	Limits of privilege.
7.77.180	Authority of tribunal in case of noncompliance.
7.77.900	Short title.
7.77.901	Uniformity of application and construction.
7.77.902	Relation to electronic signatures in global and national commerce act.

7.77.010 Definitions. In this chapter:

(1) "Collaborative law communication" means a statement, whether oral or in a record, or verbal or nonverbal, that:

(a) Is made to conduct, participate in, continue, or reconvene a collaborative law process; and

(b) Occurs after the parties sign a collaborative law participation agreement and before the collaborative law process is concluded.

(2) "Collaborative law participation agreement" means an agreement by persons to participate in a collaborative law process.

(3) "Collaborative law process" means a procedure intended to resolve a collaborative matter without intervention by a tribunal in which persons:

(a) Sign a collaborative law participation agreement; and

(b) Are represented by collaborative lawyers.

(4) "Collaborative lawyer" means a lawyer who represents a party in a collaborative law process.

(5) "Collaborative matter" means a dispute, transaction, claim, problem, or issue for resolution, including a dispute, claim, or issue in a proceeding, which is described in a collaborative law participation agreement.

(6) "Law firm" means:

(a) Lawyers who practice law together in a partnership, professional corporation, sole proprietorship, limited liability company, or association; and

(b) Lawyers employed in a legal services organization, or the legal department of a corporation or other organization, or the legal department of a government or governmental subdivision, agency, or instrumentality.

(7) "Nonparty participant" means a person, other than a party and the party's collaborative lawyer, that participates in a collaborative law process.

(8) "Party" means a person that signs a collaborative law participation agreement and whose consent is necessary to resolve a collaborative matter.

(9) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company,

association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(10) "Proceeding" means a judicial, administrative, arbitral, or other adjudicative process before a tribunal, including related prehearing and posthearing motions, conferences, and discovery.

(11) "Prospective party" means a person that discusses with a prospective collaborative lawyer the possibility of signing a collaborative law participation agreement.

(12) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(13) "Related to a collaborative matter" means involving the same parties, transaction or occurrence, nucleus of operative fact, dispute, claim, or issue as the collaborative matter.

(14) "Sign" means, with present intent to authenticate or adopt a record:

(a) To execute or adopt a tangible symbol; or

(b) To attach to or logically associate with the record an electronic symbol, sound, or process.

(15) "Tribunal" means a court, arbitrator, administrative agency, or other body acting in an adjudicative capacity which, after presentation of evidence or legal argument, has jurisdiction to render a decision affecting a party's interests in a matter. [2013 c 119 § 2.]

7.77.020 Applicability. (1) This chapter applies to a collaborative law participation agreement that meets the requirements of RCW 7.77.030 signed on or after July 28, 2013.

(2) The use of collaborative law applies only to matters that would be resolved in civil court and may not be used to resolve matters in criminal cases. [2013 c 119 § 3.]

7.77.030 Collaborative law participation agreement—Requirements. (1) A collaborative law participation agreement must:

(a) Be in a record;

(b) Be signed by the parties;

(c) State the parties' intention to resolve a collaborative matter through a collaborative law process under this chapter;

(d) Describe the nature and scope of the matter;

(e) Identify the collaborative lawyer who represents each party in the process; and

(f) Contain a statement by each collaborative lawyer confirming the lawyer's representation of a party in the collaborative law process.

(2) Parties may agree to include in a collaborative law participation agreement additional provisions not inconsistent with this chapter. [2013 c 119 § 4.]

7.77.040 Beginning and concluding collaborative law process. (1) A collaborative law process begins when the parties sign a collaborative law participation agreement.

(2) A tribunal may not order a party to participate in a collaborative law process over that party's objection.

(3) A collaborative law process is concluded by a:

(a) Resolution of a collaborative matter as evidenced by a signed record;

(b) Resolution of a part of the collaborative matter, evidenced by a signed record, in which the parties agree that the remaining parts of the matter will not be resolved in the process; or

(c) Termination of the process.

(4) A collaborative law process terminates:

(a) When a party gives notice to other parties in a record that the process is ended; or

(b) When a party:

(i) Begins a proceeding related to a collaborative matter without the agreement of all parties; or

(ii) In a pending proceeding related to the matter:

(A) Initiates a pleading, motion, order to show cause, or request for a conference with the tribunal without the agreement of all parties as to the relief sought;

(B) Requests that the proceeding be put on the tribunal's active calendar; or

(C) Takes similar contested action requiring notice to be sent to the parties; or

(c) Except as otherwise provided by subsection (7) of this section, when a party discharges a collaborative lawyer or a collaborative lawyer withdraws from further representation of a party.

(5) A party's collaborative lawyer shall give prompt notice to all other parties in a record of a discharge or withdrawal.

(6) A party may terminate a collaborative law process with or without cause.

(7) Notwithstanding the discharge or withdrawal of a collaborative lawyer, a collaborative law process continues, if not later than thirty days after the date that the notice of the discharge or withdrawal of a collaborative lawyer required by subsection (5) of this section is sent to the parties:

(a) The unrepresented party engages a successor collaborative lawyer; and

(b) In a signed record:

(i) The parties consent to continue the process by reaffirming the collaborative law participation agreement;

(ii) The agreement is amended to identify the successor collaborative lawyer; and

(iii) The successor collaborative lawyer confirms the lawyer's representation of a party in the collaborative law process.

(8) A collaborative law process does not conclude if, with the consent of the parties, a party requests a tribunal to approve a resolution of the collaborative matter or any part thereof as evidenced by a signed record.

(9) A collaborative law participation agreement may provide additional methods of concluding a collaborative law process. [2013 c 119 § 5.]

7.77.050 Proceedings pending before tribunal—Status report. (1) Persons in a proceeding pending before a tribunal may sign a collaborative law participation agreement to seek to resolve a collaborative matter related to the proceeding. Parties shall file promptly with the tribunal a notice of the agreement after it is signed. Subject to subsection (3) of this section and RCW 7.77.060 and 7.77.070, the filing operates as an application for a stay of the proceeding.

(2) The parties shall file promptly with the tribunal notice in a record when a collaborative law process con-

cludes. The stay of the proceeding under subsection (1) of this section is lifted when the notice is filed. The notice may not specify any reason for termination of the process.

(3) A tribunal in which a proceeding is stayed under subsection (1) of this section may require the parties and collaborative lawyers to provide a status report on the collaborative law process and the proceeding. A status report may include only information on whether the process is ongoing or concluded. It may not include a report, assessment, evaluation, recommendation, finding, or other communication regarding a collaborative law process or collaborative matter.

(4) A tribunal may not consider a communication made in violation of subsection (3) of this section.

(5) A tribunal shall provide parties notice and an opportunity to be heard before dismissing a proceeding in which a notice of collaborative law process is filed based on delay or failure to prosecute. [2013 c 119 § 6.]

7.77.060 Emergency order. During a collaborative law process, a tribunal may issue emergency orders to protect the health, safety, welfare, or interest of a party or a family or household member, as defined in RCW 26.50.010. [2013 c 119 § 7.]

7.77.070 Approval of agreement by tribunal. A tribunal may approve an agreement resulting from a collaborative law process. [2013 c 119 § 8.]

7.77.080 Disqualification of collaborative lawyer and lawyers in associated law firm. (1) Except as otherwise provided in subsection (3) of this section, a collaborative lawyer is disqualified from appearing before a tribunal to represent a party in a proceeding related to the collaborative matter.

(2) Except as otherwise provided in subsection (3) of this section and RCW 7.77.090, a lawyer in a law firm with which the collaborative lawyer is associated is disqualified from appearing before a tribunal to represent a party in a proceeding related to the collaborative matter if the collaborative lawyer is disqualified from doing so under subsection (1) of this section.

(3) A collaborative lawyer or a lawyer in a law firm with which the collaborative lawyer is associated may represent a party:

(a) To ask a tribunal to approve an agreement resulting from the collaborative law process; or

(b) To seek or defend an emergency order to protect the health, safety, welfare, or interest of a party, or family or household member, as defined in RCW 26.50.010, if a successor lawyer is not immediately available to represent that person.

(4) If subsection (3)(b) of this section applies, a collaborative lawyer, or lawyer in a law firm with which the collaborative lawyer is associated, may represent a party or family or household member only until the person is represented by a successor lawyer or reasonable measures are taken to protect the health, safety, welfare, or interest of the person. [2013 c 119 § 9.]

7.77.090 Governmental entity as party. (1) The disqualification of RCW 7.77.080(1) applies to a collaborative

lawyer representing a party that is a government or governmental subdivision, agency, or instrumentality.

(2) After a collaborative law process concludes, another lawyer in a law firm with which the collaborative lawyer is associated may represent a government or governmental subdivision, agency, or instrumentality in the collaborative matter or a matter related to the collaborative matter if:

(a) The collaborative law participation agreement so provides; and

(b) The collaborative lawyer is isolated from any participation in the collaborative matter or a matter related to the collaborative matter through procedures within the law firm which are reasonably calculated to isolate the collaborative lawyer from such participation. [2013 c 119 § 10.]

7.77.100 Disclosure of information. Except as provided by law other than this chapter, during the collaborative law process, on the request of another party, a party shall make timely, full, candid, and informal disclosure of information related to the collaborative matter without formal discovery. A party also shall update promptly previously disclosed information that has materially changed. The parties may define the scope of disclosure during the collaborative law process. [2013 c 119 § 11.]

7.77.110 Standards of professional responsibility and mandatory reporting not affected. (1) This chapter does not affect the professional responsibility obligations and standards applicable to a lawyer or other licensed professional or relieve a lawyer or other licensed professional from the duty to comply with all applicable professional responsibility obligations and standards.

(2) This chapter does not affect the obligation of a person to report abuse or neglect, abandonment, or exploitation of a child or adult under the law of this state.

(3) Noncompliance with an obligation or prohibition imposed by this chapter does not in itself establish grounds for professional discipline. [2013 c 119 § 12.]

7.77.120 Appropriateness of collaborative law process. Before a prospective party signs a collaborative law participation agreement, the prospective party must:

(1) Be advised as to whether a collaborative law process is appropriate for the prospective party's matter;

(2) Be provided with sufficient information to make an informed decision about the material benefits and risks of a collaborative law process as compared to the material benefits and risks of other reasonably available alternatives for resolving the proposed collaborative matter, such as litigation, mediation, arbitration, or expert evaluation;

(3) Be informed that after signing an agreement if a party initiates a proceeding or seeks tribunal intervention in a pending proceeding related to the collaborative matter, the collaborative law process terminates;

(4) Be informed that participation in a collaborative law process is voluntary and any party has the right to terminate unilaterally a collaborative law process with or without cause; and

(5) Be informed that the collaborative lawyer and any lawyer in a law firm with which the collaborative lawyer is associated may not appear before a tribunal to represent a

party in a proceeding related to the collaborative matter, except as authorized by law or court rule. [2013 c 119 § 13.]

7.77.130 Coercive or violent relationship among parties. (1) Before a prospective party signs a collaborative law participation agreement, a prospective collaborative lawyer shall make reasonable inquiry whether the prospective party has a history of a coercive or violent relationship with another prospective party.

(2) Throughout a collaborative law process, a collaborative lawyer reasonably and continuously shall assess whether the party the collaborative lawyer represents has a history of a coercive or violent relationship with another party.

(3) If a collaborative lawyer reasonably believes that the party the lawyer represents or the prospective party who consults the lawyer has a history of a coercive or violent relationship with another party or prospective party, the lawyer may not begin or continue a collaborative law process unless:

(a) The party or the prospective party requests beginning or continuing a process; and

(b) The collaborative lawyer reasonably believes that the safety of the party or prospective party can be protected adequately during a process. [2013 c 119 § 14.]

7.77.140 Confidentiality of collaborative law communication. Subject to RCW 7.77.110, a collaborative law communication is confidential to the extent agreed by the parties in a signed record or as provided by law of this state other than this chapter. [2013 c 119 § 15.]

7.77.150 Privilege against disclosure for collaborative law communication—Admissibility—Discovery. (1) Subject to RCW 7.77.160 and 7.77.170, a collaborative law communication is privileged under subsection (2) of this section, is not subject to discovery, and is not admissible in evidence.

(2) In a proceeding, the following privileges apply:

(a) A party may refuse to disclose, and may prevent any other person from disclosing, a collaborative law communication.

(b) A nonparty participant may refuse to disclose, and may prevent any other person from disclosing, a collaborative law communication of the nonparty participant.

(3) Evidence or information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely because of its disclosure or use in a collaborative law process. [2013 c 119 § 16.]

7.77.160 Waiver and preclusion of privilege. (1) A privilege under RCW 7.77.150 may be waived in a record or orally during a proceeding if it is expressly waived by all parties and, in the case of the privilege of a nonparty participant, it is also expressly waived by the nonparty participant.

(2) A person that makes a disclosure or representation about a collaborative law communication which prejudices another person in a proceeding may not assert a privilege under RCW 7.77.150, but this preclusion applies only to the extent necessary for the person prejudiced to respond to the disclosure or representation. [2013 c 119 § 17.]

7.77.170 Limits of privilege. (1) There is no privilege under RCW 7.77.150 for a collaborative law communication that is:

(a) Available to the public under chapter 42.56 RCW or made during a session of a collaborative law process that is open, or is required by law to be open, to the public;

(b) A threat or statement of a plan to inflict bodily injury or commit a crime of violence;

(c) Intentionally used to plan a crime, commit or attempt to commit a crime, or conceal an ongoing crime or ongoing criminal activity; or

(d) In an agreement resulting from the collaborative law process, evidenced by a record signed by all parties to the agreement.

(2) The privileges under RCW 7.77.150 for a collaborative law communication do not apply to the extent that a communication is:

(a) Sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice arising from or related to a collaborative law process;

(b) Sought or offered to prove or disprove abuse, neglect, abandonment, or exploitation of a child or adult, unless the child protective services agency or adult protective services agency is a party to or otherwise participates in the process; or

(c) Sought or offered to prove or disprove stalking or cyber stalking of a party or child.

(3) There is no privilege under RCW 7.77.150 if a tribunal finds, after a hearing in camera, that the party seeking discovery or the proponent of the evidence has shown the evidence is not otherwise available, the need for the evidence substantially outweighs the interest in protecting confidentiality, and the collaborative law communication is sought or offered in:

(a) A court proceeding involving a felony or misdemeanor; or

(b) A proceeding seeking rescission or reformation of a contract arising out of the collaborative law process or in which a defense to avoid liability on the contract is asserted.

(4) If a collaborative law communication is subject to an exception under subsection (2) or (3) of this section, only the part of the communication necessary for the application of the exception may be disclosed or admitted.

(5) Disclosure or admission of evidence excepted from the privilege under subsection (2) or (3) of this section does not make the evidence or any other collaborative law communication discoverable or admissible for any other purpose.

(6) The privileges under RCW 7.77.150 do not apply if the parties agree in advance in a signed record, or if a record of a proceeding reflects agreement by the parties, that all or part of a collaborative law process is not privileged. This subsection does not apply to a collaborative law communication made by a person that did not receive actual notice of the agreement before the communication was made. [2013 c 119 § 18.]

7.77.180 Authority of tribunal in case of noncompliance. (1) If an agreement fails to meet the requirements of RCW 7.77.030, or a lawyer fails to comply with RCW 7.77.120 or 7.77.130, a tribunal may nonetheless find that the

parties intended to enter into a collaborative law participation agreement if they:

(a) Signed a record indicating an intention to enter into a collaborative law participation agreement; and

(b) Reasonably believed they were participating in a collaborative law process.

(2) If a tribunal makes the findings specified in subsection (1) of this section, and the interests of justice require, the tribunal may:

(a) Enforce an agreement evidenced by a record resulting from the process in which the parties participated;

(b) Apply the disqualification provisions of RCW 7.77.040, 7.77.050, 7.77.080, and 7.77.090; and

(c) Apply a privilege under RCW 7.77.150. [2013 c 119 § 19.]

7.77.900 Short title. This chapter may be known and cited as the "uniform collaborative law act." [2013 c 119 § 1.]

7.77.901 Uniformity of application and construction. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. [2013 c 119 § 20.]

7.77.902 Relation to electronic signatures in global and national commerce act. This chapter modifies, limits, and supersedes the federal electronic signatures in global and national commerce act, 15 U.S.C. Sec. 7001, et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. Sec. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. Sec. 7003(b). [2013 c 119 § 21.]

Chapter 7.80 RCW CIVIL INFRACTIONS

Sections

7.80.120 Monetary penalties—Restitution.

7.80.120 Monetary penalties—Restitution. (1) A person found to have committed a civil infraction shall be assessed a monetary penalty.

(a) The maximum penalty and the default amount for a class 1 civil infraction shall be two hundred fifty dollars, not including statutory assessments, except for an infraction of state law involving (i) potentially dangerous litter as specified in RCW 70.93.060(4) or violent video or computer games under RCW 9.91.180, in which case the maximum penalty and default amount is five hundred dollars; or (ii) a person's refusal to submit to a test or tests pursuant to RCW 79A.60.040 and 79A.60.700, in which case the maximum penalty and default amount is one thousand dollars;

(b) The maximum penalty and the default amount for a class 2 civil infraction shall be one hundred twenty-five dollars, not including statutory assessments;

(c) The maximum penalty and the default amount for a class 3 civil infraction shall be fifty dollars, not including statutory assessments; and

(d) The maximum penalty and the default amount for a class 4 civil infraction shall be twenty-five dollars, not including statutory assessments.

(2) The supreme court shall prescribe by rule the conditions under which local courts may exercise discretion in assessing fines for civil infractions.

(3) Whenever a monetary penalty is imposed by a court under this chapter it is immediately payable. If the person is unable to pay at that time the court may grant an extension of the period in which the penalty may be paid. If the penalty is not paid on or before the time established for payment, the court may proceed to collect the penalty in the same manner as other civil judgments and may notify the prosecuting authority of the failure to pay.

(4) The court may also order a person found to have committed a civil infraction to make restitution. [2013 c 278 § 3. Prior: 2003 c 365 § 3; 2003 c 337 § 4; 1997 c 159 § 2; 1987 c 456 § 20.]

Findings—2003 c 365: See note following RCW 9.91.180.

Findings—2003 c 337: See note following RCW 70.93.060.

Chapter 7.90 RCW

SEXUAL ASSAULT PROTECTION ORDER ACT

Sections

7.90.040	Petition—Additional requirements.
7.90.050	Petition—Hearings prior to issuance of protection order.
7.90.052	Service by publication—When authorized.
7.90.053	Service by mail—When authorized.
7.90.054	Issuance of order following service by publication or mail.
7.90.120	Ex parte orders—Duration.
7.90.121	Renewal of ex parte order.
7.90.140	Sexual assault protection orders—Service to respondent.
7.90.170	Modification or termination of protection orders.

7.90.040 Petition—Additional requirements. (1) Any person may seek relief under this chapter by filing a petition with a court alleging that the person has been the victim of nonconsensual sexual conduct or nonconsensual sexual penetration committed by the respondent.

(2) A person under eighteen years of age who is sixteen years of age or older may seek relief under this chapter and is not required to seek relief by a guardian or next friend.

(3) No guardian or guardian ad litem need be appointed on behalf of a respondent to an action under this chapter who is under eighteen years of age if such respondent is sixteen years of age or older.

(4) The court may, if it deems necessary, appoint a guardian ad litem for a petitioner or respondent who is a party to an action under this chapter. The appointment shall be at no cost to either party.

(5) Jurisdiction of the courts over proceedings under this chapter shall be the same as jurisdiction over domestic violence protection orders under RCW 26.50.020(5).

(6) An action under this chapter shall be filed in the county or the municipality where the petitioner resides. [2013 c 74 § 1; 2006 c 138 § 4.]

7.90.050 Petition—Hearings prior to issuance of protection order. Upon receipt of the petition, the court shall order a hearing which shall be held not later than fourteen days from the date of the order. The court may schedule a hearing by telephone pursuant to local court rule, to reason-

ably accommodate a disability, or in exceptional circumstances to protect a petitioner from further nonconsensual sexual conduct or nonconsensual sexual penetration. The court shall require assurances of the petitioner's identity before conducting a telephonic hearing. Personal service shall be made upon the respondent not less than five court days prior to the hearing. If timely personal service cannot be made, the court shall set a new hearing date and shall either require additional attempts at obtaining personal service or permit service by publication as provided in RCW 7.90.052 or service by mail as provided in RCW 7.90.053. The court shall not require more than two attempts at obtaining personal service and shall permit service by publication or service by mail unless the petitioner requests additional time to attempt personal service. If the court permits service by publication or service by mail, the court shall set the hearing date not later than twenty-four days from the date of the order. The court may issue an ex parte temporary sexual assault order pending the hearing as provided in RCW 7.90.110. [2013 c 74 § 2; 2006 c 138 § 6.]

7.90.052 Service by publication—When authorized.

(1) The court may order service by publication instead of personal service under the following circumstances:

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

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

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

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

(2) If the court orders service by publication, it shall also reissue the temporary order of protection not to exceed another twenty-four days from the date of reissuing the ex parte protection order and order that service by publication be provided.

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

set for the hearing. The summons must also contain a brief statement of the reason for the petition and a summary of the provisions under the ex parte order. The summons must be essentially in the following form:

In the court of the state of Washington for the county of

., Petitioner
 vs. No.
, Respondent

The state of Washington to (respondent):

You are hereby summoned to appear on the day of, (year), at a.m./p.m., and respond to the petition. If you fail to respond, an order of protection will be issued against you pursuant to the provisions of the sexual assault protection order act, chapter 7.90 RCW, for a minimum of one year from the date you are required to appear. A temporary order of protection has been issued against you, restraining you from the following: (Insert a brief statement of the provisions of the ex parte order). A copy of the petition, notice of hearing, and ex parte order has been filed with the clerk of this court.

.
 Petitioner

[2013 c 74 § 6.]

7.90.053 Service by mail—When authorized. (1) In circumstances justifying service by publication under RCW 7.90.052, if the serving party files an affidavit stating facts from which the court determines that service by mail is just as likely to give actual notice as service by publication and that the serving party is unable to afford the cost of service by publication, the court may order that service be made by mail. The service must be made by any person over eighteen years of age, who is competent to be a witness, other than a party, by mailing copies of the order and other process to the party to be served at his or her last known address or any other address determined by the court to be appropriate. Two copies must be mailed, postage prepaid, one by ordinary first-class mail and the other by a form of mail requiring a signed receipt showing when and to whom it was delivered. The envelopes must bear the return address of the sender.

(2) Proof of service under this section must be consistent with court rules for civil proceedings.

(3) Service under this section may be used in the same manner and has the same jurisdictional effect as service by publication for purposes of this chapter. Service is deemed complete upon the mailing of the two copies as prescribed in this section. [2013 c 74 § 7.]

7.90.054 Issuance of order following service by publication or mail. Following completion of service by publication as provided in RCW 7.90.052 or service by mail as provided in RCW 7.90.053, if the respondent fails to appear at the hearing, the court may issue an order of protection as provided in RCW 7.90.140. That order must be served pursuant to RCW 7.90.140 and forwarded to the appropriate law enforcement agency pursuant to RCW 7.90.160. [2013 c 74 § 8.]

7.90.120 Ex parte orders—Duration. (1)(a) An ex parte temporary sexual assault protection order shall be effective for a fixed period not to exceed fourteen days. A full hearing, as provided in this chapter, shall be set for not later than fourteen days from the issuance of the temporary order or not later than twenty-four days if service by publication or service by mail is permitted. If the court permits service by publication or service by mail, the court shall also reissue the ex parte temporary protection order not to exceed another twenty-four days from the date of reissuing the ex parte protection order. Except as provided in RCW 7.90.050, 7.90.052, or 7.90.053, the respondent shall be personally served with a copy of the ex parte temporary sexual assault protection order along with a copy of the petition and notice of the date set for the hearing.

(b) Any ex parte temporary order issued under this section shall contain the date and time of issuance and the expiration date and shall be entered into a statewide judicial information system by the clerk of the court within one judicial day after issuance.

(2) Except as otherwise provided in this section or RCW 7.90.150, a final sexual assault protection order shall be effective for a fixed period of time, not to exceed two years.

(3) Any sexual assault protection order which would expire on a court holiday shall instead expire at the close of the next court business day.

(4) The practice of dismissing or suspending a criminal prosecution in exchange for the issuance of a sexual assault protection order undermines the purposes of this chapter. This section shall not be construed as encouraging that practice. [2013 c 74 § 3; 2006 c 138 § 13.]

7.90.121 Renewal of ex parte order. (1) Any ex parte temporary or final sexual assault protection order may be renewed one or more times, as required.

(2) The petitioner may apply for renewal of the order by filing a motion for renewal at any time within the three months before the order expires.

(3) If the motion for renewal is uncontested and the petitioner seeks no modification of the order, the order may be renewed on the basis of the petitioner’s motion or affidavit stating that there has been no material change in relevant circumstances since entry of the order and stating the reason for the requested renewal.

(4)(a) If the motion is contested, upon receipt of the motion, the court shall order that a hearing be held not later than fourteen days from the date of the order.

(b) The court may schedule a hearing by telephone pursuant to local court rule, to reasonably accommodate a disability, or in exceptional circumstances to protect a petitioner from further nonconsensual sexual conduct or nonconsensual sexual penetration. The court shall require assurances of the petitioner’s identity before conducting a telephonic hearing.

(c) The respondent shall be personally served not less than five court days prior to the hearing. If timely personal service cannot be made, the court shall set a new hearing date and shall either require additional attempts at obtaining personal service or permit service by publication as provided in RCW 7.90.052 or service by mail as provided in RCW 7.90.053. The court shall not require more than two attempts at obtaining personal service and shall permit service by pub-

lication or service by mail unless the petitioner requests additional time to attempt personal service. If the court permits service by publication or service by mail, the court shall set the hearing date not later than twenty-four days from the date of the order.

(5) Renewals may be granted only in open court. [2013 c 74 § 4.]

7.90.140 Sexual assault protection orders—Service to respondent. (1) An order issued under this chapter shall be personally served upon the respondent, except as provided in subsection (6) of this section.

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

(3) If service by a sheriff or municipal peace officer is to be used, the clerk of the court shall have a copy of any order issued under this chapter forwarded on or before the next judicial day to the appropriate law enforcement agency specified in the order for service upon the respondent. Service of an order issued under this chapter shall take precedence over the service of other documents unless they are of a similar emergency nature.

(4) If the sheriff or municipal peace officer cannot complete service upon the respondent within ten days, the sheriff or municipal peace officer shall notify the petitioner. The petitioner shall provide information sufficient to permit notification.

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

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

(7) If the court previously entered an order allowing service of the notice of hearing and temporary order of protection by publication under RCW 7.90.052 or service by mail under RCW 7.90.053, the court may permit service by publication or service by mail of the order of protection issued under this chapter. Service by publication must comply with the requirements of RCW 7.90.052 and service by mail must comply with the requirements of RCW 7.90.053. The court order must state whether the court permitted service by publication or service by mail. [2013 c 74 § 5; 2006 c 138 § 15.]

7.90.170 Modification or termination of protection orders. (1) Upon receipt of a motion to modify the terms of an existing sexual assault protection order, the court shall order that a hearing be held not later than fourteen days from the date of the order. The respondent shall be personally served not less than five days before the hearing. If timely service cannot be made, the court shall set a new hearing date and shall either require additional attempts at obtaining personal service or permit service by publication as provided in RCW 7.90.052 or service by mail as provided in RCW 7.90.053. If the court permits service by mail or service by publication, the court shall set the new hearing date not later than twenty-four days from the date of the order. If the order expires because timely service cannot be made, the court shall grant an ex parte order of protection as provided in

RCW 7.90.110. The court may modify the protection order for another fixed time period or may enter a permanent order as provided in RCW 7.90.120.

(2) In any situation where an order is terminated or modified before its expiration date, the clerk of the court shall forward on or before the next judicial day a true copy of the modified order or the termination order to the appropriate law enforcement agency specified in the modified or termination order. Upon receipt of the order, the law enforcement agency shall promptly enter it in the computer-based criminal intelligence information system, or if the order is terminated, remove the order from the computer-based criminal intelligence information system. [2013 c 74 § 9; 2006 c 138 § 18.]

Chapter 7.92 RCW

JENNIFER PAULSON

STALKING PROTECTION ORDER ACT

Sections

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7.92.901	Short title.

7.92.010 Intent—Finding. Stalking is a crime that affects 3.4 million people over the age of eighteen each year in the United States. Almost half of those victims experience at least one unwanted contact per week. Twenty-nine percent of stalking victims fear that the stalking will never stop. The prevalence of anxiety, insomnia, social dysfunction, and severe depression is much higher among stalking victims than the general population. Three in four stalking victims are stalked by someone they know, and at least thirty percent of stalking victims are stalked by a current or former intimate partner. For many of those victims, the domestic violence protection order is a tool they can access to help them stay safer. For those who have not had an intimate relationship with the person stalking them, there are few remedies for them under the law. Victims who do not report the crime still desire safety and protection from future interactions with the offender. Some cases in which the stalking is reported are not prosecuted. In these situations, the victim should be able to seek a civil remedy requiring that the offender stay away from the victim. It is the intent of the legislature that the stalking protection order created by this chapter be a remedy for victims who do not qualify for a domestic violence order

of protection. Moreover, it is the intent of the legislature that courts specifically distinguish stalking conduct covered by the stalking protection order from common acts of harassment or nuisance covered by antiharassment orders. Law enforcement agencies need to be able to rely on orders that distinguish stalking conduct from common acts of harassment or nuisance. Victims of stalking conduct deserve the same protection and access to the court system as victims of domestic violence and sexual assault, and this protection can be accomplished without infringing on constitutionally protected speech or activity. The legislature finds that preventing the issuance of conflicting orders is in the interest of both petitioners and respondents. [2013 c 84 § 1.]

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

(1) "Minor" means a person who is under eighteen years of age.

(2) "Petitioner" means any named petitioner for the stalking protection order or any named victim of stalking conduct on whose behalf the petition is brought.

(3) "Stalking conduct" means any of the following:

(a) Any act of stalking as defined under RCW 9A.46.110;

(b) Any act of cyberstalking as defined under RCW 9.61.260;

(c) Any course of conduct involving repeated or continuing contacts, attempts to contact, monitoring, tracking, keeping under observation, or following of another that:

(i) Would cause a reasonable person to feel intimidated, frightened, or threatened and that actually causes such a feeling;

(ii) Serves no lawful purpose; and

(iii) The stalker knows or reasonably should know threatens, frightens, or intimidates the person, even if the stalker did not intend to intimidate, frighten, or threaten the person.

(4) "Stalking no-contact order" means a temporary order or a final order granted under this chapter against a person charged with or arrested for stalking, which includes a remedy authorized under RCW 7.92.160.

(5) "Stalking protection order" means an ex parte temporary order or a final order granted under this chapter, which includes a remedy authorized in RCW 7.92.100. [2013 c 84 § 2.]

7.92.030 Petition for stalking protection order—Creation—Contents. There shall exist an action known as a petition for a stalking protection order.

(1) A petition for relief shall allege the existence of stalking conduct and shall be accompanied by an affidavit made under oath stating the specific reasons that have caused the petitioner to become reasonably fearful that the respondent intends to injure the petitioner or another person, or the petitioner's property or the property of another. The petition shall disclose the existence of any other litigation or of any other restraining, protection, or no-contact orders between the parties.

(2) A petition for relief shall be filed as a separate, stand-alone civil case and a petition for relief may be made regard-

less of whether or not there is a pending lawsuit, complaint, petition, or other action between the parties.

(3) Forms and instructional brochures and the necessary number of certified copies shall be provided to the petitioner free of charge.

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

(5) If the petition states that disclosure of the petitioner's address would risk abuse of the petitioner or any member of the petitioner's family or household, that address may be omitted from all documents filed with the court. If the petitioner has not disclosed an address under this subsection, the petitioner shall designate an alternative address at which the respondent may serve notice of any motions. [2013 c 84 § 3.]

7.92.040 Petition—Who may file. A petition for a stalking protection order may be filed by a person:

(1) Who does not qualify for a protection order under chapter 26.50 RCW and who is a victim of stalking conduct; or

(2) On behalf of any of the following persons who is a victim of stalking conduct and who does not qualify for a protection order under chapter 26.50 RCW:

(a) A minor child, where the petitioner is a parent, a legal custodian, or, where the respondent is not a parent, an adult with whom the child is currently residing; or

(b) A vulnerable adult as defined in RCW 74.34.020 and where the petitioner is an interested person as defined in RCW 74.34.020(10). [2013 c 84 § 4.]

7.92.050 Petition—Additional requirements. (1) Any person may seek relief under this chapter by filing a petition with a court alleging that the person has been the victim of stalking conduct committed by the respondent.

(2) A minor sixteen years of age or older may seek relief under this chapter and is not required to seek relief through a guardian or next friend. This does not preclude a parent or legal custodian of a victim sixteen or seventeen years of age from seeking relief on behalf of the minor.

(3) The district courts shall have original jurisdiction and cognizance of any civil actions and proceedings brought under this chapter, except a district court shall transfer such actions and proceedings to the superior court when it is shown that (a) the petitioner, victim, or respondent to the petition is under eighteen years of age; (b) the action involves title or possession of real property; (c) a superior court has exercised or is exercising jurisdiction over a proceeding involving the parties; or (d) the action would have the effect of interfering with a respondent's care, control, or custody of the respondent's minor child.

(4) Municipal courts may exercise jurisdiction and cognizance of any civil actions and proceedings brought under this chapter by adoption of local court rule, except a municipal court shall transfer such actions and proceedings to the superior court when it is shown that (a) the petitioner, victim, or respondent to the petition is under eighteen years of age; (b) the action involves title or possession of real property; (c) a superior court has exercised or is exercising jurisdiction over a proceeding involving the parties; or (d) the action would have the effect of interfering with a respondent's care, control, or custody of the respondent's minor child.

(5) Superior courts shall have concurrent jurisdiction to receive transfer of stalking petitions in cases where a district or municipal court judge makes findings of fact and conclusions of law showing that meritorious reasons exist for the transfer. The jurisdiction of district and municipal courts is limited to enforcement of RCW 26.50.110(1), or the equivalent municipal ordinance, and the issuance and enforcement of temporary orders provided for in RCW 7.92.120 if the superior court is exercising jurisdiction over a proceeding under this chapter involving the parties.

(6) No guardian or guardian ad litem need be appointed on behalf of a respondent to an action under this chapter if such respondent is sixteen years of age or older.

(7) If a guardian ad litem is appointed for the petitioner or respondent, the petitioner shall not be required to pay any fee associated with such appointment.

(8) An action under this chapter shall be filed in the county or the municipality where the petitioner resides, unless the petitioner has left the residence or household to avoid stalking conduct. In that case, the petitioner may bring an action in the county or municipality of the previous or the new residence or household. [2013 c 84 § 5.]

7.92.060 Petition—Hearings prior to issuance of protection order. Upon receipt of the petition, the court shall order a hearing which shall be held not later than fourteen days from the date of the order. The court may schedule a hearing by telephone, to reasonably accommodate a disability, or in exceptional circumstances to protect a petitioner from further stalking behavior. The court shall require assurances of the petitioner's identity before conducting a telephonic hearing. Except as provided in RCW 7.92.150, personal service shall be made upon the respondent not less than five court days prior to the hearing. If timely personal service cannot be made, the court shall set a new hearing date and shall require additional attempts at obtaining personal service or other service as permitted under RCW 7.92.150. The court may issue an ex parte temporary stalking order pending the hearing as provided in RCW 7.92.120. [2013 c 84 § 6.]

7.92.070 Consultation with judicial information system. Before granting an order under this chapter, the court may consult the judicial information system, if available, to determine criminal history or the pendency of other proceedings involving the parties. [2013 c 84 § 7.]

7.92.080 Fees not permitted. No fees for filing or service of process may be charged by a public agency to petitioners seeking relief under this chapter. [2013 c 84 § 8.]

7.92.090 Victim's advocates. Victim advocates shall be allowed to accompany the victim and confer with the victim, unless otherwise directed by the court. Court administrators shall allow advocates to assist victims of stalking conduct in the preparation of petitions for stalking protection orders. Advocates are not engaged in the unauthorized practice of law when providing assistance of the types specified in this section. [2013 c 84 § 9.]

7.92.100 Burden of proof—Issuance of protection order—Remedies. (1)(a) If the court finds by a preponderance of the evidence that the petitioner has been a victim of stalking conduct by the respondent, the court shall issue a stalking protection order.

(b) The petitioner shall not be denied a stalking protection order because the petitioner or the respondent is a minor or because the petitioner did not report the stalking conduct to law enforcement. The court, when determining whether or not to issue a stalking protection order, may not require proof of the respondent's intentions regarding the acts alleged by the petitioner. Modification and extension of prior stalking protection orders shall be in accordance with this chapter.

(2) The court may provide relief as follows:

(a) Restrain the respondent from having any contact, including nonphysical contact, with the petitioner directly, indirectly, or through third parties regardless of whether those third parties know of the order;

(b) Exclude the respondent from the petitioner's residence, workplace, or school, or from the day care, workplace, or school of the petitioner's minor children;

(c) Prohibit the respondent from knowingly coming within, or knowingly remaining within, a specified distance from a specified location;

(d) Prohibit the respondent from keeping the petitioner and/or the petitioner's minor children under surveillance, to include electronic surveillance;

(e) Order any other injunctive relief as necessary or appropriate for the protection of the petitioner, to include a mental health and/or chemical dependency evaluation; and

(f) Require the respondent to pay the administrative court costs and service fees, as established by the county or municipality incurring the expense and to reimburse the petitioner for costs incurred in bringing the action, including reasonable attorneys' fees.

(3) Unless otherwise stated in the order, when a person is petitioning on behalf of a minor child or vulnerable adult, the relief authorized in this section shall apply only for the protection of the victim, and not the petitioner.

(4) In cases where the petitioner and the respondent attend the same public or private elementary, middle, or high school, the court, when issuing a protection order and providing relief, shall consider, among the other facts of the case, the severity of the act, any continuing physical danger or emotional distress to the petitioner, and the expense difficulty, and educational disruption that would be caused by a transfer of the respondent to another school. The court may order that the person restrained in the order not attend the public or approved private elementary, middle, or high school attended by the person protected by the order. In the event the court orders a transfer of the restrained person to another school, the parents or legal guardians of the person restrained in the order are responsible for transportation and other costs associated with the change of school by the person restrained in the order. The court shall send notice of the restriction on attending the same school as the person protected by the order to the public or approved private school the person restrained by the order will attend and to the school the person protected by the order attends. [2013 c 84 § 10.]

7.92.110 Accountability for conduct of others. For the purposes of issuing a stalking protection order, deciding

what relief should be included in the order, and enforcing the order, RCW 9A.08.020 shall govern whether the respondent is legally accountable for the conduct of another person. [2013 c 84 § 11.]

7.92.120 Ex parte temporary order for protection—

Issuance. (1) Where it appears from the petition and any additional evidence that the respondent has engaged in stalking conduct and that irreparable injury could result if an order is not issued immediately without prior notice, the court may grant an ex parte temporary order for protection, pending a full hearing and grant such injunctive relief as it deems proper, including the relief as specified under RCW 7.92.100 (2)(a) through (d) and (4).

(2) Irreparable injury under this section includes, but is not limited to, situations in which the respondent has recently threatened the petitioner with bodily injury or has engaged in acts of stalking conduct against the petitioner.

(3) The court shall hold an ex parte hearing in person or by telephone on the day the petition is filed or on the following judicial day.

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

(5) Any order issued under this section shall contain the date and time of issuance and the expiration date and shall be entered into a statewide judicial information system by the clerk of the court within one judicial day after issuance.

(6) If the court declines to issue an ex parte temporary stalking protection order, the court shall state the particular reasons for the court's denial. The court's denial of a motion for an ex parte temporary order shall be filed with the court.

(7) A knowing violation of a court order issued under this section is punishable under RCW 26.50.110. [2013 c 84 § 12.]

7.92.125 Ex parte temporary order—Admissibility in subsequent civil actions. An ex parte temporary order issued under this chapter shall not be admissible as evidence in any subsequent civil action for damages arising from the conduct alleged in the petition or the order. [2013 c 84 § 22.]

7.92.130 Protection orders—Duration. (1) Except as otherwise provided in this section or RCW 7.92.160, a final stalking protection order shall be effective for a fixed period of time or be permanent.

(2) Any ex parte temporary or final stalking protection order may be renewed one or more times. The petitioner may apply for renewal of the order by filing a petition for renewal at any time within the three months before the order expires. If the motion for renewal is uncontested and the petitioner seeks no modification of the order, the order may be renewed on the basis of the petitioner's motion or affidavit stating that

there has been no material change in relevant circumstances since entry of the order and stating the reason for the requested renewal. The court shall grant the petition for renewal unless the respondent proves by a preponderance of the evidence that the respondent will not resume acts of stalking conduct against the petitioner or the petitioner's children or family or household members when the order expires. The court may renew the stalking protection order for another fixed time period or may enter a permanent order as provided in this section. The court may award court costs, service fees, and reasonable attorneys' fees as provided in RCW 7.92.100.

(3) Any stalking protection order which would expire on a court holiday shall instead expire at the close of the next court business day.

(4) The practice of dismissing or suspending a criminal prosecution in exchange for the issuance of a stalking protection order undermines the purposes of this chapter. This section shall not be construed as encouraging that practice.

(5) If the court declines to issue an order for protection or declines to renew an order for protection, the court shall state in writing on the order the particular reasons for the court's denial. [2013 c 84 § 13.]

7.92.140 Protection order—Contents. (1) Any stalking protection order shall describe each remedy granted by the court, in reasonable detail and not by reference to any other document, so that the respondent may clearly understand what he or she must do or refrain from doing.

(2) A stalking protection order shall further state the following:

(a) The name of the petitioner that the court finds was the victim of stalking by the respondent;

(b) The date and time the stalking protection order was issued, whether it is an ex parte temporary or final order, and the duration of the order;

(c) The date, time, and place for any scheduled hearing for renewal of that stalking protection order or for another order of greater duration or scope;

(d) For each remedy in an ex parte temporary stalking protection order, the reason for entering that remedy without prior notice to the respondent or greater notice than was actually given;

(e) For ex parte temporary stalking protection orders, that the respondent may petition the court, to modify or terminate the order if he or she did not receive actual prior notice of the hearing and if the respondent alleges that he or she had a meritorious defense to the order or that the order or its remedy is not authorized by this chapter.

(3) A stalking protection order shall include the following notice, printed in conspicuous type: "A knowing violation of this stalking protection order is a criminal offense under chapter 26.50 RCW and will subject a violator to arrest. You can be arrested even if any person protected by the order invites or allows you to violate the order's prohibitions. You have the sole responsibility to avoid or refrain from violating the order's provisions. Only the court can change the order." [2013 c 84 § 14.]

7.92.150 Protection orders—Service to respondent—Service by publication. (1) An order issued under this chapter shall be personally served upon the respondent, except as

provided in subsection (6), (7), or (8) of this section. If the respondent is a minor, the respondent’s parent or legal custodian shall also be personally served.

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

(3) If service by a sheriff or municipal peace officer is to be used, the clerk of the court shall have a copy of any order issued under this chapter forwarded on or before the next judicial day to the appropriate law enforcement agency specified in the order for service upon the respondent. Service of an order issued under this chapter shall take precedence over the service of other documents unless they are of a similar emergency nature.

(4) If the sheriff or municipal peace officer cannot complete service upon the respondent within ten days, the sheriff or municipal peace officer shall notify the petitioner. The petitioner shall provide information sufficient to permit notification.

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

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

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

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

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

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

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

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

(f) The publication shall be made in a newspaper of general circulation in the county where the petition was brought and in the county of the last known address of the respondent once a week for three consecutive weeks. The newspaper selected must be one of the three most widely circulated papers in the county. The publication of summons shall not

be made until the court orders service by publication under this section. Service of the summons shall be considered complete when the publication has been made for three consecutive weeks. The summons must be signed by the petitioner. The summons shall contain the date of the first publication, and shall require the respondent upon whom service by publication is desired, to appear and answer the petition on the date set for the hearing. The summons shall also contain a brief statement of the reason for the petition and a summary of the provisions under the ex parte order. The summons shall be essentially in the following form:

In the court of the state of Washington for the county of
....., Petitioner
vs. No.
....., Respondent

The state of Washington to (respondent):

You are hereby summoned to appear on the day of, 20 .., at a.m./p.m., and respond to the petition. If you fail to respond, an order of protection will be issued against you pursuant to the provisions of the stalking protection order act, chapter 7.92 RCW, for a minimum of one year from the date you are required to appear. A temporary order of protection has been issued against you, restraining you from the following: (Insert a brief statement of the provisions of the ex parte order.) A copy of the petition, notice of hearing, and ex parte order has been filed with the clerk of this court.

.....
Petitioner

(8) In circumstances justifying service by publication under subsection (7) of this section, if the serving party files an affidavit stating facts from which the court determines that service by mail is just as likely to give actual notice as service by publication and that the serving party is unable to afford the cost of service by publication, the court may order that service be made by mail. Such service shall be made by any person over eighteen years of age, who is competent to be a witness, other than a party, by mailing copies of the order and other process to the party to be served at his or her last known address or any other address determined by the court to be appropriate. Two copies shall be mailed, postage prepaid, one by ordinary first-class mail and the other by a form of mail requiring a signed receipt showing when and to whom it was delivered. The envelopes must bear the return address of the sender.

(a) Proof of service under this section shall be consistent with court rules for civil proceedings.

(b) Service under this section may be used in the same manner and shall have the same jurisdictional effect as service by publication for purposes of this chapter. Service shall be deemed complete upon the mailing of two copies as prescribed in this section. [2013 c 84 § 15.]

7.92.160 Court-initiated stalking no-contact orders.

(1)(a) When any person charged with or arrested for stalking as defined in RCW 9A.46.110 or any other stalking-related

offense under RCW 9A.46.060 is released from custody before arraignment or trial on bail or personal recognizance, the court authorizing the release may prohibit that person from having any contact with the victim. The jurisdiction authorizing the release shall determine whether that person should be prohibited from having any contact with the victim. If there is no outstanding restraining or protective order prohibiting that person from having contact with the victim, and the victim does not qualify for a domestic violence protection order under chapter 26.50 RCW, the court authorizing release may issue, by telephone, a stalking no-contact order prohibiting the person charged or arrested from having contact with the victim or from knowingly coming within, or knowingly remaining within, a specified distance of a location.

(b) In issuing the order, the court shall consider the provisions of RCW 9.41.800.

(c) The stalking no-contact order shall also be issued in writing as soon as possible.

(2)(a) At the time of arraignment or whenever a motion is brought to modify the conditions of the defendant's release, the court shall determine whether a stalking no-contact order shall be issued or extended. If a stalking no-contact order is issued or extended, the court may also include in the conditions of release a requirement that the defendant submit to electronic monitoring, including real-time global position satellite monitoring with victim notification. If electronic monitoring is ordered, the court shall specify who shall provide the monitoring services, and the terms under which the monitoring shall be performed. Upon conviction, the court may require as a condition of the sentence that the defendant reimburse the providing agency for the costs of the electronic monitoring, including costs relating to real-time global position satellite monitoring with victim notification.

(b) A stalking no-contact order issued by the court in conjunction with criminal charges shall terminate if the defendant is acquitted or the charges are dismissed, unless the victim files an independent action for a stalking protection order. If the victim files an independent action for a civil stalking protection order, the order may be continued by the court until a full hearing is conducted pursuant to RCW 7.92.060.

(3)(a) The written order releasing the person charged or arrested shall contain the court's directives and shall bear the legend: "Violation of this order is a criminal offense under chapter 26.50 RCW and will subject a violator to arrest. You can be arrested even if any person protected by the order invites or allows you to violate the order's prohibitions. You have the sole responsibility to avoid or refrain from violating the order's provisions. Only the court can change the order."

(b) A certified copy of the order shall be provided to the victim at no charge.

(4) If a stalking no-contact order has been issued prior to charging, that order shall expire at arraignment or within seventy-two hours if charges are not filed.

(5) Whenever an order prohibiting contact is issued pursuant to subsection (2) of this section, the clerk of the court shall forward a copy of the order on or before the next judicial day to the appropriate law enforcement agency specified in the order. Upon receipt of the copy of the order, the law enforcement agency shall enter the order for one year unless a different expiration date is specified on the order into any

computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. Entry into the computer-based criminal intelligence information system constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any jurisdiction in the state.

(6)(a) When a defendant is found guilty of stalking as defined in RCW 9A.46.110 or any other stalking-related offense under RCW 9A.46.060 and a condition of the sentence restricts the defendant's ability to have contact with the victim, and the victim does not qualify for a domestic violence protection order under chapter 26.50 RCW, the condition shall be recorded as a stalking no-contact order.

(b) The written order entered as a condition of sentencing shall contain the court's directives and shall bear the legend: "Violation of this order is a criminal offense under chapter 26.50 RCW and will subject a violator to arrest. You can be arrested even if any person protected by the order invites or allows you to violate the order's prohibitions. You have the sole responsibility to avoid or refrain from violating the order's provisions. Only the court can change the order."

(c) A final stalking no-contact order entered in conjunction with a criminal prosecution shall remain in effect for a period of five years from the date of entry.

(d) A certified copy of the order shall be provided to the victim at no charge.

(7) A knowing violation of a court order issued under subsection (1), (2), or (6) of this section is punishable under RCW 26.50.110.

(8) Whenever a stalking no-contact order is issued, modified, or terminated under subsection (1), (2), or (6) of this section, the clerk of the court shall forward a copy of the order on or before the next judicial day to the appropriate law enforcement agency specified in the order. Upon receipt of the copy of the order, the law enforcement agency shall enter the order for one year unless a different expiration date is specified on the order into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. Entry into the computer-based criminal intelligence information system constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any jurisdiction in the state. Upon receipt of notice that an order has been terminated under subsection (2) of this section, the law enforcement agency shall remove the order from the computer-based criminal intelligence information system. [2013 c 84 § 16.]

7.92.170 Personal jurisdiction by court over nonresident individuals. (1) In a proceeding in which a petition for a stalking protection order is sought under this chapter, a court of this state may exercise personal jurisdiction over a nonresident individual if:

(a) The individual is personally served with a petition within this state;

(b) The individual submits to the jurisdiction of this state by consent, entering a general appearance, or filing a responsive document having the effect of waiving any objection to consent to personal jurisdiction;

(c) The act or acts of the individual or the individual's agent giving rise to the petition or enforcement of a stalking protection order occurred within this state;

(d)(i) The act or acts of the individual or the individual's agent giving rise to the petition or enforcement of a stalking protection order occurred outside this state and are part of an ongoing pattern of stalking behavior that has an adverse effect on the petitioner or a member of the petitioner's family or household and the petitioner resides in this state; or

(ii) As a result of acts of stalking behavior, the petitioner or a member of the petitioner's family or household has sought safety or protection in this state and currently resides in this state; or

(e) There is any other basis consistent with RCW 4.28.185 or with the Constitution of this state and the Constitution of the United States.

(2) For jurisdiction to be exercised under subsection (1)(d)(i) or (ii) of this section, the individual must have communicated with the petitioner or a member of the petitioner's family, directly or indirectly, or made known a threat to the safety of the petitioner or member of the petitioner's family while the petitioner or family member resides in this state. For the purposes of subsection (1)(d)(i) or (ii) of this section, "communicated or made known" includes, but is not limited to, through the mail, telephonically, or a posting on an electronic communication site or medium. Communication on any electronic medium that is generally available to any individual residing in the state shall be sufficient to exercise jurisdiction under subsection (1)(d)(i) or (ii) of this section.

(3) For the purposes of this section, an act or acts that "occurred within this state" includes, but is not limited to, an oral or written statement made or published by a person outside of this state to any person in this state by means of the mail, interstate commerce, or foreign commerce. Oral or written statements sent by electronic mail or the internet are deemed to have "occurred within this state." [2013 c 84 § 17.]

7.92.180 Copy of order to be forwarded to law enforcement agency—Entry of information into computer-based information systems. (1) A copy of a stalking protection order or stalking no-contact order granted under this chapter shall be forwarded by the clerk of the court on or before the next judicial day to the appropriate law enforcement agency specified in the order. Upon receipt of the order, the law enforcement agency shall immediately enter the order into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. The order shall remain in the computer for one year unless a different expiration date is specified on the order. Upon receipt of notice that an order has been terminated, the law enforcement agency shall remove the order from the computer-based criminal intelligence information system. The law enforcement agency shall only expunge from the computer-based criminal intelligence information system orders that are expired, vacated, terminated, or superseded. Entry into the law enforcement information system constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any county in the state.

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(2) The information entered into the computer-based criminal intelligence information system shall include notice to law enforcement whether the order was personally served, served by publication, or served by mail. [2013 c 84 § 18.]

7.92.190 Modification or termination of protection orders. (1) Upon application with notice to all parties and after a hearing, the court may modify the terms of an existing stalking protection order.

(2) A respondent's motion to modify or terminate an existing stalking protection order must include a declaration setting forth facts supporting the requested order for termination or modification. The nonmoving parties to the proceeding may file opposing declarations. The court shall deny the motion unless it finds that adequate cause for hearing the motion is established by the declarations. If the court finds that the respondent established adequate cause, the court shall set a date for hearing the respondent's motion.

(3) The court may not terminate or modify an existing stalking protection order unless the respondent proves by a preponderance of the evidence that there has been a substantial change in circumstances such that the respondent will not resume acts of stalking conduct against the petitioner or those persons protected by the protection order if the order is terminated or modified. The petitioner bears no burden of proving that he or she has a current reasonable fear of harm by the respondent.

(4) A court may require the respondent to pay the petitioner for costs incurred in responding to a motion to terminate or modify a stalking protection order, including reasonable attorneys' fees.

(5) In any situation where an order is terminated or modified before its expiration date, the clerk of the court shall forward on or before the next judicial day a true copy of the modified order or the termination order to the appropriate law enforcement agency specified in the modified or termination order. Upon receipt of the order, the law enforcement agency shall promptly enter it in the computer-based criminal intelligence information system, or if the order is terminated, remove the order from the computer-based criminal intelligence information system. [2013 c 84 § 19.]

7.92.900 Construction—Filing of criminal charges not required. Nothing in this chapter shall be construed as requiring criminal charges to be filed as a condition of a stalking protection order being issued. [2013 c 84 § 23.]

7.92.901 Short title. Chapter 84, Laws of 2013 may be known and cited as the Jennifer Paulson stalking protection order act. [2013 c 84 § 24.]

Chapter 7.96 RCW

UNIFORM CORRECTION OR CLARIFICATION OF DEFAMATION ACT

Sections

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7.96.900	Uniformity of application and construction.
7.96.901	Short title.

7.96.010 Intent. Since the United States supreme court recognized the First Amendment limitations on the common law tort of defamation and defamation-like torts, courts have struggled to achieve a balance between constitutionally protected guarantees of free expression and the need to protect citizens from reputational harm. Unlike personal injuries, harm to reputation can often be cured by means other than money damages. The correction or clarification of a published statement may restore a person's reputation more quickly and more thoroughly than a victorious lawsuit. The salutary effect of a correction or clarification is enhanced if it is published reasonably soon after a statement is made.

Chapter 294, Laws of 2013 seeks to provide strong incentives for individuals to promptly correct or clarify an alleged false statement as an alternative to costly litigation. The options created by chapter 294, Laws of 2013 provide an opportunity for a plaintiff who believes he or she has been harmed by a false statement to secure quick and complete vindication of his or her reputation. Chapter 294, Laws of 2013 provides publishers with a quick and cost-effective means of correcting or clarifying alleged mistakes and avoiding costly litigation. [2013 c 294 § 1.]

7.96.020 Definition of "person." The definition in this section applies throughout this chapter unless the context clearly requires otherwise.

"Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, or other legal or commercial entity. The term does not include a government or governmental subdivision, agency, or instrumentality. [2013 c 294 § 2.]

7.96.030 Scope. (1) This chapter applies to any claim for relief, however characterized, for damages arising out of harm caused by the false content of a publication that is published on or after the effective date of this section.

(2) This chapter applies to all publications, including writings, broadcasts, oral communications, electronic transmissions, or other forms of transmitting information. [2013 c 294 § 3.]

7.96.040 Request for correction or clarification. (1) A person may maintain an action for defamation or another claim covered by this chapter only if:

(a) The person has made a timely and adequate request for correction or clarification from the defendant; or

(b) The defendant has made a correction or clarification.

(2) A request for correction or clarification is timely if made within the period of limitation for commencement of an action for defamation.

(3) A request for correction or clarification is adequate if it:

(a) Is made in writing and reasonably identifies the person making the request;

(b) Specifies with particularity the statement alleged to be false and defamatory or otherwise actionable and, to the extent known, the time and place of publication;

(c) Alleges the defamatory meaning of the statement;

(d) Specifies the circumstances giving rise to any defamatory meaning of the statement which arises from other than the express language of the publication; and

(e) States that the alleged defamatory meaning of the statement is false.

(4) In the absence of a previous adequate request, service of a summons and complaint stating a claim for defamation or another claim covered by this chapter and containing the information required in subsection (3) of this section constitutes an adequate request for correction or clarification.

(5) The period of limitation for commencement of a defamation action or another claim covered by this chapter is tolled during the period allowed in RCW 7.96.070(1) for responding to a request for correction or clarification. [2013 c 294 § 4.]

7.96.050 Disclosure of evidence of falsity. (1) A person who has been requested to make a correction or clarification may ask the requester to disclose reasonably available information material to the falsity of the allegedly defamatory or otherwise actionable statement.

(2) If a correction or clarification is not made, a person who unreasonably fails to disclose the information after a request to do so may not recover damages for injury to reputation or presumed damages; however, the person may recover all other damages permitted by law. [2013 c 294 § 5.]

7.96.060 Effect of correction or clarification. If a timely and sufficient correction or clarification is made, a person may not recover damages for injury to reputation or presumed damages; however, the person may recover all other damages permitted by law. [2013 c 294 § 6.]

7.96.070 Timelines and sufficiency of correction or clarification. (1) A correction or clarification is timely if it is published before, or within thirty days after, receipt of a request for correction or clarification or of the information in RCW 7.96.050(1), whichever is later, unless the period is extended by written agreement of the parties.

(2) A correction or clarification is sufficient if it:

(a) Is published with a prominence and in a manner and medium reasonably likely to reach substantially the same audience as the publication complained of;

(b) Refers to the statement being corrected or clarified and:

(i) Corrects the statement;

(ii) In the case of defamatory or false meaning arising from other than the express language of the publication, disclaims an intent to communicate that meaning or to assert its truth; or

(iii) In the case of a statement attributed to another person, identifies the person and disclaims an intent to assert the truth of the statement;

(c) In advance of the publication, is provided to the person who has made a request for correction or clarification; and

(d) Accompanies and is an equally prominent part of any electronic publication of the allegedly defamatory or otherwise actionable statement by the publisher.

(3) A correction or clarification is published in a medium reasonably likely to reach substantially the same audience as the publication complained of if it is published in a later issue, edition, or broadcast of the original publication.

(4) If a later issue, edition, or broadcast of the original publication will not be published within the time limits established for a timely correction or clarification, a correction or clarification is published in a manner and medium reasonably likely to reach substantially the same audience as the publication complained of if:

(a) It is timely published in a reasonably prominent manner:

(i) In another medium likely to reach an audience reasonably equivalent to the original publication; or

(ii) If the parties cannot agree on another medium, in the newspaper with the largest general circulation in the region in which the original publication was distributed;

(b) Reasonable steps are taken to correct undistributed copies of the original publication, if any; and

(c) It is published in the next practicable issue, edition, or broadcast, if any, of the original publication.

(5) A correction or clarification is timely and sufficient if the parties agree in writing that it is timely and sufficient. [2013 c 294 § 7.]

7.96.080 Challenges to correction or clarification or to request for correction or clarification. (1) If a defendant in an action governed by this chapter intends to rely on a timely and sufficient correction or clarification, the defendant's intention to do so, and the correction or clarification relied upon, must be set forth in a notice served on the plaintiff within sixty days after service of the summons and complaint or ten days after the correction or clarification is made, whichever is later.

(2) If a defendant in an action governed by this chapter intends to challenge the adequacy or timeliness of a request for correction or clarification, the defendant must set forth the challenge in a motion to declare the request inadequate or untimely served within sixty days after service of the summons and complaint. The court shall rule on the motion at the earliest appropriate time before trial. [2013 c 294 § 8.]

7.96.090 Offer to correct or clarify. (1) If a timely correction or clarification is no longer possible, the publisher of an alleged defamatory or otherwise actionable statement may offer, at any time before trial, to make a correction or clarification. The offer must be made in writing to the person allegedly harmed by the publication and:

(a) Contain the publisher's offer to:

(i) Publish, at the person's request, a sufficient correction or clarification; and

(ii) Pay the person's reasonable expenses of litigation, including attorneys' fees, incurred before publication of the correction or clarification; and

(b) Be accompanied by a copy of the proposed correction or clarification and the plan for its publication.

(2) If the person accepts in writing an offer to correct or clarify made pursuant to subsection (1) of this section:

(a) The person is barred from commencing an action against the publisher based on the statement; or

(b) If an action has been commenced, the court shall dismiss the action against the defendant with prejudice after the defendant complies with the terms of the offer.

(3) A person who does not accept an offer made in conformance with subsection (1) of this section may not recover damages for injury to reputation or presumed damages in an action based on the statement; however, the person may recover all other damages permitted by law, together with reasonable expenses of litigation, including attorneys' fees, incurred before the offer, unless the person failed to make a good faith attempt to request a correction or clarification in accordance with RCW 7.96.040 or failed to disclose information in accordance with RCW 7.96.050.

(4) On request of either party, a court shall promptly determine the sufficiency of the offered correction or clarification. [2013 c 294 § 9.]

7.96.100 Scope of protection. A timely and sufficient correction or clarification made by a person responsible for a publication constitutes a correction or clarification made by all persons responsible for that publication other than a republisher. However, a correction or clarification that is sufficient only because of the operation of RCW 7.96.070(2)(b)(iii) does not constitute a correction or clarification made by the person to whom the statement is attributed. [2013 c 294 § 10.]

7.96.900 Uniformity of application and construction. This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it. [2013 c 294 § 11.]

7.96.901 Short title. This chapter may be known and cited as the uniform correction or clarification of defamation act. [2013 c 294 § 12.]

Title 8

EMINENT DOMAIN

Chapters

8.16 Eminent domain by school districts.

Chapter 8.16 RCW

EMINENT DOMAIN BY SCHOOL DISTRICTS

Sections

8.16.090 Ten jurors may render verdict.

8.16.090 Ten jurors may render verdict. When ten of the jurors agree upon a verdict, the verdict so agreed upon shall be signed by the jury foreperson, and the verdict so agreed upon shall be and stand as the verdict of the jury. [2013 c 23 § 3; 1909 p 374 § 9; 1903 c 111 § 9; RRS § 914.]

Verdict, civil actions, ten jurors may render: RCW 4.44.380.

Title 9

CRIMES AND PUNISHMENTS

Chapters

- 9.41 Firearms and dangerous weapons.
- 9.46 Gambling—1973 act.
- 9.68A Sexual exploitation of children.
- 9.91 Miscellaneous crimes.
- 9.92 Punishment.
- 9.94A Sentencing reform act of 1981.

Chapter 9.41 RCW

FIREARMS AND DANGEROUS WEAPONS

Sections

- 9.41.010 Terms defined.
- 9.41.330 Felony firearm offenders—Determination of registration.
- 9.41.333 Duty to register—Requirements.
- 9.41.335 Failure to register as felony firearm offender.
- 9.41.800 Surrender of weapons or licenses—Prohibition on future possession or licensing.

9.41.010 Terms defined. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Antique firearm" means a firearm or replica of a firearm not designed or redesigned for using rim fire or conventional center fire ignition with fixed ammunition and manufactured in or before 1898, including any matchlock, flintlock, percussion cap, or similar type of ignition system and also any firearm using fixed ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade.

(2) "Barrel length" means the distance from the bolt face of a closed action down the length of the axis of the bore to the crown of the muzzle, or in the case of a barrel with attachments to the end of any legal device permanently attached to the end of the muzzle.

(3) "Crime of violence" means:

(a) Any of the following felonies, as now existing or hereafter amended: Any felony defined under any law as a class A felony or an attempt to commit a class A felony, criminal solicitation of or criminal conspiracy to commit a class A felony, manslaughter in the first degree, manslaughter in the second degree, indecent liberties if committed by forcible compulsion, kidnapping in the second degree, arson in the second degree, assault in the second degree, assault of a child in the second degree, extortion in the first degree, burglary in the second degree, residential burglary, and robbery in the second degree;

(b) Any conviction for a felony offense in effect at any time prior to June 6, 1996, which is comparable to a felony classified as a crime of violence in (a) of this subsection; and

(c) Any federal or out-of-state conviction for an offense comparable to a felony classified as a crime of violence under (a) or (b) of this subsection.

(4) "Dealer" means a person engaged in the business of selling firearms at wholesale or retail who has, or is required to have, a federal firearms license under 18 U.S.C. Sec. 923(a). A person who does not have, and is not required to have, a federal firearms license under 18 U.S.C. Sec. 923(a),

is not a dealer if that person makes only occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or sells all or part of his or her personal collection of firearms.

(5) "Family or household member" means "family" or "household member" as used in RCW 10.99.020.

(6) "Felony" means any felony offense under the laws of this state or any federal or out-of-state offense comparable to a felony offense under the laws of this state.

(7) "Felony firearm offender" means a person who has previously been convicted or found not guilty by reason of insanity in this state of any felony firearm offense. A person is not a felony firearm offender under this chapter if any and all qualifying offenses have been the subject of an expungement, pardon, annulment, certificate, or rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted or a pardon, annulment, or other equivalent procedure based on a finding of innocence.

(8) "Felony firearm offense" means:

(a) Any felony offense that is a violation of chapter 9.41 RCW;

(b) A violation of RCW 9A.36.045;

(c) A violation of RCW 9A.56.300;

(d) A violation of RCW 9A.56.310;

(e) Any felony offense if the offender was armed with a firearm in the commission of the offense.

(9) "Firearm" means a weapon or device from which a projectile or projectiles may be fired by an explosive such as gunpowder.

(10) "Law enforcement officer" includes a general authority Washington peace officer as defined in RCW 10.93.020, or a specially commissioned Washington peace officer as defined in RCW 10.93.020. "Law enforcement officer" also includes a limited authority Washington peace officer as defined in RCW 10.93.020 if such officer is duly authorized by his or her employer to carry a concealed pistol.

(11) "Lawful permanent resident" has the same meaning afforded a person "lawfully admitted for permanent residence" in 8 U.S.C. Sec. 1101(a)(20).

(12) "Loaded" means:

(a) There is a cartridge in the chamber of the firearm;

(b) Cartridges are in a clip that is locked in place in the firearm;

(c) There is a cartridge in the cylinder of the firearm, if the firearm is a revolver;

(d) There is a cartridge in the tube or magazine that is inserted in the action; or

(e) There is a ball in the barrel and the firearm is capped or primed if the firearm is a muzzle loader.

(13) "Machine gun" means any firearm known as a machine gun, mechanical rifle, submachine gun, or any other mechanism or instrument not requiring that the trigger be pressed for each shot and having a reservoir clip, disc, drum, belt, or other separable mechanical device for storing, carrying, or supplying ammunition which can be loaded into the firearm, mechanism, or instrument, and fired therefrom at the rate of five or more shots per second.

(14) "Nonimmigrant alien" means a person defined as such in 8 U.S.C. Sec. 1101(a)(15).

(15) "Pistol" means any firearm with a barrel less than sixteen inches in length, or is designed to be held and fired by the use of a single hand.

(16) "Rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned, made or remade, and intended to use the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

(17) "Sell" refers to the actual approval of the delivery of a firearm in consideration of payment or promise of payment of a certain price in money.

(18) "Serious offense" means any of the following felonies or a felony attempt to commit any of the following felonies, as now existing or hereafter amended:

- (a) Any crime of violence;
- (b) Any felony violation of the uniform controlled substances act, chapter 69.50 RCW, that is classified as a class B felony or that has a maximum term of imprisonment of at least ten years;
- (c) Child molestation in the second degree;
- (d) Incest when committed against a child under age fourteen;
- (e) Indecent liberties;
- (f) Leading organized crime;
- (g) Promoting prostitution in the first degree;
- (h) Rape in the third degree;
- (i) Drive-by shooting;
- (j) Sexual exploitation;
- (k) Vehicular assault, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner;
- (l) Vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

(m) Any other class B felony offense with a finding of sexual motivation, as "sexual motivation" is defined under RCW 9.94A.030;

(n) Any other felony with a deadly weapon verdict under RCW 9.94A.825; or

(o) Any felony offense in effect at any time prior to June 6, 1996, that is comparable to a serious offense, or any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a serious offense.

(19) "Short-barreled rifle" means a rifle having one or more barrels less than sixteen inches in length and any weapon made from a rifle by any means of modification if such modified weapon has an overall length of less than twenty-six inches.

(20) "Short-barreled shotgun" means a shotgun having one or more barrels less than eighteen inches in length and any weapon made from a shotgun by any means of modification if such modified weapon has an overall length of less than twenty-six inches.

(21) "Shotgun" means a weapon with one or more barrels, designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned, made or remade, and intended to use the energy of the explosive in

a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger. [2013 c 183 § 2. Prior: 2009 c 216 § 1; 2001 c 300 § 2; 1997 c 338 § 46; 1996 c 295 § 1; prior: 1994 sp.s. c 7 § 401; 1994 c 121 § 1; prior: 1992 c 205 § 117; 1992 c 145 § 5; 1983 c 232 § 1; 1971 ex.s. c 302 § 1; 1961 c 124 § 1; 1935 c 172 § 1; RRS § 2516-1.]

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

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

Additional notes found at www.leg.wa.gov

9.41.330 Felony firearm offenders—Determination of registration. (1) On or after July 28, 2013, whenever a defendant in this state is convicted of a felony firearm offense or found not guilty by reason of insanity of any felony firearm offense, the court must consider whether to impose a requirement that the person comply with the registration requirements of RCW 9.41.333 and may, in its discretion, impose such a requirement.

(2) In determining whether to require the person to register, the court shall consider all relevant factors including, but not limited to:

- (a) The person's criminal history;
- (b) Whether the person has previously been found not guilty by reason of insanity of any offense in this state or elsewhere; and
- (c) Evidence of the person's propensity for violence that would likely endanger persons. [2013 c 183 § 3.]

9.41.333 Duty to register—Requirements. (1) Any adult or juvenile residing, whether or not the person has a fixed residence, in this state who has been required by a court to comply with the registration requirements of this section shall personally register with the county sheriff for the county of the person's residence.

(2) A person required to register under this section must provide the following information when registering:

- (a) Name and any aliases used;
- (b) Complete and accurate residence address or, if the person lacks a fixed residence, where he or she plans to stay;
- (c) Identifying information of the gun offender, including a physical description;
- (d) The offense for which the person was convicted;
- (e) Date and place of conviction; and
- (f) The names of any other county where the offender has registered pursuant to this section.

(3) The county sheriff may require the offender to provide documentation that verifies the contents of his or her registration.

(4) The county sheriff may take the offender's photograph or fingerprints for the inclusion of such record in the registration.

(5) Felony firearm offenders shall register with the county sheriff not later than forty-eight hours after:

- (a) The date of release from custody, as a result of the felony firearm offense, of the state department of corrections, the state department of social and health services, a local division of youth services, or a local jail or juvenile detention facility; or

(b) The date the court imposes the felony firearm offender's sentence, if the offender receives a sentence that does not include confinement.

(6)(a) Except as described in (b) of this subsection, the felony firearm offender shall register with the county sheriff not later than twenty days after each twelve-month anniversary of the date the offender is first required to register, as described in subsection (5) of this section.

(b) If the felony firearm offender is confined to any correctional institution, state institution or facility, or health care facility throughout the twenty-day period described in (a) of this subsection, the offender shall personally appear before the county sheriff not later than forty-eight hours after release to verify and update, as appropriate, his or her registration.

(7) If the felony firearm offender changes his or her residence address and his or her new residence address is within this state, the offender shall personally register with the county sheriff for the county of the person's residence not later than forty-eight hours after the change of address. If the offender's residence address is within the same county as the offender's immediately preceding address, the offender shall update the contents of his or her current registration.

(8) The duty to register shall continue for a period of four years from the date the offender is first required to register, as described in subsection (5) of this section. [2013 c 183 § 4.]

9.41.335 Failure to register as felony firearm offender. (1) A person commits the crime of failure to register as a felony firearm offender if the person has a duty to register under RCW 9.41.333 and knowingly fails to comply with any of the requirements of RCW 9.41.333.

(2) Failure to register as a felony firearm offender is a gross misdemeanor. [2013 c 183 § 5.]

9.41.800 Surrender of weapons or licenses—Prohibition on future possession or licensing. (1) Any court when entering an order authorized under chapter 7.92 RCW, RCW 9A.46.080, 10.14.080, 10.99.040, 10.99.045, 26.09.050, 26.09.060, 26.10.040, 26.10.115, 26.26.130, 26.50.060, 26.50.070, or 26.26.590 shall, upon a showing by clear and convincing evidence, that a party has: Used, displayed, or threatened to use a firearm or other dangerous weapon in a felony, or previously committed any offense that makes him or her ineligible to possess a firearm under the provisions of RCW 9.41.040:

(a) Require the party to surrender any firearm or other dangerous weapon;

(b) Require the party to surrender any concealed pistol license issued under RCW 9.41.070;

(c) Prohibit the party from obtaining or possessing a firearm or other dangerous weapon;

(d) Prohibit the party from obtaining or possessing a concealed pistol license.

(2) Any court when entering an order authorized under chapter 7.92 RCW, RCW 9A.46.080, 10.14.080, 10.99.040, 10.99.045, 26.09.050, 26.09.060, 26.10.040, 26.10.115, 26.26.130, 26.50.060, 26.50.070, or 26.26.590 may, upon a showing by a preponderance of the evidence but not by clear and convincing evidence, that a party has: Used, displayed, or threatened to use a firearm or other dangerous weapon in a felony, or previously committed any offense that makes him

or her ineligible to possess a pistol under the provisions of RCW 9.41.040:

(a) Require the party to surrender any firearm or other dangerous weapon;

(b) Require the party to surrender a concealed pistol license issued under RCW 9.41.070;

(c) Prohibit the party from obtaining or possessing a firearm or other dangerous weapon;

(d) Prohibit the party from obtaining or possessing a concealed pistol license.

(3) The court may order temporary surrender of a firearm or other dangerous weapon without notice to the other party if it finds, on the basis of the moving affidavit or other evidence, that irreparable injury could result if an order is not issued until the time for response has elapsed.

(4) In addition to the provisions of subsections (1), (2), and (3) of this section, the court may enter an order requiring a party to comply with the provisions in subsection (1) of this section if it finds that the possession of a firearm or other dangerous weapon by any party presents a serious and imminent threat to public health or safety, or to the health or safety of any individual.

(5) The requirements of subsections (1), (2), and (4) of this section may be for a period of time less than the duration of the order.

(6) The court may require the party to surrender any firearm or other dangerous weapon in his or her immediate possession or control or subject to his or her immediate possession or control to the sheriff of the county having jurisdiction of the proceeding, the chief of police of the municipality having jurisdiction, or to the restrained or enjoined party's counsel or to any person designated by the court. [2013 c 84 § 25; 2002 c 302 § 704; 1996 c 295 § 14; 1994 sp.s. c 7 § 430.]

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

Additional notes found at www.leg.wa.gov

Chapter 9.46 RCW GAMBLING—1973 ACT

Sections

9.46.0323 Enhanced raffles—Authority of commission—Report, recommendations. (*Expires June 30, 2017.*)

9.46.0323 Enhanced raffles—Authority of commission—Report, recommendations. (*Expires June 30, 2017.*) (1) A bona fide charitable or nonprofit organization, as defined in RCW 9.46.0209, whose primary purpose is serving individuals with intellectual disabilities may conduct enhanced raffles if licensed by the commission.

(2) The commission has the authority to approve two enhanced raffles per calendar year for western Washington and two enhanced raffles per calendar year for eastern Washington. Whether the enhanced raffle occurs in western Washington or eastern Washington will be determined by the location where the grand prize winning ticket is to be drawn as stated on the organization's application to the commission. An enhanced raffle is considered approved when voted on by the commission.

(3) The commission has the authority to approve enhanced raffles under the following conditions:

(a) The value of the grand prize must not exceed five million dollars.

(b) Sales may be made in person, by mail, by fax, or by telephone only. Raffle ticket order forms may be printed from the bona fide charitable or nonprofit organization's web site. Obtaining the form in this manner does not constitute a sale.

(c) Tickets purchased as part of a multiple ticket package may be purchased at a discount.

(d) Multiple smaller prizes are authorized during the course of an enhanced raffle for a grand prize including, but not limited to, early bird, refer a friend, and multiple ticket drawings.

(e) A purchase contract is not necessary for smaller non-cash prizes, but the bona fide charitable or nonprofit organization must be able to demonstrate that such a prize is available and sufficient funds are held in reserve in the event that the winner chooses a noncash prize.

(f) All enhanced raffles and associated smaller raffles must be independently audited, as defined by the commission during rule making. The audit results must be reported to the commission.

(g) Call centers, when licensed by the commission, are authorized. The bona fide charitable or nonprofit organization may contract with a call center vendor to receive enhanced raffle ticket sales. The vendor may not solicit sales. The vendor may be located outside the state, but the bona fide charitable or nonprofit organization must have a contractual relationship with the vendor stating that the vendor must comply with all applicable Washington state laws and rules.

(h) The bona fide charitable or nonprofit organization must be the primary recipient of the funds raised.

(i) Sales data may be transmitted electronically from the vendor to the bona fide charitable or nonprofit organization. Credit cards, issued by a state regulated or federally regulated financial institution, may be used for payment to participate in enhanced raffles.

(j) Receipts including ticket confirmation numbers may be sent to ticket purchasers either by mail or by e-mail.

(k) In the event the bona fide charitable or nonprofit organization determines ticket sales are insufficient to qualify for a complete enhanced raffle to move forward, the enhanced raffle winner must receive fifty percent of the net proceeds in excess of expenses as the grand prize. The enhanced raffle winner will receive a choice between an annuity value equal to fifty percent of the net proceeds in excess of expenses paid by annuity over twenty years, or a one-time cash payment of seventy percent of the annuity value.

(l) A bona fide charitable or nonprofit organization is authorized to hire a consultant licensed by the commission to run an enhanced raffle; in addition, the bona fide charitable or nonprofit organization must have a dedicated employee who is responsible for oversight of enhanced raffle operations. The bona fide charitable or nonprofit organization is ultimately responsible for ensuring that an enhanced raffle is conducted in accordance with all applicable state laws and rules.

(4) The commission has the authority to set fees for bona fide charitable or nonprofit organizations, call center ven-

dors, and consultants conducting enhanced raffles authorized under this section.

(5) The commission has the authority to adopt rules governing the licensing and operation of enhanced raffles.

(6) Except as specifically authorized in this section, enhanced raffles must be held in accordance with all other requirements of this chapter, other applicable laws, and rules of the commission.

(7) For the purposes of this section:

(a) "Enhanced raffle" means a game in which tickets bearing an individual number are sold for not more than two hundred fifty dollars each and in which a grand prize and smaller prizes are awarded on the basis of drawings from the tickets by the person or persons conducting the game. An enhanced raffle may include additional related entries and drawings, such as early bird, refer a friend, and multiple ticket drawings when the bona fide charitable or nonprofit organization establishes the eligibility standards for such entries and drawings before any enhanced raffle tickets are sold. No drawing may occur by using a random number generator or similar means.

(b) "Early bird drawing" means a separate drawing for a separate prize held prior to the grand prize drawing. All tickets entered into the early bird drawing, including all early bird winning tickets, are entered into subsequent early bird drawings, and also entered into the drawing for the grand prize.

(c) "Refer a friend drawing" means a completely separate drawing, using tickets distinct from those for the enhanced raffle, for a separate prize held at the conclusion of the enhanced raffle for all enhanced raffle ticket purchasers, known as the referring friend, who refer other persons to the enhanced raffle when the other person ultimately purchases an enhanced raffle ticket. The referring friend will receive one ticket for each friend referred specifically for the refer a friend drawing. In addition, each friend referred could also become a referring friend and receive his or her own additional ticket for the refer a friend drawing.

(d) "Multiple ticket drawing" means a completely separate drawing, using tickets distinct from those for the enhanced raffle, for a separate prize held at the conclusion of the enhanced raffle for all enhanced raffle ticket purchasers who purchase a specified number of enhanced raffle tickets. For example, a multiple ticket drawing could include persons who purchase three or more enhanced raffle tickets in the same order, using the same payment information, with tickets in the same person's name. For each eligible enhanced raffle ticket purchased, the purchaser also receives a ticket for the multiple ticket drawing prize.

(e) "Western Washington" includes those counties west of the Cascade mountains, including Clallam, Clark, Cowlitz, Grays Harbor, Island, Jefferson, King, Kitsap, Lewis, Mason, Pacific, Pierce, San Juan, Skagit, Skamania, Snohomish, Thurston, Wahkiakum, and Whatcom.

(f) "Eastern Washington" includes those counties east of the Cascade mountains that are not listed in (e) of this subsection.

(8) By December 2016, the commission must report back to the appropriate committees of the legislature on enhanced raffles. The report must include results of the raffles, revenue generated by the raffles, and identify any state

or federal regulatory actions taken in relation to enhanced raffles in Washington. The report must also make recommendations, if any, for policy changes to the enhanced raffle authority.

(9) This section expires June 30, 2017. [2013 c 310 § 1.]

Chapter 9.68A RCW SEXUAL EXPLOITATION OF CHILDREN

(Formerly: Child pornography)

Sections

9.68A.090	Communication with minor for immoral purposes—Penalties.
9.68A.100	Commercial sexual abuse of a minor—Penalties—Consent of minor does not constitute defense.
9.68A.101	Promoting commercial sexual abuse of a minor—Penalty—Consent of minor does not constitute defense.
9.68A.102	Promoting travel for commercial sexual abuse of a minor—Penalty—Consent of minor does not constitute defense.
9.68A.103	Permitting commercial sexual abuse of a minor—Penalty—Consent of minor does not constitute defense.
9.68A.104	Repealed.
9.68A.105	Additional fee assessment.
9.68A.106	Additional fee assessment—Internet advertisement.

9.68A.090 Communication with minor for immoral purposes—Penalties. (1) Except as provided in subsection (2) of this section, a person who communicates with a minor for immoral purposes, or a person who communicates with someone the person believes to be a minor for immoral purposes, is guilty of a gross misdemeanor.

(2) A person who communicates with a minor for immoral purposes is guilty of a class C felony punishable according to chapter 9A.20 RCW if the person has previously been convicted under this section or of a felony sexual offense under chapter 9.68A, 9A.44, or 9A.64 RCW or of any other felony sexual offense in this or any other state or if the person communicates with a minor or with someone the person believes to be a minor for immoral purposes, including the purchase or sale of commercial sex acts and sex trafficking, through the sending of an electronic communication.

(3) For the purposes of this section, "electronic communication" has the same meaning as defined in RCW 9.61.260. [2013 c 302 § 1; 2006 c 139 § 1. Prior: 2003 c 53 § 42; 2003 c 26 § 1; 1989 c 32 § 7; 1986 c 319 § 2; 1984 c 262 § 8.]

Effective date—2013 c 302: "This act takes effect August 1, 2013." [2013 c 302 § 13.]

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

9.68A.100 Commercial sexual abuse of a minor—Penalties—Consent of minor does not constitute defense.

(1) A person is guilty of commercial sexual abuse of a minor if:

(a) He or she pays a fee to a minor or a third person as compensation for a minor having engaged in sexual conduct with him or her;

(b) He or she pays or agrees to pay a fee to a minor or a third person pursuant to an understanding that in return therefore such minor will engage in sexual conduct with him or her; or

(c) He or she solicits, offers, or requests to engage in sexual conduct with a minor in return for a fee.

(2) Commercial sexual abuse of a minor is a class B felony punishable under chapter 9A.20 RCW.

(3) In addition to any other penalty provided under chapter 9A.20 RCW, a person guilty of commercial sexual abuse of a minor is subject to the provisions under RCW 9A.88.130 and 9A.88.140.

(4) Consent of a minor to the sexual conduct does not constitute a defense to any offense listed in this section.

(5) For purposes of this section, "sexual conduct" means sexual intercourse or sexual contact, both as defined in chapter 9A.44 RCW. [2013 c 302 § 2; 2010 c 289 § 13; 2007 c 368 § 2; 1999 c 327 § 4; 1989 c 32 § 8; 1984 c 262 § 9.]

Effective date—2013 c 302: See note following RCW 9.68A.090.

Findings—Intent—1999 c 327: See note following RCW 9A.88.130.

Additional requirements: RCW 9A.88.130.

Vehicle impoundment: RCW 9A.88.140.

9.68A.101 Promoting commercial sexual abuse of a minor—Penalty—Consent of minor does not constitute defense. (1) A person is guilty of promoting commercial sexual abuse of a minor if he or she knowingly advances commercial sexual abuse or a sexually explicit act of a minor or profits from a minor engaged in sexual conduct or a sexually explicit act.

(2) Promoting commercial sexual abuse of a minor is a class A felony.

(3) For the purposes of this section:

(a) A person "advances commercial sexual abuse of a minor" if, acting other than as a minor receiving compensation for personally rendered sexual conduct or as a person engaged in commercial sexual abuse of a minor, he or she causes or aids a person to commit or engage in commercial sexual abuse of a minor, procures or solicits customers for commercial sexual abuse of a minor, provides persons or premises for the purposes of engaging in commercial sexual abuse of a minor, operates or assists in the operation of a house or enterprise for the purposes of engaging in commercial sexual abuse of a minor, or engages in any other conduct designed to institute, aid, cause, assist, or facilitate an act or enterprise of commercial sexual abuse of a minor.

(b) A person "profits from commercial sexual abuse of a minor" if, acting other than as a minor receiving compensation for personally rendered sexual conduct, he or she accepts or receives money or other property pursuant to an agreement or understanding with any person whereby he or she participates or will participate in the proceeds of commercial sexual abuse of a minor.

(c) A person "advances a sexually explicit act of a minor" if he or she causes or aids a sexually explicit act of a minor, procures or solicits customers for a sexually explicit act of a minor, provides persons or premises for the purposes of a sexually explicit act of a minor, or engages in any other conduct designed to institute, aid, cause, assist, or facilitate a sexually explicit act of a minor.

(d) A "sexually explicit act" is a public, private, or live photographed, recorded, or videotaped act or show intended to arouse or satisfy the sexual desires or appeal to the prurient interests of patrons and for which something of value is given or received.

(e) A "patron" is a person who pays or agrees to pay a fee to another person as compensation for a sexually explicit act

of a minor or who solicits or requests a sexually explicit act of a minor in return for a fee.

(4) Consent of a minor to the sexually explicit act or sexual conduct does not constitute a defense to any offense listed in this section.

(5) For purposes of this section, "sexual conduct" means sexual intercourse or sexual contact, both as defined in chapter 9A.44 RCW. [2013 c 302 § 3; 2012 c 144 § 1; 2010 c 289 § 14; 2007 c 368 § 4.]

Effective date—2013 c 302: See note following RCW 9.68A.090.

9.68A.102 Promoting travel for commercial sexual abuse of a minor—Penalty—Consent of minor does not constitute defense. (1) A person commits the offense of promoting travel for commercial sexual abuse of a minor if he or she knowingly sells or offers to sell travel services that include or facilitate travel for the purpose of engaging in what would be commercial sexual abuse of a minor or promoting commercial sexual abuse of a minor, if occurring in this state.

(2) Promoting travel for commercial sexual abuse of a minor is a class C felony.

(3) Consent of a minor to the travel for commercial sexual abuse, or the sexually explicit act or sexual conduct itself, does not constitute a defense to any offense listed in this section.

(4) For purposes of this section, "travel services" has the same meaning as defined in RCW 19.138.021. [2013 c 302 § 4; 2007 c 368 § 5.]

Effective date—2013 c 302: See note following RCW 9.68A.090.

9.68A.103 Permitting commercial sexual abuse of a minor—Penalty—Consent of minor does not constitute defense. (1) A person is guilty of permitting commercial sexual abuse of a minor if, having possession or control of premises which he or she knows are being used for the purpose of commercial sexual abuse of a minor, he or she fails without lawful excuse to make reasonable effort to halt or abate such use and to make a reasonable effort to notify law enforcement of such use.

(2) Permitting commercial sexual abuse of a minor is a gross misdemeanor.

(3) Consent of a minor to the sexually explicit act or sexual conduct does not constitute a defense to any offense listed in this section. [2013 c 302 § 5; 2007 c 368 § 7.]

Effective date—2013 c 302: See note following RCW 9.68A.090.

9.68A.104 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

9.68A.105 Additional fee assessment. (1)(a) In addition to penalties set forth in RCW 9.68A.100, 9.68A.101, and 9.68A.102, a person who is either convicted or given a deferred sentence or a deferred prosecution or who has entered into a statutory or nonstatutory diversion agreement as a result of an arrest for violating RCW 9.68A.100, 9.68A.101, or 9.68A.102, or a comparable county or municipal ordinance shall be assessed a five thousand dollar fee.

(b) The court may not reduce, waive, or suspend payment of all or part of the fee assessed unless it finds, on the record, that the person does not have the ability to pay in

which case it may reduce the fee by an amount up to two-thirds of the maximum allowable fee.

(c) When a minor has been adjudicated a juvenile offender or has entered into a statutory or nonstatutory diversion agreement for an offense which, if committed by an adult, would constitute a violation of RCW 9.68A.100, 9.68A.101, or 9.68A.102, or a comparable county or municipal ordinance, the court shall assess the fee under (a) of this subsection. The court may not reduce, waive, or suspend payment of all or part of the fee assessed unless it finds, on the record, that the minor does not have the ability to pay the fee in which case it may reduce the fee by an amount up to two-thirds of the maximum allowable fee.

(2) Fees assessed under this section shall be collected by the clerk of the court and remitted to the treasurer of the county where the offense occurred for deposit in the county general fund, except in cases in which the offense occurred in a city or town that provides for its own law enforcement, in which case these amounts shall be remitted to the treasurer of the city or town for deposit in the general fund of the city or town. Revenue from the fees must be used for local efforts to reduce the commercial sale of sex including, but not limited to, increasing enforcement of commercial sex laws.

(a) At least fifty percent of the revenue from fees imposed under this section must be spent on prevention, including education programs for offenders, such as john school, and rehabilitative services for victims, such as mental health and substance abuse counseling, parenting skills, training, housing relief, education, vocational training, drop-in centers, and employment counseling.

(b) Two percent of the revenue from fees imposed under this section shall be remitted quarterly to the department of commerce, together with a report detailing the fees assessed, the revenue received, and how that revenue was spent.

(c) Revenues from these fees are not subject to the distribution requirements under RCW 3.50.100, 3.62.020, 3.62.040, 10.82.070, or 35.20.220.

(3) For the purposes of this section:

(a) "Statutory or nonstatutory diversion agreement" means an agreement under RCW 13.40.080 or any written agreement between a person accused of an offense listed in subsection (1) of this section and a court, county or city prosecutor, or designee thereof, whereby the person agrees to fulfill certain conditions in lieu of prosecution.

(b) "Deferred sentence" means a sentence that will not be carried out if the defendant meets certain requirements, such as complying with the conditions of probation. [2013 c 121 § 4; 2012 c 134 § 4; 2010 c 289 § 15; 2007 c 368 § 11; 1995 c 353 § 12.]

Intent—Finding—2013 c 121: See note following RCW 43.280.091.

9.68A.106 Additional fee assessment—Internet advertisement. (1) In addition to all other penalties under this chapter, a person convicted of an offense under RCW 9.68A.100, 9.68A.101, or 9.68A.102 shall be assessed an additional fee of five thousand dollars per offense when the court finds that an internet advertisement in which the victim of the crime was described or depicted was instrumental in facilitating the commission of the crime.

(2) For purposes of this section, an "internet advertisement" means a statement in electronic media that would be

understood by a reasonable person to be an implicit or explicit offer for sexual contact or sexual intercourse, both as defined in chapter 9A.44 RCW, in exchange for something of value.

(3) Amounts collected as penalties under this section shall be deposited in the account established under RCW 43.63A.740. [2013 c 9 § 1.]

Chapter 9.91 RCW MISCELLANEOUS CRIMES

Sections

9.91.020 Operating railroad, steamboat, vehicle, etc., while intoxicated.

9.91.020 Operating railroad, steamboat, vehicle, etc., while intoxicated. Every person who, being employed upon any railway, as engineer, motor operator, grip operator, conductor, switch tender, fire tender, bridge tender, flagger, or signal operator, or having charge of stations, starting, regulating, or running trains upon a railway, or being employed as captain, engineer, or other officer of a vessel propelled by steam, or being the driver of any animal or vehicle upon any public highway, street, or other public place, is intoxicated while engaged in the discharge of any such duties, shall be guilty of a gross misdemeanor. [2013 c 23 § 4; 2000 c 239 § 3; 1915 c 165 § 2; 1909 c 249 § 275; RRS § 2527.]

Reviser's note: Caption for 1915 c 165 § 2 reads as follows: "Section 2527 [Rem. & Bal.] Intoxication of employees." See *State v. Crothers*, 118 Wash. 226.

Hunting while intoxicated—Penalty: RCW 77.15.675.

Operating vehicle under influence of intoxicants or drugs: RCW 46.20.285, 46.61.502.

Operating vessel in reckless manner or while under influence of alcohol or drugs: RCW 79A.60.040.

Railroads, employees, equipment, operations: Chapters 81.40, 81.44, 81.48 RCW.

Additional notes found at www.leg.wa.gov

Chapter 9.92 RCW PUNISHMENT

Sections

9.92.151 Early release for good behavior.

9.92.151 Early release for good behavior. (1) Except as provided in subsection (2) of this section, the sentence of a prisoner confined in a county jail facility for a felony, gross misdemeanor, or misdemeanor conviction may be reduced by earned release credits in accordance with procedures that shall be developed and promulgated by the correctional agency having jurisdiction. The earned early release time shall be for good behavior and good performance as determined by the correctional agency having jurisdiction. Any program established pursuant to this section shall allow an offender to earn early release credits for presentence incarceration. The correctional agency shall not credit the offender with earned early release credits in advance of the offender actually earning the credits. In the case of an offender convicted of a serious violent offense or a sex offense that is a class A felony committed on or after July 1, 1990, the aggregate earned early release time may not exceed

fifteen percent of the sentence. In no other case may the aggregate earned early release time exceed one-third of the total sentence.

(2) An offender serving a term of confinement imposed under RCW 9.94A.670(5)(a) is not eligible for earned release credits under this section.

(3) If an offender is transferred from a county jail to the department, the administrator of a county jail facility shall certify to the department the amount of time spent in custody at the facility and the number of days of early release credits lost or not earned. [2013 2nd sp.s. c 14 § 3; 2009 c 28 § 3; 2004 c 176 § 5; 1990 c 3 § 201; 1989 c 248 § 1.]

Application—Recalculation of earned release date—Compilation of sentencing information—Report—Effective date—2013 2nd sp.s. c 14: See notes following RCW 9.94A.517.

Effective date—2009 c 28: See note following RCW 2.24.040.

Severability—Effective date—2004 c 176: See notes following RCW 9.94A.515.

Additional notes found at www.leg.wa.gov

Chapter 9.94A RCW SENTENCING REFORM ACT OF 1981

Sections

9.94A.500 Sentencing hearing—Presentencing procedures—Disclosure of mental health services information. (*Effective July 1, 2014.*)

9.94A.501 Department must supervise specified offenders—Risk assessment of felony offenders.

9.94A.515 Table 2—Crimes included within each seriousness level. (*Effective until January 1, 2014.*)

9.94A.515 Table 2—Crimes included within each seriousness level. (*Effective January 1, 2014.*)

9.94A.517 Table 3—Drug offense sentencing grid. (*Effective until July 1, 2018.*)

9.94A.525 Offender score.

9.94A.533 Adjustments to standard sentences.

9.94A.535 Departures from the guidelines.

9.94A.729 Earned release time—Risk assessments.

9.94A.832 Special allegation—Robbery in the first or second degree—Robbery of a pharmacy—Procedures.

9.94A.500 Sentencing hearing—Presentencing procedures—Disclosure of mental health services information. (*Effective July 1, 2014.*) (1) Before imposing a sentence upon a defendant, the court shall conduct a sentencing hearing. The sentencing hearing shall be held within forty court days following conviction. Upon the motion of either party for good cause shown, or on its own motion, the court may extend the time period for conducting the sentencing hearing.

Except in cases where the defendant shall be sentenced to a term of total confinement for life without the possibility of release or, when authorized by RCW 10.95.030 for the crime of aggravated murder in the first degree, sentenced to death, the court may order the department to complete a risk assessment report. If available before sentencing, the report shall be provided to the court.

Unless specifically waived by the court, the court shall order the department to complete a chemical dependency screening report before imposing a sentence upon a defendant who has been convicted of a violation of the uniform controlled substances act under chapter 69.50 RCW, a criminal solicitation to commit such a violation under chapter 9A.28 RCW, or any felony where the court finds that the

offender has a chemical dependency that has contributed to his or her offense. In addition, the court shall, at the time of plea or conviction, order the department to complete a presentence report before imposing a sentence upon a defendant who has been convicted of a felony sexual offense. The department of corrections shall give priority to presentence investigations for sexual offenders. If the court determines that the defendant may be a mentally ill person as defined in RCW 71.24.025, although the defendant has not established that at the time of the crime he or she lacked the capacity to commit the crime, was incompetent to commit the crime, or was insane at the time of the crime, the court shall order the department to complete a presentence report before imposing a sentence.

The court shall consider the risk assessment report and presentence reports, if any, including any victim impact statement and criminal history, and allow arguments from the prosecutor, the defense counsel, the offender, the victim, the survivor of the victim, or a representative of the victim or survivor, and an investigative law enforcement officer as to the sentence to be imposed.

A criminal history summary relating to the defendant from the prosecuting authority or from a state, federal, or foreign governmental agency shall be prima facie evidence of the existence and validity of the convictions listed therein. If the court is satisfied by a preponderance of the evidence that the defendant has a criminal history, the court shall specify the convictions it has found to exist. All of this information shall be part of the record. Copies of all risk assessment reports and presentence reports presented to the sentencing court and all written findings of facts and conclusions of law as to sentencing entered by the court shall be sent to the department by the clerk of the court at the conclusion of the sentencing and shall accompany the offender if the offender is committed to the custody of the department. Court clerks shall provide, without charge, certified copies of documents relating to criminal convictions requested by prosecuting attorneys.

(2) To prevent wrongful disclosure of information and records related to mental health services, as described in RCW 71.05.445 and 70.02.250, a court may take only those steps necessary during a sentencing hearing or any hearing in which the department presents information related to mental health services to the court. The steps may be taken on motion of the defendant, the prosecuting attorney, or on the court's own motion. The court may seal the portion of the record relating to information relating to mental health services, exclude the public from the hearing during presentation or discussion of information and records relating to mental health services, or grant other relief to achieve the result intended by this subsection, but nothing in this subsection shall be construed to prevent the subsequent release of information and records related to mental health services as authorized by RCW 71.05.445, 70.02.250, or 72.09.585. Any person who otherwise is permitted to attend any hearing pursuant to chapter 7.69 or 7.69A RCW shall not be excluded from the hearing solely because the department intends to disclose or discloses information related to mental health services. [2013 c 200 § 33; 2008 c 231 § 2; 2006 c 339 § 303; 2000 c 75 § 8. Prior: 1999 c 197 § 3; 1999 c 196 § 4; 1998 c 260 §

2; 1988 c 60 § 1; 1986 c 257 § 34; 1985 c 443 § 6; 1984 c 209 § 5; 1981 c 137 § 11. Formerly RCW 9.94A.110.]

Effective date—2013 c 200: See note following RCW 70.02.010.

Intent—2008 c 231 §§ 2-4: "It is the legislature's intent to ensure that offenders receive accurate sentences that are based on their actual, complete criminal history. Accurate sentences further the sentencing reform act's goals of:

- (1) Ensuring that the punishment for a criminal offense is proportionate to the seriousness of the offense and the offender's criminal history;
- (2) Ensuring punishment that is just; and
- (3) Ensuring that sentences are commensurate with the punishment imposed on others for committing similar offenses.

Given the decisions in *In re Cadwallader*, 155 Wn.2d 867 (2005); *State v. Lopez*, 147 Wn.2d 515 (2002); *State v. Ford*, 137 Wn.2d 472 (1999); and *State v. McCorkle*, 137 Wn.2d 490 (1999), the legislature finds it is necessary to amend the provisions in RCW 9.94A.500, 9.94A.525, and 9.94A.530 in order to ensure that sentences imposed accurately reflect the offender's actual, complete criminal history, whether imposed at sentencing or upon resentencing. These amendments are consistent with the United States supreme court holding in *Monge v. California*, 524 U.S. 721 (1998), that double jeopardy is not implicated at resentencing following an appeal or collateral attack." [2008 c 231 § 1.]

Application—2008 c 231 §§ 2 and 3: "Sections 2 and 3 of this act apply to all sentencings and resentencings commenced before, on, or after June 12, 2008." [2008 c 231 § 5.]

Severability—2008 c 231: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2008 c 231 § 62.]

Intent—Part headings not law—2006 c 339: See notes following RCW 70.96A.325.

Intent—2000 c 75: See note following RCW 71.05.445.

Intent—1998 c 260: "It is the intent of the legislature to decrease the likelihood of recidivism and reincarceration by mentally ill offenders under correctional supervision in the community by authorizing:

- (1) The courts to request presentence reports from the department of corrections when a relationship between mental illness and criminal behavior is suspected, and to order a mental status evaluation and treatment for offenders whose criminal behavior is influenced by a mental illness; and
- (2) Community corrections officers to work with community mental health providers to support participation in treatment by mentally ill offenders on community placement or community supervision." [1998 c 260 § 1.]

Additional notes found at www.leg.wa.gov

9.94A.501 Department must supervise specified offenders—Risk assessment of felony offenders. (1) The department shall supervise the following offenders who are sentenced to probation in superior court, pursuant to RCW 9.92.060, 9.95.204, or 9.95.210:

- (a) Offenders convicted of:
 - (i) Sexual misconduct with a minor second degree;
 - (ii) Custodial sexual misconduct second degree;
 - (iii) Communication with a minor for immoral purposes;
 and
 - (iv) Violation of RCW 9A.44.132(2) (failure to register);
 and
- (b) Offenders who have:
 - (i) A current conviction for a repetitive domestic violence offense where domestic violence has been plead and proven after August 1, 2011; and
 - (ii) A prior conviction for a repetitive domestic violence offense or domestic violence felony offense where domestic violence has been plead and proven after August 1, 2011.
- (2) Misdemeanor and gross misdemeanor offenders supervised by the department pursuant to this section shall be placed on community custody.

(3) The department shall supervise every felony offender sentenced to community custody pursuant to RCW 9.94A.701 or 9.94A.702 whose risk assessment classifies the offender as one who is at a high risk to reoffend.

(4) Notwithstanding any other provision of this section, the department shall supervise an offender sentenced to community custody regardless of risk classification if the offender:

(a) Has a current conviction for a sex offense or a serious violent offense and was sentenced to a term of community custody pursuant to RCW 9.94A.701, 9.94A.702, or 9.94A.507;

(b) Has been identified by the department as a dangerous mentally ill offender pursuant to RCW 72.09.370;

(c) Has an indeterminate sentence and is subject to parole pursuant to RCW 9.95.017;

(d) Has a current conviction for violating RCW 9A.44.132(1) (failure to register) and was sentenced to a term of community custody pursuant to RCW 9.94A.701;

(e) Has a current conviction for a domestic violence felony offense where domestic violence has been plead and proven after August 1, 2011, and a prior conviction for a repetitive domestic violence offense or domestic violence felony offense where domestic violence has been plead and proven after August 1, 2011;

(f) Was sentenced under RCW 9.94A.650, 9.94A.655, 9.94A.660, or 9.94A.670;

(g) Is subject to supervision pursuant to RCW 9.94A.745; or

(h) Was convicted and sentenced under RCW 46.61.520 (vehicular homicide), RCW 46.61.522 (vehicular assault), RCW 46.61.502(6) (felony DUI), or RCW 46.61.504(6) (felony physical control).

(5) The department is not authorized to, and may not, supervise any offender sentenced to a term of community custody or any probationer unless the offender or probationer is one for whom supervision is required under this section or RCW 9.94A.5011.

(6) The department shall conduct a risk assessment for every felony offender sentenced to a term of community custody who may be subject to supervision under this section or RCW 9.94A.5011. [2013 2nd sp.s. c 35 § 15; 2011 1st sp.s. c 40 § 2. Prior: 2010 c 267 § 10; 2010 c 224 § 3; 2009 c 376 § 2; (2009 c 376 § 1 expired August 1, 2009); 2009 c 375 § 2; (2009 c 375 § 1 expired August 1, 2009); 2008 c 231 § 24; 2005 c 362 § 1; 2003 c 379 § 3.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: "(1) Except as otherwise provided in this section, the provisions of this act apply to persons convicted before, on, or after June 15, 2011.

(2) By January 1, 2012, consistent with RCW 9.94A.171, 9.94A.501, and section 3 of this act, the department of corrections shall recalculate the term of community custody for offenders currently in confinement or serving a term of community custody. The department of corrections shall reset the date that community custody will end for those offenders. The recalculation shall not extend a term of community custody beyond that to which an offender is currently subject.

(3) By January 1, 2012, consistent with the provisions of RCW 9.94A.650, the department of corrections shall recalculate the term of community custody for each offender sentenced to a first-time offender waiver under RCW 9.94A.650 and currently in confinement or serving a term of community custody. The department of corrections shall reset the date that community custody will end for those offenders. The recalculation shall not extend a term of community custody beyond that to which an offender is currently subject." [2011 1st sp.s. c 40 § 42.]

Effective date—2011 1st sp.s. c 40 §§ 1-9, 42: "Sections 1 through 9 and 42 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [June 15, 2011]." [2011 1st sp.s. c 40 § 44.]

Application—2010 c 267: See note following RCW 9A.44.128.

Expiration date—2009 c 376 § 1: "Section 1 of this act expires August 1, 2009." [2009 c 376 § 4.]

Expiration date—2009 c 375 §§ 1, 3, and 13: "Sections 1, 3, and 13 of this act expire August 1, 2009." [2009 c 375 § 19.]

Application—2009 c 375: "This act applies retroactively and prospectively regardless of whether the offender is currently on community custody or probation with the department, currently incarcerated with a term of community custody or probation with the department, or sentenced after July 26, 2009." [2009 c 375 § 20.]

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Severability—2008 c 231: See note following RCW 9.94A.500.

Effective date—2005 c 362: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 10, 2005]." [2005 c 362 § 5.]

Severability—Effective dates—2003 c 379: See notes following RCW 9.94A.728.

Conditions of probation: RCW 9.95.210.

Misdemeanant probation services—County supervision: RCW 9.95.204.

Suspending sentences: RCW 9.92.060.

9.94A.515 Table 2—Crimes included within each seriousness level. (Effective until January 1, 2014.)

TABLE 2 CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL	
XVI	Aggravated Murder 1 (RCW 10.95.020)
XV	Homicide by abuse (RCW 9A.32.055)
	Malicious explosion 1 (RCW 70.74.280(1))
	Murder 1 (RCW 9A.32.030)
XIV	Murder 2 (RCW 9A.32.050)
	Trafficking 1 (RCW 9A.40.100(1))
XIII	Malicious explosion 2 (RCW 70.74.280(2))
	Malicious placement of an explosive 1 (RCW 70.74.270(1))
XII	Assault 1 (RCW 9A.36.011)
	Assault of a Child 1 (RCW 9A.36.120)
	Malicious placement of an imitation device 1 (RCW 70.74.272(1)(a))
	Promoting Commercial Sexual Abuse of a Minor (RCW 9.68A.101)
	Rape 1 (RCW 9A.44.040)
	Rape of a Child 1 (RCW 9A.44.073)
	Trafficking 2 (RCW 9A.40.100(2))
XI	Manslaughter 1 (RCW 9A.32.060)
	Rape 2 (RCW 9A.44.050)
	Rape of a Child 2 (RCW 9A.44.076)

- Vehicular Homicide, by being under the influence of intoxicating liquor or any drug (RCW 46.61.520)
- X Child Molestation 1 (RCW 9A.44.083)
- Criminal Mistreatment 1 (RCW 9A.42.020)
- Indecent Liberties (with forcible compulsion) (RCW 9A.44.100(1)(a))
- Kidnapping 1 (RCW 9A.40.020)
- Leading Organized Crime (RCW 9A.82.060(1)(a))
- Malicious explosion 3 (RCW 70.74.280(3))
- Sexually Violent Predator Escape (RCW 9A.76.115)
- IX Abandonment of Dependent Person 1 (RCW 9A.42.060)
- Assault of a Child 2 (RCW 9A.36.130)
- Explosive devices prohibited (RCW 70.74.180)
- Hit and Run—Death (RCW 46.52.020(4)(a))
- Homicide by Watercraft, by being under the influence of intoxicating liquor or any drug (RCW 79A.60.050)
- Inciting Criminal Profiteering (RCW 9A.82.060(1)(b))
- Malicious placement of an explosive 2 (RCW 70.74.270(2))
- Robbery 1 (RCW 9A.56.200)
- Sexual Exploitation (RCW 9.68A.040)
- VIII Arson 1 (RCW 9A.48.020)
- Commercial Sexual Abuse of a Minor (RCW 9.68A.100)
- Homicide by Watercraft, by the operation of any vessel in a reckless manner (RCW 79A.60.050)
- Manslaughter 2 (RCW 9A.32.070)
- Promoting Prostitution 1 (RCW 9A.88.070)
- Theft of Ammonia (RCW 69.55.010)
- Vehicular Homicide, by the operation of any vehicle in a reckless manner (RCW 46.61.520)
- VII Burglary 1 (RCW 9A.52.020)
- Child Molestation 2 (RCW 9A.44.086)
- Civil Disorder Training (RCW 9A.48.120)
- Dealing in depictions of minor engaged in sexually explicit conduct 1 (RCW 9.68A.050(1))
- Drive-by Shooting (RCW 9A.36.045)
- Homicide by Watercraft, by disregard for the safety of others (RCW 79A.60.050)
- Indecent Liberties (without forcible compulsion) (RCW 9A.44.100(1)(b) and (c))
- Introducing Contraband 1 (RCW 9A.76.140)
- Malicious placement of an explosive 3 (RCW 70.74.270(3))
- Negligently Causing Death By Use of a Signal Preemption Device (RCW 46.37.675)
- Sending, bringing into state depictions of minor engaged in sexually explicit conduct 1 (RCW 9.68A.060(1))
- Unlawful Possession of a Firearm in the first degree (RCW 9.41.040(1))
- Use of a Machine Gun in Commission of a Felony (RCW 9.41.225)
- Vehicular Homicide, by disregard for the safety of others (RCW 46.61.520)
- VI Bail Jumping with Murder 1 (RCW 9A.76.170(3)(a))
- Bribery (RCW 9A.68.010)
- Incest 1 (RCW 9A.64.020(1))
- Intimidating a Judge (RCW 9A.72.160)
- Intimidating a Juror/Witness (RCW 9A.72.110, 9A.72.130)
- Malicious placement of an imitation device 2 (RCW 70.74.272(1)(b))
- Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct 1 (RCW 9.68A.070(1))
- Rape of a Child 3 (RCW 9A.44.079)
- Theft of a Firearm (RCW 9A.56.300)
- Unlawful Storage of Ammonia (RCW 69.55.020)
- V Abandonment of Dependent Person 2 (RCW 9A.42.070)
- Advancing money or property for extortionate extension of credit (RCW 9A.82.030)
- Bail Jumping with class A Felony (RCW 9A.76.170(3)(b))
- Child Molestation 3 (RCW 9A.44.089)
- Criminal Mistreatment 2 (RCW 9A.42.030)
- Custodial Sexual Misconduct 1 (RCW 9A.44.160)

- Dealing in Depictions of Minor Engaged in Sexually Explicit Conduct 2 (RCW 9.68A.050(2))
- Domestic Violence Court Order Violation (RCW 10.99.040, 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145)
- Driving While Under the Influence (RCW 46.61.502(6))
- Extortion 1 (RCW 9A.56.120)
- Extortionate Extension of Credit (RCW 9A.82.020)
- Extortionate Means to Collect Extensions of Credit (RCW 9A.82.040)
- Incest 2 (RCW 9A.64.020(2))
- Kidnapping 2 (RCW 9A.40.030)
- Perjury 1 (RCW 9A.72.020)
- Persistent prison misbehavior (RCW 9.94.070)
- Physical Control of a Vehicle While Under the Influence (RCW 46.61.504(6))
- Possession of a Stolen Firearm (RCW 9A.56.310)
- Rape 3 (RCW 9A.44.060)
- Rendering Criminal Assistance 1 (RCW 9A.76.070)
- Sending, Bringing into State Depictions of Minor Engaged in Sexually Explicit Conduct 2 (RCW 9.68A.060(2))
- Sexual Misconduct with a Minor 1 (RCW 9A.44.093)
- Sexually Violating Human Remains (RCW 9A.44.105)
- Stalking (RCW 9A.46.110)
- Taking Motor Vehicle Without Permission 1 (RCW 9A.56.070)
- IV Arson 2 (RCW 9A.48.030)
- Assault 2 (RCW 9A.36.021)
- Assault 3 (of a Peace Officer with a Projectile Stun Gun) (RCW 9A.36.031(1)(h))
- Assault by Watercraft (RCW 79A.60.060)
- Bribing a Witness/Bribe Received by Witness (RCW 9A.72.090, 9A.72.100)
- Cheating 1 (RCW 9.46.1961)
- Commercial Bribery (RCW 9A.68.060)
- Counterfeiting (RCW 9.16.035(4))
- Endangerment with a Controlled Substance (RCW 9A.42.100)
- Escape 1 (RCW 9A.76.110)
- Hit and Run—Injury (RCW 46.52.020(4)(b))
- Hit and Run with Vessel—Injury Accident (RCW 79A.60.200(3))
- Identity Theft 1 (RCW 9.35.020(2))
- Indecent Exposure to Person Under Age Fourteen (subsequent sex offense) (RCW 9A.88.010)
- Influencing Outcome of Sporting Event (RCW 9A.82.070)
- Malicious Harassment (RCW 9A.36.080)
- Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct 2 (RCW 9.68A.070(2))
- Residential Burglary (RCW 9A.52.025)
- Robbery 2 (RCW 9A.56.210)
- Theft of Livestock 1 (RCW 9A.56.080)
- Threats to Bomb (RCW 9.61.160)
- Trafficking in Stolen Property 1 (RCW 9A.82.050)
- Unlawful factoring of a credit card or payment card transaction (RCW 9A.56.290(4)(b))
- Unlawful transaction of health coverage as a health care service contractor (RCW 48.44.016(3))
- Unlawful transaction of health coverage as a health maintenance organization (RCW 48.46.033(3))
- Unlawful transaction of insurance business (RCW 48.15.023(3))
- Unlicensed practice as an insurance professional (RCW 48.17.063(2))
- Use of Proceeds of Criminal Profiteering (RCW 9A.82.080 (1) and (2))
- Vehicle Prowling 2 (third or subsequent offense) (RCW 9A.52.100(3))
- Vehicular Assault, by being under the influence of intoxicating liquor or any drug, or by the operation or driving of a vehicle in a reckless manner (RCW 46.61.522)
- Viewing of Depictions of a Minor Engaged in Sexually Explicit Conduct 1 (RCW 9.68A.075(1))
- Willful Failure to Return from Furlough (*RCW 72.66.060)
- III Animal Cruelty 1 (Sexual Conduct or Contact) (RCW 16.52.205(3))

- Assault 3 (Except Assault 3 of a Peace Officer With a Projectile Stun Gun) (RCW 9A.36.031 except subsection (1)(h))
- Assault of a Child 3 (RCW 9A.36.140)
- Bail Jumping with class B or C Felony (RCW 9A.76.170(3)(c))
- Burglary 2 (RCW 9A.52.030)
- Communication with a Minor for Immoral Purposes (RCW 9.68A.090)
- Criminal Gang Intimidation (RCW 9A.46.120)
- Custodial Assault (RCW 9A.36.100)
- Cyberstalking (subsequent conviction or threat of death) (RCW 9.61.260(3))
- Escape 2 (RCW 9A.76.120)
- Extortion 2 (RCW 9A.56.130)
- Harassment (RCW 9A.46.020)
- Intimidating a Public Servant (RCW 9A.76.180)
- Introducing Contraband 2 (RCW 9A.76.150)
- Malicious Injury to Railroad Property (RCW 81.60.070)
- Mortgage Fraud (RCW 19.144.080)
- Negligently Causing Substantial Bodily Harm By Use of a Signal Preemption Device (RCW 46.37.674)
- Organized Retail Theft 1 (RCW 9A.56.350(2))
- Perjury 2 (RCW 9A.72.030)
- Possession of Incendiary Device (RCW 9.40.120)
- Possession of Machine Gun or Short-Barreled Shotgun or Rifle (RCW 9.41.190)
- Promoting Prostitution 2 (RCW 9A.88.080)
- Retail Theft with Extenuating Circumstances 1 (RCW 9A.56.360(2))
- Securities Act violation (RCW 21.20.400)
- Tampering with a Witness (RCW 9A.72.120)
- Telephone Harassment (subsequent conviction or threat of death) (RCW 9.61.230(2))
- Theft of Livestock 2 (RCW 9A.56.083)
- Theft with the Intent to Resell 1 (RCW 9A.56.340(2))
- Trafficking in Stolen Property 2 (RCW 9A.82.055)
- Unlawful Hunting of Big Game 1 (RCW 77.15.410(3)(b))
- Unlawful Imprisonment (RCW 9A.40.040)
- Unlawful Misbranding of Food Fish or Shellfish 1 (RCW 69.04.938(3))
- Unlawful possession of firearm in the second degree (RCW 9.41.040(2))
- Unlawful Taking of Endangered Fish or Wildlife 1 (RCW 77.15.120(3)(b))
- Unlawful Trafficking in Fish, Shellfish, or Wildlife 1 (RCW 77.15.260(3)(b))
- Unlawful Use of a Nondesignated Vessel (RCW 77.15.530(4))
- Vehicular Assault, by the operation or driving of a vehicle with disregard for the safety of others (RCW 46.61.522)
- Willful Failure to Return from Work Release (*RCW 72.65.070)
- II Commercial Fishing Without a License 1 (RCW 77.15.500(3)(b))
- Computer Trespass 1 (RCW 9A.52.110)
- Counterfeiting (RCW 9.16.035(3))
- Engaging in Fish Dealing Activity Unlicensed 1 (RCW 77.15.620(3))
- Escape from Community Custody (RCW 72.09.310)
- Failure to Register as a Sex Offender (second or subsequent offense) (RCW 9A.44.132)
- Health Care False Claims (RCW 48.80.030)
- Identity Theft 2 (RCW 9.35.020(3))
- Improperly Obtaining Financial Information (RCW 9.35.010)
- Malicious Mischief 1 (RCW 9A.48.070)
- Organized Retail Theft 2 (RCW 9A.56.350(3))
- Possession of Stolen Property 1 (RCW 9A.56.150)
- Possession of a Stolen Vehicle (RCW 9A.56.068)
- Retail Theft with Extenuating Circumstances 2 (RCW 9A.56.360(3))
- Scrap Processing, Recycling, or Supplying Without a License (second or subsequent offense) (RCW 19.290.100)
- Theft 1 (RCW 9A.56.030)

Theft of a Motor Vehicle (RCW 9A.56.065)	Transaction of insurance business beyond the scope of licensure (RCW 48.17.063)
Theft of Rental, Leased, or Lease-purchased Property (valued at one thousand five hundred dollars or more) (RCW 9A.56.096(5)(a))	Unlawful Fish and Shellfish Catch Accounting (RCW 77.15.630(3)(b))
Theft with the Intent to Resell 2 (RCW 9A.56.340(3))	Unlawful Issuance of Checks or Drafts (RCW 9A.56.060)
Trafficking in Insurance Claims (RCW 48.30A.015)	Unlawful Possession of Fictitious Identification (RCW 9A.56.320)
Unlawful factoring of a credit card or payment card transaction (RCW 9A.56.290(4)(a))	Unlawful Possession of Instruments of Financial Fraud (RCW 9A.56.320)
Unlawful Participation of Non-Indians in Indian Fishery (RCW 77.15.570(2))	Unlawful Possession of Payment Instruments (RCW 9A.56.320)
Unlawful Practice of Law (RCW 2.48.180)	Unlawful Possession of a Personal Identification Device (RCW 9A.56.320)
Unlawful Purchase or Use of a License (RCW 77.15.650(3)(b))	Unlawful Production of Payment Instruments (RCW 9A.56.320)
Unlawful Trafficking in Fish, Shellfish, or Wildlife 2 (RCW 77.15.260(3)(a))	Unlawful Release of Deleterious Exotic Wildlife (RCW 77.15.250(2)(b))
Unlicensed Practice of a Profession or Business (RCW 18.130.190(7))	Unlawful Trafficking in Food Stamps (RCW 9.91.142)
Voyeurism (RCW 9A.44.115)	Unlawful Use of Food Stamps (RCW 9.91.144)
I Attempting to Elude a Pursuing Police Vehicle (RCW 46.61.024)	Unlawful Use of Net to Take Fish 1 (RCW 77.15.580(3)(b))
False Verification for Welfare (RCW 74.08.055)	Unlawful Use of Prohibited Aquatic Animal Species (RCW 77.15.253(3))
Forgery (RCW 9A.60.020)	Vehicle Prowl 1 (RCW 9A.52.095)
Fraudulent Creation or Revocation of a Mental Health Advance Directive (RCW 9A.60.060)	Violating Commercial Fishing Area or Time 1 (RCW 77.15.550(3)(b))
Malicious Mischief 2 (RCW 9A.48.080)	
Mineral Trespass (RCW 78.44.330)	
Possession of Stolen Property 2 (RCW 9A.56.160)	
Reckless Burning 1 (RCW 9A.48.040)	
Spotlighting Big Game 1 (RCW 77.15.450(3)(b))	
Suspension of Department Privileges 1 (RCW 77.15.670(3)(b))	
Taking Motor Vehicle Without Permission 2 (RCW 9A.56.075)	
Theft 2 (RCW 9A.56.040)	
Theft of Rental, Leased, or Lease-purchased Property (valued at two hundred fifty dollars or more but less than one thousand five hundred dollars) (RCW 9A.56.096(5)(b))	

[2013 c 322 § 26; 2013 c 290 § 8; 2013 c 267 § 2. Prior: 2012 c 176 § 3; 2012 c 162 § 1; prior: 2010 c 289 § 11; 2010 c 227 § 9; prior: 2008 c 108 § 23; 2008 c 38 § 1; prior: 2007 c 368 § 14; 2007 c 199 § 10; prior: 2006 c 277 § 6; 2006 c 228 § 9; 2006 c 191 § 2; 2006 c 139 § 2; 2006 c 128 § 3; 2006 c 73 § 12; prior: (2006 c 125 § 5 repealed by 2006 c 126 § 7); 2005 c 458 § 2; 2005 c 183 § 9; prior: 2004 c 176 § 2; 2004 c 94 § 3; (2004 c 94 § 2 expired July 1, 2004); prior: 2003 c 335 § 5; (2003 c 335 § 4 expired July 1, 2004); 2003 c 283 § 33; (2003 c 283 § 32 expired July 1, 2004); 2003 c 267 § 3; (2003 c 267 § 2 expired July 1, 2004); 2003 c 250 § 14; (2003 c 250 § 13 expired July 1, 2004); 2003 c 119 § 8; (2003 c 119 § 7 expired July 1, 2004); 2003 c 53 § 56; 2003 c 52 § 4; (2003 c 52 § 3 expired July 1, 2004); prior: 2002 c 340 § 2; 2002 c 324 § 2; 2002 c 290 § 7; (2002 c 290 § 2 expired July 1, 2003); 2002 c 253 § 4; 2002 c 229 § 2; 2002 c 134 § 2; 2002 c 133 § 4; prior: 2001 2nd sp.s. c 12 § 361; 2001 c 300 § 4; 2001 c 217 § 12; 2001 c 17 § 1; prior: 2001 c 310 § 4; 2001 c 287 § 3; 2001 c 224 § 3; 2001 c 222 § 24; 2001 c 207 § 3; 2000 c 225 § 5; 2000 c 119 § 17; 2000 c 66 § 2; prior: 1999 c 352 § 3; 1999 c 322 § 5; 1999 c 45 § 4; prior: 1998 c 290 § 4; 1998 c 219 § 4; 1998 c 82 § 1; 1998 c 78 § 1; prior: 1997 c 365 § 4; 1997 c 346 § 3; 1997 c 340 § 1; 1997 c 338 § 51;

1997 c 266 § 15; 1997 c 120 § 5; prior: 1996 c 302 § 6; 1996 c 205 § 3; 1996 c 36 § 2; prior: 1995 c 385 § 2; 1995 c 285 § 28; 1995 c 129 § 3 (Initiative Measure No. 159); prior: (1994 sp.s. c 7 § 510 repealed by 1995 c 129 § 19 (Initiative Measure No. 159)); 1994 c 275 § 20; 1994 c 53 § 2; prior: 1992 c 145 § 4; 1992 c 75 § 3; 1991 c 32 § 3; 1990 c 3 § 702; prior: 1989 2nd ex.s. c 1 § 3; 1989 c 412 § 3; 1989 c 405 § 1; 1989 c 271 § 102; 1989 c 99 § 1; prior: 1988 c 218 § 2; 1988 c 145 § 12; 1988 c 62 § 2; prior: 1987 c 224 § 1; 1987 c 187 § 4; 1986 c 257 § 23; 1984 c 209 § 17; 1983 c 115 § 3. Formerly RCW 9.94A.320.]

Reviser's note: *(1) RCW 72.66.060 and 72.65.070 were repealed by 2001 c 264 § 7. Cf. 2001 c 264 § 8.

(2) This section was amended by 2013 c 267 § 2, 2013 c 290 § 8, and by 2013 c 322 § 26, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—2008 c 108: See RCW 19.144.005.

Findings—Intent—Short title—2007 c 199: See notes following RCW 9A.56.065.

Intent—Severability—Effective date—2006 c 125: See notes following RCW 9A.44.190.

Effective date—2006 c 73: See note following RCW 46.61.502.

Severability—2004 c 176: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2004 c 176 § 8.]

Effective date—2004 c 176: "Sections 2 through 6 of this act take effect July 1, 2005." [2004 c 176 § 9.]

Expiration date—2004 c 94 § 2: "Section 2 of this act expires July 1, 2004." [2004 c 94 § 8.]

Severability—Effective dates—2004 c 94: See notes following RCW 9.61.260.

Effective date—2003 c 335 § 5: "Section 5 of this act takes effect July 1, 2004." [2003 c 335 § 8.]

Expiration date—2003 c 335 § 4: "Section 4 of this act expires July 1, 2004." [2003 c 335 § 7.]

Effective date—2003 c 283 § 33: "Section 33 of this act takes effect July 1, 2004." [2003 c 283 § 37.]

Expiration date—2003 c 283 § 32: "Section 32 of this act expires July 1, 2004." [2003 c 283 § 36.]

Severability—Part headings not law—2003 c 283: See RCW 71.32.900 and 71.32.901.

Effective date—2003 c 267 § 3: "Section 3 of this act takes effect July 1, 2004." [2003 c 267 § 9.]

Expiration date—2003 c 267 § 2: "Section 2 of this act expires July 1, 2004." [2003 c 267 § 8.]

Effective date—2003 c 250 § 14: "Section 14 of this act takes effect July 1, 2004." [2003 c 250 § 17.]

Expiration date—2003 c 250 § 13: "Section 13 of this act expires July 1, 2004." [2003 c 250 § 16.]

Severability—2003 c 250: See note following RCW 48.01.080.

Effective date—2003 c 119 § 8: "Section 8 of this act takes effect July 1, 2004." [2003 c 119 § 10.]

Expiration date—2003 c 119 § 7: "Section 7 of this act expires July 1, 2004." [2003 c 119 § 9.]

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

Effective date—2003 c 52 § 4: "Section 4 of this act takes effect July 1, 2004." [2003 c 52 § 6.]

Expiration date—2003 c 52 § 3: "Section 3 of this act expires July 1, 2004." [2003 c 52 § 5.]

Intent—2002 c 290: See note following RCW 9.94A.517.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Purpose—Effective date—2001 c 310: See notes following RCW 2.48.180.

Purpose—Effective date—2001 c 224: See notes following RCW 9A.68.060.

Purpose—Effective date—2001 c 222: See notes following RCW 9A.82.001.

Purpose—Effective date—2001 c 207: See notes following RCW 18.130.190.

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Findings—Intent—Severability—1997 c 266: See notes following RCW 28A.600.455.

Findings and intent—Short title—Severability—Captions not law—1995 c 129: See notes following RCW 9.94A.510.

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

Finding—Intent—1989 c 271 §§ 102, 109, and 110: See note following RCW 9A.36.050.

Additional notes found at www.leg.wa.gov

9.94A.515 Table 2—Crimes included within each seriousness level. (Effective January 1, 2014.)

TABLE 2 CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL	
XVI	Aggravated Murder 1 (RCW 10.95.020)
XV	Homicide by abuse (RCW 9A.32.055)
	Malicious explosion 1 (RCW 70.74.280(1))
	Murder 1 (RCW 9A.32.030)
XIV	Murder 2 (RCW 9A.32.050)
	Trafficking 1 (RCW 9A.40.100(1))
XIII	Malicious explosion 2 (RCW 70.74.280(2))
	Malicious placement of an explosive 1 (RCW 70.74.270(1))
XII	Assault 1 (RCW 9A.36.011)
	Assault of a Child 1 (RCW 9A.36.120)
	Malicious placement of an imitation device 1 (RCW 70.74.272(1)(a))
	Promoting Commercial Sexual Abuse of a Minor (RCW 9.68A.101)
	Rape 1 (RCW 9A.44.040)
	Rape of a Child 1 (RCW 9A.44.073)
	Trafficking 2 (RCW 9A.40.100(2))
XI	Manslaughter 1 (RCW 9A.32.060)
	Rape 2 (RCW 9A.44.050)
	Rape of a Child 2 (RCW 9A.44.076)
	Vehicular Homicide, by being under the influence of intoxicating liquor or any drug (RCW 46.61.520)
X	Child Molestation 1 (RCW 9A.44.083)
	Criminal Mistreatment 1 (RCW 9A.42.020)

- Indecent Liberties (with forcible compulsion) (RCW 9A.44.100(1)(a))
- Kidnapping 1 (RCW 9A.40.020)
- Leading Organized Crime (RCW 9A.82.060(1)(a))
- Malicious explosion 3 (RCW 70.74.280(3))
- Sexually Violent Predator Escape (RCW 9A.76.115)
- IX Abandonment of Dependent Person 1 (RCW 9A.42.060)
- Assault of a Child 2 (RCW 9A.36.130)
- Explosive devices prohibited (RCW 70.74.180)
- Hit and Run—Death (RCW 46.52.020(4)(a))
- Homicide by Watercraft, by being under the influence of intoxicating liquor or any drug (RCW 79A.60.050)
- Inciting Criminal Profiteering (RCW 9A.82.060(1)(b))
- Malicious placement of an explosive 2 (RCW 70.74.270(2))
- Robbery 1 (RCW 9A.56.200)
- Sexual Exploitation (RCW 9.68A.040)
- VIII Arson 1 (RCW 9A.48.020)
- Commercial Sexual Abuse of a Minor (RCW 9.68A.100)
- Homicide by Watercraft, by the operation of any vessel in a reckless manner (RCW 79A.60.050)
- Manslaughter 2 (RCW 9A.32.070)
- Promoting Prostitution 1 (RCW 9A.88.070)
- Theft of Ammonia (RCW 69.55.010)
- Vehicular Homicide, by the operation of any vehicle in a reckless manner (RCW 46.61.520)
- VII Burglary 1 (RCW 9A.52.020)
- Child Molestation 2 (RCW 9A.44.086)
- Civil Disorder Training (RCW 9A.48.120)
- Dealing in depictions of minor engaged in sexually explicit conduct 1 (RCW 9.68A.050(1))
- Drive-by Shooting (RCW 9A.36.045)
- Homicide by Watercraft, by disregard for the safety of others (RCW 79A.60.050)
- Indecent Liberties (without forcible compulsion) (RCW 9A.44.100(1)(b) and (c))
- Introducing Contraband 1 (RCW 9A.76.140)
- Malicious placement of an explosive 3 (RCW 70.74.270(3))
- Negligently Causing Death By Use of a Signal Preemption Device (RCW 46.37.675)
- Sending, bringing into state depictions of minor engaged in sexually explicit conduct 1 (RCW 9.68A.060(1))
- Unlawful Possession of a Firearm in the first degree (RCW 9.41.040(1))
- Use of a Machine Gun in Commission of a Felony (RCW 9.41.225)
- Vehicular Homicide, by disregard for the safety of others (RCW 46.61.520)
- VI Bail Jumping with Murder 1 (RCW 9A.76.170(3)(a))
- Bribery (RCW 9A.68.010)
- Incest 1 (RCW 9A.64.020(1))
- Intimidating a Judge (RCW 9A.72.160)
- Intimidating a Juror/Witness (RCW 9A.72.110, 9A.72.130)
- Malicious placement of an imitation device 2 (RCW 70.74.272(1)(b))
- Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct 1 (RCW 9.68A.070(1))
- Rape of a Child 3 (RCW 9A.44.079)
- Theft of a Firearm (RCW 9A.56.300)
- Unlawful Storage of Ammonia (RCW 69.55.020)
- V Abandonment of Dependent Person 2 (RCW 9A.42.070)
- Advancing money or property for extortionate extension of credit (RCW 9A.82.030)
- Bail Jumping with class A Felony (RCW 9A.76.170(3)(b))
- Child Molestation 3 (RCW 9A.44.089)
- Criminal Mistreatment 2 (RCW 9A.42.030)
- Custodial Sexual Misconduct 1 (RCW 9A.44.160)
- Dealing in Depictions of Minor Engaged in Sexually Explicit Conduct 2 (RCW 9.68A.050(2))
- Domestic Violence Court Order Violation (RCW 10.99.040, 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145)

- Driving While Under the Influence (RCW 46.61.502(6))
- Extortion 1 (RCW 9A.56.120)
- Extortionate Extension of Credit (RCW 9A.82.020)
- Extortionate Means to Collect Extensions of Credit (RCW 9A.82.040)
- Incest 2 (RCW 9A.64.020(2))
- Kidnapping 2 (RCW 9A.40.030)
- Perjury 1 (RCW 9A.72.020)
- Persistent prison misbehavior (RCW 9.94.070)
- Physical Control of a Vehicle While Under the Influence (RCW 46.61.504(6))
- Possession of a Stolen Firearm (RCW 9A.56.310)
- Rape 3 (RCW 9A.44.060)
- Rendering Criminal Assistance 1 (RCW 9A.76.070)
- Sending, Bringing into State Depictions of Minor Engaged in Sexually Explicit Conduct 2 (RCW 9.68A.060(2))
- Sexual Misconduct with a Minor 1 (RCW 9A.44.093)
- Sexually Violating Human Remains (RCW 9A.44.105)
- Stalking (RCW 9A.46.110)
- Taking Motor Vehicle Without Permission 1 (RCW 9A.56.070)
- IV Arson 2 (RCW 9A.48.030)
- Assault 2 (RCW 9A.36.021)
- Assault 3 (of a Peace Officer with a Projectile Stun Gun) (RCW 9A.36.031(1)(h))
- Assault by Watercraft (RCW 79A.60.060)
- Bribing a Witness/Bribe Received by Witness (RCW 9A.72.090, 9A.72.100)
- Cheating 1 (RCW 9.46.1961)
- Commercial Bribery (RCW 9A.68.060)
- Counterfeiting (RCW 9.16.035(4))
- Endangerment with a Controlled Substance (RCW 9A.42.100)
- Escape 1 (RCW 9A.76.110)
- Hit and Run—Injury (RCW 46.52.020(4)(b))
- Hit and Run with Vessel—Injury Accident (RCW 79A.60.200(3))
- Identity Theft 1 (RCW 9.35.020(2))
- Indecent Exposure to Person Under Age Fourteen (subsequent sex offense) (RCW 9A.88.010)
- Influencing Outcome of Sporting Event (RCW 9A.82.070)
- Malicious Harassment (RCW 9A.36.080)
- Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct 2 (RCW 9.68A.070(2))
- Residential Burglary (RCW 9A.52.025)
- Robbery 2 (RCW 9A.56.210)
- Theft of Livestock 1 (RCW 9A.56.080)
- Threats to Bomb (RCW 9.61.160)
- Trafficking in Stolen Property 1 (RCW 9A.82.050)
- Unlawful factoring of a credit card or payment card transaction (RCW 9A.56.290(4)(b))
- Unlawful transaction of health coverage as a health care service contractor (RCW 48.44.016(3))
- Unlawful transaction of health coverage as a health maintenance organization (RCW 48.46.033(3))
- Unlawful transaction of insurance business (RCW 48.15.023(3))
- Unlicensed practice as an insurance professional (RCW 48.17.063(2))
- Use of Proceeds of Criminal Profiteering (RCW 9A.82.080 (1) and (2))
- Vehicle Prowling 2 (third or subsequent offense) (RCW 9A.52.100(3))
- Vehicular Assault, by being under the influence of intoxicating liquor or any drug, or by the operation or driving of a vehicle in a reckless manner (RCW 46.61.522)
- Viewing of Depictions of a Minor Engaged in Sexually Explicit Conduct 1 (RCW 9.68A.075(1))
- Willful Failure to Return from Furlough (*RCW 72.66.060)
- III Animal Cruelty 1 (Sexual Conduct or Contact) (RCW 16.52.205(3))
- Assault 3 (Except Assault 3 of a Peace Officer With a Projectile Stun Gun) (RCW 9A.36.031 except subsection (1)(h))
- Assault of a Child 3 (RCW 9A.36.140)
- Bail Jumping with class B or C Felony (RCW 9A.76.170(3)(c))
- Burglary 2 (RCW 9A.52.030)

Communication with a Minor for Immoral Purposes (RCW 9.68A.090)	Unlawful Taking of Endangered Fish or Wildlife 1 (RCW 77.15.120(3)(b))
Criminal Gang Intimidation (RCW 9A.46.120)	Unlawful Trafficking in Fish, Shellfish, or Wildlife 1 (RCW 77.15.260(3)(b))
Custodial Assault (RCW 9A.36.100)	Unlawful Use of a Nondesignated Vessel (RCW 77.15.530(4))
Cyberstalking (subsequent conviction or threat of death) (RCW 9.61.260(3))	Vehicular Assault, by the operation or driving of a vehicle with disregard for the safety of others (RCW 46.61.522)
Escape 2 (RCW 9A.76.120)	Willful Failure to Return from Work Release (*RCW 72.65.070)
Extortion 2 (RCW 9A.56.130)	II Commercial Fishing Without a License 1 (RCW 77.15.500(3)(b))
Harassment (RCW 9A.46.020)	Computer Trespass 1 (RCW 9A.52.110)
Intimidating a Public Servant (RCW 9A.76.180)	Counterfeiting (RCW 9.16.035(3))
Introducing Contraband 2 (RCW 9A.76.150)	Engaging in Fish Dealing Activity Unlicensed 1 (RCW 77.15.620(3))
Malicious Injury to Railroad Property (RCW 81.60.070)	Escape from Community Custody (RCW 72.09.310)
Mortgage Fraud (RCW 19.144.080)	Failure to Register as a Sex Offender (second or subsequent offense) (RCW 9A.44.132)
Negligently Causing Substantial Bodily Harm By Use of a Signal Preemption Device (RCW 46.37.674)	Health Care False Claims (RCW 48.80.030)
Organized Retail Theft 1 (RCW 9A.56.350(2))	Identity Theft 2 (RCW 9.35.020(3))
Perjury 2 (RCW 9A.72.030)	Improperly Obtaining Financial Information (RCW 9.35.010)
Possession of Incendiary Device (RCW 9.40.120)	Malicious Mischief 1 (RCW 9A.48.070)
Possession of Machine Gun or Short-Barreled Shotgun or Rifle (RCW 9.41.190)	Organized Retail Theft 2 (RCW 9A.56.350(3))
Promoting Prostitution 2 (RCW 9A.88.080)	Possession of Stolen Property 1 (RCW 9A.56.150)
Retail Theft with Special Circumstances 1 (RCW 9A.56.360(2))	Possession of a Stolen Vehicle (RCW 9A.56.068)
Securities Act violation (RCW 21.20.400)	Retail Theft with Special Circumstances 2 (RCW 9A.56.360(3))
Tampering with a Witness (RCW 9A.72.120)	Scrap Processing, Recycling, or Supplying Without a License (second or subsequent offense) (RCW 19.290.100)
Telephone Harassment (subsequent conviction or threat of death) (RCW 9.61.230(2))	Theft 1 (RCW 9A.56.030)
Theft of Livestock 2 (RCW 9A.56.083)	Theft of a Motor Vehicle (RCW 9A.56.065)
Theft with the Intent to Resell 1 (RCW 9A.56.340(2))	Theft of Rental, Leased, or Lease-purchased Property (valued at one thousand five hundred dollars or more) (RCW 9A.56.096(5)(a))
Trafficking in Stolen Property 2 (RCW 9A.82.055)	Theft with the Intent to Resell 2 (RCW 9A.56.340(3))
Unlawful Hunting of Big Game 1 (RCW 77.15.410(3)(b))	
Unlawful Imprisonment (RCW 9A.40.040)	
Unlawful Misbranding of Food Fish or Shellfish 1 (RCW 69.04.938(3))	
Unlawful possession of firearm in the second degree (RCW 9.41.040(2))	

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| Trafficking in Insurance Claims (RCW 48.30A.015) | Unlawful Possession of Instruments of Financial Fraud (RCW 9A.56.320) |
| Unlawful factoring of a credit card or payment card transaction (RCW 9A.56.290(4)(a)) | Unlawful Possession of Payment Instruments (RCW 9A.56.320) |
| Unlawful Participation of Non-Indians in Indian Fishery (RCW 77.15.570(2)) | Unlawful Possession of a Personal Identification Device (RCW 9A.56.320) |
| Unlawful Practice of Law (RCW 2.48.180) | Unlawful Production of Payment Instruments (RCW 9A.56.320) |
| Unlawful Purchase or Use of a License (RCW 77.15.650(3)(b)) | Unlawful Release of Deleterious Exotic Wildlife (RCW 77.15.250(2)(b)) |
| Unlawful Trafficking in Fish, Shellfish, or Wildlife 2 (RCW 77.15.260(3)(a)) | Unlawful Trafficking in Food Stamps (RCW 9.91.142) |
| Unlicensed Practice of a Profession or Business (RCW 18.130.190(7)) | Unlawful Use of Food Stamps (RCW 9.91.144) |
| Voyeurism (RCW 9A.44.115) | Unlawful Use of Net to Take Fish 1 (RCW 77.15.580(3)(b)) |
| I Attempting to Elude a Pursuing Police Vehicle (RCW 46.61.024) | Unlawful Use of Prohibited Aquatic Animal Species (RCW 77.15.253(3)) |
| False Verification for Welfare (RCW 74.08.055) | Vehicle Prowl 1 (RCW 9A.52.095) |
| Forgery (RCW 9A.60.020) | Violating Commercial Fishing Area or Time 1 (RCW 77.15.550(3)(b)) |
| Fraudulent Creation or Revocation of a Mental Health Advance Directive (RCW 9A.60.060) | |
| Malicious Mischief 2 (RCW 9A.48.080) | [2013 c 322 § 26; 2013 c 290 § 8; 2013 c 267 § 2; 2013 c 153 § 2. Prior: 2012 c 176 § 3; 2012 c 162 § 1; prior: 2010 c 289 § 11; 2010 c 227 § 9; prior: 2008 c 108 § 23; 2008 c 38 § 1; prior: 2007 c 368 § 14; 2007 c 199 § 10; prior: 2006 c 277 § 6; 2006 c 228 § 9; 2006 c 191 § 2; 2006 c 139 § 2; 2006 c 128 § 3; 2006 c 73 § 12; prior: (2006 c 125 § 5 repealed by 2006 c 126 § 7); 2005 c 458 § 2; 2005 c 183 § 9; prior: 2004 c 176 § 2; 2004 c 94 § 3; (2004 c 94 § 2 expired July 1, 2004); prior: 2003 c 335 § 5; (2003 c 335 § 4 expired July 1, 2004); 2003 c 283 § 33; (2003 c 283 § 32 expired July 1, 2004); 2003 c 267 § 3; (2003 c 267 § 2 expired July 1, 2004); 2003 c 250 § 14; (2003 c 250 § 13 expired July 1, 2004); 2003 c 119 § 8; (2003 c 119 § 7 expired July 1, 2004); 2003 c 53 § 56; 2003 c 52 § 4; (2003 c 52 § 3 expired July 1, 2004); prior: 2002 c 340 § 2; 2002 c 324 § 2; 2002 c 290 § 7; (2002 c 290 § 2 expired July 1, 2003); 2002 c 253 § 4; 2002 c 229 § 2; 2002 c 134 § 2; 2002 c 133 § 4; prior: 2001 2nd sp.s. c 12 § 361; 2001 c 300 § 4; 2001 c 217 § 12; 2001 c 17 § 1; prior: 2001 c 310 § 4; 2001 c 287 § 3; 2001 c 224 § 3; 2001 c 222 § 24; 2001 c 207 § 3; 2000 c 225 § 5; 2000 c 119 § 17; 2000 c 66 § 2; prior: 1999 c 352 § 3; 1999 c 322 § 5; 1999 c 45 § 4; prior: 1998 c 290 § 4; 1998 c 219 § 4; 1998 c 82 § 1; 1998 c 78 § 1; prior: 1997 c 365 § 4; 1997 c 346 § 3; 1997 c 340 § 1; 1997 c 338 § 51; 1997 c 266 § 15; 1997 c 120 § 5; prior: 1996 c 302 § 6; 1996 c 205 § 3; 1996 c 36 § 2; prior: 1995 c 385 § 2; 1995 c 285 § 28; 1995 c 129 § 3 (Initiative Measure No. 159); prior: (1994 sp.s. c 7 § 510 repealed by 1995 c 129 § 19 (Initiative Measure No. 159)); 1994 c 275 § 20; 1994 c 53 § 2; prior: 1992 c 145 § 4; 1992 c 75 § 3; 1991 c 32 § 3; 1990 c 3 § 702; prior: 1989 2nd ex.s. c 1 § 3; 1989 c 412 § 3; 1989 c 405 § 1; 1989 c 271 § 102; 1989 c 99 § 1; prior: 1988 c 218 § 2; 1988 c 145 § 12; 1988 c 62 § 2; prior: 1987 c 224 § 1; 1987 c 187 § 4; 1986 c 257 § 23; 1984 c 209 § 17; 1983 c 115 § 3. Formerly RCW 9.94A.320.] |
| Mineral Trespass (RCW 78.44.330) | |
| Possession of Stolen Property 2 (RCW 9A.56.160) | |
| Reckless Burning 1 (RCW 9A.48.040) | |
| Spotlighting Big Game 1 (RCW 77.15.450(3)(b)) | |
| Suspension of Department Privileges 1 (RCW 77.15.670(3)(b)) | |
| Taking Motor Vehicle Without Permission 2 (RCW 9A.56.075) | |
| Theft 2 (RCW 9A.56.040) | |
| Theft of Rental, Leased, or Lease-purchased Property (valued at two hundred fifty dollars or more but less than one thousand five hundred dollars) (RCW 9A.56.096(5)(b)) | |
| Transaction of insurance business beyond the scope of licensure (RCW 48.17.063) | |
| Unlawful Fish and Shellfish Catch Accounting (RCW 77.15.630(3)(b)) | |
| Unlawful Issuance of Checks or Drafts (RCW 9A.56.060) | |
| Unlawful Possession of Fictitious Identification (RCW 9A.56.320) | |

Reviser's note: *(1) RCW 72.66.060 and 72.65.070 were repealed by 2001 c 264 § 7. Cf. 2001 c 264 § 8.

(2) This section was amended by 2013 c 153 § 2, 2013 c 267 § 2, 2013 c 290 § 8, and by 2013 c 322 § 26, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2013 c 153: See note following RCW 9A.56.360.

Findings—2008 c 108: See RCW 19.144.005.

Findings—Intent—Short title—2007 c 199: See notes following RCW 9A.56.065.

Intent—Severability—Effective date—2006 c 125: See notes following RCW 9A.44.190.

Effective date—2006 c 73: See note following RCW 46.61.502.

Severability—2004 c 176: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2004 c 176 § 8.]

Effective date—2004 c 176: "Sections 2 through 6 of this act take effect July 1, 2005." [2004 c 176 § 9.]

Expiration date—2004 c 94 § 2: "Section 2 of this act expires July 1, 2004." [2004 c 94 § 8.]

Severability—Effective dates—2004 c 94: See notes following RCW 9.61.260.

Effective date—2003 c 335 § 5: "Section 5 of this act takes effect July 1, 2004." [2003 c 335 § 8.]

Expiration date—2003 c 335 § 4: "Section 4 of this act expires July 1, 2004." [2003 c 335 § 7.]

Effective date—2003 c 283 § 33: "Section 33 of this act takes effect July 1, 2004." [2003 c 283 § 37.]

Expiration date—2003 c 283 § 32: "Section 32 of this act expires July 1, 2004." [2003 c 283 § 36.]

Severability—Part headings not law—2003 c 283: See RCW 71.32.900 and 71.32.901.

Effective date—2003 c 267 § 3: "Section 3 of this act takes effect July 1, 2004." [2003 c 267 § 9.]

Expiration date—2003 c 267 § 2: "Section 2 of this act expires July 1, 2004." [2003 c 267 § 8.]

Effective date—2003 c 250 § 14: "Section 14 of this act takes effect July 1, 2004." [2003 c 250 § 17.]

Expiration date—2003 c 250 § 13: "Section 13 of this act expires July 1, 2004." [2003 c 250 § 16.]

Severability—2003 c 250: See note following RCW 48.01.080.

Effective date—2003 c 119 § 8: "Section 8 of this act takes effect July 1, 2004." [2003 c 119 § 10.]

Expiration date—2003 c 119 § 7: "Section 7 of this act expires July 1, 2004." [2003 c 119 § 9.]

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

Effective date—2003 c 52 § 4: "Section 4 of this act takes effect July 1, 2004." [2003 c 52 § 6.]

Expiration date—2003 c 52 § 3: "Section 3 of this act expires July 1, 2004." [2003 c 52 § 5.]

Intent—2002 c 290: See note following RCW 9.94A.517.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Purpose—Effective date—2001 c 310: See notes following RCW 2.48.180.

Purpose—Effective date—2001 c 224: See notes following RCW 9A.68.060.

Purpose—Effective date—2001 c 222: See notes following RCW 9A.82.001.

Purpose—Effective date—2001 c 207: See notes following RCW 18.130.190.

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Findings—Intent—Severability—1997 c 266: See notes following RCW 28A.600.455.

Findings and intent—Short title—Severability—Captions not law—1995 c 129: See notes following RCW 9.94A.510.

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

Finding—Intent—1989 c 271 §§ 102, 109, and 110: See note following RCW 9A.36.050.

Additional notes found at www.leg.wa.gov

9.94A.517 Table 3—Drug offense sentencing grid. (Effective until July 1, 2018.)

(1)

TABLE 3

DRUG OFFENSE SENTENCING GRID

Seriousness Level	Offender Score 0 to 2	Offender Score 3 to 5	Offender Score 6 to 9 or more
III	51 to 68 months	68+ to 100 months	100+ to 120 months
II	12+ to 20 months	20+ to 60 months	60+ to 120 months
I	0 to 6 months	6+ to 12 months	12+ to 24 months

References to months represent the standard sentence ranges. 12+ equals one year and one day.

(2) The court may utilize any other sanctions or alternatives as authorized by law, including but not limited to the special drug offender sentencing alternative under RCW 9.94A.660 or drug court under RCW 2.28.170.

(3) Nothing in this section creates an entitlement for a criminal defendant to any specific sanction, alternative, sentence option, or substance abuse treatment. [2013 2nd sp.s. c 14 § 1; 2002 c 290 § 8.]

Application—Recalculation of earned release date—2013 2nd sp.s. c 14: "Pursuant to RCW 9.94A.729, the department shall recalculate the earned release date for any offender currently serving a term in a facility or institution either operated by the state or utilized under contract. The earned release date shall be recalculated whether the offender is currently incarcerated or is sentenced after July 1, 2013, and regardless of the offender's date of offense. For offenders whose offense was committed prior to July 1, 2013, the recalculation shall not extend a term of incarceration beyond that to which an offender is currently subject." [2013 2nd sp.s. c 14 § 4.]

Declaration—2013 2nd sp.s. c 14 § 4: "The legislature declares that section 4 of this act does not create any liberty interest. The department is authorized to take the time reasonably necessary to complete the recalculations of section 4 of this act after July 1, 2013." [2013 2nd sp.s. c 14 § 6.]

Compilation of sentencing information—Report—2013 2nd sp.s. c 14: "(1)(a) The department must, in consultation with the caseload forecast council, compile the following information in summary form for the two years prior to and after July 1, 2013: For offenders sentenced under RCW 9.94A.517 for a seriousness level I offense where the offender score is three to five: (A) The total number of sentences and the average length of sentence imposed, sorted by sentences served in state versus local correctional facilities; (B) the number of current and prior felony convictions for each offender; (C) the estimated cost or cost savings, total and per offender, to the state and local governments from the change to the maximum sentence pursuant to RCW 9.94A.517(1); and (D) the number of offenders who were sentenced to community custody, the number of violations committed on community custody, and any sanctions imposed for such violations.

(b) The department must submit a report with its findings to the office of financial management and the appropriate fiscal and policy committees of the house of representatives and the senate by January 1, 2015, and January 1, 2018.

(2) For purposes of this section, "department" means the department of corrections." [2013 2nd sp.s. c 14 § 5.]

Effective date—2013 2nd sp.s. c 14: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2013." [2013 2nd sp.s. c 14 § 9.]

Applicability—2013 2nd sp.s. c 14 § 1: "Section 1 of this act applies to sentences imposed on or after July 1, 2013, regardless of the date of offense." [2013 2nd sp.s. c 14 § 7.]

Expiration date—2013 2nd sp.s. c 14 §§ 1 and 5: "Sections 1 and 5 of this act expire July 1, 2018." [2013 2nd sp.s. c 14 § 10.]

Intent—2002 c 290: "It is the intent of the legislature to increase the use of effective substance abuse treatment for defendants and offenders in Washington in order to make frugal use of state and local resources, thus reducing recidivism and increasing the likelihood that defendants and offenders will become productive and law-abiding persons. The legislature recognizes that substance abuse treatment can be effective if it is well planned and involves adequate monitoring, and that substance abuse and addiction is a public safety and public health issue that must be more effectively addressed if recidivism is to be reduced. The legislature intends that sentences for drug offenses accurately reflect the adverse impact of substance abuse and addiction on public safety, that the public must have protection from violent offenders, and further intends that such sentences be based on policies that are supported by research and public policy goals established by the legislature." [2002 c 290 § 1.]

Additional notes found at www.leg.wa.gov

9.94A.525 Offender score. The offender score is measured on the horizontal axis of the sentencing grid. The offender score rules are as follows:

The offender score is the sum of points accrued under this section rounded down to the nearest whole number.

(1) A prior conviction is a conviction which exists before the date of sentencing for the offense for which the offender score is being computed. Convictions entered or sentenced on the same date as the conviction for which the offender score is being computed shall be deemed "other current offenses" within the meaning of RCW 9.94A.589.

(2)(a) Class A and sex prior felony convictions shall always be included in the offender score.

(b) Class B prior felony convictions other than sex offenses shall not be included in the offender score, if since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of judgment and sentence, the offender had spent ten consecutive years in the community without committing any crime that subsequently results in a conviction.

(c) Except as provided in (e) of this subsection, class C prior felony convictions other than sex offenses shall not be included in the offender score if, since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of judgment and sentence, the offender had spent five consecutive years in the community without committing any crime that subsequently results in a conviction.

(d) Except as provided in (e) of this subsection, serious traffic convictions shall not be included in the offender score if, since the last date of release from confinement (including full-time residential treatment) pursuant to a conviction, if any, or entry of judgment and sentence, the offender spent five years in the community without committing any crime that subsequently results in a conviction.

(e) If the present conviction is felony driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502(6)) or felony physical control of a vehicle while under the influence of intoxicating liquor or any drug (RCW 46.61.504(6)), all predicate crimes for the offense as defined by RCW 46.61.5055(14) shall be included in the offender score, and prior convictions for felony driving while under the influence of intoxicating liquor or any drug (RCW

46.61.502(6)) or felony physical control of a vehicle while under the influence of intoxicating liquor or any drug (RCW 46.61.504(6)) shall always be included in the offender score. All other convictions of the defendant shall be scored according to this section.

(f) Prior convictions for a repetitive domestic violence offense, as defined in RCW 9.94A.030, shall not be included in the offender score if, since the last date of release from confinement or entry of judgment and sentence, the offender had spent ten consecutive years in the community without committing any crime that subsequently results in a conviction.

(g) This subsection applies to both adult and juvenile prior convictions.

(3) Out-of-state convictions for offenses shall be classified according to the comparable offense definitions and sentences provided by Washington law. Federal convictions for offenses shall be classified according to the comparable offense definitions and sentences provided by Washington law. If there is no clearly comparable offense under Washington law or the offense is one that is usually considered subject to exclusive federal jurisdiction, the offense shall be scored as a class C felony equivalent if it was a felony under the relevant federal statute.

(4) Score prior convictions for felony anticipatory offenses (attempts, criminal solicitations, and criminal conspiracies) the same as if they were convictions for completed offenses.

(5)(a) In the case of multiple prior convictions, for the purpose of computing the offender score, count all convictions separately, except:

(i) Prior offenses which were found, under RCW 9.94A.589(1)(a), to encompass the same criminal conduct, shall be counted as one offense, the offense that yields the highest offender score. The current sentencing court shall determine with respect to other prior adult offenses for which sentences were served concurrently or prior juvenile offenses for which sentences were served consecutively, whether those offenses shall be counted as one offense or as separate offenses using the "same criminal conduct" analysis found in RCW 9.94A.589(1)(a), and if the court finds that they shall be counted as one offense, then the offense that yields the highest offender score shall be used. The current sentencing court may presume that such other prior offenses were not the same criminal conduct from sentences imposed on separate dates, or in separate counties or jurisdictions, or in separate complaints, indictments, or informations;

(ii) In the case of multiple prior convictions for offenses committed before July 1, 1986, for the purpose of computing the offender score, count all adult convictions served concurrently as one offense, and count all juvenile convictions entered on the same date as one offense. Use the conviction for the offense that yields the highest offender score.

(b) As used in this subsection (5), "served concurrently" means that: (i) The latter sentence was imposed with specific reference to the former; (ii) the concurrent relationship of the sentences was judicially imposed; and (iii) the concurrent timing of the sentences was not the result of a probation or parole revocation on the former offense.

(6) If the present conviction is one of the anticipatory offenses of criminal attempt, solicitation, or conspiracy,

count each prior conviction as if the present conviction were for a completed offense. When these convictions are used as criminal history, score them the same as a completed crime.

(7) If the present conviction is for a nonviolent offense and not covered by subsection (11), (12), or (13) of this section, count one point for each adult prior felony conviction and one point for each juvenile prior violent felony conviction and 1/2 point for each juvenile prior nonviolent felony conviction.

(8) If the present conviction is for a violent offense and not covered in subsection (9), (10), (11), (12), or (13) of this section, count two points for each prior adult and juvenile violent felony conviction, one point for each prior adult nonviolent felony conviction, and 1/2 point for each prior juvenile nonviolent felony conviction.

(9) If the present conviction is for a serious violent offense, count three points for prior adult and juvenile convictions for crimes in this category, two points for each prior adult and juvenile violent conviction (not already counted), one point for each prior adult nonviolent felony conviction, and 1/2 point for each prior juvenile nonviolent felony conviction.

(10) If the present conviction is for Burglary 1, count prior convictions as in subsection (8) of this section; however count two points for each prior adult Burglary 2 or residential burglary conviction, and one point for each prior juvenile Burglary 2 or residential burglary conviction.

(11) If the present conviction is for a felony traffic offense count two points for each adult or juvenile prior conviction for Vehicular Homicide or Vehicular Assault; for each felony offense count one point for each adult and 1/2 point for each juvenile prior conviction; for each serious traffic offense, other than those used for an enhancement pursuant to RCW 46.61.520(2), count one point for each adult and 1/2 point for each juvenile prior conviction; count one point for each adult and 1/2 point for each juvenile prior conviction for operation of a vessel while under the influence of intoxicating liquor or any drug.

(12) If the present conviction is for homicide by watercraft or assault by watercraft count two points for each adult or juvenile prior conviction for homicide by watercraft or assault by watercraft; for each felony offense count one point for each adult and 1/2 point for each juvenile prior conviction; count one point for each adult and 1/2 point for each juvenile prior conviction for driving under the influence of intoxicating liquor or any drug, actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug, or operation of a vessel while under the influence of intoxicating liquor or any drug.

(13) If the present conviction is for manufacture of methamphetamine count three points for each adult prior manufacture of methamphetamine conviction and two points for each juvenile manufacture of methamphetamine offense. If the present conviction is for a drug offense and the offender has a criminal history that includes a sex offense or serious violent offense, count three points for each adult prior felony drug offense conviction and two points for each juvenile drug offense. All other adult and juvenile felonies are scored as in subsection (8) of this section if the current drug offense is violent, or as in subsection (7) of this section if the current drug offense is nonviolent.

(14) If the present conviction is for Escape from Community Custody, RCW 72.09.310, count only prior escape convictions in the offender score. Count adult prior escape convictions as one point and juvenile prior escape convictions as 1/2 point.

(15) If the present conviction is for Escape 1, RCW 9A.76.110, or Escape 2, RCW 9A.76.120, count adult prior convictions as one point and juvenile prior convictions as 1/2 point.

(16) If the present conviction is for Burglary 2 or residential burglary, count priors as in subsection (7) of this section; however, count two points for each adult and juvenile prior Burglary 1 conviction, two points for each adult prior Burglary 2 or residential burglary conviction, and one point for each juvenile prior Burglary 2 or residential burglary conviction.

(17) If the present conviction is for a sex offense, count priors as in subsections (7) through (11) and (13) through (16) of this section; however count three points for each adult and juvenile prior sex offense conviction.

(18) If the present conviction is for failure to register as a sex offender under RCW *9A.44.130 or 9A.44.132, count priors as in subsections (7) through (11) and (13) through (16) of this section; however count three points for each adult and juvenile prior sex offense conviction, excluding prior convictions for failure to register as a sex offender under RCW *9A.44.130 or 9A.44.132, which shall count as one point.

(19) If the present conviction is for an offense committed while the offender was under community custody, add one point. For purposes of this subsection, community custody includes community placement or postrelease supervision, as defined in chapter 9.94B RCW.

(20) If the present conviction is for Theft of a Motor Vehicle, Possession of a Stolen Vehicle, Taking a Motor Vehicle Without Permission 1, or Taking a Motor Vehicle Without Permission 2, count priors as in subsections (7) through (18) of this section; however count one point for prior convictions of Vehicle Prowling 2, and three points for each adult and juvenile prior Theft 1 (of a motor vehicle), Theft 2 (of a motor vehicle), Possession of Stolen Property 1 (of a motor vehicle), Possession of Stolen Property 2 (of a motor vehicle), Theft of a Motor Vehicle, Possession of a Stolen Vehicle, Taking a Motor Vehicle Without Permission 1, or Taking a Motor Vehicle Without Permission 2 conviction.

(21) If the present conviction is for a felony domestic violence offense where domestic violence as defined in RCW 9.94A.030 was plead and proven, count priors as in subsections (7) through (20) of this section; however, count points as follows:

(a) Count two points for each adult prior conviction where domestic violence as defined in RCW 9.94A.030 was plead and proven after August 1, 2011, for the following offenses: A violation of a no-contact order that is a felony offense, a violation of a protection order that is a felony offense, a felony domestic violence harassment offense, a felony domestic violence stalking offense, a domestic violence Burglary 1 offense, a domestic violence Kidnapping 1 offense, a domestic violence Kidnapping 2 offense, a domestic violence unlawful imprisonment offense, a domestic violence

lence Robbery 1 offense, a domestic violence Robbery 2 offense, a domestic violence Assault 1 offense, a domestic violence Assault 2 offense, a domestic violence Assault 3 offense, a domestic violence Arson 1 offense, or a domestic violence Arson 2 offense;

(b) Count one point for each second and subsequent juvenile conviction where domestic violence as defined in RCW 9.94A.030 was plead and proven after August 1, 2011, for the offenses listed in (a) of this subsection; and

(c) Count one point for each adult prior conviction for a repetitive domestic violence offense as defined in RCW 9.94A.030, where domestic violence as defined in RCW 9.94A.030, was plead and proven after August 1, 2011.

(22) The fact that a prior conviction was not included in an offender's offender score or criminal history at a previous sentencing shall have no bearing on whether it is included in the criminal history or offender score for the current offense. Prior convictions that were not counted in the offender score or included in criminal history under repealed or previous versions of the sentencing reform act shall be included in criminal history and shall count in the offender score if the current version of the sentencing reform act requires including or counting those convictions. Prior convictions that were not included in criminal history or in the offender score shall be included upon any resentencing to ensure imposition of an accurate sentence. [2013 2nd sp.s. c 35 § 8; 2011 c 166 § 3; 2010 c 274 § 403; 2008 c 231 § 3. Prior: 2007 c 199 § 8; 2007 c 116 § 1; prior: 2006 c 128 § 6; 2006 c 73 § 7; prior: 2002 c 290 § 3; 2002 c 107 § 3; 2001 c 264 § 5; 2000 c 28 § 15; prior: 1999 c 352 § 10; 1999 c 331 § 1; 1998 c 211 § 4; 1997 c 338 § 5; prior: 1995 c 316 § 1; 1995 c 101 § 1; prior: 1992 c 145 § 10; 1992 c 75 § 4; 1990 c 3 § 706; 1989 c 271 § 103; prior: 1988 c 157 § 3; 1988 c 153 § 12; 1987 c 456 § 4; 1986 c 257 § 25; 1984 c 209 § 19; 1983 c 115 § 7. Formerly RCW 9.94A.360.]

***Reviser's note:** 2010 c 267 removed from RCW 9A.44.130 provisions relating to the crime of "failure to register" as a sex offender or kidnapping offender, and placed similar provisions in RCW 9A.44.132.

Intent—2010 c 274: See note following RCW 10.31.100.

Intent—2008 c 231 §§ 2-4: See note following RCW 9.94A.500.

Application—2008 c 231 §§ 2 and 3: See note following RCW 9.94A.500.

Severability—2008 c 231: See note following RCW 9.94A.500.

Findings—Intent—Short title—2007 c 199: See notes following RCW 9A.56.065.

Effective date—2007 c 116: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2007." [2007 c 116 § 2.]

Effective date—2006 c 73: See note following RCW 46.61.502.

Intent—2002 c 290: See note following RCW 9.94A.517.

Finding—Application—2002 c 107: See notes following RCW 9.94A.030.

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Additional notes found at www.leg.wa.gov

9.94A.533 Adjustments to standard sentences. (1)

The provisions of this section apply to the standard sentence ranges determined by RCW 9.94A.510 or 9.94A.517.

(2) For persons convicted of the anticipatory offenses of criminal attempt, solicitation, or conspiracy under chapter

9A.28 RCW, the standard sentence range is determined by locating the sentencing grid sentence range defined by the appropriate offender score and the seriousness level of the completed crime, and multiplying the range by seventy-five percent.

(3) The following additional times shall be added to the standard sentence range for felony crimes committed after July 23, 1995, if the offender or an accomplice was armed with a firearm as defined in RCW 9.41.010 and the offender is being sentenced for one of the crimes listed in this subsection as eligible for any firearm enhancements based on the classification of the completed felony crime. If the offender is being sentenced for more than one offense, the firearm enhancement or enhancements must be added to the total period of confinement for all offenses, regardless of which underlying offense is subject to a firearm enhancement. If the offender or an accomplice was armed with a firearm as defined in RCW 9.41.010 and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection as eligible for any firearm enhancements, the following additional times shall be added to the standard sentence range determined under subsection (2) of this section based on the felony crime of conviction as classified under RCW 9A.28.020:

(a) Five years for any felony defined under any law as a class A felony or with a statutory maximum sentence of at least twenty years, or both, and not covered under (f) of this subsection;

(b) Three years for any felony defined under any law as a class B felony or with a statutory maximum sentence of ten years, or both, and not covered under (f) of this subsection;

(c) Eighteen months for any felony defined under any law as a class C felony or with a statutory maximum sentence of five years, or both, and not covered under (f) of this subsection;

(d) If the offender is being sentenced for any firearm enhancements under (a), (b), and/or (c) of this subsection and the offender has previously been sentenced for any deadly weapon enhancements after July 23, 1995, under (a), (b), and/or (c) of this subsection or subsection (4)(a), (b), and/or (c) of this section, or both, all firearm enhancements under this subsection shall be twice the amount of the enhancement listed;

(e) Notwithstanding any other provision of law, all firearm enhancements under this section are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other firearm or deadly weapon enhancements, for all offenses sentenced under this chapter. However, whether or not a mandatory minimum term has expired, an offender serving a sentence under this subsection may be granted an extraordinary medical placement when authorized under RCW 9.94A.728(3);

(f) The firearm enhancements in this section shall apply to all felony crimes except the following: Possession of a machine gun, possessing a stolen firearm, drive-by shooting, theft of a firearm, unlawful possession of a firearm in the first and second degree, and use of a machine gun in a felony;

(g) If the standard sentence range under this section exceeds the statutory maximum sentence for the offense, the statutory maximum sentence shall be the presumptive sentence unless the offender is a persistent offender. If the addi-

tion of a firearm enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced.

(4) The following additional times shall be added to the standard sentence range for felony crimes committed after July 23, 1995, if the offender or an accomplice was armed with a deadly weapon other than a firearm as defined in RCW 9.41.010 and the offender is being sentenced for one of the crimes listed in this subsection as eligible for any deadly weapon enhancements based on the classification of the completed felony crime. If the offender is being sentenced for more than one offense, the deadly weapon enhancement or enhancements must be added to the total period of confinement for all offenses, regardless of which underlying offense is subject to a deadly weapon enhancement. If the offender or an accomplice was armed with a deadly weapon other than a firearm as defined in RCW 9.41.010 and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection as eligible for any deadly weapon enhancements, the following additional times shall be added to the standard sentence range determined under subsection (2) of this section based on the felony crime of conviction as classified under RCW 9A.28.020:

(a) Two years for any felony defined under any law as a class A felony or with a statutory maximum sentence of at least twenty years, or both, and not covered under (f) of this subsection;

(b) One year for any felony defined under any law as a class B felony or with a statutory maximum sentence of ten years, or both, and not covered under (f) of this subsection;

(c) Six months for any felony defined under any law as a class C felony or with a statutory maximum sentence of five years, or both, and not covered under (f) of this subsection;

(d) If the offender is being sentenced under (a), (b), and/or (c) of this subsection for any deadly weapon enhancements and the offender has previously been sentenced for any deadly weapon enhancements after July 23, 1995, under (a), (b), and/or (c) of this subsection or subsection (3)(a), (b), and/or (c) of this section, or both, all deadly weapon enhancements under this subsection shall be twice the amount of the enhancement listed;

(e) Notwithstanding any other provision of law, all deadly weapon enhancements under this section are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other firearm or deadly weapon enhancements, for all offenses sentenced under this chapter. However, whether or not a mandatory minimum term has expired, an offender serving a sentence under this subsection may be granted an extraordinary medical placement when authorized under RCW 9.94A.728(3);

(f) The deadly weapon enhancements in this section shall apply to all felony crimes except the following: Possession of a machine gun, possessing a stolen firearm, drive-by shooting, theft of a firearm, unlawful possession of a firearm in the first and second degree, and use of a machine gun in a felony;

(g) If the standard sentence range under this section exceeds the statutory maximum sentence for the offense, the

statutory maximum sentence shall be the presumptive sentence unless the offender is a persistent offender. If the addition of a deadly weapon enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced.

(5) The following additional times shall be added to the standard sentence range if the offender or an accomplice committed the offense while in a county jail or state correctional facility and the offender is being sentenced for one of the crimes listed in this subsection. If the offender or an accomplice committed one of the crimes listed in this subsection while in a county jail or state correctional facility, and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection, the following additional times shall be added to the standard sentence range determined under subsection (2) of this section:

(a) Eighteen months for offenses committed under RCW 69.50.401(2) (a) or (b) or 69.50.410;

(b) Fifteen months for offenses committed under RCW 69.50.401(2) (c), (d), or (e);

(c) Twelve months for offenses committed under RCW 69.50.4013.

For the purposes of this subsection, all of the real property of a state correctional facility or county jail shall be deemed to be part of that facility or county jail.

(6) An additional twenty-four months shall be added to the standard sentence range for any ranked offense involving a violation of chapter 69.50 RCW if the offense was also a violation of RCW 69.50.435 or 9.94A.827. All enhancements under this subsection shall run consecutively to all other sentencing provisions, for all offenses sentenced under this chapter.

(7) An additional two years shall be added to the standard sentence range for vehicular homicide committed while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502 for each prior offense as defined in RCW 46.61.5055. All enhancements under this subsection shall be mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions.

(8)(a) The following additional times shall be added to the standard sentence range for felony crimes committed on or after July 1, 2006, if the offense was committed with sexual motivation, as that term is defined in RCW 9.94A.030. If the offender is being sentenced for more than one offense, the sexual motivation enhancement must be added to the total period of total confinement for all offenses, regardless of which underlying offense is subject to a sexual motivation enhancement. If the offender committed the offense with sexual motivation and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW, the following additional times shall be added to the standard sentence range determined under subsection (2) of this section based on the felony crime of conviction as classified under RCW 9A.28.020:

(i) Two years for any felony defined under the law as a class A felony or with a statutory maximum sentence of at least twenty years, or both;

(ii) Eighteen months for any felony defined under any law as a class B felony or with a statutory maximum sentence of ten years, or both;

(iii) One year for any felony defined under any law as a class C felony or with a statutory maximum sentence of five years, or both;

(iv) If the offender is being sentenced for any sexual motivation enhancements under (a)(i), (ii), and/or (iii) of this subsection and the offender has previously been sentenced for any sexual motivation enhancements on or after July 1, 2006, under (a)(i), (ii), and/or (iii) of this subsection, all sexual motivation enhancements under this subsection shall be twice the amount of the enhancement listed;

(b) Notwithstanding any other provision of law, all sexual motivation enhancements under this subsection are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other sexual motivation enhancements, for all offenses sentenced under this chapter. However, whether or not a mandatory minimum term has expired, an offender serving a sentence under this subsection may be granted an extraordinary medical placement when authorized under RCW 9.94A.728(3);

(c) The sexual motivation enhancements in this subsection apply to all felony crimes;

(d) If the standard sentence range under this subsection exceeds the statutory maximum sentence for the offense, the statutory maximum sentence shall be the presumptive sentence unless the offender is a persistent offender. If the addition of a sexual motivation enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced;

(e) The portion of the total confinement sentence which the offender must serve under this subsection shall be calculated before any earned early release time is credited to the offender;

(f) Nothing in this subsection prevents a sentencing court from imposing a sentence outside the standard sentence range pursuant to RCW 9.94A.535.

(9) An additional one-year enhancement shall be added to the standard sentence range for the felony crimes of RCW 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089 committed on or after July 22, 2007, if the offender engaged, agreed, or offered to engage the victim in the sexual conduct in return for a fee. If the offender is being sentenced for more than one offense, the one-year enhancement must be added to the total period of total confinement for all offenses, regardless of which underlying offense is subject to the enhancement. If the offender is being sentenced for an anticipatory offense for the felony crimes of RCW 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089, and the offender attempted, solicited another, or conspired to engage, agree, or offer to engage the victim in the sexual conduct in return for a fee, an additional one-year enhancement shall be added to the standard sentence range determined under subsection (2) of this section. For purposes of this subsection, "sexual conduct" means sexual intercourse or sexual contact, both as defined in chapter 9A.44 RCW.

(10)(a) For a person age eighteen or older convicted of any criminal street gang-related felony offense for which the person compensated, threatened, or solicited a minor in order to involve the minor in the commission of the felony offense, the standard sentence range is determined by locating the sentencing grid sentence range defined by the appropriate offender score and the seriousness level of the completed crime, and multiplying the range by one hundred twenty-five percent. If the standard sentence range under this subsection exceeds the statutory maximum sentence for the offense, the statutory maximum sentence is the presumptive sentence unless the offender is a persistent offender.

(b) This subsection does not apply to any criminal street gang-related felony offense for which involving a minor in the commission of the felony offense is an element of the offense.

(c) The increased penalty specified in (a) of this subsection is unavailable in the event that the prosecution gives notice that it will seek an exceptional sentence based on an aggravating factor under RCW 9.94A.535.

(11) An additional twelve months and one day shall be added to the standard sentence range for a conviction of attempting to elude a police vehicle as defined by RCW 46.61.024, if the conviction included a finding by special allegation of endangering one or more persons under RCW 9.94A.834.

(12) An additional twelve months shall be added to the standard sentence range for an offense that is also a violation of RCW 9.94A.831.

(13) An additional twelve months shall be added to the standard sentence range for vehicular homicide committed while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.520 or for vehicular assault committed while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.522, or for any felony driving under the influence (RCW 46.61.502(6)) or felony physical control under the influence (RCW 46.61.504(6)) for each child passenger under the age of sixteen who is an occupant in the defendant's vehicle. These enhancements shall be mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions. If the addition of a minor child enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced.

(14) An additional twelve months shall be added to the standard sentence range for an offense that is also a violation of RCW 9.94A.832. [2013 c 270 § 2; 2012 c 42 § 3; 2011 c 293 § 9; 2009 c 141 § 2. Prior: 2008 c 276 § 301; 2008 c 219 § 3; 2007 c 368 § 9; prior: 2006 c 339 § 301; 2006 c 123 § 1; 2003 c 53 § 58; 2002 c 290 § 11.]

Effective date—2011 c 293 §§ 1-9: See note following RCW 46.20.385.

Severability—Part headings, subheadings not law—2008 c 276: See notes following RCW 36.28A.200.

Short title—2008 c 219: See note following RCW 9.94A.834.

Intent—Part headings not law—2006 c 339: See notes following RCW 70.96A.325.

Effective date—2006 c 123: "This act takes effect July 1, 2006." [2006 c 123 § 4.]

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

Intent—2002 c 290: See note following RCW 9.94A.517.

Additional notes found at www.leg.wa.gov

9.94A.535 Departures from the guidelines. The court may impose a sentence outside the standard sentence range for an offense if it finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence. Facts supporting aggravated sentences, other than the fact of a prior conviction, shall be determined pursuant to the provisions of RCW 9.94A.537.

Whenever a sentence outside the standard sentence range is imposed, the court shall set forth the reasons for its decision in written findings of fact and conclusions of law. A sentence outside the standard sentence range shall be a determinate sentence.

If the sentencing court finds that an exceptional sentence outside the standard sentence range should be imposed, the sentence is subject to review only as provided for in RCW 9.94A.585(4).

A departure from the standards in RCW 9.94A.589 (1) and (2) governing whether sentences are to be served consecutively or concurrently is an exceptional sentence subject to the limitations in this section, and may be appealed by the offender or the state as set forth in RCW 9.94A.585 (2) through (6).

(1) Mitigating Circumstances - Court to Consider

The court may impose an exceptional sentence below the standard range if it finds that mitigating circumstances are established by a preponderance of the evidence. The following are illustrative only and are not intended to be exclusive reasons for exceptional sentences.

(a) To a significant degree, the victim was an initiator, willing participant, aggressor, or provoker of the incident.

(b) Before detection, the defendant compensated, or made a good faith effort to compensate, the victim of the criminal conduct for any damage or injury sustained.

(c) The defendant committed the crime under duress, coercion, threat, or compulsion insufficient to constitute a complete defense but which significantly affected his or her conduct.

(d) The defendant, with no apparent predisposition to do so, was induced by others to participate in the crime.

(e) The defendant's capacity to appreciate the wrongfulness of his or her conduct, or to conform his or her conduct to the requirements of the law, was significantly impaired. Voluntary use of drugs or alcohol is excluded.

(f) The offense was principally accomplished by another person and the defendant manifested extreme caution or sincere concern for the safety or well-being of the victim.

(g) The operation of the multiple offense policy of RCW 9.94A.589 results in a presumptive sentence that is clearly excessive in light of the purpose of this chapter, as expressed in RCW 9.94A.010.

(h) The defendant or the defendant's children suffered a continuing pattern of physical or sexual abuse by the victim of the offense and the offense is a response to that abuse.

(i) The defendant was making a good faith effort to obtain or provide medical assistance for someone who is experiencing a drug-related overdose.

(j) The current offense involved domestic violence, as defined in RCW 10.99.020, and the defendant suffered a continuing pattern of coercion, control, or abuse by the victim of the offense and the offense is a response to that coercion, control, or abuse.

(2) Aggravating Circumstances - Considered and Imposed by the Court

The trial court may impose an aggravated exceptional sentence without a finding of fact by a jury under the following circumstances:

(a) The defendant and the state both stipulate that justice is best served by the imposition of an exceptional sentence outside the standard range, and the court finds the exceptional sentence to be consistent with and in furtherance of the interests of justice and the purposes of the sentencing reform act.

(b) The defendant's prior unscored misdemeanor or prior unscored foreign criminal history results in a presumptive sentence that is clearly too lenient in light of the purpose of this chapter, as expressed in RCW 9.94A.010.

(c) The defendant has committed multiple current offenses and the defendant's high offender score results in some of the current offenses going unpunished.

(d) The failure to consider the defendant's prior criminal history which was omitted from the offender score calculation pursuant to RCW 9.94A.525 results in a presumptive sentence that is clearly too lenient.

(3) Aggravating Circumstances - Considered by a Jury - Imposed by the Court

Except for circumstances listed in subsection (2) of this section, the following circumstances are an exclusive list of factors that can support a sentence above the standard range. Such facts should be determined by procedures specified in RCW 9.94A.537.

(a) The defendant's conduct during the commission of the current offense manifested deliberate cruelty to the victim.

(b) The defendant knew or should have known that the victim of the current offense was particularly vulnerable or incapable of resistance.

(c) The current offense was a violent offense, and the defendant knew that the victim of the current offense was pregnant.

(d) The current offense was a major economic offense or series of offenses, so identified by a consideration of any of the following factors:

(i) The current offense involved multiple victims or multiple incidents per victim;

(ii) The current offense involved attempted or actual monetary loss substantially greater than typical for the offense;

(iii) The current offense involved a high degree of sophistication or planning or occurred over a lengthy period of time; or

(iv) The defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate the commission of the current offense.

(e) The current offense was a major violation of the Uniform Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to trafficking in controlled substances, which was more onerous than the typical offense of its statu-

tory definition: The presence of ANY of the following may identify a current offense as a major VUCSA:

(i) The current offense involved at least three separate transactions in which controlled substances were sold, transferred, or possessed with intent to do so;

(ii) The current offense involved an attempted or actual sale or transfer of controlled substances in quantities substantially larger than for personal use;

(iii) The current offense involved the manufacture of controlled substances for use by other parties;

(iv) The circumstances of the current offense reveal the offender to have occupied a high position in the drug distribution hierarchy;

(v) The current offense involved a high degree of sophistication or planning, occurred over a lengthy period of time, or involved a broad geographic area of disbursement; or

(vi) The offender used his or her position or status to facilitate the commission of the current offense, including positions of trust, confidence or fiduciary responsibility (e.g., pharmacist, physician, or other medical professional).

(f) The current offense included a finding of sexual motivation pursuant to RCW 9.94A.835.

(g) The offense was part of an ongoing pattern of sexual abuse of the same victim under the age of eighteen years manifested by multiple incidents over a prolonged period of time.

(h) The current offense involved domestic violence, as defined in RCW 10.99.020, or stalking, as defined in RCW 9A.46.110, and one or more of the following was present:

(i) The offense was part of an ongoing pattern of psychological, physical, or sexual abuse of a victim or multiple victims manifested by multiple incidents over a prolonged period of time;

(ii) The offense occurred within sight or sound of the victim's or the offender's minor children under the age of eighteen years; or

(iii) The offender's conduct during the commission of the current offense manifested deliberate cruelty or intimidation of the victim.

(i) The offense resulted in the pregnancy of a child victim of rape.

(j) The defendant knew that the victim of the current offense was a youth who was not residing with a legal custodian and the defendant established or promoted the relationship for the primary purpose of victimization.

(k) The offense was committed with the intent to obstruct or impair human or animal health care or agricultural or forestry research or commercial production.

(l) The current offense is trafficking in the first degree or trafficking in the second degree and any victim was a minor at the time of the offense.

(m) The offense involved a high degree of sophistication or planning.

(n) The defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate the commission of the current offense.

(o) The defendant committed a current sex offense, has a history of sex offenses, and is not amenable to treatment.

(p) The offense involved an invasion of the victim's privacy.

(q) The defendant demonstrated or displayed an egregious lack of remorse.

(r) The offense involved a destructive and foreseeable impact on persons other than the victim.

(s) The defendant committed the offense to obtain or maintain his or her membership or to advance his or her position in the hierarchy of an organization, association, or identifiable group.

(t) The defendant committed the current offense shortly after being released from incarceration.

(u) The current offense is a burglary and the victim of the burglary was present in the building or residence when the crime was committed.

(v) The offense was committed against a law enforcement officer who was performing his or her official duties at the time of the offense, the offender knew that the victim was a law enforcement officer, and the victim's status as a law enforcement officer is not an element of the offense.

(w) The defendant committed the offense against a victim who was acting as a good samaritan.

(x) The defendant committed the offense against a public official or officer of the court in retaliation of the public official's performance of his or her duty to the criminal justice system.

(y) The victim's injuries substantially exceed the level of bodily harm necessary to satisfy the elements of the offense. This aggravator is not an exception to RCW 9.94A.530(2).

(z)(i)(A) The current offense is theft in the first degree, theft in the second degree, possession of stolen property in the first degree, or possession of stolen property in the second degree; (B) the stolen property involved is metal property; and (C) the property damage to the victim caused in the course of the theft of metal property is more than three times the value of the stolen metal property, or the theft of the metal property creates a public hazard.

(ii) For purposes of this subsection, "metal property" means commercial metal property, private metal property, or nonferrous metal property, as defined in RCW 19.290.010.

(aa) The defendant committed the offense with the intent to directly or indirectly cause any benefit, aggrandizement, gain, profit, or other advantage to or for a criminal street gang as defined in RCW 9.94A.030, its reputation, influence, or membership.

(bb) The current offense involved paying to view, over the internet in violation of RCW 9.68A.075, depictions of a minor engaged in an act of sexually explicit conduct as defined in RCW 9.68A.011(4) (a) through (g).

(cc) The offense was intentionally committed because the defendant perceived the victim to be homeless, as defined in RCW 9.94A.030.

(dd) The current offense involved a felony crime against persons, except for assault in the third degree pursuant to RCW 9A.36.031(1)(k), that occurs in a courtroom, jury room, judge's chamber, or any waiting area or corridor immediately adjacent to a courtroom, jury room, or judge's chamber. This subsection shall apply only: (i) During the times when a courtroom, jury room, or judge's chamber is being used for judicial purposes during court proceedings; and (ii) if signage was posted in compliance with RCW 2.28.200 at the time of the offense.

(ee) During the commission of the current offense, the defendant was driving in the opposite direction of the normal flow of traffic on a multiple lane highway, as defined by RCW 46.04.350, with a posted speed limit of forty-five miles per hour or greater. [2013 2nd sp.s. c 35 § 37. Prior: 2013 c 256 § 2; 2013 c 84 § 26; 2011 c 87 § 1; prior: 2010 c 274 § 402; 2010 c 227 § 10; 2010 c 9 § 4; prior: 2008 c 276 § 303; 2008 c 233 § 9; 2007 c 377 § 10; 2005 c 68 § 3; 2003 c 267 § 4; 2002 c 169 § 1; 2001 2nd sp.s. c 12 § 314; 2000 c 28 § 8; 1999 c 330 § 1; 1997 c 52 § 4; prior: 1996 c 248 § 2; 1996 c 121 § 1; 1995 c 316 § 2; 1990 c 3 § 603; 1989 c 408 § 1; 1987 c 131 § 2; 1986 c 257 § 27; 1984 c 209 § 24; 1983 c 115 § 10. Formerly RCW 9.94A.390.]

Intent—2010 c 274: See note following RCW 10.31.100.

Intent—2010 c 9: See note following RCW 69.50.315.

Severability—Part headings, subheadings not law—2008 c 276: See notes following RCW 36.28A.200.

Captions not law—Severability—2007 c 377: See RCW 19.290.900 and 19.290.901.

Intent—Severability—Effective date—2005 c 68: See notes following RCW 9.94A.537.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

9.94A.729 Earned release time—Risk assessments.

(1)(a) The term of the sentence of an offender committed to a correctional facility operated by the department may be reduced by earned release time in accordance with procedures that shall be developed and adopted by the correctional agency having jurisdiction in which the offender is confined. The earned release time shall be for good behavior and good performance, as determined by the correctional agency having jurisdiction. The correctional agency shall not credit the offender with earned release credits in advance of the offender actually earning the credits.

(b) Any program established pursuant to this section shall allow an offender to earn early release credits for pre-sentence incarceration. If an offender is transferred from a county jail to the department, the administrator of a county jail facility shall certify to the department the amount of time spent in custody at the facility and the number of days of early release credits lost or not earned. The department may approve a jail certification from a correctional agency that calculates early release time based on the actual amount of confinement time served by the offender before sentencing when an erroneous calculation of confinement time served by the offender before sentencing appears on the judgment and sentence. The department must adjust an offender's rate of early release listed on the jail certification to be consistent with the rate applicable to offenders in the department's facilities. However, the department is not authorized to adjust the number of presentence early release days that the jail has certified as lost or not earned.

(2) An offender who has been convicted of a felony committed after July 23, 1995, that involves any applicable deadly weapon enhancements under RCW 9.94A.533 (3) or (4), or both, shall not receive any good time credits or earned release time for that portion of his or her sentence that results from any deadly weapon enhancements.

(3) An offender may earn early release time as follows:

(a) In the case of an offender convicted of a serious violent offense, or a sex offense that is a class A felony, committed on or after July 1, 1990, and before July 1, 2003, the aggregate earned release time may not exceed fifteen percent of the sentence.

(b) In the case of an offender convicted of a serious violent offense, or a sex offense that is a class A felony, committed on or after July 1, 2003, the aggregate earned release time may not exceed ten percent of the sentence.

(c) An offender is qualified to earn up to fifty percent of aggregate earned release time if he or she:

(i) Is not classified as an offender who is at a high risk to reoffend as provided in subsection (4) of this section;

(ii) Is not confined pursuant to a sentence for:

(A) A sex offense;

(B) A violent offense;

(C) A crime against persons as defined in RCW 9.94A.411;

(D) A felony that is domestic violence as defined in RCW 10.99.020;

(E) A violation of RCW 9A.52.025 (residential burglary);

(F) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by manufacture or delivery or possession with intent to deliver methamphetamine; or

(G) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.406 (delivery of a controlled substance to a minor);

(ii) Has no prior conviction for the offenses listed in (c)(ii) of this subsection;

(iv) Participates in programming or activities as directed by the offender's individual reentry plan as provided under RCW 72.09.270 to the extent that such programming or activities are made available by the department; and

(v) Has not committed a new felony after July 22, 2007, while under community custody.

(d) In no other case shall the aggregate earned release time exceed one-third of the total sentence.

(4) The department shall perform a risk assessment of each offender who may qualify for earned early release under subsection (3)(c) of this section utilizing the risk assessment tool recommended by the Washington state institute for public policy. Subsection (3)(c) of this section does not apply to offenders convicted after July 1, 2010.

(5)(a) A person who is eligible for earned early release as provided in this section and who will be supervised by the department pursuant to RCW 9.94A.501 or 9.94A.5011, shall be transferred to community custody in lieu of earned release time;

(b) The department shall, as a part of its program for release to the community in lieu of earned release, require the offender to propose a release plan that includes an approved residence and living arrangement. All offenders with community custody terms eligible for release to community custody in lieu of earned release shall provide an approved residence and living arrangement prior to release to the community;

(c) The department may deny transfer to community custody in lieu of earned release time if the department determines an offender's release plan, including proposed residence location and living arrangements, may violate the con-

ditions of the sentence or conditions of supervision, place the offender at risk to violate the conditions of the sentence, place the offender at risk to reoffend, or present a risk to victim safety or community safety. The department's authority under this section is independent of any court-ordered condition of sentence or statutory provision regarding conditions for community custody;

(d) If the department is unable to approve the offender's release plan, the department may do one or more of the following:

(i) Transfer an offender to partial confinement in lieu of earned early release for a period not to exceed three months. The three months in partial confinement is in addition to that portion of the offender's term of confinement that may be served in partial confinement as provided in RCW 9.94A.728(5);

(ii) Provide rental vouchers to the offender for a period not to exceed three months if rental assistance will result in an approved release plan.

A voucher must be provided in conjunction with additional transition support programming or services that enable an offender to participate in services including, but not limited to, substance abuse treatment, mental health treatment, sex offender treatment, educational programming, or employment programming;

(e) The department shall maintain a list of housing providers that meets the requirements of RCW 72.09.285. If more than two voucher recipients will be residing per dwelling unit, as defined in RCW 59.18.030, rental vouchers for those recipients may only be paid to a housing provider on the department's list;

(f) For each offender who is the recipient of a rental voucher, the department shall gather data as recommended by the Washington state institute for public policy in order to best demonstrate whether rental vouchers are effective in reducing recidivism.

(6) An offender serving a term of confinement imposed under RCW 9.94A.670(5)(a) is not eligible for earned release credits under this section. [2013 2nd sp.s. c 14 § 2; 2013 c 266 § 1; 2011 1st sp.s. c 40 § 4; 2010 c 224 § 7; 2009 c 455 § 3.]

Reviser's note: This section was amended by 2013 c 266 § 1 and by 2013 2nd sp.s. c 14 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Application—Recalculation of earned release date—Compilation of sentencing information—Report—Effective date—2013 2nd sp.s. c 14: See notes following RCW 9.94A.517.

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Effective date—2011 1st sp.s. c 40 §§ 1-9, 42: See note following RCW 9.94A.501.

Effective date—2009 c 455 § 3: "Section 3 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 11, 2009]." [2009 c 455 § 7.]

9.94A.832 Special allegation—Robbery in the first or second degree—Robbery of a pharmacy—Procedures. In a criminal case where:

(1) The defendant has been convicted of robbery in the first degree or robbery in the second degree; and

(2) There has been a special allegation pleaded and proven beyond a reasonable doubt that the defendant committed a robbery of a pharmacy as defined in RCW 18.64.011(21); the court shall make a finding of fact of the special allegation, or if a jury is had, the jury shall, if it finds the defendant guilty, also find a special verdict as to the special allegation. [2013 c 270 § 1.]

Title 9A

WASHINGTON CRIMINAL CODE

Chapters

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Chapter 9A.04 RCW

PRELIMINARY ARTICLE

Sections

9A.04.080 Limitation of actions.

9A.04.080 Limitation of actions. (1) Prosecutions for criminal offenses shall not be commenced after the periods prescribed in this section.

(a) The following offenses may be prosecuted at any time after their commission:

(i) Murder;

(ii) Homicide by abuse;

(iii) Arson if a death results;

(iv) Vehicular homicide;

(v) Vehicular assault if a death results;

(vi) Hit-and-run injury-accident if a death results (RCW 46.52.020(4)).

(b) Except as provided in (c) of this subsection, the following offenses shall not be prosecuted more than ten years after their commission:

(i) Any felony committed by a public officer if the commission is in connection with the duties of his or her office or constitutes a breach of his or her public duty or a violation of the oath of office;

(ii) Arson if no death results;

(iii)(A) Violations of RCW 9A.44.040 or 9A.44.050 if the rape is reported to a law enforcement agency within one year of its commission.

(B) If a violation of RCW 9A.44.040 or 9A.44.050 is not reported within one year, the rape may not be prosecuted more than three years after its commission; or

(iv) Indecent liberties under RCW 9A.44.100(1)(b).

(c) Violations of the following statutes, when committed against a victim under the age of eighteen, may be prosecuted up to the victim's thirtieth birthday: RCW 9A.44.040 (rape in the first degree), 9A.44.050 (rape in the second degree), 9A.44.073 (rape of a child in the first degree), 9A.44.076 (rape of a child in the second degree), 9A.44.079 (rape of a child in the third degree), 9A.44.083 (child molestation in the first degree), 9A.44.086 (child molestation in the second degree), 9A.44.089 (child molestation in the third degree), 9A.44.100(1)(b) (indecent liberties), 9A.64.020 (incest), or 9.68A.040 (sexual exploitation of a minor).

(d) The following offenses shall not be prosecuted more than six years after their commission or their discovery, whichever occurs later:

(i) Violations of RCW 9A.82.060 or 9A.82.080;
 (ii) Any felony violation of chapter 9A.83 RCW;
 (iii) Any felony violation of chapter 9.35 RCW;
 (iv) Theft in the first or second degree under chapter 9A.56 RCW when accomplished by color or aid of deception; or

(v) Trafficking in stolen property in the first or second degree under chapter 9A.82 RCW in which the stolen property is a motor vehicle or major component part of a motor vehicle as defined in RCW 46.80.010.

(e) The following offenses shall not be prosecuted more than five years after their commission: Any class C felony under chapter 74.09, *82.36, or 82.38 RCW.

(f) Bigamy shall not be prosecuted more than three years after the time specified in RCW 9A.64.010.

(g) A violation of RCW 9A.56.030 must not be prosecuted more than three years after the discovery of the offense when the victim is a tax exempt corporation under 26 U.S.C. Sec. 501(c)(3).

(h) No other felony may be prosecuted more than three years after its commission; except that in a prosecution under RCW 9A.44.115, if the person who was viewed, photographed, or filmed did not realize at the time that he or she was being viewed, photographed, or filmed, the prosecution must be commenced within two years of the time the person who was viewed or in the photograph or film first learns that he or she was viewed, photographed, or filmed.

(i) No gross misdemeanor may be prosecuted more than two years after its commission.

(j) No misdemeanor may be prosecuted more than one year after its commission.

(2) The periods of limitation prescribed in subsection (1) of this section do not run during any time when the person charged is not usually and publicly resident within this state.

(3) In any prosecution for a sex offense as defined in RCW 9.94A.030, the periods of limitation prescribed in subsection (1) of this section run from the date of commission or one year from the date on which the identity of the suspect is conclusively established by deoxyribonucleic acid testing or by photograph as defined in RCW 9.68A.011, whichever is later.

(4) If, before the end of a period of limitation prescribed in subsection (1) of this section, an indictment has been found or a complaint or an information has been filed, and the indictment, complaint, or information is set aside, then the period of limitation is extended by a period equal to the length of time from the finding or filing to the setting aside.

[2013 c 17 § 1; 2012 c 105 § 1. Prior: 2009 c 61 § 1; 2009 c 53 § 1; 2006 c 132 § 1; 1998 c 221 § 2; prior: 1997 c 174 § 1; 1997 c 97 § 1; prior: 1995 c 287 § 5; 1995 c 17 § 1; 1993 c 214 § 1; 1989 c 317 § 3; 1988 c 145 § 14; prior: 1986 c 257 § 13; 1986 c 85 § 1; prior: 1985 c 455 § 19; 1985 c 186 § 1; 1984 c 270 § 18; 1982 c 129 § 1; 1981 c 203 § 1; 1975 1st ex.s. c 260 § 9A.04.080.]

*Reviser's note: Chapter 82.36 RCW was repealed in its entirety by 2013 c 225 § 501, effective July 1, 2015.

Intent—1989 c 317: See note following RCW 4.16.340.

Additional notes found at www.leg.wa.gov

Chapter 9A.36 RCW ASSAULT—PHYSICAL HARM

Sections

9A.36.031 Assault in the third degree.

9A.36.031 Assault in the third degree. (1) A person is guilty of assault in the third degree if he or she, under circumstances not amounting to assault in the first or second degree:

(a) With intent to prevent or resist the execution of any lawful process or mandate of any court officer or the lawful apprehension or detention of himself, herself, or another person, assaults another; or

(b) Assaults a person employed as a transit operator or driver, the immediate supervisor of a transit operator or driver, a mechanic, or a security officer, by a public or private transit company or a contracted transit service provider, while that person is performing his or her official duties at the time of the assault; or

(c) Assaults a school bus driver, the immediate supervisor of a driver, a mechanic, or a security officer, employed by a school district transportation service or a private company under contract for transportation services with a school district, while the person is performing his or her official duties at the time of the assault; or

(d) With criminal negligence, causes bodily harm to another person by means of a weapon or other instrument or thing likely to produce bodily harm; or

(e) Assaults a firefighter or other employee of a fire department, county fire marshal's office, county fire prevention bureau, or fire protection district who was performing his or her official duties at the time of the assault; or

(f) With criminal negligence, causes bodily harm accompanied by substantial pain that extends for a period sufficient to cause considerable suffering; or

(g) Assaults a law enforcement officer or other employee of a law enforcement agency who was performing his or her official duties at the time of the assault; or

(h) Assaults a peace officer with a projectile stun gun; or

(i) Assaults a nurse, physician, or health care provider who was performing his or her nursing or health care duties at the time of the assault. For purposes of this subsection: "Nurse" means a person licensed under chapter 18.79 RCW; "physician" means a person licensed under chapter 18.57 or 18.71 RCW; and "health care provider" means a person certified under chapter 18.71 or 18.73 RCW who performs emergency medical services or a person regulated under Title 18 RCW and employed by, or contracting with, a hospital licensed under chapter 70.41 RCW; or

(j) Assaults a judicial officer, court-related employee, county clerk, or county clerk's employee, while that person is performing his or her official duties at the time of the assault or as a result of that person's employment within the judicial system. For purposes of this subsection, "court-related employee" includes bailiffs, court reporters, judicial assistants, court managers, court managers' employees, and any other employee, regardless of title, who is engaged in equivalent functions; or

(k) Assaults a person located in a courtroom, jury room, judge's chamber, or any waiting area or corridor immediately adjacent to a courtroom, jury room, or judge's chamber. This section shall apply only: (i) During the times when a courtroom, jury room, or judge's chamber is being used for judicial purposes during court proceedings; and (ii) if signage was posted in compliance with RCW 2.28.200 at the time of the assault.

(2) Assault in the third degree is a class C felony. [2013 c 256 § 1. Prior: 2011 c 336 § 359; 2011 c 238 § 1; 2005 c 458 § 1; 1999 c 328 § 1; 1998 c 94 § 1; 1997 c 172 § 1; 1996 c 266 § 1; 1990 c 236 § 1; 1989 c 169 § 1; 1988 c 158 § 3; 1986 c 257 § 6.]

Additional notes found at www.leg.wa.gov

Chapter 9A.40 RCW

KIDNAPPING, UNLAWFUL IMPRISONMENT, AND CUSTODIAL INTERFERENCE

Sections

9A.40.100 Trafficking.

9A.40.100 Trafficking. (1)(a) A person is guilty of trafficking in the first degree when:

(i) Such person:

(A) Recruits, harbors, transports, transfers, provides, obtains, buys, purchases, or receives by any means another person knowing, or in reckless disregard of the fact, that force, fraud, or coercion as defined in RCW 9A.36.070 will be used to cause the person to engage in forced labor, involuntary servitude, a sexually explicit act, or a commercial sex act, or that the person has not attained the age of eighteen years and is caused to engage in a sexually explicit act or a commercial sex act; or

(B) Benefits financially or by receiving anything of value from participation in a venture that has engaged in acts set forth in (a)(i)(A) of this subsection; and

(ii) The acts or venture set forth in (a)(i) of this subsection:

(A) Involve committing or attempting to commit kidnapping;

(B) Involve a finding of sexual motivation under RCW 9.94A.835;

(C) Involve the illegal harvesting or sale of human organs; or

(D) Result in a death.

(b) Trafficking in the first degree is a class A felony.

(2)(a) A person is guilty of trafficking in the second degree when such person:

(i) Recruits, harbors, transports, transfers, provides, obtains, buys, purchases, or receives by any means another person knowing, or in reckless disregard of the fact, that

force, fraud, or coercion as defined in RCW 9A.36.070 will be used to cause the person to engage in forced labor, involuntary servitude, a sexually explicit act, or a commercial sex act, or that the person has not attained the age of eighteen years and is caused to engage [engage] in a sexually explicit act or a commercial sex act; or

(ii) Benefits financially or by receiving anything of value from participation in a venture that has engaged in acts set forth in (a)(i) of this subsection.

(b) Trafficking in the second degree is a class A felony.

(3)(a) A person who is either convicted or given a deferred sentence or a deferred prosecution or who has entered into a statutory or nonstatutory diversion agreement as a result of an arrest for a violation of a trafficking crime shall be assessed a ten thousand dollar fee.

(b) The court shall not reduce, waive, or suspend payment of all or part of the fee assessed in this section unless it finds, on the record, that the offender does not have the ability to pay the fee in which case it may reduce the fee by an amount up to two-thirds of the maximum allowable fee.

(c) Fees assessed under this section shall be collected by the clerk of the court and remitted to the treasurer of the county where the offense occurred for deposit in the county general fund, except in cases in which the offense occurred in a city or town that provides for its own law enforcement, in which case these amounts shall be remitted to the treasurer of the city or town for deposit in the general fund of the city or town. Revenue from the fees must be used for local efforts to reduce the commercial sale of sex including, but not limited to, increasing enforcement of commercial sex laws.

(i) At least fifty percent of the revenue from fees imposed under this section must be spent on prevention, including education programs for offenders, such as john school, and rehabilitative services, such as mental health and substance abuse counseling, parenting skills, training, housing relief, education, vocational training, drop-in centers, and employment counseling.

(ii) Revenues from these fees are not subject to the distribution requirements under RCW 3.50.100, 3.62.020, 3.62.040, 10.82.070, or 35.20.220.

(4) If the victim of any offense identified in this section is a minor, force, fraud, or coercion are not necessary elements of an offense and consent to the sexually explicit act or commercial sex act does not constitute a defense.

(5) For purposes of this section:

(a) "Commercial sex act" means any act of sexual contact or sexual intercourse, both as defined in chapter 9A.44 RCW, for which something of value is given or received by any person; and

(b) "Sexually explicit act" means a public, private, or live photographed, recorded, or videotaped act or show intended to arouse or satisfy the sexual desires or appeal to the prurient interests of patrons for which something of value is given or received. [2013 c 302 § 6. Prior: 2012 c 144 § 2; 2012 c 134 § 1; 2011 c 111 § 1; 2003 c 267 § 1.]

Effective date—2013 c 302: See note following RCW 9.68A.090.

Chapter 9A.44 RCW
SEX OFFENSES

Sections

9A.44.020	Testimony—Evidence—Written motion—Admissibility.
9A.44.060	Rape in the third degree.
9A.44.100	Indecent liberties.
9A.44.128	Definitions applicable to RCW 9A.44.130 through 9A.44.145, 10.01.200, 43.43.540, 70.48.470, and 72.09.330.
9A.44.150	Testimony of child by closed-circuit television.

9A.44.020 Testimony—Evidence—Written motion—Admissibility. (1) In order to convict a person of any crime defined in this chapter it shall not be necessary that the testimony of the alleged victim be corroborated.

(2) Evidence of the victim's past sexual behavior including but not limited to the victim's marital history, divorce history, or general reputation for promiscuity, nonchastity, or sexual mores contrary to community standards is inadmissible on the issue of credibility and is inadmissible to prove the victim's consent except as provided in subsection (3) of this section, but when the perpetrator and the victim have engaged in sexual intercourse with each other in the past, and when the past behavior is material to the issue of consent, evidence concerning the past behavior between the perpetrator and the victim may be admissible on the issue of consent to the offense.

(3) In any prosecution for the crime of rape, trafficking pursuant to RCW 9A.40.100, or any of the offenses in chapter 9.68A RCW, or for an attempt to commit, or an assault with an intent to commit any such crime evidence of the victim's past sexual behavior including but not limited to the victim's marital behavior, divorce history, or general reputation for promiscuity, nonchastity, or sexual mores contrary to community standards is not admissible if offered to attack the credibility of the victim and is admissible on the issue of consent, except where prohibited in the underlying criminal offense, only pursuant to the following procedure:

(a) A written pretrial motion shall be made by the defendant to the court and prosecutor stating that the defense has an offer of proof of the relevancy of evidence of the past sexual behavior of the victim proposed to be presented and its relevancy on the issue of the consent of the victim.

(b) The written motion shall be accompanied by an affidavit or affidavits in which the offer of proof shall be stated.

(c) If the court finds that the offer of proof is sufficient, the court shall order a hearing out of the presence of the jury, if any, and the hearing shall be closed except to the necessary witnesses, the defendant, counsel, and those who have a direct interest in the case or in the work of the court.

(d) At the conclusion of the hearing, if the court finds that the evidence proposed to be offered by the defendant regarding the past sexual behavior of the victim is relevant to the issue of the victim's consent; is not inadmissible because its probative value is substantially outweighed by the probability that its admission will create a substantial danger of undue prejudice; and that its exclusion would result in denial of substantial justice to the defendant; the court shall make an order stating what evidence may be introduced by the defendant, which order may include the nature of the questions to be permitted. The defendant may then offer evidence pursuant to the order of the court.

(4) Nothing in this section shall be construed to prohibit cross-examination of the victim on the issue of past sexual behavior when the prosecution presents evidence in its case in chief tending to prove the nature of the victim's past sexual behavior, but the court may require a hearing pursuant to subsection (3) of this section concerning such evidence. [2013 c 302 § 7; 1975 1st ex.s. c 14 § 2. Formerly RCW 9.79.150.]

Effective date—2013 c 302: See note following RCW 9.68A.090.

9A.44.060 Rape in the third degree. (1) A person is guilty of rape in the third degree when, under circumstances not constituting rape in the first or second degrees, such person engages in sexual intercourse with another person:

(a) Where the victim did not consent as defined in RCW 9A.44.010(7), to sexual intercourse with the perpetrator and such lack of consent was clearly expressed by the victim's words or conduct, or

(b) Where there is threat of substantial unlawful harm to property rights of the victim.

(2) Rape in the third degree is a class C felony. [2013 c 94 § 1; 1999 c 143 § 34; 1979 ex.s. c 244 § 3; 1975 1st ex.s. c 14 § 6. Formerly RCW 9.79.190.]

9A.44.100 Indecent liberties. (1) A person is guilty of indecent liberties when he or she knowingly causes another person to have sexual contact with him or her or another:

(a) By forcible compulsion;

(b) When the other person is incapable of consent by reason of being mentally defective, mentally incapacitated, or physically helpless;

(c) When the victim is a person with a developmental disability and the perpetrator is a person who is not married to the victim and who:

(i) Has supervisory authority over the victim; or

(ii) Was providing transportation, within the course of his or her employment, to the victim at the time of the offense;

(d) When the perpetrator is a health care provider, the victim is a client or patient, and the sexual contact occurs during a treatment session, consultation, interview, or examination. It is an affirmative defense that the defendant must prove by a preponderance of the evidence that the client or patient consented to the sexual contact with the knowledge that the sexual contact was not for the purpose of treatment;

(e) When the victim is a resident of a facility for persons with a mental disorder or chemical dependency and the perpetrator is a person who is not married to the victim and has supervisory authority over the victim; or

(f) When the victim is a frail elder or vulnerable adult and the perpetrator is a person who is not married to the victim and who:

(i) Has a significant relationship with the victim; or

(ii) Was providing transportation, within the course of his or her employment, to the victim at the time of the offense.

(2)(a) Except as provided in (b) of this subsection, indecent liberties is a class B felony.

(b) Indecent liberties by forcible compulsion is a class A felony. [2013 c 94 § 2; 2007 c 20 § 2; 2003 c 53 § 67; 2001 2nd sp.s. c 12 § 359; 1997 c 392 § 515; 1993 c 477 § 3; 1988

c 146 § 2; 1988 c 145 § 10; 1986 c 131 § 1; 1975 1st ex.s. c 260 § 9A.88.100. Formerly RCW 9A.88.100.]

Effective date—2007 c 20: See note following RCW 9A.44.050.

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

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392: See notes following RCW 74.39A.009.

Additional notes found at www.leg.wa.gov

9A.44.128 Definitions applicable to RCW 9A.44.130 through 9A.44.145, 10.01.200, 43.43.540, 70.48.470, and 72.09.330. For the purposes of RCW 9A.44.130 through 9A.44.145, 10.01.200, 43.43.540, 70.48.470, and 72.09.330, the following definitions apply:

(1) "Business day" means any day other than Saturday, Sunday, or a legal local, state, or federal holiday.

(2) "Conviction" means any adult conviction or juvenile adjudication for a sex offense or kidnapping offense.

(3) "Disqualifying offense" means a conviction for: Any offense that is a felony; a sex offense as defined in this section; a crime against children or persons as defined in RCW 43.43.830(7) and 9.94A.411(2)(a); an offense with a domestic violence designation as provided in RCW 10.99.020; permitting the commercial sexual abuse of a minor as defined in RCW 9.68A.103; or any violation of chapter 9A.88 RCW.

(4) "Employed" or "carries on a vocation" means employment that is full time or part time for a period of time exceeding fourteen days, or for an aggregate period of time exceeding thirty days during any calendar year. A person is employed or carries on a vocation whether the person's employment is financially compensated, volunteered, or for the purpose of government or educational benefit.

(5) "Fixed residence" means a building that a person lawfully and habitually uses as living quarters a majority of the week. Uses as living quarters means to conduct activities consistent with the common understanding of residing, such as sleeping; eating; keeping personal belongings; receiving mail; and paying utilities, rent, or mortgage. A nonpermanent structure including, but not limited to, a motor home, travel trailer, camper, or boat may qualify as a residence provided it is lawfully and habitually used as living quarters a majority of the week, primarily kept at one location with a physical address, and the location it is kept at is either owned or rented by the person or used by the person with the permission of the owner or renter. A shelter program may qualify as a residence provided it is a shelter program designed to provide temporary living accommodations for the homeless, provides an offender with a personally assigned living space, and the offender is permitted to store belongings in the living space.

(6) "In the community" means residing outside of confinement or incarceration for a disqualifying offense.

(7) "Institution of higher education" means any public or private institution dedicated to postsecondary education, including any college, university, community college, trade, or professional school.

(8) "Kidnapping offense" means:

(a) The crimes of kidnapping in the first degree, kidnapping in the second degree, and unlawful imprisonment, as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent;

(b) Any offense that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit an offense that is classified as a kidnapping offense under this subsection; and

(c) Any federal or out-of-state conviction for: An offense for which the person would be required to register as a kidnapping offender if residing in the state of conviction; or, if not required to register in the state of conviction, an offense that under the laws of this state would be classified as a kidnapping offense under this subsection.

(9) "Lacks a fixed residence" means the person does not have a living situation that meets the definition of a fixed residence and includes, but is not limited to, a shelter program designed to provide temporary living accommodations for the homeless, an outdoor sleeping location, or locations where the person does not have permission to stay.

(10) "Sex offense" means:

(a) Any offense defined as a sex offense by RCW 9.94A.030;

(b) Any violation under RCW 9A.44.096 (sexual misconduct with a minor in the second degree);

(c) Any violation under RCW 9A.40.100(1)(a)(ii)(B) (trafficking);

(d) Any violation under RCW 9.68A.090 (communication with a minor for immoral purposes);

(e) A violation under RCW 9A.88.070 (promoting prostitution in the first degree) or RCW 9A.88.080 (promoting prostitution in the second degree) if the person has a prior conviction for one of these offenses;

(f) Any gross misdemeanor that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit an offense that is classified as a sex offense under RCW 9.94A.030 or this subsection;

(g) Any out-of-state conviction for an offense for which the person would be required to register as a sex offender while residing in the state of conviction; or, if not required to register in the state of conviction, an offense that under the laws of this state would be classified as a sex offense under this subsection;

(h) Any federal conviction classified as a sex offense under 42 U.S.C. Sec. 16911 (SORNA);

(i) Any military conviction for a sex offense. This includes sex offenses under the uniform code of military justice, as specified by the United States secretary of defense;

(j) Any conviction in a foreign country for a sex offense if it was obtained with sufficient safeguards for fundamental fairness and due process for the accused under guidelines or regulations established pursuant to 42 U.S.C. Sec. 16912.

(11) "School" means a public or private school regulated under Title 28A RCW or chapter 72.40 RCW.

(12) "Student" means a person who is enrolled, on a full-time or part-time basis, in any school or institution of higher education. [2013 c 302 § 8; 2012 c 134 § 2; 2011 c 337 § 2; 2010 c 267 § 1.]

Effective date—2013 c 302: See note following RCW 9.68A.090.

Application—2010 c 267: "The provisions of this act apply to persons convicted before, on, or after June 10, 2010." [2010 c 267 § 15.]

9A.44.150 Testimony of child by closed-circuit television. (1) On motion of the prosecuting attorney in a criminal proceeding, the court may order that a child under the age of fourteen may testify in a room outside the presence of the defendant and the jury while one-way closed-circuit television equipment simultaneously projects the child's testimony into another room so the defendant and the jury can watch and hear the child testify if:

(a) The testimony will:

(i) Describe an act or attempted act of sexual contact performed with or on the child witness by another person or with or on a child other than the child witness by another person;

(ii) Describe an act or attempted act of physical abuse against the child witness by another person or against a child other than the child witness by another person;

(iii) Describe a violation of RCW 9A.40.100 (trafficking) or any offense identified in chapter 9.68A RCW (sexual exploitation of children); or

(iv) Describe a violent offense as defined by RCW 9.94A.030 committed against a person known by or familiar to the child witness or by a person known by or familiar to the child witness;

(b) The testimony is taken during the criminal proceeding;

(c) The court finds by substantial evidence, in a hearing conducted outside the presence of the jury, that requiring the child witness to testify in the presence of the defendant will cause the child to suffer serious emotional or mental distress that will prevent the child from reasonably communicating at the trial. If the defendant is excluded from the presence of the child, the jury must also be excluded;

(d) As provided in (a) and (b) of this subsection, the court may allow a child witness to testify in the presence of the defendant but outside the presence of the jury, via closed-circuit television, if the court finds, upon motion and hearing outside the presence of the jury, that the child will suffer serious emotional distress that will prevent the child from reasonably communicating at the trial in front of the jury, or, that although the child may be able to reasonably communicate at trial in front of the jury, the child will suffer serious emotional or mental distress from testifying in front of the jury. If the child is able to communicate in front of the defendant but not the jury the defendant will remain in the room with the child while the jury is excluded from the room;

(e) The court finds that the prosecutor has made all reasonable efforts to prepare the child witness for testifying, including informing the child or the child's parent or guardian about community counseling services, giving court tours, and explaining the trial process. If the prosecutor fails to demonstrate that preparations were implemented or the prosecutor in good faith attempted to implement them, the court shall deny the motion;

(f) The court balances the strength of the state's case without the testimony of the child witness against the defendant's constitutional rights and the degree of infringement of the closed-circuit television procedure on those rights;

(g) The court finds that no less restrictive method of obtaining the testimony exists that can adequately protect the child witness from the serious emotional or mental distress;

(h) When the court allows the child witness to testify outside the presence of the defendant, the defendant can com-

municate constantly with the defense attorney by electronic transmission and be granted reasonable court recesses during the child's testimony for person-to-person consultation with the defense attorney;

(i) The court can communicate with the attorneys by an audio system so that the court can rule on objections and otherwise control the proceedings;

(j) All parties in the room with the child witness are on camera and can be viewed by all other parties. If viewing all participants is not possible, the court shall describe for the viewers the location of the prosecutor, defense attorney, and other participants in relation to the child;

(k) The court finds that the television equipment is capable of making an accurate reproduction and the operator of the equipment is competent to operate the equipment; and

(l) The court imposes reasonable guidelines upon the parties for conducting the filming to avoid trauma to the child witness or abuse of the procedure for tactical advantage.

The prosecutor, defense attorney, and a neutral and trained victim's advocate, if any, shall always be in the room where the child witness is testifying. The court in the court's discretion depending on the circumstances and whether the jury or defendant or both are excluded from the room where the child is testifying, may remain or may not remain in the room with the child.

(2) During the hearing conducted under subsection (1) of this section to determine whether the child witness may testify outside the presence of the defendant and/or the jury, the court may conduct the observation and examination of the child outside the presence of the defendant if:

(a) The prosecutor alleges and the court concurs that the child witness will be unable to testify in front of the defendant or will suffer severe emotional or mental distress if forced to testify in front of the defendant;

(b) The defendant can observe and hear the child witness by closed-circuit television;

(c) The defendant can communicate constantly with the defense attorney during the examination of the child witness by electronic transmission and be granted reasonable court recesses during the child's examination for person-to-person consultation with the defense attorney; and

(d) The court finds the closed-circuit television is capable of making an accurate reproduction and the operator of the equipment is competent to operate the equipment. Whenever possible, all the parties in the room with the child witness shall be on camera so that the viewers can see all the parties. If viewing all participants is not possible, then the court shall describe for the viewers the location of the prosecutor, defense attorney, and other participants in relation to the child.

(3) The court shall make particularized findings on the record articulating the factors upon which the court based its decision to allow the child witness to testify via closed-circuit television pursuant to this section. The factors the court may consider include, but are not limited to, a consideration of the child's age, physical health, emotional stability, expressions by the child of fear of testifying in open court or in front of the defendant, the relationship of the defendant to the child, and the court's observations of the child's inability to reasonably communicate in front of the defendant or in open court. The court's findings shall identify the impact the factors have

upon the child's ability to testify in front of the jury or the defendant or both and the specific nature of the emotional or mental trauma the child would suffer. The court shall determine whether the source of the trauma is the presence of the defendant, the jury, or both, and shall limit the use of the closed-circuit television accordingly.

(4) This section does not apply if the defendant is an attorney pro se unless the defendant has a court-appointed attorney assisting the defendant in the defense.

(5) This section may not preclude the presence of both the child witness and the defendant in the courtroom together for purposes of establishing or challenging the identification of the defendant when identification is a legitimate issue in the proceeding.

(6) The Washington supreme court may adopt rules of procedure regarding closed-circuit television procedures.

(7) All recorded tapes of testimony produced by closed-circuit television equipment shall be subject to any protective order of the court for the purpose of protecting the privacy of the child witness.

(8) Nothing in this section creates a right of the child witness to a closed-circuit television procedure in lieu of testifying in open court.

(9) The state shall bear the costs of the closed-circuit television procedure.

(10) A child witness may or may not be a victim in the proceeding.

(11) Nothing in this section precludes the court, under other circumstances arising under subsection (1)(a) of this section, from allowing a child to testify outside the presence of the defendant and the jury so long as the testimony is presented in accordance with the standards and procedures required in this section. [2013 c 302 § 9; 2005 c 455 § 1; 1990 c 150 § 2.]

Effective date—2013 c 302: See note following RCW 9.68A.090.

Additional notes found at www.leg.wa.gov

Chapter 9A.46 RCW HARASSMENT

Sections

9A.46.040	Court-ordered requirements upon person charged with crime—Violation.
9A.46.085	Stalking no-contact orders—Appearance before magistrate required.
9A.46.110	Stalking.

9A.46.040 Court-ordered requirements upon person charged with crime—Violation. (1) Because of the likelihood of repeated harassment directed at those who have been victims of harassment in the past, when any defendant charged with a crime involving harassment is released from custody before trial on bail or personal recognizance, the court authorizing the release may issue an order pursuant to this chapter and require that the defendant:

(a) Stay away from the home, school, business, or place of employment of the victim or victims of the alleged offense or other location, as shall be specifically named by the court in the order;

(b) Refrain from contacting, intimidating, threatening, or otherwise interfering with the victim or victims of the alleged offense and such other persons, including but not limited to

members of the family or household of the victim, as shall be specifically named by the court in the order.

(2) Willful violation of a court order issued under this section or an equivalent local ordinance is a gross misdemeanor. The written order releasing the defendant shall contain the court's directives and shall bear the legend: Violation of this order is a criminal offense under chapter 9A.46 RCW. A certified copy of the order shall be provided to the victim by the clerk of the court.

(3) If the defendant is charged with the crime of stalking or any other stalking-related offense under RCW 9A.46.060, and the court issues an order protecting the victim, the court shall issue a stalking no-contact order pursuant to chapter 7.92 RCW. [2013 c 84 § 27; 2012 c 223 § 1; 2011 c 307 § 4; 1985 c 288 § 4.]

9A.46.085 Stalking no-contact orders—Appearance before magistrate required. (1) A defendant arrested for stalking as defined by RCW 9A.46.110 shall be required to appear in person before a magistrate within one judicial day after the arrest.

(2) At the time of appearance provided in subsection (1) of this section the court shall determine the necessity of imposing a stalking no-contact order under chapter 7.92 RCW.

(3) Appearances required pursuant to this section are mandatory and cannot be waived.

(4) The stalking no-contact order shall be issued and entered with the appropriate law enforcement agency pursuant to the procedures outlined in chapter 7.92 RCW. [2013 c 84 § 28.]

9A.46.110 Stalking. (1) A person commits the crime of stalking if, without lawful authority and under circumstances not amounting to a felony attempt of another crime:

(a) He or she intentionally and repeatedly harasses or repeatedly follows another person; and

(b) The person being harassed or followed is placed in fear that the stalker intends to injure the person, another person, or property of the person or of another person. The feeling of fear must be one that a reasonable person in the same situation would experience under all the circumstances; and

(c) The stalker either:

(i) Intends to frighten, intimidate, or harass the person; or
(ii) Knows or reasonably should know that the person is afraid, intimidated, or harassed even if the stalker did not intend to place the person in fear or intimidate or harass the person.

(2)(a) It is not a defense to the crime of stalking under subsection (1)(c)(i) of this section that the stalker was not given actual notice that the person did not want the stalker to contact or follow the person; and

(b) It is not a defense to the crime of stalking under subsection (1)(c)(ii) of this section that the stalker did not intend to frighten, intimidate, or harass the person.

(3) It shall be a defense to the crime of stalking that the defendant is a licensed private investigator acting within the capacity of his or her license as provided by chapter 18.165 RCW.

(4) Attempts to contact or follow the person after being given actual notice that the person does not want to be con-

tacted or followed constitutes prima facie evidence that the stalker intends to intimidate or harass the person. "Contact" includes, in addition to any other form of contact or communication, the sending of an electronic communication to the person.

(5)(a) Except as provided in (b) of this subsection, a person who stalks another person is guilty of a gross misdemeanor.

(b) A person who stalks another is guilty of a class B felony if any of the following applies: (i) The stalker has previously been convicted in this state or any other state of any crime of harassment, as defined in RCW 9A.46.060, of the same victim or members of the victim's family or household or any person specifically named in a protective order; (ii) the stalking violates any protective order protecting the person being stalked; (iii) the stalker has previously been convicted of a gross misdemeanor or felony stalking offense under this section for stalking another person; (iv) the stalker was armed with a deadly weapon, as defined in RCW 9.94A.825, while stalking the person; (v)(A) the stalker's victim is or was a law enforcement officer; judge; juror; attorney; victim advocate; legislator; community corrections' officer; an employee, contract staff person, or volunteer of a correctional agency; court employee, court clerk, or courthouse facilitator; or an employee of the child protective, child welfare, or adult protective services division within the department of social and health services; and (B) the stalker stalked the victim to retaliate against the victim for an act the victim performed during the course of official duties or to influence the victim's performance of official duties; or (vi) the stalker's victim is a current, former, or prospective witness in an adjudicative proceeding, and the stalker stalked the victim to retaliate against the victim as a result of the victim's testimony or potential testimony.

(6) As used in this section:

(a) "Correctional agency" means a person working for the department of natural resources in a correctional setting or any state, county, or municipally operated agency with the authority to direct the release of a person serving a sentence or term of confinement and includes but is not limited to the department of corrections, the indeterminate sentence review board, and the department of social and health services.

(b) "Follows" means deliberately maintaining visual or physical proximity to a specific person over a period of time. A finding that the alleged stalker repeatedly and deliberately appears at the person's home, school, place of employment, business, or any other location to maintain visual or physical proximity to the person is sufficient to find that the alleged stalker follows the person. It is not necessary to establish that the alleged stalker follows the person while in transit from one location to another.

(c) "Harasses" means unlawful harassment as defined in RCW 10.14.020.

(d) "Protective order" means any temporary or permanent court order prohibiting or limiting violence against, harassment of, contact or communication with, or physical proximity to another person.

(e) "Repeatedly" means on two or more separate occasions. [2013 c 84 § 29; 2007 c 201 § 1; 2006 c 95 § 3; 2003 c 53 § 70. Prior: 1999 c 143 § 35; 1999 c 27 § 3; 1994 c 271 § 801; 1992 c 186 § 1.]

Findings—Intent—2006 c 95: See note following RCW 74.04.790.

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

Intent—1999 c 27: See note following RCW 9A.46.020.

Purpose—Severability—1994 c 271: See notes following RCW 9A.28.020.

Additional notes found at www.leg.wa.gov

Chapter 9A.48 RCW

ARSON, RECKLESS BURNING, AND MALICIOUS MISCHIEF

Sections

9A.48.100 Malicious mischief—"Physical damage" defined.

9A.48.100 Malicious mischief—"Physical damage" defined. For the purposes of RCW 9A.48.070 through 9A.48.090 inclusive:

(1) "Physical damage," in addition to its ordinary meaning, shall include the total or partial alteration, damage, obliteration, or erasure of records, information, data, computer programs, or their computer representations, which are recorded for use in computers or the impairment, interruption, or interference with the use of such records, information, data, or computer programs, or the impairment, interruption, or interference with the use of any computer or services provided by computers. "Physical damage" also includes any diminution in the value of any property as the consequence of an act and the cost to repair any physical damage;

(2) If more than one item of property is physically damaged as a result of a common scheme or plan by a person and the physical damage to the property would, when considered separately, constitute mischief in the third degree because of value, then the value of the damages may be aggregated in one count. If the sum of the value of all the physical damages exceeds two hundred fifty dollars, the defendant may be charged with and convicted of malicious mischief in the second degree. [2013 c 322 § 1; 1984 c 273 § 4; 1981 c 260 § 2. Prior: 1979 ex.s. c 244 § 11; 1979 c 145 § 3; 1977 ex.s. c 174 § 1; 1975 1st ex.s. c 260 § 9A.48.100.]

Action by owner of stolen livestock: RCW 4.24.320.

Computer trespass: RCW 9A.52.110 through 9A.52.130.

Additional notes found at www.leg.wa.gov

Chapter 9A.52 RCW

BURGLARY AND TRESPASS

Sections

9A.52.100 Vehicle prowling in the second degree.

9A.52.100 Vehicle prowling in the second degree. (1) A person is guilty of vehicle prowling in the second degree if, with intent to commit a crime against a person or property therein, he or she enters or remains unlawfully in a vehicle other than a motor home, as defined in RCW 46.04.305, or a vessel equipped for propulsion by mechanical means or by sail which has a cabin equipped with permanently installed sleeping quarters or cooking facilities.

(2) Except as provided in subsection (3) of this section, vehicle prowling in the second degree is a gross misdemeanor.

(3) Vehicle prowling in the second degree is a class C felony upon a third or subsequent conviction of vehicle prowling in the second degree. A third or subsequent conviction means that a person has been previously convicted at least two separate occasions of the crime of vehicle prowling in the second degree.

(4) Multiple counts of vehicle prowling (a) charged in the same charging document do not count as separate offenses for the purposes of charging as a felony based on previous convictions for vehicle prowling in the second degree and (b) based on the same date of occurrence do not count as separate offenses for the purposes of charging as a felony based on previous convictions for vehicle prowling in the second degree. [2013 c 267 § 1; 2011 c 336 § 376; 1982 1st ex.s. c 47 § 14; 1975 1st ex.s. c 260 § 9A.52.100.]

Additional notes found at www.leg.wa.gov

Chapter 9A.56 RCW THEFT AND ROBBERY

Sections

9A.56.030	Theft in the first degree.
9A.56.040	Theft in the second degree.
9A.56.360	Retail theft with special circumstances. (<i>Effective January 1, 2014.</i>)

9A.56.030 Theft in the first degree. (1) A person is guilty of theft in the first degree if he or she commits theft of:

(a) Property or services which exceed(s) five thousand dollars in value other than a firearm as defined in RCW 9.41.010;

(b) Property of any value, other than a firearm as defined in RCW 9.41.010 or a motor vehicle, taken from the person of another;

(c) A search and rescue dog, as defined in RCW 9.91.175, while the search and rescue dog is on duty; or

(d) Commercial metal property, nonferrous metal property, or private metal property, as those terms are defined in RCW 19.290.010, and the costs of the damage to the owner's property exceed five thousand dollars in value.

(2) Theft in the first degree is a class B felony. [2013 c 322 § 2; 2012 c 233 § 2; 2009 c 431 § 7; 2007 c 199 § 3; 2005 c 212 § 2; 1995 c 129 § 11 (Initiative Measure No. 159); 1975 1st ex.s. c 260 § 9A.56.030.]

Applicability—2009 c 431: See note following RCW 4.24.230.

Findings—Intent—Short title—2007 c 199: See notes following RCW 9A.56.065.

Findings and intent—Short title—Severability—Captions not law—1995 c 129: See notes following RCW 9.94A.510.

Civil action for shoplifting by adults, minors: RCW 4.24.230.

Property crime database, liability: RCW 4.24.340.

9A.56.040 Theft in the second degree. (1) A person is guilty of theft in the second degree if he or she commits theft of:

(a) Property or services which exceed(s) seven hundred fifty dollars in value but does not exceed five thousand dol-

lars in value, other than a firearm as defined in RCW 9.41.010 or a motor vehicle;

(b) A public record, writing, or instrument kept, filed, or deposited according to law with or in the keeping of any public office or public servant;

(c) Commercial metal property, nonferrous metal property, or private metal property, as those terms are defined in RCW 19.290.010, and the costs of the damage to the owner's property exceed seven hundred fifty dollars but does not exceed five thousand dollars in value; or

(d) An access device.

(2) Theft in the second degree is a class C felony. [2013 c 322 § 3; 2012 c 233 § 3; 2009 c 431 § 8; 2007 c 199 § 4; 1995 c 129 § 12 (Initiative Measure No. 159); 1994 sp.s. c 7 § 433; 1987 c 140 § 2; 1982 1st ex.s. c 47 § 15; 1975 1st ex.s. c 260 § 9A.56.040.]

Applicability—2009 c 431: See note following RCW 4.24.230.

Findings—Intent—Short title—2007 c 199: See notes following RCW 9A.56.065.

Findings and intent—Short title—Severability—Captions not law—1995 c 129: See notes following RCW 9.94A.510.

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

Civil action for shoplifting by adults, minors: RCW 4.24.230.

Property crime database, liability: RCW 4.24.340.

Additional notes found at www.leg.wa.gov

9A.56.360 Retail theft with special circumstances. (*Effective January 1, 2014.*) (1) A person commits retail theft with special circumstances if he or she commits theft of property from a mercantile establishment with one of the following special circumstances:

(a) To facilitate the theft, the person leaves the mercantile establishment through a designated emergency exit;

(b) The person was, at the time of the theft, in possession of an item, article, implement, or device designed to overcome security systems including, but not limited to, lined bags or tag removers; or

(c) The person committed theft at three or more separate and distinct mercantile establishments within a one hundred eighty-day period.

(2) A person is guilty of retail theft with special circumstances in the first degree if the theft involved constitutes theft in the first degree. Retail theft with special circumstances in the first degree is a class B felony.

(3) A person is guilty of retail theft with special circumstances in the second degree if the theft involved constitutes theft in the second degree. Retail theft with special circumstances in the second degree is a class C felony.

(4) A person is guilty of retail theft with special circumstances in the third degree if the theft involved constitutes theft in the third degree. Retail theft with special circumstances in the third degree is a class C felony.

(5) For the purposes of this section, "special circumstances" means the particular aggravating circumstances described in subsection (1)(a) through (c) of this section. [2013 c 153 § 1; 2006 c 277 § 3.]

Effective date—2013 c 153: "This act takes effect January 1, 2014." [2013 c 153 § 3.]

Chapter 9A.76 RCW

OBSTRUCTING GOVERNMENTAL OPERATION

Sections

- 9A.76.010 Definitions.
 9A.76.140 Introducing contraband in the first degree.
 9A.76.150 Introducing contraband in the second degree.
 9A.76.160 Introducing contraband in the third degree.

9A.76.010 Definitions. The following definitions are applicable in this chapter unless the context otherwise requires:

(1) "Contraband" means any article or thing which a person confined in a detention facility or a secure facility under chapter 71.09 RCW is prohibited from obtaining or possessing by statute, rule, regulation, or order of a court;

(2) "Custody" means restraint pursuant to a lawful arrest or an order of a court, or any period of service on a work crew: PROVIDED, That custody pursuant to chapter 13.34 RCW and RCW *74.13.020 and 74.13.031 and chapter 13.32A RCW shall not be deemed custody for purposes of this chapter;

(3) "Detention facility" means any place used for the confinement of a person (a) arrested for, charged with or convicted of an offense, or (b) charged with being or adjudicated to be a juvenile offender as defined in RCW 13.40.020 as now existing or hereafter amended, or (c) held for extradition or as a material witness, or (d) otherwise confined pursuant to an order of a court, except an order under chapter 13.34 RCW or chapter 13.32A RCW, or (e) in any work release, furlough, or other such facility or program;

(4) "Uncontrollable circumstances" means an act of nature such as a flood, earthquake, or fire, or a medical condition that requires immediate hospitalization or treatment, or an act of a human being such as an automobile accident or threats of death, forcible sexual attack, or substantial bodily injury in the immediate future for which there is no time for a complaint to the authorities and no time or opportunity to resort to the courts. [2013 c 43 § 1. Prior: 2009 c 549 § 1003; 2001 c 264 § 4; 1991 c 181 § 6; 1979 c 155 § 35; 1977 ex.s. c 291 § 53; 1975 1st ex.s. c 260 § 9A.76.010.]

*Reviser's note: RCW 74.13.020 no longer refers to "custody."

Additional notes found at www.leg.wa.gov

9A.76.140 Introducing contraband in the first degree. (1) A person is guilty of introducing contraband in the first degree if he or she knowingly provides any deadly weapon to any person confined in a detention facility or secure facility under chapter 71.09 RCW.

(2) Introducing contraband in the first degree is a class B felony. [2013 c 43 § 3; 2011 c 336 § 404; 1975 1st ex.s. c 260 § 9A.76.140.]

9A.76.150 Introducing contraband in the second degree. (1) A person is guilty of introducing contraband in the second degree if he or she knowingly and unlawfully provides contraband to any person confined in a detention facility or secure facility under chapter 71.09 RCW with the intent that such contraband be of assistance in an escape or in the commission of a crime.

(2) Introducing contraband in the second degree is a class C felony. [2013 c 43 § 4; 2011 c 336 § 405; 1975 1st ex.s. c 260 § 9A.76.150.]

9A.76.160 Introducing contraband in the third degree. (1) A person is guilty of introducing contraband in the third degree if he or she knowingly and unlawfully provides contraband to any person confined in a detention facility or secure facility under chapter 71.09 RCW.

(2)(a) This section does not apply to an attorney representing a client confined in a secure facility under chapter 71.09 RCW for the purposes of bringing discovery or other legal materials to assist the client in the civil commitment process under chapter 71.09 RCW; PROVIDED, That:

(i) The attorney must be present when the materials are being reviewed or handled by the client; and

(ii) The attorney must take the materials and any and all copies of the materials when leaving the secure facility.

(3) Introducing contraband in the third degree is a misdemeanor. [2013 c 43 § 5; 2011 c 336 § 406; 1975 1st ex.s. c 260 § 9A.76.160.]

Chapter 9A.82 RCW

CRIMINAL PROFITEERING ACT

(Formerly: Racketeering)

Sections

- 9A.82.010 Definitions.

9A.82.010 Definitions. Unless the context requires the contrary, the definitions in this section apply throughout this chapter.

(1)(a) "Beneficial interest" means:

(i) The interest of a person as a beneficiary under a trust established under Title 11 RCW in which the trustee for the trust holds legal or record title to real property;

(ii) The interest of a person as a beneficiary under any other trust arrangement under which a trustee holds legal or record title to real property for the benefit of the beneficiary; or

(iii) The interest of a person under any other form of express fiduciary arrangement under which one person holds legal or record title to real property for the benefit of the other person.

(b) "Beneficial interest" does not include the interest of a stockholder in a corporation or the interest of a partner in a general partnership or limited partnership.

(c) A beneficial interest is considered to be located where the real property owned by the trustee is located.

(2) "Control" means the possession of a sufficient interest to permit substantial direction over the affairs of an enterprise.

(3) "Creditor" means a person making an extension of credit or a person claiming by, under, or through a person making an extension of credit.

(4) "Criminal profiteering" means any act, including any anticipatory or completed offense, committed for financial gain, that is chargeable or indictable under the laws of the state in which the act occurred and, if the act occurred in a state other than this state, would be chargeable or indictable under the laws of this state had the act occurred in this state

and punishable as a felony and by imprisonment for more than one year, regardless of whether the act is charged or indicted, as any of the following:

(a) Murder, as defined in RCW 9A.32.030 and 9A.32.050;

(b) Robbery, as defined in RCW 9A.56.200 and 9A.56.210;

(c) Kidnapping, as defined in RCW 9A.40.020 and 9A.40.030;

(d) Forgery, as defined in RCW 9A.60.020 and 9A.60.030;

(e) Theft, as defined in RCW 9A.56.030, 9A.56.040, 9A.56.060, 9A.56.080, and 9A.56.083;

(f) Unlawful sale of subscription television services, as defined in RCW 9A.56.230;

(g) Theft of telecommunication services or unlawful manufacture of a telecommunication device, as defined in RCW 9A.56.262 and 9A.56.264;

(h) Child selling or child buying, as defined in RCW 9A.64.030;

(i) Bribery, as defined in RCW 9A.68.010, 9A.68.020, 9A.68.040, and 9A.68.050;

(j) Gambling, as defined in RCW 9.46.220 and 9.46.215 and 9.46.217;

(k) Extortion, as defined in RCW 9A.56.120 and 9A.56.130;

(l) Unlawful production of payment instruments, unlawful possession of payment instruments, unlawful possession of a personal identification device, unlawful possession of fictitious identification, or unlawful possession of instruments of financial fraud, as defined in RCW 9A.56.320;

(m) Extortionate extension of credit, as defined in RCW 9A.82.020;

(n) Advancing money for use in an extortionate extension of credit, as defined in RCW 9A.82.030;

(o) Collection of an extortionate extension of credit, as defined in RCW 9A.82.040;

(p) Collection of an unlawful debt, as defined in RCW 9A.82.045;

(q) Delivery or manufacture of controlled substances or possession with intent to deliver or manufacture controlled substances under chapter 69.50 RCW;

(r) Trafficking in stolen property, as defined in RCW 9A.82.050;

(s) Leading organized crime, as defined in RCW 9A.82.060;

(t) Money laundering, as defined in RCW 9A.83.020;

(u) Obstructing criminal investigations or prosecutions in violation of RCW 9A.72.090, 9A.72.100, 9A.72.110, 9A.72.120, 9A.72.130, 9A.76.070, or 9A.76.180;

(v) Fraud in the purchase or sale of securities, as defined in RCW 21.20.010;

(w) Promoting pornography, as defined in RCW 9.68.140;

(x) Sexual exploitation of children, as defined in RCW 9.68A.040, 9.68A.050, and 9.68A.060;

(y) Promoting prostitution, as defined in RCW 9A.88.070 and 9A.88.080;

(z) Arson, as defined in RCW 9A.48.020 and 9A.48.030;

(aa) Assault, as defined in RCW 9A.36.011 and 9A.36.021;

(bb) Assault of a child, as defined in RCW 9A.36.120 and 9A.36.130;

(cc) A pattern of equity skimming, as defined in RCW 61.34.020;

(dd) Commercial telephone solicitation in violation of RCW 19.158.040(1);

(ee) Trafficking in insurance claims, as defined in RCW 48.30A.015;

(ff) Unlawful practice of law, as defined in RCW 2.48.180;

(gg) Commercial bribery, as defined in RCW 9A.68.060;

(hh) Health care false claims, as defined in RCW 48.80.030;

(ii) Unlicensed practice of a profession or business, as defined in RCW 18.130.190(7);

(jj) Improperly obtaining financial information, as defined in RCW 9.35.010;

(kk) Identity theft, as defined in RCW 9.35.020;

(ll) Unlawful shipment of cigarettes in violation of *RCW 70.155.105(6) (a) or (b);

(mm) Unlawful shipment of cigarettes in violation of RCW 82.24.110(2);

(nn) Unauthorized sale or procurement of telephone records in violation of RCW 9.26A.140;

(oo) Theft with the intent to resell, as defined in RCW 9A.56.340;

(pp) Organized retail theft, as defined in RCW 9A.56.350;

(qq) Mortgage fraud, as defined in RCW 19.144.080;

(rr) Commercial sexual abuse of a minor, as defined in RCW 9.68A.100;

(ss) Promoting commercial sexual abuse of a minor, as defined in RCW 9.68A.101; or

(tt) Trafficking, as defined in RCW 9A.40.100, promoting travel for commercial sexual abuse of a minor, as defined in RCW 9.68A.102, and permitting commercial sexual abuse of a minor, as defined in RCW 9.68A.103.

(5) "Dealer in property" means a person who buys and sells property as a business.

(6) "Debtor" means a person to whom an extension of credit is made or a person who guarantees the repayment of an extension of credit or in any manner undertakes to indemnify the creditor against loss resulting from the failure of a person to whom an extension is made to repay the same.

(7) "Documentary material" means any book, paper, document, writing, drawing, graph, chart, photograph, phonograph record, magnetic tape, computer printout, other data compilation from which information can be obtained or from which information can be translated into usable form, or other tangible item.

(8) "Enterprise" includes any individual, sole proprietorship, partnership, corporation, business trust, or other profit or nonprofit legal entity, and includes any union, association, or group of individuals associated in fact although not a legal entity, and both illicit and licit enterprises and governmental and nongovernmental entities.

(9) "Extortionate extension of credit" means an extension of credit with respect to which it is the understanding of the creditor and the debtor at the time the extension is made that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to

cause harm to the person, reputation, or property of any person.

(10) "Extortionate means" means the use, or an express or implicit threat of use, of violence or other criminal means to cause harm to the person, reputation, or property of any person.

(11) "Financial institution" means any bank, trust company, savings and loan association, savings bank, mutual savings bank, credit union, or loan company under the jurisdiction of the state or an agency of the United States.

(12) "Pattern of criminal profiteering activity" means engaging in at least three acts of criminal profiteering, one of which occurred after July 1, 1985, and the last of which occurred within five years, excluding any period of imprisonment, after the commission of the earliest act of criminal profiteering. In order to constitute a pattern, the three acts must have the same or similar intent, results, accomplices, principals, victims, or methods of commission, or be otherwise interrelated by distinguishing characteristics including a nexus to the same enterprise, and must not be isolated events. However, in any civil proceedings brought pursuant to RCW 9A.82.100 by any person other than the attorney general or county prosecuting attorney in which one or more acts of fraud in the purchase or sale of securities are asserted as acts of criminal profiteering activity, it is a condition to civil liability under RCW 9A.82.100 that the defendant has been convicted in a criminal proceeding of fraud in the purchase or sale of securities under RCW 21.20.400 or under the laws of another state or of the United States requiring the same elements of proof, but such conviction need not relate to any act or acts asserted as acts of criminal profiteering activity in such civil action under RCW 9A.82.100.

(13) "Real property" means any real property or interest in real property, including but not limited to a land sale contract, lease, or mortgage of real property.

(14) "Records" means any book, paper, writing, record, computer program, or other material.

(15) "Repayment of an extension of credit" means the repayment, satisfaction, or discharge in whole or in part of a debt or claim, acknowledged or disputed, valid or invalid, resulting from or in connection with that extension of credit.

(16) "Stolen property" means property that has been obtained by theft, robbery, or extortion.

(17) "To collect an extension of credit" means to induce in any way a person to make repayment thereof.

(18) "To extend credit" means to make or renew a loan or to enter into an agreement, tacit or express, whereby the repayment or satisfaction of a debt or claim, whether acknowledged or disputed, valid or invalid, and however arising, may or shall be deferred.

(19) "Traffic" means to sell, transfer, distribute, dispense, or otherwise dispose of stolen property to another person, or to buy, receive, possess, or obtain control of stolen property, with intent to sell, transfer, distribute, dispense, or otherwise dispose of the property to another person.

(20)(a) "Trustee" means:

(i) A person acting as a trustee under a trust established under Title 11 RCW in which the trustee holds legal or record title to real property;

(ii) A person who holds legal or record title to real property in which another person has a beneficial interest; or

(iii) A successor trustee to a person who is a trustee under (a)(i) or (ii) of this subsection.

(b) "Trustee" does not mean a person appointed or acting as:

(i) A personal representative under Title 11 RCW;

(ii) A trustee of any testamentary trust;

(iii) A trustee of any indenture of trust under which a bond is issued; or

(iv) A trustee under a deed of trust.

(21) "Unlawful debt" means any money or other thing of value constituting principal or interest of a debt that is legally unenforceable in the state in full or in part because the debt was incurred or contracted:

(a) In violation of any one of the following:

(i) Chapter 67.16 RCW relating to horse racing;

(ii) Chapter 9.46 RCW relating to gambling;

(b) In a gambling activity in violation of federal law; or

(c) In connection with the business of lending money or a thing of value at a rate that is at least twice the permitted rate under the applicable state or federal law relating to usury. [2013 c 302 § 10; 2012 c 139 § 1; 2008 c 108 § 24. Prior: 2006 c 277 § 5; 2006 c 193 § 2; prior: 2003 c 119 § 6; 2003 c 113 § 3; 2003 c 53 § 85; prior: 2001 c 222 § 3; 2001 c 217 § 11; prior: 1999 c 143 § 40; prior: 1995 c 285 § 34; 1995 c 92 § 5; 1994 c 218 § 17; prior: 1992 c 210 § 6; 1992 c 145 § 13; 1989 c 20 § 17; 1988 c 33 § 5; 1986 c 78 § 1; 1985 c 455 § 2; 1984 c 270 § 1.]

*Reviser's note: RCW 70.155.105 was repealed by 2009 c 278 § 3.

Effective date—2013 c 302: See note following RCW 9.68A.090.

Findings—2008 c 108: See RCW 19.144.005.

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

Purpose—Effective date—2001 c 222: See notes following RCW 9A.82.001.

Additional notes found at www.leg.wa.gov

Chapter 9A.84 RCW PUBLIC DISTURBANCE

Sections

9A.84.010 Criminal mischief. (*Effective January 1, 2014.*)

9A.84.010 Criminal mischief. (*Effective January 1, 2014.*) (1) A person is guilty of the crime of criminal mischief if, acting with three or more other persons, he or she knowingly and unlawfully uses or threatens to use force, or in any way participates in the use of such force, against any other person or against property.

(2)(a) Except as provided in (b) of this subsection, the crime of criminal mischief is a gross misdemeanor.

(b) The crime of criminal mischief is a class C felony if the actor is armed with a deadly weapon. [2013 c 20 § 1; 2003 c 53 § 91; 1975 1st ex.s. c 260 § 9A.84.010.]

Effective date—2013 c 20: "This act takes effect January 1, 2014." [2013 c 20 § 3.]

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

Chapter 9A.88 RCW

INDECENT EXPOSURE—PROSTITUTION

(Formerly: Public indecency—Prostitution)

Sections

9A.88.120 Additional fee assessments.

9A.88.140 Vehicle impoundment—Fees—Fines.

9A.88.120 Additional fee assessments. (1)(a) In addition to penalties set forth in RCW 9A.88.010 and 9A.88.030, a person who is either convicted or given a deferred sentence or a deferred prosecution or who has entered into a statutory or nonstatutory diversion agreement as a result of an arrest for violating RCW 9A.88.010, 9A.88.030, or comparable county or municipal ordinances shall be assessed a fifty dollar fee.

(b) In addition to penalties set forth in RCW 9A.88.090, a person who is either convicted or given a deferred sentence or a deferred prosecution or who has entered into a statutory or nonstatutory diversion agreement as a result of an arrest for violating RCW 9A.88.090 or comparable county or municipal ordinances shall be assessed a fee in the amount of:

(i) One thousand five hundred dollars if the defendant has no prior convictions, deferred sentences, deferred prosecutions, or statutory or nonstatutory diversion agreements for this offense;

(ii) Two thousand five hundred dollars if the defendant has one prior conviction, deferred sentence, deferred prosecution, or statutory or nonstatutory diversion agreement for this offense; and

(iii) Five thousand dollars if the defendant has two or more prior convictions, deferred sentences, deferred prosecutions, or statutory or nonstatutory diversion agreements for this offense.

(c) In addition to penalties set forth in RCW 9A.88.110, a person who is either convicted or given a deferred sentence or a deferred prosecution or who has entered into a statutory or nonstatutory diversion agreement as a result of an arrest for violating RCW 9A.88.110 or a comparable county or municipal ordinance shall be assessed a fee in the amount of:

(i) One thousand five hundred dollars if the defendant has no prior convictions, deferred sentences, deferred prosecutions, or statutory or nonstatutory diversion agreements for this offense;

(ii) Two thousand five hundred dollars if the defendant has one prior conviction, deferred sentence, deferred prosecution, or statutory or nonstatutory diversion agreement for this offense; and

(iii) Five thousand dollars if the defendant has two or more prior convictions, deferred sentences, deferred prosecutions, or statutory or nonstatutory diversion agreements for this offense.

(d) In addition to penalties set forth in RCW 9A.88.070 and 9A.88.080, a person who is either convicted or given a deferred sentence or a deferred prosecution or who has entered into a statutory or nonstatutory diversion agreement as a result of an arrest for violating RCW 9A.88.070, 9A.88.080, or comparable county or municipal ordinances shall be assessed a fee in the amount of:

(i) Three thousand dollars if the defendant has no prior convictions, deferred sentences, deferred prosecutions, or

statutory or nonstatutory diversion agreements for this offense;

(ii) Six thousand dollars if the defendant has one prior conviction, deferred sentence, deferred prosecution, or statutory or nonstatutory diversion agreement for this offense; and

(iii) Ten thousand dollars if the defendant has two or more prior convictions, deferred sentences, deferred prosecutions, or statutory or nonstatutory diversion agreements for this offense.

(2) When a minor has been adjudicated a juvenile offender or has entered into a statutory or nonstatutory diversion agreement for an offense which, if committed by an adult, would constitute a violation under this chapter or comparable county or municipal ordinances, the court shall assess the fee as specified under subsection (1) of this section.

(3) The court shall not reduce, waive, or suspend payment of all or part of the assessed fee in this section unless it finds, on the record, that the offender does not have the ability to pay the fee in which case it may reduce the fee by an amount up to two-thirds of the maximum allowable fee.

(a) A superior court may, as described in RCW 9.94A.760, set a sum that the offender is required to pay on a monthly basis towards satisfying the fee imposed in this section.

(b) A district or municipal court may enter into a payment plan with the defendant, in which the fee assessed in this section is paid through scheduled periodic payments. The court may assess the defendant a reasonable fee for administrative services related to the operation of the payment plan.

(4) Fees assessed under this section shall be collected by the clerk of the court and remitted to the treasurer of the county where the offense occurred for deposit in the county general fund, except in cases in which the offense occurred in a city or town that provides for its own law enforcement, in which case these amounts shall be remitted to the treasurer of the city or town for deposit in the general fund of the city or town. Revenue from the fees must be used for local efforts to reduce the commercial sale of sex including, but not limited to, increasing enforcement of commercial sex laws.

(a) At least fifty percent of the revenue from fees imposed under this section must be spent on prevention, including education programs for offenders, such as john school, and rehabilitative services for victims, such as mental health and substance abuse counseling, parenting skills, training, housing relief, education, vocational training, drop-in centers, and employment counseling.

(b) Two percent of the revenue from fees imposed under this section shall be remitted quarterly to the department of commerce, together with a report detailing the fees assessed, the revenue received, and how that revenue was spent.

(c) Revenues from these fees are not subject to the distribution requirements under RCW 3.50.100, 3.62.020, 3.62.040, 10.82.070, or 35.20.220.

(5) For the purposes of this section:

(a) "Statutory or nonstatutory diversion agreement" means an agreement under RCW 13.40.080 or any written agreement between a person accused of an offense listed in subsection (1) of this section and a court, county, or city prosecutor, or designee thereof, whereby the person agrees to fulfill certain conditions in lieu of prosecution.

(b) "Deferred sentence" means a sentence that will not be carried out if the defendant meets certain requirements, such as complying with the conditions of probation. [2013 c 121 § 5; 2012 c 134 § 3; 2007 c 368 § 12; 1995 c 353 § 13.]

Intent—Finding—2013 c 121: See note following RCW 43.280.091.

9A.88.140 Vehicle impoundment—Fees—Fines.

(1)(a) Upon an arrest for a suspected violation of patronizing a prostitute, promoting prostitution in the first degree, promoting prostitution in the second degree, promoting travel for prostitution, the arresting law enforcement officer may impound the person's vehicle if (i) the motor vehicle was used in the commission of the crime; (ii) the person arrested is the owner of the vehicle or the vehicle is a rental car as defined in RCW 46.04.465; and (iii) either (A) the person arrested has previously been convicted of one of the offenses listed in this subsection or (B) the offense was committed within an area designated under (b) of this subsection.

(b) A local governing authority may designate areas within which vehicles are subject to impoundment under this section regardless of whether the person arrested has previously been convicted of any of the offenses listed in (a) of this subsection.

(i) The designation must be based on evidence indicating that the area has a disproportionately higher number of arrests for the offenses listed in (a) of this subsection as compared to other areas within the same jurisdiction.

(ii) The local governing authority shall post signs at the boundaries of the designated area to indicate that the area has been designated under this subsection.

(2) Upon an arrest for a suspected violation of commercial sexual abuse of a minor, promoting commercial sexual abuse of a minor, or promoting travel for commercial sexual abuse of a minor, the arresting law enforcement officer shall impound the person's vehicle if (a) the motor vehicle was used in the commission of the crime; and (b) the person arrested is the owner of the vehicle or the vehicle is a rental car as defined in RCW 46.04.465.

(3) Impoundments performed under this section shall be in accordance with chapter 46.55 RCW and the impoundment order must clearly state "prostitution hold."

(4)(a) Prior to redeeming the impounded vehicle, and in addition to all applicable impoundment, towing, and storage fees paid to the towing company under chapter 46.55 RCW, the owner of the impounded vehicle must pay a fine to the impounding agency. The fine shall be five hundred dollars for the offenses specified in subsection (1) of this section, or two thousand five hundred dollars for the offenses specified in subsection (2) of this section.

(b) Upon receipt of the fine paid under (a) of this subsection, the impounding agency shall issue a written receipt to the owner of the impounded vehicle.

(c) Fines assessed under this section shall be collected by the clerk of the court and remitted to the treasurer of the county where the offense occurred for deposit in the county general fund, except in cases in which the offense occurred in a city or town that provides for its own law enforcement, in which case these amounts shall be remitted to the treasurer of the city or town for deposit in the general fund of the city or town. Revenue from the fines must be used for local efforts

to reduce the commercial sale of sex including, but not limited to, increasing enforcement of commercial sex laws.

(i) At least fifty percent of the revenue from fines imposed under this section must be spent on prevention, including education programs for offenders, such as john school, and rehabilitative services for victims, such as mental health and substance abuse counseling, parenting skills, training, housing relief, education, vocational training, drop-in centers, and employment counseling.

(ii) Two percent of the revenue from fines imposed under this section shall be remitted quarterly to the department of commerce, together with a report detailing the fees assessed, the revenue received, and how that revenue was spent.

(iii) Revenues from these fees are not subject to the distribution requirements under RCW 3.50.100, 3.62.020, 3.62.040, 10.82.070, or 35.20.220.

(5)(a) In order to redeem a vehicle impounded under this section, the owner must provide the towing company with the written receipt issued under subsection (4)(b) of this section.

(b) The written receipt issued under subsection (4)(b) of this section authorizes the towing company to release the impounded vehicle upon payment of all impoundment, towing, and storage fees.

(c) A towing company that relies on a forged receipt to release a vehicle impounded under this section is not liable to the impounding authority for any unpaid fine under subsection (4)(a) of this section.

(6)(a) In any proceeding under chapter 46.55 RCW to contest the validity of an impoundment under this section where the claimant substantially prevails, the claimant is entitled to a full refund of the impoundment, towing, and storage fees paid under chapter 46.55 RCW and the five hundred dollar fine paid under subsection (4) of this section.

(b) If the person is found not guilty at trial for a crime listed under subsection (1) of this section, the person is entitled to a full refund of the impoundment, towing, and storage fees paid under chapter 46.55 RCW and the fine paid under subsection (4) of this section.

(c) All refunds made under this section shall be paid by the impounding agency.

(d) Prior to receiving any refund under this section, the claimant must provide proof of payment. [2013 c 121 § 6; 2010 c 289 § 12; 2009 c 387 § 1; 2007 c 368 § 8; 1999 c 327 § 3.]

Intent—Finding—2013 c 121: See note following RCW 43.280.091.

Findings—Intent—1999 c 327: See note following RCW 9A.88.130.

Title 10

CRIMINAL PROCEDURE

Chapters

10.05 Deferred prosecution—Courts of limited jurisdiction.

10.14 Harassment.

10.21 Bail determinations under Article I, section 20—Conditions of release.

10.31 Warrants and arrests.

10.77 Criminally insane—Procedures.

10.98 Criminal justice information act.

Chapter 10.05 RCW
DEFERRED PROSECUTION—
COURTS OF LIMITED JURISDICTION

Sections

10.05.140 Conditions of granting.

10.05.140 Conditions of granting. As a condition of granting a deferred prosecution petition, the court shall order that the petitioner shall not operate a motor vehicle upon the public highways without a valid operator's license and proof of liability insurance. The amount of liability insurance shall be established by the court at not less than that established by RCW 46.29.490. As a condition of granting a deferred prosecution petition on any alcohol-dependency based case, the court shall also order the installation of an ignition interlock under RCW 46.20.720. The required periods of use of the interlock shall be not less than the periods provided for in RCW 46.20.720(3). As a condition of granting a deferred prosecution petition, the court may order the petitioner to make restitution and to pay costs as defined in RCW 10.01.160. To help ensure continued sobriety and reduce the likelihood of reoffense, the court may order reasonable conditions during the period of the deferred prosecution including, but not limited to, attendance at self-help recovery support groups for alcoholism or drugs, complete abstinence from alcohol and all nonprescribed mind-altering drugs, periodic urinalysis or breath analysis, and maintaining law-abiding behavior. The court may terminate the deferred prosecution program upon violation of the deferred prosecution order. [2013 2nd sp.s. c 35 § 21; 2011 c 293 § 8; 2004 c 95 § 1; 2003 c 220 § 2; 1999 c 331 § 4; 1997 c 229 § 2; 1991 c 247 § 1; 1985 c 352 § 16.]

Effective date—2011 c 293 §§ 1-9: See note following RCW 46.20.385.

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

Additional notes found at www.leg.wa.gov

Chapter 10.14 RCW
HARASSMENT

Sections

10.14.045 Protection order commissioners—Appointment authorized.
10.14.070 Hearing—Service.
10.14.800 Master petition pattern form to be developed—Recommendations to legislature.

10.14.045 Protection order commissioners—Appointment authorized. In each county, the superior court may appoint one or more attorneys to act as protection order commissioners pursuant to this chapter to exercise all powers and perform all duties of a court commissioner appointed pursuant to RCW 2.24.010 provided that such positions may not be created without prior consent of the county legislative authority. A person appointed as a protection order commissioner under this chapter may also be appointed to any other commissioner position authorized by law. [2013 c 84 § 20.]

10.14.070 Hearing—Service. Upon receipt of the petition alleging a prima facie case of harassment, other than a petition alleging a sex offense as defined in chapter 9A.44

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RCW or a petition for a stalking protection order under chapter 7.92 RCW, the court shall order a hearing which shall be held not later than fourteen days from the date of the order. If the petition alleges a sex offense as defined in chapter 9A.44 RCW, the court shall order a hearing which shall be held not later than fourteen days from the date of the order. Except as provided in RCW 10.14.085, personal service shall be made upon the respondent not less than five court days before the hearing. If timely personal service cannot be made, the court shall set a new hearing date and shall either require additional attempts at obtaining personal service or permit service by publication as provided by RCW 10.14.085. If the court permits service by publication, the court shall set the hearing date not later than twenty-four days from the date of the order. The court may issue an ex parte order for protection pending the hearing as provided in RCW 10.14.080 and 10.14.085. [2013 c 84 § 30; 2005 c 144 § 1; 1992 c 143 § 10; 1987 c 280 § 7.]

10.14.800 Master petition pattern form to be developed—Recommendations to legislature. The legislature respectfully requests that:

(1) By January 1, 2014, the administrative office of the courts shall develop a single master petition pattern form for all antiharassment and stalking protection orders issued under chapter 7.92 RCW and this chapter. The master petition must prompt petitioners to disclose on the form whether the petitioner who is seeking an ex parte order has experienced stalking conduct as defined in RCW 7.92.020. An antiharassment order and stalking protection order issued under chapter 7.92 RCW and this chapter must substantially comply with the pattern form developed by the administrative office of the courts.

(2) The Washington state supreme court gender and justice commission, to the extent it is able, in consultation with Washington coalition of sexual assault programs, Washington state coalition against domestic violence, Washington association of prosecuting attorneys, Washington association of criminal defense lawyers, and Washington association of sheriffs and police chiefs, consider other potential solutions to reduce confusion about which type of protection order a petitioner should seek and to provide any recommendations to the legislature by January 1, 2014. [2013 c 84 § 21.]

Chapter 10.21 RCW

**BAIL DETERMINATIONS UNDER ARTICLE I,
SECTION 20—CONDITIONS OF RELEASE**

Sections

10.21.055 Conditions of release—Requirements—Ignition interlock device—24/7 sobriety program monitoring.

10.21.055 Conditions of release—Requirements—Ignition interlock device—24/7 sobriety program monitoring. (1) When any person charged with or arrested for a violation of RCW 46.61.502, 46.61.504, 46.61.520, or 46.61.522, in which the person has a prior offense as defined in RCW 46.61.5055 and the current offense involves alcohol, is released from custody before arraignment or trial on bail or personal recognizance, the court authorizing the release shall require, as a condition of release, that person to (a) have a

functioning ignition interlock device installed on all motor vehicles operated by the person, with proof of installation filed with the court by the person or the certified interlock provider within five business days of the date of release from custody or as soon thereafter as determined by the court based on availability within the jurisdiction; or (b) comply with 24/7 sobriety program monitoring, as defined in RCW 36.28A.330; or both.

(2) Upon acquittal or dismissal of all pending or current charges relating to a violation of RCW 46.61.502, 46.61.504, 46.61.520, or 46.61.522, or equivalent local ordinance, the court shall authorize removal of the ignition interlock device and lift any requirement to comply with electronic alcohol/drug monitoring imposed under subsection (1) of this section. Nothing in this section limits the authority of the court or department under RCW 46.20.720. [2013 2nd sp.s. c 35 § 1.]

Chapter 10.31 RCW WARRANTS AND ARRESTS

Sections

10.31.100 Arrest without warrant.

10.31.100 Arrest without warrant. A police officer having probable cause to believe that a person has committed or is committing a felony shall have the authority to arrest the person without a warrant. A police officer may arrest a person without a warrant for committing a misdemeanor or gross misdemeanor only when the offense is committed in the presence of the officer, except as provided in subsections (1) through (11) of this section.

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

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

(a) An order has been issued of which the person has knowledge under RCW 26.44.063, or chapter 7.92, 7.90, 9A.46, 10.99, 26.09, 26.10, 26.26, 26.50, or 74.34 RCW restraining the person and the person has violated the terms of the order restraining the person from acts or threats of violence, or restraining the person from going onto the grounds of or entering a residence, workplace, school, or day care, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location or, in the case of an order issued under RCW 26.44.063, imposing any other restrictions or conditions upon the person; or

(b) A foreign protection order, as defined in RCW 26.52.010, has been issued of which the person under restraint has knowledge and the person under restraint has

violated a provision of the foreign protection order prohibiting the person under restraint from contacting or communicating with another person, or excluding the person under restraint from a residence, workplace, school, or day care, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location, or a violation of any provision for which the foreign protection order specifically indicates that a violation will be a crime; or

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

(d) The person has violated RCW 46.61.502 or 46.61.504 or an equivalent local ordinance and the police officer has knowledge that the person has a prior offense as defined in RCW 46.61.5055 within ten years.

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

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

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

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

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

(e) RCW 46.61.503 or 46.25.110, relating to persons having alcohol or THC in their system;

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

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

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

(5)(a) A law enforcement officer investigating at the scene of a motor vessel accident may arrest the operator of a motor vessel involved in the accident if the officer has prob-

able cause to believe that the operator has committed, in connection with the accident, a criminal violation of chapter 79A.60 RCW.

(b) A law enforcement officer investigating at the scene of a motor vessel accident may issue a citation for an infraction to the operator of a motor vessel involved in the accident if the officer has probable cause to believe that the operator has committed, in connection with the accident, a violation of any boating safety law of chapter 79A.60 RCW.

(6) Any police officer having probable cause to believe that a person has committed or is committing a violation of RCW 79A.60.040 shall have the authority to arrest the person.

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

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

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

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

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

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

(12) Except as specifically provided in subsections (2), (3), (4), and (7) of this section, nothing in this section extends or otherwise affects the powers of arrest prescribed in Title 46 RCW.

(13) No police officer may be held criminally or civilly liable for making an arrest pursuant to subsection (2) or (9) of this section if the police officer acts in good faith and without malice. [2013 2nd sp.s. c 35 § 22. Prior: 2013 c 278 § 4; 2013 c 84 § 32; 2010 c 274 § 201; 2006 c 138 § 23; 2000 c 119 § 4; 1999 c 184 § 14; 1997 c 66 § 10; 1996 c 248 § 4; prior: 1995 c 246 § 20; 1995 c 184 § 1; 1995 c 93 § 1; prior: 1993 c 209 § 1; 1993 c 128 § 5; 1988 c 190 § 1; prior: 1987 c 280 § 20; 1987 c 277 § 2; 1987 c 154 § 1; 1987 c 66 § 1; prior: 1985 c 303 § 9; 1985 c 267 § 3; 1984 c 263 § 19; 1981 c 106 § 1; 1980 c 148 § 8; 1979 ex.s. c 28 § 1; 1969 ex.s. c 198 § 1.]

Intent—2010 c 274: "The legislature intends to improve the lives of persons who suffer from the adverse effects of domestic violence and to

require reasonable, coordinated measures to prevent domestic violence from occurring. The legislature intends to give law enforcement and the courts better tools to identify violent perpetrators of domestic violence and hold them accountable. The legislature intends to: Increase the safety afforded to individuals who seek protection of public and private agencies involved in domestic violence prevention; improve the ability of agencies to address the needs of victims and their children and the delivery of services; upgrade the quality of treatment programs; and enhance the ability of the justice system to respond quickly and fairly to domestic violence. In order to improve the lives of persons who have, or may suffer, the effects of domestic violence the legislature intends to achieve more uniformity in the decision-making processes at public and private agencies that address domestic violence by reducing inconsistencies and duplications allowing domestic violence victims to achieve safety and stability in their lives." [2010 c 274 § 101.]

Short title—2006 c 138: See RCW 7.90.900.

Arrest procedure involving traffic violations: Chapter 46.64 RCW.

Domestic violence, peace officers—Immunity: RCW 26.50.140.

Uniform Controlled Substances Act: Chapter 69.50 RCW.

Additional notes found at www.leg.wa.gov

Chapter 10.77 RCW

CRIMINALLY INSANE—PROCEDURES

Sections

10.77.065	Mental condition evaluations—Reports and recommendations required—Discharge of defendant when determined competent to stand trial.
10.77.073	Competency to stand trial—Evaluation—Appointment of qualified expert or professional person. (<i>Expires June 30, 2016.</i>)
10.77.086	Commitment—Procedure in felony charge.
10.77.200	Release—Procedure.
10.77.270	Independent public safety review panel—Members—Secretary to submit recommendation—Access to records—Support, rules—Report.

10.77.065 Mental condition evaluations—Reports and recommendations required—Discharge of defendant when determined competent to stand trial. (1)(a)(i) The expert conducting the evaluation shall provide his or her report and recommendation to the court in which the criminal proceeding is pending. For a competency evaluation of a defendant who is released from custody, if the evaluation cannot be completed within twenty-one days due to a lack of cooperation by the defendant, the evaluator shall notify the court that he or she is unable to complete the evaluation because of such lack of cooperation.

(ii) A copy of the report and recommendation shall be provided to the designated mental health professional, the prosecuting attorney, the defense attorney, and the professional person at the local correctional facility where the defendant is being held, or if there is no professional person, to the person designated under (a)(iv) of this subsection. Upon request, the evaluator shall also provide copies of any source documents relevant to the evaluation to the designated mental health professional.

(iii) Any facility providing inpatient services related to competency shall discharge the defendant as soon as the facility determines that the defendant is competent to stand trial. Discharge shall not be postponed during the writing and distribution of the evaluation report. Distribution of an evaluation report by a facility providing inpatient services shall ordinarily be accomplished within two working days or less following the final evaluation of the defendant. If the defendant is discharged to the custody of a local correctional facility, the local correctional facility must continue the medica-

tion regimen prescribed by the facility, when clinically appropriate, unless the defendant refuses to cooperate with medication.

(iv) If there is no professional person at the local correctional facility, the local correctional facility shall designate a professional person as defined in RCW 71.05.020 or, in cooperation with the regional support network, a professional person at the regional support network to receive the report and recommendation.

(v) Upon commencement of a defendant's evaluation in the local correctional facility, the local correctional facility must notify the evaluator of the name of the professional person, or person designated under (a)(iv) of this subsection, to receive the report and recommendation.

(b) If the evaluator concludes, under RCW 10.77.060(3)(f), the person should be evaluated by a designated mental health professional under chapter 71.05 RCW, the court shall order such evaluation be conducted prior to release from confinement when the person is acquitted or convicted and sentenced to confinement for twenty-four months or less, or when charges are dismissed pursuant to a finding of incompetent to stand trial.

(2) The designated mental health professional shall provide written notification within twenty-four hours of the results of the determination whether to commence proceedings under chapter 71.05 RCW. The notification shall be provided to the persons identified in subsection (1)(a) of this section.

(3) The prosecuting attorney shall provide a copy of the results of any proceedings commenced by the designated mental health professional under subsection (2) of this section to the secretary.

(4) A facility conducting a civil commitment evaluation under RCW 10.77.086(4) or 10.77.088(1)(b)(ii) that makes a determination to release the person instead of filing a civil commitment petition must provide written notice to the prosecutor and defense attorney at least twenty-four hours prior to release. The notice may be given by electronic mail, facsimile, or other means reasonably likely to communicate the information immediately.

(5) The fact of admission and all information and records compiled, obtained, or maintained in the course of providing services under this chapter may also be disclosed to the courts solely to prevent the entry of any evaluation or treatment order that is inconsistent with any order entered under chapter 71.05 RCW. [2013 c 214 § 1; 2012 c 256 § 4; 2008 c 213 § 1; 2000 c 74 § 2; 1998 c 297 § 35.]

Purpose—Effective date—2012 c 256: See notes following RCW 10.77.068.

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

Additional notes found at www.leg.wa.gov

10.77.073 Competency to stand trial—Evaluation—Appointment of qualified expert or professional person. (Expires June 30, 2016.) (1) If, at the time of a referral for an evaluation of competency to stand trial in a jail for an in-custody defendant, the department has not met the performance target for timely completion of competency evaluations under RCW 10.77.068(1)(a)(ii) during the most recent quarter in fifty percent of cases submitted by the referring

county, as documented in the most recent quarterly report under RCW 10.77.068(3) or confirmed by records maintained by the department, the department shall reimburse the county for the cost of appointing a qualified expert or professional person under RCW 10.77.060(1)(a) subject to subsections (2) and (3) of this section.

(2) Appointment of a qualified expert or professional person under this section must be from a list of qualified experts or professional persons assembled with participation by representatives of the prosecuting attorney and the defense bar of the county. The qualified expert or professional person shall complete an evaluation and report that includes the components specified in RCW 10.77.060(3).

(3) The county shall provide a copy of the evaluation report to the applicable state hospital upon referral of the defendant for admission to the state hospital. The county shall maintain data on the timeliness of competency evaluations completed under this section.

(4) A qualified expert or professional person appointed by a court under this section must be compensated for competency evaluations in an amount that will encourage in-depth evaluation reports. Subject to the availability of amounts appropriated for this specific purpose, the department shall reimburse the county in an amount determined by the department to be fair and reasonable with the county paying any excess costs. The amount of reimbursement established by the department must at least meet the equivalent amount for evaluations conducted by the department.

(4) [(5)] Nothing in this section precludes either party from objecting to the appointment of an evaluator on the basis that an inpatient evaluation is appropriate under RCW 10.77.060(1)(d).

(5) [(6)] This section expires June 30, 2016. [2013 c 284 § 1.]

Data gathering and report—2013 c 284: "Within current resources, the office of the state human resources director shall gather market salary data related to psychologists and psychiatrists employed by the department of social and health services and department of corrections and report to the governor and relevant committees of the legislature by June 30, 2013." [2013 c 284 § 2.]

Effective date—2013 c 284: "Section 2 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 16, 2013]." [2013 c 284 § 3.]

10.77.086 Commitment—Procedure in felony charge. (1)(a) If the defendant is charged with a felony and determined to be incompetent, until he or she has regained the competency necessary to understand the proceedings against him or her and assist in his or her own defense, or has been determined unlikely to regain competency pursuant to RCW 10.77.084(1)(b), but in any event for a period of no longer than ninety days, the court:

(i) Shall commit the defendant to the custody of the secretary who shall place such defendant in an appropriate facility of the department for evaluation and treatment; or

(ii) May alternatively order the defendant to undergo evaluation and treatment at some other facility as determined by the department, or under the guidance and control of a professional person.

(b) For a defendant whose highest charge is a class C felony, or a class B felony that is not classified as violent under

RCW 9.94A.030, the maximum time allowed for the initial period of commitment for competency restoration is forty-five days.

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

(3) If the court finds by a preponderance of the evidence that a defendant charged with a felony is incompetent, the court shall have the option of extending the order of commitment or alternative treatment for an additional period of ninety days, but the court must at the time of extension set a date for a prompt hearing to determine the defendant's competency before the expiration of the second restoration period. The defendant, the defendant's attorney, or the prosecutor has the right to demand that the hearing be before a jury. No extension shall be ordered for a second or third restoration period as provided in subsection (4) of this section if the defendant's incompetence has been determined by the secretary to be solely the result of a developmental disability which is such that competence is not reasonably likely to be regained during an extension.

(4) For persons charged with a felony, at the hearing upon the expiration of the second restoration period or at the end of the first restoration period, in the case of a defendant with a developmental disability, if the jury or court finds that the defendant is incompetent, the charges shall be dismissed without prejudice, and the court shall order the defendant be committed to a state hospital as defined in RCW 72.23.010 for up to seventy-two hours starting from admission to the facility, excluding Saturdays, Sundays, and holidays, for evaluation for the purpose of filing a civil commitment petition under chapter 71.05 RCW. The criminal charges shall not be dismissed if the court or jury finds that: (a) The defendant (i) is a substantial danger to other persons; or (ii) presents a substantial likelihood of committing criminal acts jeopardizing public safety or security; and (b) there is a substantial probability that the defendant will regain competency within a reasonable period of time. In the event that the court or jury makes such a finding, the court may extend the period of commitment for up to an additional six months. [2013 c 289 § 2; 2012 c 256 § 6; 2007 c 375 § 4.]

Findings—2013 c 289: "The legislature finds that persons with a mental illness or developmental disability are more likely to be victimized by crime than to be perpetrators of crime. The legislature further finds that there are a small number of individuals who commit repeated violent acts against others while suffering from the effects of a mental illness and/or developmental disability that both contributes to their criminal behaviors and renders them legally incompetent to be held accountable for those behaviors. The legislature further finds that the primary statutory mechanisms designed to protect the public from violent behavior, either criminal commitment to a corrections institution, or long-term commitment as not guilty by reason of insanity, are unavailable due to the legal incompetence of these individuals to stand trial. The legislature further finds that the existing civil system of short-term commitments under the Washington's involuntary treatment act is insufficient to protect the public from these violent acts. Finally, the legislature finds that changes to the involuntary treatment act to account for this small number of individuals is necessary in order to serve Washington's compelling interest in public safety and to provide for the proper care of these individuals." [2013 c 289 § 1.]

Purpose—Effective date—2012 c 256: See notes following RCW 10.77.068.

Findings—Purpose—Construction—Severability—2007 c 375: See notes following RCW 10.31.110.

[2013 RCW Supp—page 76]

Captions not law—2007 c 375: See note following RCW 10.77.084.

10.77.200 Release—Procedure. (1) Upon application by the committed or conditionally released person, the secretary shall determine whether or not reasonable grounds exist for release. In making this determination, the secretary may consider the reports filed under RCW 10.77.060, 10.77.110, 10.77.140, and 10.77.160, and other reports and evaluations provided by professionals familiar with the case. If the secretary approves the release he or she then shall authorize the person to petition the court.

(2) In instances in which persons have not made application for release, but the secretary believes, after consideration of the reports filed under RCW 10.77.060, 10.77.110, 10.77.140, and 10.77.160, and other reports and evaluations provided by professionals familiar with the case, that reasonable grounds exist for release, the secretary may petition the court. If the secretary petitions the court for release under this subsection, notice of the petition must be provided to the person who is the subject of the petition and to his or her attorney.

(3) The petition shall be served upon the court and the prosecuting attorney. The court, upon receipt of the petition for release, shall within forty-five days order a hearing. Continuance of the hearing date shall only be allowed for good cause shown. The prosecuting attorney shall represent the state, and shall have the right to have the person who is the subject of the petition examined by an expert or professional person of the prosecuting attorney's choice. If the secretary is the petitioner, the attorney general shall represent the secretary. If the person who is the subject of the petition is indigent, and the person so requests, the court shall appoint a qualified expert or professional person to examine him or her. If the person who is the subject of the petition has a developmental disability, the examination shall be performed by a developmental disabilities professional. The hearing shall be before a jury if demanded by either the petitioner or the prosecuting attorney. The burden of proof shall be upon the petitioner to show by a preponderance of the evidence that the person who is the subject of the petition no longer presents, as a result of a mental disease or defect, a substantial danger to other persons, or a substantial likelihood of committing criminal acts jeopardizing public safety or security, unless kept under further control by the court or other persons or institutions. If the person who is the subject of the petition will be transferred to a state correctional institution or facility upon release to serve a sentence for any class A felony, the petitioner must show that the person's mental disease or defect is manageable within a state correctional institution or facility, but must not be required to prove that the person does not present either a substantial danger to other persons, or a substantial likelihood of committing criminal acts jeopardizing public safety or security, if released.

(4) For purposes of this section, a person affected by a mental disease or defect in a state of remission is considered to have a mental disease or defect requiring supervision when the disease may, with reasonable medical probability, occasionally become active and, when active, render the person a danger to others. Upon a finding that the person who is the subject of the petition has a mental disease or defect in a state of remission under this subsection, the court may deny

release, or place or continue such a person on conditional release.

(5) Nothing contained in this chapter shall prohibit the patient from petitioning the court for release or conditional release from the institution in which he or she is committed. The petition shall be served upon the court, the prosecuting attorney, and the secretary. Upon receipt of such petition, the secretary shall develop a recommendation as provided in subsection (1) of this section and provide the secretary's recommendation to all parties and the court. The issue to be determined on such proceeding is whether the patient, as a result of a mental disease or defect, is a substantial danger to other persons, or presents a substantial likelihood of committing criminal acts jeopardizing public safety or security, unless kept under further control by the court or other persons or institutions.

(6) Nothing contained in this chapter shall prohibit the committed person from petitioning for release by writ of habeas corpus. [2013 c 289 § 7; 2010 c 263 § 8; 2000 c 94 § 16; 1998 c 297 § 44; 1993 c 31 § 11; 1989 c 420 § 11; 1983 c 25 § 2; 1974 ex.s. c 198 § 16; 1973 1st ex.s. c 117 § 20.]

Findings—2013 c 289: See note following RCW 10.77.086.

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

10.77.270 Independent public safety review panel—Members—Secretary to submit recommendation—Access to records—Support, rules—Report. (1) The secretary shall establish an independent public safety review panel for the purpose of advising the secretary and the courts with respect to persons who have been found not guilty by reason of insanity, or persons committed under the involuntary treatment act where the court has made a special finding under RCW 71.05.280(3)(b). The panel shall provide advice regarding all recommendations to the secretary, decisions by the secretary, or actions pending in court: (a) For a change in commitment status; (b) to allow furloughs or temporary leaves accompanied by staff; (c) not to seek further commitment terms under RCW 71.05.320; or (d) to permit movement about the grounds of the treatment facility, with or without the accompaniment of staff.

(2) The members of the public safety review panel shall be appointed by the governor for a renewable term of three years and shall include the following:

- (a) A psychiatrist;
- (b) A licensed clinical psychologist;
- (c) A representative of the department of corrections;
- (d) A prosecutor or a representative of a prosecutor's association;
- (e) A representative of law enforcement or a law enforcement association;
- (f) A consumer and family advocate representative; and
- (g) A public defender or a representative of a defender's association.

(3) Thirty days prior to issuing a recommendation for conditional release under RCW 10.77.150 or forty-five days prior to issuing a recommendation for release under RCW 10.77.200, the secretary shall submit its recommendation with the committed person's application and the department's risk assessment to the public safety review panel. The public safety review panel shall complete an independent

assessment of the public safety risk entailed by the secretary's proposed conditional release recommendation or release recommendation and provide this assessment in writing to the secretary. The public safety review panel may, within funds appropriated for this purpose, request additional evaluations of the committed person. The public safety review panel may indicate whether it is in agreement with the secretary's recommendation, or whether it would issue a different recommendation. The secretary shall provide the panel's assessment when it is received along with any supporting documentation, including all previous reports of evaluations of the committed person in the person's hospital record, to the court, prosecutor in the county that ordered the person's commitment, and counsel for the committed person.

(4) The secretary shall notify the public safety review panel at appropriate intervals concerning any changes in the commitment or custody status of persons found not guilty by reason of insanity, or persons committed under the involuntary treatment act where the court has made a special finding under RCW 71.05.280(3)(b). The panel shall have access, upon request, to a committed person's complete hospital record, and any other records deemed necessary by the public safety review panel.

(5) The department shall provide administrative and financial support to the public safety review panel. The department, in consultation with the public safety review panel, may adopt rules to implement this section.

(6) By December 1, 2014, the public safety review panel shall report to the appropriate legislative committees the following:

(a) Whether the public safety review panel has observed a change in statewide consistency of evaluations and decisions concerning changes in the commitment status of persons found not guilty by reason of insanity;

(b) Whether the public safety review panel should be given the authority to make release decisions and monitor release conditions;

(c) Whether further changes in the law are necessary to enhance public safety when incompetency prevents operation of the criminal justice system and long-term commitment of the criminally insane; and

(d) Any other issues the public safety review panel deems relevant. [2013 c 289 § 3; 2010 c 263 § 1.]

Findings—2013 c 289: See note following RCW 10.77.086.

Chapter 10.98 RCW

CRIMINAL JUSTICE INFORMATION ACT

Sections

10.98.100 Compliance audit.

10.98.100 Compliance audit. The section shall administer a compliance audit at least once annually for each prosecuting attorney, district and municipal court, and originating agency to ensure that all disposition reports have been received and added to the criminal history record information described in RCW 43.43.705. The section shall identify criminal history record information for which no disposition report has been received and has been outstanding for one year or longer since the date of arrest. Each open arrest shall

be researched for a final disposition by section staff or the criminal justice agency shall be furnished a list of outstanding disposition reports for criminal history record information of persons who were arrested or against whom charges were filed by that agency. Each criminal justice agency shall provide the section with a current disposition report or status within sixty days of receipt of notification of open arrest. Cases pending prosecution shall be considered outstanding dispositions in the compliance audit. The results of compliance audits shall be published annually and distributed to legislative committees dealing with criminal justice issues, the office of financial management, and criminal justice agencies and associations. [2013 c 62 § 1; 2005 c 282 § 24; 1985 c 201 § 5; 1984 c 17 § 10.]

Title 11

PROBATE AND TRUST LAW

Chapters

- 11.36** Qualifications of personal representatives.
- 11.88** Guardianship—Appointment, qualification, removal of guardians.
- 11.96A** Trust and estate dispute resolution.
- 11.97** Effect of trust instrument.
- 11.98** Trusts.
- 11.103** Revocable trusts.
- 11.106** Trustees' accounting act.
- 11.118** Trusts—Animals.

Chapter 11.36 RCW

QUALIFICATIONS OF PERSONAL REPRESENTATIVES

Sections

- 11.36.010 Parties disqualified—Result of disqualification after appointment.
- 11.36.021 Trustees—Who may serve.

11.36.010 Parties disqualified—Result of disqualification after appointment. (1) Except as provided in subsections (2), (3), and (4) of this section, the following persons are not qualified to act as personal representatives: Corporations, limited liability companies, limited liability partnerships, minors, persons of unsound mind, or persons who have been convicted of (a) any felony or (b) any crime involving moral turpitude.

(2) Trust companies regularly organized under the laws of this state and national banks when authorized so to do may act as the personal representative of an individual's estate or of the estate of an incapacitated person upon petition of any person having a right to such appointment and may act as personal representatives or guardians when so appointed by will. No trust company or national bank may qualify as such personal representative or guardian under any will hereafter drawn by it or its agents or employees, and no salaried attorney of any such company may be allowed any attorney fee for probating any such will or in relation to the administration or settlement of any such estate, and no part of any attorney fee may inure, directly or indirectly, to the benefit of any trust company or national bank.

(3) Professional service corporations, professional limited liability companies, or limited liability partnerships, that are duly organized under the laws of this state and whose shareholders, members, or partners, respectively, are exclusively attorneys, may act as personal representatives.

(4) Any nonprofit corporation may act as personal representative if the articles of incorporation or bylaws of that corporation permit the action and the corporation is in compliance with all applicable provisions of Title 24 RCW.

(5) When any person to whom letters testamentary or of administration have been issued becomes disqualified to act because of becoming of unsound mind or being convicted of (a) any felony or (b) any crime involving moral turpitude, the court having jurisdiction must revoke his or her letters.

(6) A nonresident may be appointed to act as personal representative if the nonresident appoints an agent who is a resident of the county where such estate is being probated or who is an attorney of record of the estate, upon whom service of all papers may be made; such appointment to be made in writing and filed by the clerk with other papers of such estate; and, unless bond has been waived as provided by RCW 11.28.185, such nonresident personal representative must file a bond to be approved by the court. [2013 c 272 § 1; 1983 c 51 § 1; 1983 c 3 § 14; 1965 c 145 § 11.36.010. Prior: 1959 c 43 § 1; 1917 c 156 § 87; RRS § 1457; prior: Code 1881 § 1409; 1863 p 227 § 164; 1860 p 189 § 131.]

Rules of court: *Counsel fees:* SPR 98.12W.

Application—2013 c 272: See note following RCW 11.98.002.

Financial institutions may act as guardian: RCW 11.88.020.

Procedure during minority or absence of executor: RCW 11.28.040.

Trust company may act as personal representative: RCW 30.08.150.

11.36.021 Trustees—Who may serve. (1) The following may serve as trustees:

(a) Any suitable persons over the age of eighteen years, if not otherwise disqualified;

(b) Any trust company regularly organized under the laws of this state and national banks when authorized to do so;

(c) Any nonprofit corporation, if the articles of incorporation or bylaws of that corporation permit the action and if the corporation is in compliance with all applicable provisions of Title 24 RCW;

(d) Any professional service corporations, professional limited liability companies, or limited liability partnerships, that are duly organized under the laws of this state and whose shareholders, members, or partners, respectively, are exclusively attorneys;

(e) Any state or regional college or university, as those institutions are defined in RCW 28B.10.016;

(f) Any community or technical college, as those institutions are defined in RCW 28B.50.030; and

(g) Any other entity so authorized under the laws of the state of Washington.

(2) The following are disqualified to serve as trustees:

(a) Minors, persons of unsound mind, or persons who have been convicted of (i) any felony or (ii) any crime involving moral turpitude; and

(b) A corporation organized under Title 23B RCW that is not authorized under the laws of the state of Washington to

act as a fiduciary. [2013 c 272 § 2; 1991 c 72 § 1; 1985 c 30 § 6. Prior: 1984 c 149 § 9.]

Application—2013 c 272: See note following RCW 11.98.002.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

Chapter 11.88 RCW

GUARDIANSHIP—APPOINTMENT, QUALIFICATION, REMOVAL OF GUARDIANS

Sections

11.88.125 Standby limited guardian or limited guardian.

11.88.125 Standby limited guardian or limited guardian. (1) Any individual or professional guardian appointed by the court as either guardian or limited guardian of the person and/or estate of an incapacitated person shall file in writing with the court, within ninety days from the date of appointment, a notice designating a standby guardian or standby limited guardian to serve as guardian or limited guardian at the death, legal incapacity, or planned absence of the court-appointed guardian or limited guardian. The notice shall state the name, address, zip code, and telephone number of the designated standby guardian or standby limited guardian. Notice of the guardian's designation of the standby guardian or standby limited guardian shall be given to the standby guardian or standby limited guardian, the incapacitated person and his or her spouse or domestic partner and adult children, any facility in which the incapacitated person resides, and any person who requested special notice under RCW 11.92.150.

(2)(a) If the regularly appointed guardian or limited guardian dies or becomes incapacitated, then the standby guardian or standby limited guardian shall have all the powers, duties, and obligations of the regularly appointed guardian or limited guardian and in addition shall, within a period of thirty days from the death or adjudication of incapacity of the regularly appointed guardian or limited guardian, file with the superior court in the county in which the guardianship or limited guardianship is then being administered, a petition for appointment of a substitute guardian or limited guardian. Upon the court's appointment of a new, substitute guardian or limited guardian, the standby guardian or standby limited guardian shall make an accounting and report to be approved by the court, and upon approval of the court, the standby guardian or standby limited guardian shall be released from all duties and obligations arising from or out of the guardianship or limited guardianship.

(b) Letters of guardianship shall be issued to the standby guardian or standby limited guardian upon filing an oath and posting a bond as required by RCW 11.88.100. The oath may be filed prior to the regularly appointed guardian's or limited guardian's death or incapacity. The standby guardian or standby limited guardian shall provide notice of such appointment to the incapacitated person and his or her spouse or domestic partner and adult children, any facility in which the incapacitated person resides, and any person who requested special notice under RCW 11.92.150.

(c) The provisions of RCW 11.88.100 through 11.88.110 shall apply to standby guardians and standby limited guardians.

(3)(a) A standby guardian or standby limited guardian may assume some or all of the duties, responsibilities, and powers of the guardian or limited guardian during the guardian's or limited guardian's planned absence. Prior to the commencement of the guardian's or limited guardian's planned absence and prior to the standby guardian or standby limited guardian assuming any duties, responsibilities, and powers of the guardian or limited guardian, the guardian or limited guardian shall file a petition in the superior court where the guardianship or limited guardianship is being administered stating the dates of the planned absence and the duties, responsibilities, and powers the standby guardian or standby limited guardian should assume. The guardian or limited guardian shall give notice of the planned absence petition to the standby guardian or standby limited guardian, the incapacitated person and his or her spouse or domestic partner and adult children, any facility in which the incapacitated person resides, and any person who requested special notice under RCW 11.92.150.

(b) Upon the conclusion of the hearing on the planned absence petition, and a determination by the court that the standby guardian or standby limited guardian meets the requirements of RCW 11.88.020, the court shall issue an order specifying: (i) The amount of bond as required by RCW 11.88.100 through 11.88.110 to be filed by the standby guardian or standby limited guardian; (ii) the duties, responsibilities, and powers the standby guardian or standby limited guardian will assume during the planned absence; (iii) the duration the standby guardian or standby limited guardian will be acting; and (iv) the expiration date of the letters of guardianship to be issued to the standby guardian or standby limited guardian.

(c) Letters of guardianship consistent with the court's determination under (b) of this subsection shall be issued to the standby guardian or standby limited guardian upon filing an oath and posting a bond as required by RCW 11.88.100. The standby guardian or standby limited guardian shall give notice of such appointment to the incapacitated person and his or her spouse or domestic partner and adult children, any facility in which the incapacitated person resides, and any person who requested special notice under RCW 11.92.150.

(d) The provisions of RCW 11.88.100 through 11.88.110 shall apply to standby guardians and standby limited guardians.

(4) In addition to the powers of a standby guardian or standby limited guardian as noted in this section, the standby guardian or standby limited guardian shall have the authority to provide timely, informed consent to necessary medical procedures, as authorized in RCW 11.92.043, if the guardian or limited guardian cannot be located within four hours after the need for such consent arises. [2013 c 304 § 1; 2011 c 329 § 5; 2008 c 6 § 805; 1991 c 289 § 8; 1990 c 122 § 15; 1979 c 32 § 1; 1977 ex.s. c 309 § 10; 1975 1st ex.s. c 95 § 6.]

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

Additional notes found at www.leg.wa.gov

Chapter 11.96A RCW

TRUST AND ESTATE DISPUTE RESOLUTION

Sections

11.96A.050	Venue in proceedings involving probate or trust matters.
11.96A.070	Statutes of limitation.
11.96A.090	Judicial proceedings.
11.96A.120	Application of doctrine of virtual representation.
11.96A.125	Mistake of fact or law in terms of will or trust—Judicial and nonjudicial reform.
11.96A.250	Special representative.

11.96A.050 Venue in proceedings involving probate or trust matters. (1) Venue for proceedings pertaining to trusts is:

(a) For testamentary trusts established under wills probated in the state of Washington, in the superior court of the county where the probate of the will is being administered or was completed or, in the alternative, the superior court of the county where any qualified beneficiary of the trust as defined in RCW 11.98.002 resides, the county where any trustee resides or has a place of business, or the county where any real property that is an asset of the trust is located; and

(b) For all other trusts, in the superior court of the county where any qualified beneficiary of the trust as defined in RCW 11.98.002 resides, the county where any trustee resides or has a place of business, or the county where any real property that is an asset of the trust is located. If no county has venue for proceedings pertaining to a trust under the preceding sentence, then in any county.

(2) A party to a proceeding pertaining to a trust may request that venue be changed. If the request is made within four months of the giving of the first notice of a proceeding pertaining to the trust, except for good cause shown, venue must be moved to the county with the strongest connection to the trust as determined by the court, considering such factors as the residence of a qualified beneficiary of the trust as defined in RCW 11.98.002, the residence or place of business of a trustee, and the location of any real property that is an asset of the trust.

(3) Venue for proceedings subject to chapter 11.88 or 11.92 RCW must be determined under the provisions of those chapters.

(4) Venue for proceedings pertaining to the probate of wills, the administration and disposition of a decedent's property, including nonprobate assets, and any other matter not identified in subsection (1), (2), or (3) of this section, must be in any county in the state of Washington that the petitioner selects. A party to a proceeding may request that venue be changed if the request is made within four months of the mailing of the notice of appointment and pendency of probate required by RCW 11.28.237, and except for good cause shown, venue must be moved as follows:

(a) If the decedent was a resident of the state of Washington at the time of death, to the county of the decedent's residence; or

(b) If the decedent was not a resident of the state of Washington at the time of death, to any of the following:

(i) Any county in which any part of the probate estate might be;

(ii) If there are no probate assets, any county where any nonprobate asset might be; or

(iii) The county in which the decedent died.

(5) Once letters testamentary or of administration have been granted in the state of Washington, all orders, settlements, trials, and other proceedings under this title must be had or made in the county in which such letters have been granted unless venue is moved as provided in subsection (4) of this section.

(6) Venue for proceedings pertaining to powers of attorney must be in the superior court of the county of the principal's residence, except for good cause shown.

(7) If venue is moved, an action taken before venue is changed is not invalid because of the venue.

(8) Any request to change venue that is made more than four months after the commencement of the action may be granted in the discretion of the court. [2013 c 272 § 3; 2011 c 327 § 6; 2001 c 203 § 10; 1999 c 42 § 202.]

Application—2013 c 272: See note following RCW 11.98.002.

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

11.96A.070 Statutes of limitation. (1)(a) A beneficiary of an express trust may not commence a proceeding against a trustee for breach of trust more than three years after the date a report was delivered in the manner provided in RCW 11.96A.110 to the beneficiary or to a representative of the beneficiary if the report adequately disclosed the existence of a potential claim for breach of trust and informed the beneficiary of the time allowed for commencing a proceeding.

(b) A report adequately discloses the existence of a potential claim for breach of trust if it provides sufficient information so that the beneficiary or representative knows or should have known of the potential claim. A report that includes all of the items described in this subsection [(1)](b) that are relevant for the reporting period is presumed to have provided such sufficient information regarding the existence of potential claims for breach of trust for such period:

(i) A statement of receipts and disbursements of principal and income that have occurred during the accounting period;

(ii) A statement of the assets and liabilities of the trust and their values at the beginning and end of the period;

(iii) The trustee's compensation for the period;

(iv) The agents hired by the trustee, their relationship to the trustee, if any, and their compensation, for the period;

(v) Disclosure of any pledge, mortgage, option, or lease of trust property, or other agreement affecting trust property binding for a period of five years or more that was granted or entered into during the accounting period;

(vi) Disclosure of all transactions during the period that are equivalent to one of the types of transactions described in RCW 11.98.078 or otherwise could have been affected by a conflict between the trustee's fiduciary and personal interests;

(vii) A statement that the recipient of the account information may petition the superior court pursuant to chapter 11.106 RCW to obtain review of the statement and of acts of the trustee disclosed in the statement; and

(viii) A statement that claims against the trustee for breach of trust may not be made after the expiration of three years from the date the trustee delivers the report in the manner provided in RCW 11.96A.110.

(c) If (a) of this subsection does not apply, a judicial proceeding by a beneficiary against a trustee for breach of trust must be commenced within three years after the first to occur of:

- (i) The removal, resignation, or death of the trustee;
- (ii) The termination of the beneficiary's interest in the trust; or
- (iii) The termination of the trust.

(d) For purposes of this section, "express trust" does not include resulting trusts, constructive trusts, business trusts in which certificates of beneficial interest are issued to the beneficiary, investment trusts, voting trusts, trusts in the nature of mortgages or pledges, liquidation trusts, or trusts for the sole purpose of paying dividends, interest, interest coupons, salaries, wages, pensions, or profits, trusts created in deposits in any financial institution under chapter 30.22 RCW, unless any such trust that is created in writing specifically incorporates this chapter in whole or in part.

(2) Except as provided in RCW 11.96A.250 with respect to special representatives, an action against a personal representative for alleged breach of fiduciary duty by an heir, legatee, or other interested party must be brought before discharge of the personal representative.

(3) The legislature hereby confirms the long standing public policy of promoting the prompt and efficient resolution of matters involving trusts and estates. To further implement this policy, the legislature adopts the following statutory provisions in order to:

(a) Encourage and facilitate the participation of qualified individuals as special representatives;

(b) Serve the public's interest in having a prompt and efficient resolution of matters involving trusts or estates; and

(c) Promote complete and final resolution of proceedings involving trusts and estates.

(i) Actions against a special representative must be brought before the earlier of:

(A) Three years from the discharge of the special representative as provided in RCW 11.96A.250; or

(B) The entry of an order by a court of competent jurisdiction under RCW 11.96A.240 approving the written agreement executed by all interested parties in accord with the provisions of RCW 11.96A.220.

(ii) If a legal action is commenced against the special representative after the expiration of the period during which claims may be brought against the special representative as provided in (c)(i) of this subsection, alleging property damage, property loss, or other civil liability caused by or resulting from an alleged act or omission of the special representative arising out of or by reason of the special representative's duties or actions as special representative, the special representative must be indemnified: (A) From the assets held in the trust or comprising the estate involved in the dispute; and (B) by the persons bringing the legal action, for all expenses, attorneys' fees, judgments, settlements, decrees, or amounts due and owing or paid in satisfaction of or incurred in the defense of the legal action. To the extent possible, indemnification must be made first by the persons bringing the legal action, second from that portion of the trust or estate that is held for the benefit of, or has been distributed or applied to, the persons bringing the legal action, and third from the other

assets held in the trust or comprising the estate involved in the dispute.

(4) The tolling provisions of RCW 4.16.190 apply to this chapter except that the running of a statute of limitations under subsection (1) or (2) of this section, or any other applicable statute of limitations for any matter that is the subject of dispute under this chapter, is not tolled as to an individual who had a guardian ad litem, limited or general guardian of the estate, or a special representative to represent the person during the probate or dispute resolution proceeding. [2013 c 272 § 4; 2011 c 327 § 7; 1999 c 42 § 204.]

Application—2013 c 272: See note following RCW 11.98.002.

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

11.96A.090 Judicial proceedings. (1) A judicial proceeding under this title is a special proceeding under the civil rules of court. The provisions of this title governing such actions control over any inconsistent provision of the civil rules.

(2) A judicial proceeding under this title must be commenced as a new action.

(3) Once commenced, the action may be consolidated with an existing proceeding upon the motion of a party for good cause shown, or by the court on its own motion.

(4) The procedural rules of court apply to judicial proceedings under this title only to the extent that they are consistent with this title, unless otherwise provided by statute or ordered by the court under RCW 11.96A.020 or 11.96A.050, or other applicable rules of court. [2013 c 246 § 2; 1999 c 42 § 302.]

11.96A.120 Application of doctrine of virtual representation. (1) Notice to a person who may represent and bind another person under this section has the same effect as if notice were given directly to the other person.

(2) The consent of a person who may represent and bind another person under this section is binding on the person represented unless the person represented objects to the representation before the consent would otherwise have become effective.

(3) The following limitations on the ability to serve as a virtual representative apply:

(a) A trustor may not represent and bind a beneficiary under this section with respect to the termination and modification of an irrevocable trust; and

(b) Representation of an incapacitated trustor with respect to his or her powers over a trust is subject to the provisions of RCW 11.103.030, and chapters 11.96A, 11.88, and 11.92 RCW.

(4) To the extent there is no conflict of interest between the representative and the person represented or among those being represented with respect to the particular question or dispute:

(a) A guardian may represent and bind the estate that the guardian controls, subject to chapters 11.96A, 11.88, and 11.92 RCW;

(b) A guardian of the person may represent and bind the incapacitated person if a guardian of the incapacitated person's estate has not been appointed;

(c) An agent having authority to act with respect to the particular question or dispute may represent and bind the principal;

(d) A trustee may represent and bind the beneficiaries of the trust;

(e) A personal representative of a decedent's estate may represent and bind persons interested in the estate; and

(f) A parent may represent and bind the parent's minor or unborn child or children if a guardian for the child or children has not been appointed.

(5) Unless otherwise represented, a minor, incapacitated, or unborn individual, or a person whose identity or location is unknown and not reasonably ascertainable, may be represented by and bound by another having a substantially identical interest with respect to the particular question or dispute, but only to the extent there is no conflict of interest between the representative and the person represented with regard to the particular question or dispute.

(6) Where an interest has been given to persons who comprise a certain class upon the happening of a certain event, the living persons who would constitute the class as of the date the representation is to be determined may virtually represent all other members of the class as of that date, but only to the extent that there is no conflict of interest between the representative and the person(s) represented with regard to the particular question or dispute.

(7) Where an interest has been given to a living person, and the same interest, or a share in it, is to pass to the surviving spouse or surviving domestic partner or to persons who are, or might be, the heirs, issue, or other kindred of that living person or the distributees of the estate of that living person upon the happening of a future event, that living person may virtually represent the surviving spouse or surviving domestic partner, heirs, issue, or other kindred of the person, and the distributees of the estate of the person, but only to the extent that there is no conflict of interest between the representative and the person(s) represented with regard to the particular question or dispute.

(8) Except as otherwise provided in subsection (7) of this section, where an interest has been given to a person or a class of persons, or both, upon the happening of any future event, and the same interest or a share of the interest is to pass to another person or class of persons, or both, upon the happening of an additional future event, the living person or persons who would take the interest upon the happening of the first event may virtually represent the persons and classes of persons who might take on the happening of the additional future event, but only to the extent that there is no conflict of interest between the representative and the person(s) represented with regard to the particular question or dispute.

(9) To the extent there is no conflict of interest between the holder of the power of appointment and the persons represented with respect to the particular question or dispute, the holder of a lifetime or testamentary power of appointment may virtually represent and bind persons who are permissible appointees or takers in default (but only to the extent that they are permissible appointees in the case of a limited power of appointment) under the power, and who are not permissible distributees as defined in RCW 11.98.002.

(10) The attorney general may virtually represent and bind a charitable organization if:

(a) The charitable organization is not a qualified beneficiary as defined in RCW 11.98.002 specified in the trust instrument or acting as trustee; or

(b) The charitable organization is a qualified beneficiary, but is not a permissible distributee, as those terms are defined in RCW 11.98.002, and its beneficial interest in the trust is subject to change by the trustor or by a person designated by the trustor.

(11) An action taken by the court is conclusive and binding upon each person receiving actual or constructive notice or who is otherwise represented under this section.

(12) This section is intended to adopt the common law concept of virtual representation. This section supplements the common law relating to the doctrine of virtual representation and may not be construed as limiting the application of that common law doctrine. [2013 c 272 § 5; 2011 c 327 § 9; 2008 c 6 § 928; 2001 c 203 § 11; 1999 c 42 § 305.]

Application—2013 c 272: See note following RCW 11.98.002.

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

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

11.96A.125 Mistake of fact or law in terms of will or trust—Judicial and nonjudicial reform. The terms of a will or trust, even if unambiguous, may be reformed by judicial proceedings under this chapter to conform the terms to the intention of the testator or trustor if it is proved by clear, cogent, and convincing evidence that both the intent of the testator or trustor and the terms of the will or trust were affected by a mistake of fact or law, whether in expression or inducement. This does not limit the ability to reform the will or trust using the binding nonjudicial procedures of RCW 11.96A.220. [2013 c 272 § 6; 2011 c 327 § 11.]

Application—2013 c 272: See note following RCW 11.98.002.

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

11.96A.250 Special representative. (1)(a) Any party or the parent of a minor or unborn party may petition the court for the appointment of a special representative to represent a party: (i) Who is a minor; (ii) who is incapacitated without an appointed guardian of his or her estate; (iii) who is yet unborn or unascertained; or (iv) whose identity or address is unknown. The petition may be heard by the court without notice.

(b) In appointing the special representative the court shall give due consideration and deference to any nomination(s) made in the petition, the special skills required in the representation, and the need for a representative who will act independently and prudently. The nomination of a person as special representative by the petitioner and the person's willingness to serve as special representative are not grounds by themselves for finding a lack of independence, however, the court may consider any interests that the nominating party may have in the estate or trust in making the determination.

(c) The special representative may enter into a binding agreement on behalf of the person or beneficiary. The special representative may be appointed for more than one person or class of persons if the interests of such persons or class are not in conflict. The petition must be verified. The petition

and order appointing the special representative may be in the following form:

CAPTION OF CASE PETITION FOR APPOINTMENT OF SPECIAL REPRESENTATIVE UNDER RCW 11.96A.250

The undersigned petitioner petitions the court for the appointment of a special representative in accordance with RCW 11.96A.250 and shows the court as follows:

1. Petitioner. Petitioner ... [is the qualified and presently acting (personal representative) (trustee) of the above (estate) (trust) having been named (personal representative) (trustee) under (describe will and reference probate order or describe trust instrument)] or [is the (describe relationship of the petitioner to the party to be represented or to the matter at issue)].

2. Matter. A question concerning ... has arisen as to (describe issue, for example: Related to interpretation, construction, administration, distribution). The issue is a matter as defined in RCW 11.96A.030 and is appropriate for determination under RCW 11.96A.210 through 11.96A.250.

3. Party/Parties to be Represented. This matter involves (include description of asset(s) and related beneficiaries and/or interested parties). Resolution of this matter will require the involvement of ... (name of person or class of persons), who is/are (minors), (incapacitated and without an appointed guardian), (unborn or unascertained) (whose identity or address is unknown).

4. Special Representative. The nominated special representative ... is a lawyer licensed to practice before the courts of this state or an individual with special skill or training in the administration of estates or trusts. The nominated special representative does not have an interest in the matter and is not related to any person interested in the matter. The nominated special representative is willing to serve. The petitioner has no reason to believe that the nominated special representative will not act in an independent and prudent manner and in the best interests of the represented parties. (It is recommended that the petitioner also include information specifying the particular skills of the nominated special representative that relate to the matter in issue.)

5. Resolution. Petitioner desires to achieve a resolution of the questions that have arisen in this matter. Petitioner believes that proceeding in accordance with the procedures permitted under RCW 11.96A.210 through 11.96A.250 would be in the best interests of the parties, including the party requiring a special representative.

6. Request of Court. Petitioner requests that ... an attorney licensed to practice in the State of Washington,

(OR)

... an individual with special skill or training in the administration of estates or trusts

be appointed special representative for ... (describe party or parties being represented), who is/are (minors), (incapacitated and without an appointed guardian), (unborn or unascertained) (whose identity or address is unknown), as provided under RCW 11.96A.250.

DATED this ... day of ... , ...

..... (Petitioner)

VERIFICATION

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED ... , 20.., at ... , Washington.

..... (Petitioner or other person having knowledge)

CAPTION OF CASE ORDER FOR APPOINTMENT OF SPECIAL REPRESENTATIVE

THIS MATTER having come on for hearing before this Court on Petition for Appointment of Special Representative filed herein, and it appearing that it would be in the best interests of the parties related to the matter described in the Petition to appoint a special representative to address the issues that have arisen in the matter and the Court finding that the facts stated in the Petition are true, now, therefore,

IT IS ORDERED that ... is appointed under RCW 11.96A.250 as special representative (describe party or parties being represented) who is/are (minors), (incapacitated and without an appointed guardian), (unborn or unascertained) (whose identity or address is unknown), to represent their respective interests in the matter as provided in RCW 11.96A.250. The special representative shall be discharged of responsibility with respect to the matter as provided in RCW 11.96A.250. The special representative is discharged of responsibility with respect to the matter at such time as a written agreement is executed resolving the present issues, all as provided in that statute, or if an agreement is not reached within six months from entry of this Order, the special representative appointed under this Order is discharged of responsibility, subject to subsequent reappointment under RCW 11.96A.250.

DONE IN OPEN COURT this ... day of ... , ...

..... JUDGE/COURT COMMISSIONER

(2) Upon appointment by the court, the special representative must file a certification made under penalty of perjury in accordance with RCW 9A.72.085 that he or she (a) is not interested in the matter; (b) is not related to any person interested in the matter; (c) is willing to serve; and (d) will act independently, prudently, and in the best interests of the represented parties.

(3) The special representative must be a lawyer licensed to practice before the courts of this state or an individual with special skill or training in the administration of estates or trusts. The special representative may not have an interest in the matter, and may not be related to a person interested in the matter. The special representative is entitled to reasonable compensation for services that must be paid from the principal of an asset involved in the matter.

(4) The special representative is discharged from any responsibility and will have no further duties with respect to

the matter or with respect to any party, on the earlier of: (a) The expiration of six months from the date the special representative was appointed unless the order appointing the special representative provides otherwise, or (b) the execution of the written agreement by all parties or their virtual representatives. Any action against a special representative must be brought within the time limits provided by RCW 11.96A.070(3)(c)(i). [2013 c 272 § 21; 2001 c 14 § 3; 1999 c 42 § 405.]

Application—2013 c 272: See note following RCW 11.98.002.

Additional notes found at www.leg.wa.gov

Chapter 11.97 RCW EFFECT OF TRUST INSTRUMENT

Sections

11.97.010 Power of trustor—Trust provisions control.

11.97.010 Power of trustor—Trust provisions control. The trustor of a trust may by the provisions of the trust relieve the trustee from any or all of the duties, restrictions, and liabilities which would otherwise be imposed by chapters 11.95, 11.98, 11.100, and 11.104A RCW and RCW 11.106.020, or may alter or deny any or all of the privileges and powers conferred by those provisions; or may add duties, restrictions, liabilities, privileges, or powers to those imposed or granted by those provisions. If any specific provision of those chapters is in conflict with the provisions of a trust, the provisions of the trust control whether or not specific reference is made in the trust to any of those chapters, except as provided in RCW 6.32.250, 11.96A.190, 19.36.020, 11.98.002, 11.98.200 through 11.98.240, 11.98.072(1), 11.95.100 through 11.95.150, and chapter 11.103 RCW. In no event may a trustee be relieved of the duty to act in good faith and with honest judgment. Notwithstanding the breadth of discretion granted to a trustee in the terms of the trust, including the use of such terms as "absolute," "sole," or "uncontrolled," the trustee must exercise a discretionary power in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries. [2013 c 272 § 7; 2011 c 327 § 12; 2003 c 254 § 4; 1993 c 339 § 1; 1985 c 30 § 38. Prior: 1984 c 149 § 64; 1959 c 124 § 2. Formerly RCW 30.99.020.]

Application—2013 c 272: See note following RCW 11.98.002.

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

Chapter 11.98 RCW TRUSTS

Sections

11.98.002 Definitions.
11.98.005 Trust situs and governing law.
11.98.015 Noncharitable trusts without ascertainable beneficiaries.
11.98.017 Trusteeship—Accepting and declining—Powers without acceptance.
11.98.019 Relinquishment of powers by trustee.
11.98.039 Nonjudicial change of trustee—Judicial appointment or change of trustee—Liability and duties of successor fiduciary.

11.98.041 Change of trustee—Discharge of outgoing trustee, when.
11.98.045 Criteria for transfer of trust assets or administration.
11.98.051 Nonjudicial transfer of trust assets or administration—
Notice—Consent required.
11.98.072 Trustee—Notification requirements.
11.98.078 Trustee duty of loyalty.
11.98.080 Consolidation of trusts.
11.98.090 Repealed.

11.98.002 Definitions. The definitions in this section apply throughout this chapter, and throughout this title where specifically referenced, unless the context clearly requires otherwise.

(1) "Permissible distributee" means a trust beneficiary who is currently eligible to receive distributions of trust income or principal, whether the distribution is mandatory or discretionary.

(2) "Qualified beneficiary" means a trust beneficiary who, on the date that such beneficiary's qualification is determined:

(a) Is a permissible distributee;

(b) Would be a permissible distributee if the interests of the distributees described in (a) of this subsection terminated on that date; or

(c) Would be a permissible distributee if the trust terminated on that date. [2013 c 272 § 8.]

Application—2013 c 272: "Except as otherwise provided in this act:

(1) This act applies to all trusts created before, on, or after January 1, 2013;

(2) This act applies to all judicial proceedings concerning trusts commenced on or after January 1, 2013;

(3) An action taken before January 1, 2013, is not affected by this act; and

(4) If a right is acquired, extinguished, or barred upon the expiration of a prescribed period that has commenced to run under any other statute before January 1, 2013, that statute continues to apply to the right even if it has been repealed or superseded." [2013 c 272 § 28.]

11.98.005 Trust situs and governing law. (1) If provisions of a trust instrument designate Washington as the situs of the trust or designate Washington law to govern the trust or any of its terms, then the situs of the trust is Washington provided that one of the following conditions is met:

(a) A trustee has a place of business in or a trustee is a resident of Washington; or

(b) More than an insignificant part of the trust administration occurs in Washington; or

(c) The trustor resides in Washington at the time situs is being established, or resided in Washington at the time the trust became irrevocable; or

(d) One or more of the qualified beneficiaries resides in Washington; or

(e) An interest in real property located in Washington is an asset of the trust.

(2)(a) Unless the trust instrument designates a state other than Washington as the situs of the trust and does not expressly authorize transfer of situs, the trustee may register the trust as a Washington trust if any of the factors in subsection (1)(a) through (e) of this section are present. The trustee must register the trust by filing with the clerk of the court in any county where venue lies for the trust under RCW 11.96A.050, a statement including the following information:

(i) The name and address of the trustee;

(ii) The date of the trust, name of the trustor, and name of the trust, if any;

(iii) The factor or factors listed in subsection (1)(a) through (e) of this section that are present for the trust and which qualify the trust for registration.

(b) Within five days of filing the registration with the court, the trustee must mail a copy of the registration to each qualified beneficiary who has not waived notice of the registration, in writing, filed in the cause, together with a notice that must be in substantially the same form as set forth in this section. Persons receiving such notice have thirty days from the date of filing the registration to file a petition in the court objecting to such registration and requesting the court to issue an order that Washington is not the proper situs of the trust, and to serve a copy of such petition upon the trustee or the trustee's lawyer. If a petition objecting to the registration is filed within thirty days of the date of filing the registration, the trustee must request the court to fix a time and place for the hearing of the petition and notify by mail, personal service or electronic transmission, if a valid consent to electronic transmission is in effect under the terms of RCW 11.96A.110, all qualified beneficiaries of the time and place of the hearing, not less than ten days before the hearing on the petition.

(c) Unless a person receiving notice of the registration files a petition with the court objecting to the registration within thirty days of the date of filing the registration, the registration will be deemed the equivalent of an order entered by the court declaring that the situs of the trust is Washington. After expiration of the thirty-day period following filing of the registration, the trustee may obtain a certificate of registration signed by the clerk, and issued under the seal of the court, which may be in the form specified in (d) of this subsection.

(d) Notice of registration and certificates of registration may be in the following form:

(i) Notice form:

NOTICE OF FILING OF REGISTRATION OF [NAME AND DATE OF TRUST] AS A WASHINGTON TRUST

NOTICE IS GIVEN that the attached Registration of Trust was filed by the undersigned in the above-entitled court on the . . . day of . . . , 20 . . . ; unless you file a petition in the above-entitled court objecting to such registration and requesting the court to issue an order that Washington is not the proper situs of the trust, and serve a copy thereof upon the trustee or the trustee's lawyer, within thirty days after the date of the filing, the registration will be deemed the equivalent of an order entered by the court declaring that the situs of the trust is Washington.

If you file and serve a petition within the period specified, the undersigned will request the court to fix a time and place for the hearing of your petition, and you will be notified of the time and place thereof, by mail, or personal service, not less than ten days before the hearing on the petition.

(ii) Certificate of Registration:

State of Washington, County of
In the superior court of the county of

Whereas, the attached Registration of Trust was filed with this court on . . . , the attached Notice of Filing Registration of Trust and Affidavit of Mailing Notice of Filing Registration of Trust were filed with this court on . . . , and no objections to such Registration have been filed with this

court, the trust known as . . . , under trust agreement dated . . . , between . . . as Trustor and . . . as Trustee, is hereby registered as a Washington trust.

Witness my hand and the seal of said court this . . . day of . . . , 20 . . .

(3) If the instrument establishing a trust does not designate any jurisdiction as the situs or designate any jurisdiction's governing law to apply to the trust, and the trustee of the trust has not registered the trust as allowed in subsection (2) of this section, the situs of the trust is Washington if situs has not previously been established by any court proceeding and the additional conditions specified in this subsection (3) are met.

(a) For a testamentary trust, the situs of the trust is Washington if:

(i) The will was admitted to probate in Washington; or

(ii) The will has not been admitted to probate in Washington, but any trustee of the trust resides or has a place of business in Washington, any qualified beneficiary resides in Washington, or any real property that is an asset of the trust is located in Washington.

(b) For an inter vivos trust, the situs of the trust is Washington if:

(i) The trustor is living and Washington is the trustor's domicile or any of the trustees reside in or have a place of business in Washington; or

(ii) The trustor is deceased; and:

(A) The trustor's will was admitted to probate in Washington; or

(B) The trustor's will was not admitted to probate in Washington, but any qualified beneficiary resides in Washington, any trustee resides or has a place of business in Washington, or any real property that is an asset of the trust is located in Washington.

(c) If the situs of the trust is not determined under (a) or (b) of this subsection, the determination regarding the situs of the trust is a matter for purposes of RCW 11.96A.030. Whether Washington is the situs must be determined by a court in a judicial proceeding conducted under RCW 11.96A.080 if:

(i) A trustee has a place of business in or a trustee is a resident of Washington; or

(ii) More than an insignificant part of the trust administration occurs in Washington; or

(iii) One or more of the qualified beneficiaries resides in Washington; or

(iv) An interest in real property located in Washington is an asset of the trust.

(d) Determination of situs under (c) of this subsection (3) cannot be made by nonjudicial agreement under RCW 11.96A.220. [2013 c 272 § 9; 2011 c 327 § 22.]

Application—2013 c 272: See note following RCW 11.98.002.

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

11.98.015 Noncharitable trusts without ascertainable beneficiaries. Except as otherwise provided in chapter 11.118 RCW or by another statute, the following rules apply:

(1) A trust may be created for a noncharitable purpose without a definite or definitely ascertainable beneficiary or

for a noncharitable but otherwise valid purpose to be selected by the trustee. The trust may not be enforced for longer than the time period specified in RCW 11.98.130 as the period during which a trust cannot be deemed to violate the rule against perpetuities;

(2) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court. Such person is considered to be a permissible distributee of the trust; and

(3) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the trustor, if then living, otherwise to the trustor's successors in interest. Successors in interest include the beneficiaries under the trustor's will, if the trustor has a will, or, in the absence of an effective will provision, the trustor's heirs. [2013 c 272 § 22; 2011 c 327 § 20.]

Application—2013 c 272: See note following RCW 11.98.002.

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

11.98.017 Trusteeship—Accepting and declining—Powers without acceptance. (1) Except as otherwise provided in subsection (3) of this section, a person designated as trustee accepts the trusteeship:

(a) By substantially complying with a method of acceptance provided in the terms of the trust; or

(b) If the terms of the trust do not provide a method of acceptance or the method provided in the terms is not expressly made exclusive, by accepting delivery of the trust property, exercising powers or performing duties as trustee, or otherwise indicating acceptance of the trusteeship.

(2) A person designated as trustee who has not yet accepted the trusteeship may decline the trusteeship by delivering a written declination of the trusteeship to the trustor or, if the trustor is deceased or is incapacitated, to a successor trustee, if any, and if none, to a qualified beneficiary.

(3) A person designated as trustee, without accepting the trusteeship, may:

(a) Act to preserve the trust property if, within a reasonable time after acting, the person sends a written declination of the trusteeship to the trustor or, if the trustor is dead or is incapacitated, to a successor trustee, if any, and if none, to a qualified beneficiary; and

(b) Inspect or investigate trust property to determine potential liability under environmental or other law or for any other purpose. [2013 c 272 § 10.]

Application—2013 c 272: See note following RCW 11.98.002.

11.98.019 Relinquishment of powers by trustee. Any trustee may, by written instrument delivered to any then acting co-trustee and to the permissible distributees of the trust, relinquish to any extent and upon any terms any or all of the trustee's powers, rights, authorities, or discretions that are or may be tax sensitive in that they cause or may cause adverse tax consequences to the trustee or the trust. Any trustee not relinquishing such a power, right, authority, or discretion and

upon whom it is conferred continues to have full power to exercise it. [2013 c 272 § 11; 1985 c 30 § 42. Prior: 1984 c 149 § 69.]

Application—2013 c 272: See note following RCW 11.98.002.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.98.039 Nonjudicial change of trustee—Judicial appointment or change of trustee—Liability and duties of successor fiduciary. (1) Where a vacancy occurs in the office of the trustee and there is a successor trustee who is willing to serve as trustee and (a) is named in the governing instrument as successor trustee or (b) has been selected to serve as successor trustee under the procedure established in the governing instrument for the selection of a successor trustee, the outgoing trustee, or any other interested party, must give notice of such vacancy, whether arising because of the trustee's resignation or because of any other reason, and of the successor trustee's agreement to serve as trustee, to each permissible distributee. The successor trustee named in the governing instrument or selected pursuant to the procedure therefor established in the governing instrument is entitled to act as trustee except for good cause or disqualification. The successor trustee is deemed to have accepted the trusteeship as of the effective date of the discharge of the predecessor trustee as provided in RCW 11.98.041.

(2) Where a vacancy exists or occurs in the office of the trustee and there is no successor trustee who is named in the governing instrument or who has been selected to serve as successor trustee under the procedure established in the governing instrument for the selection of a successor trustee, and who is willing to serve as trustee, then all parties with an interest in the trust may agree to a nonjudicial change of the trustee under RCW 11.96A.220. The successor trustee is deemed to have accepted the trusteeship as of the effective date of the discharge of the predecessor trustee as provided in RCW 11.98.041 or, in circumstances where there is no predecessor trustee, as of the effective date of the trustee's appointment.

(3) When there is a desire to name one or more cotrustees to serve with the existing trustee, then all parties with an interest in the trust may agree to the nonjudicial addition of one or more cotrustees under RCW 11.96A.220. The additional cotrustee is deemed to have accepted the trusteeship as of the effective date of the cotrustee's appointment.

(4) Unless subsection (1), (2), or (3) of this section applies, any beneficiary of a trust, the trustor, if alive, or the trustee may petition the superior court having jurisdiction for the appointment or change of a trustee or cotrustee under the procedures provided in RCW 11.96A.080 through 11.96A.200: (a) Whenever the office of trustee becomes vacant; (b) upon filing of a petition of resignation by a trustee; or (c) for any other reasonable cause.

(5) For purposes of this subsection, the term fiduciary includes both trustee and personal representative.

(a) Except as otherwise provided in the governing instrument, a successor fiduciary, absent actual knowledge of a breach of fiduciary duty: (i) Is not liable for any act or omission of a predecessor fiduciary and is not obligated to inquire into the validity or propriety of any such act or omission; (ii)

is authorized to accept as conclusively accurate any accounting or statement of assets tendered to the successor fiduciary by a predecessor fiduciary; and (iii) is authorized to receipt only for assets actually delivered and has no duty to make further inquiry as to undisclosed assets of the trust or estate.

(b) Nothing in this section relieves a successor fiduciary from liability for retaining improper investments, nor does this section in any way bar the successor fiduciary, trust beneficiaries, or other party in interest from bringing an action against a predecessor fiduciary arising out of the acts or omissions of the predecessor fiduciary, nor does it relieve the successor fiduciary of liability for its own acts or omissions except as specifically stated or authorized in this section.

(6) A change of trustee to a foreign trustee does not change the situs of the trust. Transfer of situs of a trust to another jurisdiction requires compliance with RCW 11.98.005 and RCW 11.98.045 through 11.98.055. [2013 c 272 § 12; 2011 c 327 § 21; 2005 c 97 § 13; 1999 c 42 § 618; 1985 c 30 § 44. Prior: 1984 c 149 § 72; 1959 c 124 § 5. Formerly RCW 30.99.050.]

Application—2013 c 272: See note following RCW 11.98.002.

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.98.041 Change of trustee—Discharge of outgoing trustee, when. Where a vacancy occurs in the office of trustee under the circumstances described in RCW 11.98.039 (1) or (2), the outgoing trustee is discharged upon the agreement of all parties entitled to notice or upon the expiration of thirty days after notice is given of such vacancy as required by the applicable subsection of RCW 11.98.039, whichever occurs first, or if no notice is required under RCW 11.98.039(1), upon the date the vacancy occurs, unless before the effective date of such discharge a petition is filed under RCW 11.98.039(4) regarding the appointment or change of a trustee of the trust. Where a petition is filed under RCW 11.98.039(4) regarding the appointment or change of a trustee, the superior court having jurisdiction may discharge the trustee from the trust and may appoint a successor trustee upon such terms as the court may require. [2013 c 272 § 13; 1985 c 30 § 141.]

Application—2013 c 272: See note following RCW 11.98.002.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

11.98.045 Criteria for transfer of trust assets or administration. (1) If a trust is a Washington trust under RCW 11.98.005, a trustee may transfer the situs of the trust to a jurisdiction other than Washington if the trust instrument so provides or in accordance with RCW 11.98.051 or 11.98.055.

(2) Transfer under this section is permitted only if:

(a) The transfer would facilitate the economic and convenient administration of the trust;

(b) The transfer would not materially impair the interests of the qualified beneficiaries or others interested in the trust;

(c) The transfer does not violate the terms of the trust;

(d) The new trustee is qualified and able to administer the trust or such assets on the terms set forth in the trust; and

(e) The trust meets at least one condition for situs listed in RCW 11.98.005(1) with respect to the new jurisdiction.

(3) Acceptance of such transfer by a foreign corporate trustee or trust company under this section or RCW 11.98.051 or 11.98.055 may not be construed to be doing a "trust business" as described in RCW 30.08.150(9). [2013 c 272 § 14; 2011 c 327 § 23; 1985 c 30 § 45. Prior: 1984 c 149 § 74.]

Application—2013 c 272: See note following RCW 11.98.002.

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.98.051 Nonjudicial transfer of trust assets or administration—Notice—Consent required. (1) The trustee may transfer trust situs (a) in accordance with RCW 11.96A.220; or (b) by giving written notice to the attorney general in the case of a charitable trust subject to chapter 11.110 RCW and to the qualified beneficiaries not less than sixty days before initiating the transfer. The notice must:

(a) State the name and mailing address of the trustee;

(b) Include a copy of the governing instrument of the trust;

(c) Include a statement of assets and liabilities of the trust dated within ninety days of the notice;

(d) State the name and mailing address of the trustee to whom the trust will be transferred together with evidence that the trustee has agreed to accept the trust in the manner provided by law of the new situs. The notice must also contain a statement of the trustee's qualifications and the name of the court, if any, having jurisdiction of that trustee or in which a proceeding with respect to the administration of the trust may be heard;

(e) State the facts supporting the requirements of RCW 11.98.045(2);

(f) Advise the recipients of the notice of the date, not less than sixty days after the giving of the notice, by which such recipients must notify the trustee of an objection to the proposed transfer; and

(g) Include a form on which the recipient may object to the proposed transfer.

(2) If the date upon which the right to object to the transfer expires without receipt by the trustee of any objection, the trustee may transfer the trust situs as provided in the notice. If the trust was registered under RCW 11.98.045(2), the trustee must file a notice of transfer of situs and termination of registration with the court of the county where the trust was registered.

(3) The authority of a trustee under this section to transfer a trust's situs terminates if a recipient of the notice notifies the trustee of an objection to the proposed transfer on or before the date specified in the notice.

(4) A change of trust situs does not authorize a change of trustee. Change of trustee of a trust requires compliance with RCW 11.98.039. [2013 c 272 § 15; 2011 c 327 § 24; 1999 c 42 § 619; 1985 c 30 § 46. Prior: 1984 c 149 § 75.]

Application—2013 c 272: See note following RCW 11.98.002.

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.98.072 Trustee—Notification requirements. (1) A trustee must keep all qualified beneficiaries of a trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests. Unless unreasonable under the circumstances, a trustee must promptly respond to any beneficiary's request for information related to the administration of the trust. The trustee is deemed to have satisfied the request of a qualified beneficiary who requests information concerning the terms of the trust reasonably necessary to enable such beneficiary to enforce his or her rights under the trust if the trustee provides a copy of the entire trust instrument. If a qualified beneficiary must compel production of information from the trustee by order of the court, then the court may order costs, including reasonable attorneys' fees, to be awarded to such beneficiary pursuant to RCW 11.96A.150.

(2)(a) Except to the extent waived or modified as provided in subsection (5) of this section, within sixty days after the date of acceptance of the position of trustee, the trustee must give notice to the qualified beneficiaries of the trust of:

- (i) The existence of the trust;
- (ii) The identity of the trustor or trustors;
- (iii) The trustee's name, address, and telephone number;

and

(iv) The right to request such information as is reasonably necessary to enable the notified person to enforce his or her rights under the trust.

(b) The notice required under this subsection (2) applies only to irrevocable trusts created after December 31, 2011, and revocable trusts that become irrevocable after December 31, 2011.

(3) Despite any other provision of this section, and except to the extent waived or modified as provided in subsection (5) of this section, the trustee may not be required to provide any information described in subsection (1) or (2) of this section to any beneficiary of a trust other than the trustor's spouse or domestic partner if:

- (a) Such spouse or domestic partner has capacity;
- (b) Such spouse or domestic partner is the only permissible distributee of the trust; and
- (c) All of the other qualified beneficiaries of the trust are the descendants of the trustor and the trustor's spouse or domestic partner.

(4) While the trustor of a revocable trust is living, no beneficiary other than the trustor is entitled to receive any information under this section.

(5) The trustor may waive or modify the notification requirements of subsections (2) and (3) of this section in the trust document or in a separate writing, made at any time, that is delivered to the trustee. [2013 c 272 § 16.]

Application—2013 c 272: See note following RCW 11.98.002.

11.98.078 Trustee duty of loyalty. (1) A trustee must administer the trust solely in the interests of the beneficiaries.

(2) Subject to the rights of persons dealing with or assisting the trustee as provided in RCW 11.98.105, a sale, encumbrance, or other transaction involving the investment or man-

agement of trust property entered into by the trustee for the trustee's own personal account or which is otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction unless:

(a) The transaction was authorized by the terms of the trust;

(b) The transaction was approved by the court or approved in a nonjudicial binding agreement in compliance with RCW 11.96A.210 through 11.96A.250;

(c) The beneficiary did not commence a judicial proceeding within the time allowed by RCW 11.96A.070;

(d) The beneficiary consented to the trustee's conduct, ratified the transaction, or released the trustee in compliance with RCW 11.98.108; or

(e) The transaction involves a contract entered into or claim acquired by the trustee before the person became or contemplated becoming trustee.

(3)(a) A sale, encumbrance, or other transaction involving the investment or management of trust property is presumed to be "otherwise affected" by a conflict between fiduciary and personal interests under this section if it is entered into by the trustee with:

- (i) The trustee's spouse or registered domestic partner;
- (ii) The trustee's descendants, siblings, parents, or their spouses or registered domestic partners;
- (iii) An agent or attorney of the trustee; or

(iv) A corporation or other person or enterprise in which the trustee, or a person that owns a significant interest in the trustee, has an interest that might affect the trustee's best judgment.

(b) The presumption is rebutted if the trustee establishes that the conflict did not adversely affect the interests of the beneficiaries.

(4) A sale, encumbrance, or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account that is voidable under subsection (2) of this section may be voided by a beneficiary without further proof.

(5) An investment by a trustee in securities of an investment company or investment trust to which the trustee, or its affiliate, provides services in a capacity other than as trustee is not presumed to be affected by a conflict between personal and fiduciary interests if the investment complies with the prudent investor rule of chapter 11.100 RCW. In addition to its compensation for acting as trustee, the trustee may be compensated by the investment company or investment trust for providing those services out of fees charged to the trust. If the trustee receives compensation from the investment company or investment trust for providing investment advisory or investment management services, the trustee must at least annually notify the permissible distributees of the rate and method by which that compensation was determined. The obligation of the trustee to provide the notice described in this section may be waived or modified by the trustor in the trust document or in a separate writing, made at any time, that is delivered to the trustee.

(6) The following transactions, if fair to the beneficiaries, cannot be voided under this section:

- (a) An agreement between a trustee and a beneficiary relating to the appointment or compensation of the trustee;

(b) Payment of reasonable compensation to the trustee and any affiliate providing services to the trust, provided total compensation is reasonable;

(c) A transaction between a trust and another trust, decedent's estate, or guardianship of which the trustee is a fiduciary or in which a beneficiary has an interest;

(d) A deposit of trust money in a regulated financial-service institution operated by the trustee or its affiliate;

(e) A delegation and any transaction made pursuant to the delegation from a trustee to an agent that is affiliated or associated with the trustee; or

(f) Any loan from the trustee or its affiliate.

(7) The court may appoint a special fiduciary to make a decision with respect to any proposed transaction that might violate this section if entered into by the trustee.

(8) If a trust has two or more beneficiaries, the trustee must act impartially in administering the trust and distributing the trust property, giving due regard to the beneficiaries' respective interests. [2013 c 272 § 23; 2011 c 327 § 32.]

Application—2013 c 272: See note following RCW 11.98.002.

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

11.98.080 Consolidation of trusts. (1)(a) Two or more trusts may be consolidated if:

(i) The trusts so provide; or

(ii) Whether provided in the trusts or not, the requirements of subsection (2), (3), or (4) of this section are satisfied.

(b) Consolidation under subsection (2), (3), or (4) of this section is permitted only if:

(i) The dispositive provisions of each trust to be consolidated are substantially similar;

(ii) Consolidation is not inconsistent with the intent of the trustor with regard to any trust to be consolidated; and

(iii) Consolidation would facilitate administration of the trusts and would not materially impair the interests of the beneficiaries.

(c) Trusts may be consolidated whether created inter vivos or by will, by the same or different instruments, by the same or different trustors, whether the trustees are the same, and regardless of where the trusts were created or administered.

(2)(a) A trustee must deliver sixty days in advance written notice of a proposed consolidation in the manner provided in RCW 11.96A.110 to the qualified beneficiaries of every trust affected by the consolidation and to any trustee of such trusts who does not join in the notice. The notice must: (i) State the name and mailing address of the trustee; (ii) include a copy of the governing instrument of each trust to be consolidated; (iii) include a statement of assets and liabilities of each trust to be consolidated, dated within ninety days of the notice; (iv) fully describe the terms and manner of consolidation; and (v) state the reasons supporting the requirements of subsection (1)(b) of this section. The notice must advise the recipient of the right to petition for a judicial determination of the proposed consolidation as provided in subsection (4) of this section, and must indicate that the recipient has thirty days to object to the proposed consolidation.

(b) If the trustee receives written objection to the proposed consolidation from any trustee or beneficiary entitled

to notice or from their representatives within the objection period provided in subsection (a) of this section, the trustee(s) may not consolidate the trusts as provided in the notice, though an objection does not preclude the trustee or a beneficiary's right to petition for a judicial determination of the proposed consolidation as provided in subsection (4) of this section. If the trustee does not receive any objection within the objection period provided above, then the trustee may consolidate the trusts, and such will be deemed the equivalent of an order entered by the court declaring that the trusts were combined in the manner provided in the initial notice.

(3) The trustees of two or more trusts may consolidate the trusts on such terms and conditions as appropriate without court approval as provided in RCW 11.96A.220.

(4)(a) Any trustee, beneficiary, or special representative may petition the superior court of the county in which the situs of a trust is located for an order consolidating two or more trusts under RCW 11.96A.080 through 11.96A.200.

(b) At the conclusion of the hearing, if the court finds that the requirements of subsection (1)(b) of this section have been satisfied, it may direct consolidation of two or more trusts on such terms and conditions as appropriate. The court in its discretion may provide for payment from one or more of the trusts of reasonable fees and expenses for any party to the proceeding.

(5) This section applies to all trusts whenever created. Any person dealing with the trustee of the resulting consolidated trust is entitled to rely on the authority of that trustee to act and is not obliged to inquire into the validity or propriety of the consolidation under this section.

(6) For powers of fiduciaries to divide trusts, see RCW 11.108.025. [2013 c 272 § 17; 1999 c 42 § 621; 1991 c 6 § 2; 1985 c 30 § 51. Prior: 1984 c 149 § 81.]

Application—2013 c 272: See note following RCW 11.98.002.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

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

Chapter 11.103 RCW REVOCABLE TRUSTS

Sections

- 11.103.030 Revocation or amendment.
- 11.103.040 Trustor's powers—Powers of withdrawal.
- 11.103.050 Limitation on action contesting validity of revocable trust—Distribution of trust property.

11.103.030 Revocation or amendment. (1) Unless the terms of a trust expressly provide that the trust is revocable, the trustor may not revoke or amend the trust.

(2) If a revocable trust is created or funded by more than one trustor and unless the trust agreement provides otherwise:

(a) To the extent the trust consists of community property, the trust may be revoked by either spouse or either domestic partner acting alone but may be amended only by joint action of both spouses or both domestic partners;

(b) To the extent the trust consists of property other than community property, each trustor may revoke or amend the trust with regard to the portion of the trust property attributable to that trustor's contribution;

(c) The character of community property or separate property is unaffected by its transfer to and from a revocable trust; and

(d) Upon the revocation or amendment of the trust by fewer than all of the trustors, the trustee must promptly notify the other trustors of the revocation or amendment.

(3) The trustor may revoke or amend a revocable trust:

(a) By substantial compliance with a method provided in the terms of the trust; or

(b)(i) If the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by:

(A) A later will or codicil that expressly refers to the trust or specifically devises property that would otherwise have passed according to the terms of the trust; or

(B) A written instrument signed by the trustor evidencing intent to revoke or amend.

(ii) The requirements of chapter 11.11 RCW do not apply to revocation or amendment of a revocable trust under (b)(i) of this subsection.

(4) Upon revocation of a revocable trust, the trustee must deliver the trust property as the trustor directs.

(5) A trustor's powers with respect to the revocation or amendment of a trust or distribution of the property of a trust, may be exercised by the trustor's agent under a power of attorney only to the extent specified in the power of attorney document, as provided in RCW 11.94.050(1) and to the extent consistent with or expressly authorized by the trust agreement.

(6) A guardian of the trustor may exercise a trustor's powers with respect to revocation, amendment, or distribution of trust property only with the approval of the court supervising the guardianship pursuant to RCW 11.92.140.

(7) A trustee who does not know that a trust has been revoked or amended is not liable to the trustor or trustor's successors in interest for distributions made and other actions taken on the assumption that the trust had not been amended or revoked.

(8) This section does not limit or affect operation of RCW 11.96A.220 through 11.96A.240. [2013 c 272 § 24; 2011 c 327 § 36.]

Application—2013 c 272: See note following RCW 11.98.002.

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

11.103.040 Trustor's powers—Powers of withdrawal. While the trustor of a revocable trust is living, the rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the trustor. If a revocable trust has more than one trustor, the duties of the trustee are owed to all of the living trustors having the right to revoke the trust. [2013 c 272 § 19; 2011 c 327 § 37.]

Application—2013 c 272: See note following RCW 11.98.002.

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

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11.103.050 Limitation on action contesting validity of revocable trust—Distribution of trust property. (1) A person may commence a judicial proceeding to contest the validity of a trust that was revocable at the trustor's death within the earlier of:

(a) Twenty-four months after the trustor's death; or

(b) Four months after the trustee sent to the person by personal service, mail, or in an electronic transmission if there is a consent of the recipient to electronic transmission then in effect under the terms of RCW 11.96A.110, a notice including:

(i) The name and date of the trust;

(ii) The identity of the trustor or trustors;

(iii) The trustee's name, address, and telephone number; and

(iv) Notice of the time allowed for commencing a proceeding.

(2) Upon the death of the trustor of a trust that was revocable at the trustor's death, the trustee may proceed to distribute the trust property in accordance with the terms of the trust, unless:

(a) The trustee knows of a pending judicial proceeding contesting the validity of the trust; or

(b) A potential contestant has notified the trustee of a possible judicial proceeding to contest the trust and a judicial proceeding is commenced within sixty days after the contestant sent the notification.

(3) A beneficiary of a trust that is determined to have been invalid is liable to return any distribution received. [2013 c 272 § 20; 2011 c 327 § 38.]

Application—2013 c 272: See note following RCW 11.98.002.

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

Chapter 11.106 RCW TRUSTEES' ACCOUNTING ACT

Sections

11.106.010 Scope of chapter—Exceptions.

11.106.020 Trustee's annual statement.

11.106.010 Scope of chapter—Exceptions. This chapter does not apply to resulting trusts, constructive trusts, business trusts where certificates of beneficial interest are issued to the beneficiaries, investment trusts, voting trusts, insurance trusts prior to the death of the insured, trusts in the nature of mortgages or pledges, liquidation trusts or trusts for the sole purpose of paying dividends, interest or interest coupons, salaries, wages or pensions; nor does this chapter apply to personal representatives. [2013 c 272 § 25; 1985 c 30 § 95. Prior: 1984 c 149 § 128; 1955 c 33 § 30.30.010; prior: 1951 c 226 § 10. Formerly RCW 30.30.010.]

Application—2013 c 272: See note following RCW 11.98.002.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.106.020 Trustee's annual statement. The trustee or trustees appointed by any will, deed, or agreement executed must mail or deliver at least annually to each permissible distributee, as defined in RCW 11.98.002, a written itemized

statement of all current receipts and disbursements made by the trustee of the funds of the trust both principal and income, and upon the request of any such beneficiary must furnish the beneficiary an itemized statement of all property then held by that trustee, and may also file any such statement in the superior court of the county in which the trustee or one of the trustees resides. [2013 c 272 § 26; 1985 c 30 § 96. Prior: 1984 c 149 § 129; 1955 c 33 § 30.30.020; prior: 1951 c 226 § 2. Formerly RCW 30.30.020.]

Application—2013 c 272: See note following RCW 11.98.002.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Trust provisions may relieve trustee from duty, restriction, or liability imposed by statute: RCW 11.97.010.

Additional notes found at www.leg.wa.gov

Chapter 11.118 RCW TRUSTS—ANIMALS

Sections

11.118.050 Enforcement of trust provisions.

11.118.050 Enforcement of trust provisions. The intended use of the principal or income can be enforced by a person designated for that purpose in the trust instrument, by the person having custody of an animal that is a beneficiary of the trust, or by a person appointed by a court upon application to it by any person. Such person is considered to be a permissible distributee, as defined in RCW 11.98.002, of the trust. A person with an interest in the welfare of the animal may petition for an order appointing or removing a person designated or appointed to enforce the trust. [2013 c 272 § 27; 2001 c 327 § 6.]

Application—2013 c 272: See note following RCW 11.98.002.

Title 13

JUVENILE COURTS AND JUVENILE OFFENDERS

Chapters

- 13.04 Basic juvenile court act.
- 13.32A Family reconciliation act.
- 13.34 Juvenile court act—Dependency and termination of parent-child relationship.
- 13.40 Juvenile justice act of 1977.
- 13.50 Keeping and release of records by juvenile justice or care agencies.
- 13.60 Missing children clearinghouse.

Chapter 13.04 RCW BASIC JUVENILE COURT ACT (Formerly: Juvenile courts)

Sections

13.04.011 Definitions.

13.04.011 Definitions. For purposes of this title:

(1) "Adjudication" has the same meaning as "conviction" in RCW 9.94A.030, but only for the purposes of sentencing under chapter 9.94A RCW;

(2) Except as specifically provided in RCW 13.40.020 and chapters 13.24 and 13.34 RCW, "juvenile," "youth," and "child" mean any individual who is under the chronological age of eighteen years;

(3) "Juvenile offender" and "juvenile offense" have the meaning ascribed in RCW 13.40.020;

(4) "Court" when used without further qualification means the juvenile court judge(s) or commissioner(s);

(5) "Parent" or "parents," except as used in chapter 13.34 RCW, means that parent or parents who have the right of legal custody of the child. "Parent" or "parents" as used in chapter 13.34 RCW, means the biological or adoptive parents of a child unless the legal rights of that person have been terminated by judicial proceedings;

(6) "Custodian" means that person who has the legal right to custody of the child. [2011 c 330 § 2; 2010 c 150 § 4; 1997 c 338 § 6; 1992 c 205 § 119; 1979 c 155 § 1; 1977 ex.s. c 291 § 2.]

Intent—2013 c 39; 2011 c 330: "The Washington state legislature has consistently provided national leadership on safe housing and support to foster youth transitioning out of foster care. Since 2006, the legislature has addressed the needs of foster youth aging out of care with medicaid to twenty-one (2007), foster care to twenty-one (2006), the independent youth housing program (2007), and Washington's alignment with the federal fostering connections act (2009). As a result of this national leadership to provide safe and basic housing to youth aging out of foster care, the programs have demonstrated the significant cost-benefit to providing safe housing to our youth exiting foster care.

The United States congress passed the fostering connections to success and increasing adoptions act of 2008 in order to give states another financial tool to continue to provide foster care services to dependent youth who turn eighteen years old while in foster care. However, substantially declining revenues have resulted in markedly decreased funds for states to use to meet the federal requirements necessary to help these youth. Current fiscal realities require that the scope of programs must be narrowed.

The Washington state legislature intends to serve, within the resources available, the maximum number of foster youth who are legally dependent on the state and who reach the age of eighteen while still in foster care. The legislature intends to provide these youth continued foster care services to support basic and healthy transition into adulthood. The legislature recognizes the extremely poor outcomes of unsupported foster youth aging out of the foster care system and is committed to ensuring that those foster youth who engage in positive, age-appropriate activities receive support. It is the intent of the legislature to fully engage in the fostering connections act by providing support, including extended court supervision to foster youth pursuing a high school diploma or high school equivalency certificate as provided in RCW 28B.50.536 to age twenty-one with the goal of increasing support to all children up to age twenty-one who are eligible under the federal fostering connections to success act as resources become available." [2013 c 39 § 1; 2011 c 330 § 1.]

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Additional notes found at www.leg.wa.gov

Chapter 13.32A RCW FAMILY RECONCILIATION ACT (Formerly: Procedures for families in conflict)

Sections

- 13.32A.030 Definitions—Regulating leave from semi-secure facility.
- 13.32A.082 Providing shelter to minor—Requirement to notify parent, law enforcement, or department.
- 13.32A.085 Unlicensed youth shelter or unlicensed runaway and homeless youth program—Private right of action or claim.

13.32A.030 Definitions—Regulating leave from semi-secure facility. As used in this chapter the following

terms have the meanings indicated unless the context clearly requires otherwise:

(1) "Abuse or neglect" means the injury, sexual abuse, sexual exploitation, negligent treatment, or maltreatment of a child by any person under circumstances that indicate the child's health, welfare, and safety is harmed, excluding conduct permitted under RCW 9A.16.100. An abused child is a child who has been subjected to child abuse or neglect as defined in this section.

(2) "Administrator" means the individual who has the daily administrative responsibility of a crisis residential center, or his or her designee.

(3) "At-risk youth" means a juvenile:

(a) Who is absent from home for at least seventy-two consecutive hours without consent of his or her parent;

(b) Who is beyond the control of his or her parent such that the child's behavior endangers the health, safety, or welfare of the child or any other person; or

(c) Who has a substance abuse problem for which there are no pending criminal charges related to the substance abuse.

(4) "Child," "juvenile," "youth," and "minor" mean any unemancipated individual who is under the chronological age of eighteen years.

(5) "Child in need of services" means a juvenile:

(a) Who is beyond the control of his or her parent such that the child's behavior endangers the health, safety, or welfare of the child or any other person;

(b) Who has been reported to law enforcement as absent without consent for at least twenty-four consecutive hours on two or more separate occasions from the home of either parent, a crisis residential center, an out-of-home placement, or a court-ordered placement; and

(i) Has exhibited a serious substance abuse problem; or

(ii) Has exhibited behaviors that create a serious risk of harm to the health, safety, or welfare of the child or any other person;

(c)(i) Who is in need of: (A) Necessary services, including food, shelter, health care, clothing, or education; or (B) services designed to maintain or reunite the family;

(ii) Who lacks access to, or has declined to use, these services; and

(iii) Whose parents have evidenced continuing but unsuccessful efforts to maintain the family structure or are unable or unwilling to continue efforts to maintain the family structure; or

(d) Who is a "sexually exploited child."

(6) "Child in need of services petition" means a petition filed in juvenile court by a parent, child, or the department seeking adjudication of placement of the child.

(7) "Crisis residential center" means a secure or semi-secure facility established pursuant to chapter 74.13 RCW.

(8) "Custodian" means the person or entity that has the legal right to custody of the child.

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

(10) "Extended family member" means an adult who is a grandparent, brother, sister, stepbrother, stepsister, uncle, aunt, or first cousin with whom the child has a relationship and is comfortable, and who is willing and available to care for the child.

(11) "Guardian" means the person or agency that (a) has been appointed as the guardian of a child in a legal proceeding other than a proceeding under chapter 13.34 RCW, and (b) has the legal right to custody of the child pursuant to such appointment. The term "guardian" does not include a "dependency guardian" appointed pursuant to a proceeding under chapter 13.34 RCW.

(12) "Multidisciplinary team" means a group formed to provide assistance and support to a child who is an at-risk youth or a child in need of services and his or her parent. The team must include the parent, a department caseworker, a local government representative when authorized by the local government, and when appropriate, members from the mental health and substance abuse disciplines. The team may also include, but is not limited to, the following persons: Educators, law enforcement personnel, probation officers, employers, church persons, tribal members, therapists, medical personnel, social service providers, placement providers, and extended family members. The team members must be volunteers who do not receive compensation while acting in a capacity as a team member, unless the member's employer chooses to provide compensation or the member is a state employee.

(13) "Out-of-home placement" means a placement in a foster family home or group care facility licensed pursuant to chapter 74.15 RCW or placement in a home, other than that of the child's parent, guardian, or legal custodian, not required to be licensed pursuant to chapter 74.15 RCW.

(14) "Parent" means the parent or parents who have the legal right to custody of the child. "Parent" includes custodian or guardian.

(15) "Secure facility" means a crisis residential center, or portion thereof, that has locking doors, locking windows, or a secured perimeter, designed and operated to prevent a child from leaving without permission of the facility staff.

(16) "Semi-secure facility" means any facility, including but not limited to crisis residential centers or specialized foster family homes, operated in a manner to reasonably assure that youth placed there will not run away. Pursuant to rules established by the department, the facility administrator shall establish reasonable hours for residents to come and go from the facility such that no residents are free to come and go at all hours of the day and night. To prevent residents from taking unreasonable actions, the facility administrator, where appropriate, may condition a resident's leaving the facility upon the resident being accompanied by the administrator or the administrator's designee and the resident may be required to notify the administrator or the administrator's designee of any intent to leave, his or her intended destination, and the probable time of his or her return to the center.

(17) "Sexually exploited child" means any person under the age of eighteen who is a victim of the crime of commercial sex abuse of a minor under RCW 9.68A.100, promoting commercial sexual abuse of a minor under RCW 9.68A.101, or promoting travel for commercial sexual abuse of a minor under RCW 9.68A.102.

(18) "Staff secure facility" means a structured group care facility licensed under rules adopted by the department with a ratio of at least one adult staff member to every two children.

(19) "Temporary out-of-home placement" means an out-of-home placement of not more than fourteen days ordered

by the court at a fact-finding hearing on a child in need of services petition. [2013 c 4 § 1; 2010 c 289 § 1; 2000 c 123 § 2; 1997 c 146 § 1; 1996 c 133 § 9; 1995 c 312 § 3; 1990 c 276 § 3; 1985 c 257 § 6; 1979 c 155 § 17.]

Effective date—2010 c 289: "Section 1 of this act takes effect July 1, 2011." [2010 c 289 § 2.]

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

Intent—1990 c 276: See RCW 13.32A.015.

Additional notes found at www.leg.wa.gov

13.32A.082 Providing shelter to minor—Requirement to notify parent, law enforcement, or department.

(1)(a) Except as provided in (b) of this subsection, any person, unlicensed youth shelter, or runaway and homeless youth program that, without legal authorization, provides shelter to a minor and that knows at the time of providing the shelter that the minor is away from a lawfully prescribed residence or home without parental permission, shall promptly report the location of the child to the parent, the law enforcement agency of the jurisdiction in which the person lives, or the department.

(b)(i) If a licensed overnight youth shelter, or another licensed organization with a stated mission to provide services to homeless or runaway youth and their families, shelters a child and knows at the time of providing the shelter that the child is away from a lawfully prescribed residence or home without parental permission, it must contact the youth's parent within seventy-two hours, but preferably within twenty-four hours, following the time that the youth is admitted to the shelter or other licensed organization's program. The notification must include the whereabouts of the youth, a description of the youth's physical and emotional condition, and the circumstances surrounding the youth's contact with the shelter or organization. If there are compelling reasons not to notify the parent, the shelter or organization must instead notify the department.

(ii) At least once every eight hours after learning that a youth receiving services or shelter under this section is away from home without permission, the shelter or organization staff must consult the information that the Washington state patrol makes publicly available under RCW 43.43.510(2). If the youth is publicly listed as missing, the shelter or organization must immediately notify the department of its contact with the youth listed as missing. The notification must include a description of the minor's physical and emotional condition and the circumstances surrounding the youth's contact with the shelter or organization.

(c) Reports required under this section may be made by telephone or any other reasonable means.

(2) Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this section.

(a) "Shelter" means the person's home or any structure over which the person has any control.

(b) "Promptly report" means to report within eight hours after the person has knowledge that the minor is away from a lawfully prescribed residence or home without parental permission.

(c) "Compelling reasons" include, but are not limited to, circumstances that indicate that notifying the parent or legal

guardian will subject the minor to abuse or neglect as defined in RCW 26.44.020.

(3) When the department receives a report under subsection (1) of this section, it shall make a good faith attempt to notify the parent that a report has been received and offer services designed to resolve the conflict and accomplish a reunification of the family.

(4) Nothing in this section prohibits any person, unlicensed youth shelter, or runaway and homeless youth program from immediately reporting the identity and location of any minor who is away from a lawfully prescribed residence or home without parental permission more promptly than required under this section. [2013 c 4 § 2; 2011 c 151 § 1; 2010 c 229 § 2; 2000 c 123 § 10; 1996 c 133 § 14; 1995 c 312 § 34.]

Effective date—2011 c 151 § 1: "Section 1 of this act takes effect July 1, 2012." [2011 c 151 § 2.]

Findings—2010 c 229: "The legislature finds that youth services provide safety to youth on the streets and are a critical pathway to ensuring the youth's return home. Runaway youth are without protection, live under the threat of violence, and fall victim to predators who exploit their vulnerability. The policy of this state is to provide assistance to youth in crisis and to protect and preserve families. In order to effectively serve youth on the streets and promote their safe return home, shelters must have the time to establish and maintain an environment that facilitates open communication and trust.

The legislature also finds that parents of runaway youth have an interest in knowing their sons and daughters are safe in a shelter, rather than on the streets without protection. The legislature further finds that law enforcement and the department can notify a parent that the youth is safe, without disclosing the youth's location or compromising the ability of youth services providers to effectively assist youth in crisis." [2010 c 229 § 1.]

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

Additional notes found at www.leg.wa.gov

13.32A.085 Unlicensed youth shelter or unlicensed runaway and homeless youth program—Private right of action or claim.

A private right of action or claim on the part of a parent is created against an unlicensed youth shelter or unlicensed runaway and homeless youth program that fails to meet the reporting requirements in RCW 13.32A.082(1) (a), (b), and (c). [2013 c 4 § 3; 2010 c 229 § 3.]

Findings—2010 c 229: See note following RCW 13.32A.082.

**Chapter 13.34 RCW
JUVENILE COURT ACT—DEPENDENCY
AND TERMINATION OF
PARENT-CHILD RELATIONSHIP**

Sections

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13.34.030 Definitions. For purposes of this chapter:

(1) "Abandoned" means when the child's parent, guardian, or other custodian has expressed, either by statement or conduct, an intent to forego, for an extended period, parental rights or responsibilities despite an ability to exercise such rights and responsibilities. If the court finds that the petitioner has exercised due diligence in attempting to locate the parent, no contact between the child and the child's parent, guardian, or other custodian for a period of three months creates a rebuttable presumption of abandonment, even if there is no expressed intent to abandon.

(2) "Child," "juvenile," and "youth" means:

(a) Any individual under the age of eighteen years; or
 (b) Any individual age eighteen to twenty-one years who is eligible to receive and who elects to receive the extended foster care services authorized under RCW 74.13.031. A youth who remains dependent and who receives extended foster care services under RCW 74.13.031 shall not be considered a "child" under any other statute or for any other purpose.

(3) "Current placement episode" means the period of time that begins with the most recent date that the child was removed from the home of the parent, guardian, or legal custodian for purposes of placement in out-of-home care and continues until: (a) The child returns home; (b) an adoption decree, a permanent custody order, or guardianship order is entered; or (c) the dependency is dismissed, whichever occurs first.

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

(5) "Dependency guardian" means the person, nonprofit corporation, or Indian tribe appointed by the court pursuant to this chapter for the limited purpose of assisting the court in the supervision of the dependency.

(6) "Dependent child" means any child who:

(a) Has been abandoned;
 (b) Is abused or neglected as defined in chapter 26.44 RCW by a person legally responsible for the care of the child;
 (c) Has no parent, guardian, or custodian capable of adequately caring for the child, such that the child is in circumstances which constitute a danger of substantial damage to the child's psychological or physical development; or
 (d) Is receiving extended foster care services, as authorized by RCW 74.13.031.

(7) "Developmental disability" means a disability attributable to intellectual disability, cerebral palsy, epilepsy, autism, or another neurological or other condition of an individual found by the secretary to be closely related to an intellectual disability or to require treatment similar to that required for individuals with intellectual disabilities, which

disability originates before the individual attains age eighteen, which has continued or can be expected to continue indefinitely, and which constitutes a substantial limitation to the individual.

(8) "Educational liaison" means a person who has been appointed by the court to fulfill responsibilities outlined in RCW 13.34.046.

(9) "Extended foster care services" means residential and other support services the department is authorized to provide under RCW 74.13.031. These services may include placement in licensed, relative, or otherwise approved care, or supervised independent living settings; assistance in meeting basic needs; independent living services; medical assistance; and counseling or treatment.

(10) "Guardian" means the person or agency that: (a) Has been appointed as the guardian of a child in a legal proceeding, including a guardian appointed pursuant to chapter 13.36 RCW; and (b) has the legal right to custody of the child pursuant to such appointment. The term "guardian" does not include a "dependency guardian" appointed pursuant to a proceeding under this chapter.

(11) "Guardian ad litem" means a person, appointed by the court to represent the best interests of a child in a proceeding under this chapter, or in any matter which may be consolidated with a proceeding under this chapter. A "court-appointed special advocate" appointed by the court to be the guardian ad litem for the child, or to perform substantially the same duties and functions as a guardian ad litem, shall be deemed to be guardian ad litem for all purposes and uses of this chapter.

(12) "Guardian ad litem program" means a court-authorized volunteer program, which is or may be established by the superior court of the county in which such proceeding is filed, to manage all aspects of volunteer guardian ad litem representation for children alleged or found to be dependent. Such management shall include but is not limited to: Recruitment, screening, training, supervision, assignment, and discharge of volunteers.

(13) "Housing assistance" means appropriate referrals by the department or other supervising agencies to federal, state, local, or private agencies or organizations, assistance with forms, applications, or financial subsidies or other monetary assistance for housing. For purposes of this chapter, "housing assistance" is not a remedial service or time-limited family reunification service as described in RCW 13.34.025(2).

(14) "Indigent" means a person who, at any stage of a court proceeding, is:

(a) Receiving one of the following types of public assistance: Temporary assistance for needy families, aged, blind, or disabled assistance benefits, medical care services under RCW 74.09.035, pregnant women assistance benefits, poverty-related veterans' benefits, food stamps or food stamp benefits transferred electronically, refugee resettlement benefits, medicaid, or supplemental security income; or

(b) Involuntarily committed to a public mental health facility; or

(c) Receiving an annual income, after taxes, of one hundred twenty-five percent or less of the federally established poverty level; or

(d) Unable to pay the anticipated cost of counsel for the matter before the court because his or her available funds are insufficient to pay any amount for the retention of counsel.

(15) "Nonminor dependent" means any individual age eighteen to twenty-one years who is participating in extended foster care services authorized under RCW 74.13.031.

(16) "Out-of-home care" means placement in a foster family home or group care facility licensed pursuant to chapter 74.15 RCW or placement in a home, other than that of the child's parent, guardian, or legal custodian, not required to be licensed pursuant to chapter 74.15 RCW.

(17) "Preventive services" means preservation services, as defined in chapter 74.14C RCW, and other reasonably available services, including housing assistance, capable of preventing the need for out-of-home placement while protecting the child.

(18) "Shelter care" means temporary physical care in a facility licensed pursuant to RCW 74.15.030 or in a home not required to be licensed pursuant to RCW 74.15.030.

(19) "Sibling" means a child's birth brother, birth sister, adoptive brother, adoptive sister, half-brother, or half-sister, or as defined by the law or custom of the Indian child's tribe for an Indian child as defined in RCW 13.38.040.

(20) "Social study" means a written evaluation of matters relevant to the disposition of the case and shall contain the following information:

(a) A statement of the specific harm or harms to the child that intervention is designed to alleviate;

(b) A description of the specific services and activities, for both the parents and child, that are needed in order to prevent serious harm to the child; the reasons why such services and activities are likely to be useful; the availability of any proposed services; and the agency's overall plan for ensuring that the services will be delivered. The description shall identify the services chosen and approved by the parent;

(c) If removal is recommended, a full description of the reasons why the child cannot be protected adequately in the home, including a description of any previous efforts to work with the parents and the child in the home; the in-home treatment programs that have been considered and rejected; the preventive services, including housing assistance, that have been offered or provided and have failed to prevent the need for out-of-home placement, unless the health, safety, and welfare of the child cannot be protected adequately in the home; and the parents' attitude toward placement of the child;

(d) A statement of the likely harms the child will suffer as a result of removal;

(e) A description of the steps that will be taken to minimize the harm to the child that may result if separation occurs including an assessment of the child's relationship and emotional bond with any siblings, and the agency's plan to provide ongoing contact between the child and the child's siblings if appropriate; and

(f) Behavior that will be expected before determination that supervision of the family or placement is no longer necessary.

(21) "Supervised independent living" includes, but is not limited to, apartment living, room and board arrangements, college or university dormitories, and shared roommate set-

tings. Supervised independent living settings must be approved by the children's administration or the court.

(22) "Supervising agency" means an agency licensed by the state under RCW 74.15.090, or licensed by a federally recognized Indian tribe located in this state under RCW 74.15.190, that has entered into a performance-based contract with the department to provide case management for the delivery and documentation of child welfare services as defined in RCW 74.13.020.

(23) "Voluntary placement agreement" means, for the purposes of extended foster care services, a written voluntary agreement between a nonminor dependent who agrees to submit to the care and authority of the department for the purposes of participating in the extended foster care program. [2013 c 332 § 2; 2013 c 182 § 2. Prior: 2011 1st sp.s. c 36 § 13; prior: 2011 c 330 § 3; 2011 c 309 § 22; prior: 2010 1st sp.s. c 8 § 13; 2010 c 272 § 10; 2010 c 94 § 6; prior: 2009 c 520 § 21; 2009 c 397 § 1; 2003 c 227 § 2; 2002 c 52 § 3; 2000 c 122 § 1; 1999 c 267 § 6; 1998 c 130 § 1; 1997 c 386 § 7; 1995 c 311 § 23; 1994 c 288 § 1; 1993 c 241 § 1; 1988 c 176 § 901; 1987 c 524 § 3; 1983 c 311 § 2; 1982 c 129 § 4; 1979 c 155 § 37; 1977 ex.s. c 291 § 31.]

Reviser's note: (1) The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

(2) This section was amended by 2013 c 182 § 2 and by 2013 c 332 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—Recommendations—Application—2013 c 332: See notes following RCW 13.34.267.

Findings—2013 c 182: "The legislature believes that youth residing in foster care are capable of achieving success in school with appropriate support. Youth residing in foster care in Washington state lag behind their non-foster youth peers in educational outcomes. Reasonable efforts by the department of social and health services to monitor educational outcomes and encourage academic achievement for youth in out-of-home care should be a responsibility of the child welfare system. When a youth is removed from his or her school district, it is the expectation of the legislature that the department of social and health services recognizes [recognize] the impact this move may have on a youth's academic success and provide the youth with necessary supports to be successful in school. The legislature believes that active oversight and advocacy by an educational liaison and collaborations will encourage youth to reach their fullest academic potential." [2013 c 182 § 1.]

Findings—Intent—2011 1st sp.s. c 36: See RCW 74.62.005.

Effective date—2011 1st sp.s. c 36: See note following RCW 74.62.005.

Intent—2011 c 330: See note following RCW 13.04.011.

Findings—Intent—Short title—Effective date—2010 1st sp.s. c 8: See notes following RCW 74.04.225.

Purpose—2010 c 94: See note following RCW 44.04.280.

Intent—2003 c 227: See note following RCW 13.34.130.

Intent—2002 c 52: See note following RCW 13.34.025.

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

Legislative finding—1983 c 311: "The legislature finds that in order for the state to receive federal funds for family foster care under Title IV-B and Title IV-E of the social security act, all children in family foster care must be subjected to periodic court review. Unfortunately, this includes children who are developmentally disabled and who are placed in family foster care solely because their parents have determined that the children's service needs require out-of-home placement. Except for providing such needed services, the parents of these children are completely competent to care for the children. The legislature intends by this act to minimize the embarrassment and inconvenience of developmentally disabled persons and their fam-

ilies caused by complying with these federal requirements." [1983 c 311 § 1.]

Additional notes found at www.leg.wa.gov

13.34.045 Educational liaison—Identification. (1)

The department must identify an educational liaison for youth in grades six through twelve who are subject to a proceeding under this chapter and who meet one of the following requirements:

- (a) All parental rights have been terminated;
- (b) Parents are unavailable because of incarceration or other limitations;
- (c) The court has restricted contact between the youth and parents; or
- (d) The youth is placed in a behavioral rehabilitative setting and the court has limited the educational rights of parents.

(2) If a child is placed in the custody of the department at the shelter care hearing, the department shall recommend the identified educational liaison at the shelter care hearing and all subsequent review hearings for the given case. The purpose of identifying the educational liaison at each hearing during the dependency case is to determine if the identified educational liaison remains appropriate for the case as youth change placements.

(3) It is presumed that the educational liaison is the youth's parent. If a youth's parent is not able to serve as the educational liaison, the department must identify another person to act as the educational liaison. It is preferred that the educational liaison be known to the youth and be a relative, other suitable person as described in RCW 13.34.130(1)(b), or the youth's foster parent. Birth parents with a primary plan of family reunification may serve as the educational liaison. The identified educational liaison should be a person committed to providing enduring educational support to the youth. If the department is not able to identify an adult with an existing relationship to the youth who is able to serve as the educational liaison, the court may appoint another adult as the educational liaison, such as the court-appointed special advocate if applicable, but may not appoint the youth's caseworker. In the event that any party disagrees with the department's recommendation, the court shall determine who will serve as the educational liaison based on who is most appropriate and available to act in the youth's educational interest. [2013 c 182 § 3.]

Findings—2013 c 182: See note following RCW 13.34.030.

13.34.046 Educational liaison—Responsibilities—Background checks. (1) Unless otherwise directed by the court, the responsibilities of the educational liaison for a youth subject to a proceeding under this chapter include, but are not limited to, the following:

- (a) To attend educational meetings and dependency hearings;
- (b) To meet with local school personnel at regular intervals regarding the youth's educational performance and academic needs;
- (c) To seek to understand the youth's academic strengths, areas of concern, and future life goals;
- (d) To advocate for necessary educational services;

(e) To join in decision-making processes regarding appropriate school placements, school coursework, personal future, and educational planning;

(f) To explore opportunities and barriers for youth to participate in extracurricular activities;

(g) To involve youth in educational decisions as developmentally appropriate;

(h) To keep all information regarding the youth confidential except as required pursuant to lawful order of a court; and

(i) To provide a written or verbal report to the court during each dependency hearing. The report must include information about the youth's educational progress, experience in school, and the educational liaison's and youth's recommendations regarding needed services in school or the community.

(2) The educational liaison may serve as the surrogate parent or educational representative under federal law.

(3) The educational liaison may have access to all educational records pertaining to the youth involved in the case, without the consent of a parent or guardian of the child, or if the child is under thirteen years of age.

(4) The educational liaison is a volunteer and not compensated for services.

(5) The educational liaison must complete background checks as required by the department. [2013 c 182 § 5.]

Findings—2013 c 182: See note following RCW 13.34.030.

13.34.065 Shelter care—Hearing—Recommendation as to further need—Release. (1)(a) When a child is taken into custody, the court shall hold a shelter care hearing within seventy-two hours, excluding Saturdays, Sundays, and holidays. The primary purpose of the shelter care hearing is to determine whether the child can be immediately and safely returned home while the adjudication of the dependency is pending.

(b) Any parent, guardian, or legal custodian who for good cause is unable to attend the shelter care hearing may request that a subsequent shelter care hearing be scheduled. The request shall be made to the clerk of the court where the petition is filed prior to the initial shelter care hearing. Upon the request of the parent, the court shall schedule the hearing within seventy-two hours of the request, excluding Saturdays, Sundays, and holidays. The clerk shall notify all other parties of the hearing by any reasonable means.

(2)(a) If it is likely that the child will remain in shelter care longer than seventy-two hours, in those areas in which child welfare services are being provided by a supervising agency, the supervising agency shall assume case management responsibilities of the case. The department or supervising agency shall submit a recommendation to the court as to the further need for shelter care in all cases in which the child will remain in shelter care longer than the seventy-two hour period. In all other cases, the recommendation shall be submitted by the juvenile court probation counselor.

(b) All parties have the right to present testimony to the court regarding the need or lack of need for shelter care.

(c) Hearsay evidence before the court regarding the need or lack of need for shelter care must be supported by sworn testimony, affidavit, or declaration of the person offering such evidence.

(3)(a) At the commencement of the hearing, the court shall notify the parent, guardian, or custodian of the following:

(i) The parent, guardian, or custodian has the right to a shelter care hearing;

(ii) The nature of the shelter care hearing, the rights of the parents, and the proceedings that will follow; and

(iii) If the parent, guardian, or custodian is not represented by counsel, the right to be represented. If the parent, guardian, or custodian is indigent, the court shall appoint counsel as provided in RCW 13.34.090; and

(b) If a parent, guardian, or legal custodian desires to waive the shelter care hearing, the court shall determine, on the record and with the parties present, whether such waiver is knowing and voluntary. A parent may not waive his or her right to the shelter care hearing unless he or she appears in court and the court determines that the waiver is knowing and voluntary. Regardless of whether the court accepts the parental waiver of the shelter care hearing, the court must provide notice to the parents of their rights required under (a) of this subsection and make the finding required under subsection (4) of this section.

(4) At the shelter care hearing the court shall examine the need for shelter care and inquire into the status of the case. The paramount consideration for the court shall be the health, welfare, and safety of the child. At a minimum, the court shall inquire into the following:

(a) Whether the notice required under RCW 13.34.062 was given to all known parents, guardians, or legal custodians of the child. The court shall make an express finding as to whether the notice required under RCW 13.34.062 was given to the parent, guardian, or legal custodian. If actual notice was not given to the parent, guardian, or legal custodian and the whereabouts of such person is known or can be ascertained, the court shall order the department to make reasonable efforts to advise the parent, guardian, or legal custodian of the status of the case, including the date and time of any subsequent hearings, and their rights under RCW 13.34.090;

(b) Whether the child can be safely returned home while the adjudication of the dependency is pending;

(c) What efforts have been made to place the child with a relative. The court shall ask the parents whether the department discussed with them the placement of the child with a relative or other suitable person described in RCW 13.34.130(1)(b) and shall determine what efforts have been made toward such a placement;

(d) What services were provided to the family to prevent or eliminate the need for removal of the child from the child's home. If the dependency petition or other information before the court alleges that homelessness or the lack of suitable housing was a significant factor contributing to the removal of the child, the court shall inquire as to whether housing assistance was provided to the family to prevent or eliminate the need for removal of the child or children;

(e) Is the placement proposed by the department or supervising agency the least disruptive and most family-like setting that meets the needs of the child;

(f) Whether it is in the best interest of the child to remain enrolled in the school, developmental program, or child care the child was in prior to placement and what efforts have

been made to maintain the child in the school, program, or child care if it would be in the best interest of the child to remain in the same school, program, or child care;

(g) Appointment of a guardian ad litem or attorney;

(h) Whether the child is or may be an Indian child as defined in RCW 13.38.040, whether the provisions of the federal Indian child welfare act or chapter 13.38 RCW apply, and whether there is compliance with the federal Indian child welfare act and chapter 13.38 RCW, including notice to the child's tribe;

(i) Whether, as provided in RCW 26.44.063, restraining orders, or orders expelling an allegedly abusive household member from the home of a nonabusive parent, guardian, or legal custodian, will allow the child to safely remain in the home;

(j) Whether any orders for examinations, evaluations, or immediate services are needed. The court may not order a parent to undergo examinations, evaluation, or services at the shelter care hearing unless the parent agrees to the examination, evaluation, or service;

(k) The terms and conditions for parental, sibling, and family visitation.

(5)(a) The court shall release a child alleged to be dependent to the care, custody, and control of the child's parent, guardian, or legal custodian unless the court finds there is reasonable cause to believe that:

(i) After consideration of the specific services that have been provided, reasonable efforts have been made to prevent or eliminate the need for removal of the child from the child's home and to make it possible for the child to return home; and

(ii)(A) The child has no parent, guardian, or legal custodian to provide supervision and care for such child; or

(B) The release of such child would present a serious threat of substantial harm to such child, notwithstanding an order entered pursuant to RCW 26.44.063; or

(C) The parent, guardian, or custodian to whom the child could be released has been charged with violating RCW 9A.40.060 or 9A.40.070.

(b) If the court does not release the child to his or her parent, guardian, or legal custodian, the court shall order placement with a relative or other suitable person as described in RCW 13.34.130(1)(b), unless there is reasonable cause to believe the health, safety, or welfare of the child would be jeopardized or that the efforts to reunite the parent and child will be hindered. If such relative or other suitable person appears otherwise suitable and competent to provide care and treatment, the fingerprint-based background check need not be completed before placement, but as soon as possible after placement. The court must also determine whether placement with the relative or other suitable person is in the child's best interests. The relative or other suitable person must be willing and available to:

(i) Care for the child and be able to meet any special needs of the child;

(ii) Facilitate the child's visitation with siblings, if such visitation is part of the supervising agency's plan or is ordered by the court; and

(iii) Cooperate with the department or supervising agency in providing necessary background checks and home studies.

(c) If the child was not initially placed with a relative or other suitable person, and the court does not release the child to his or her parent, guardian, or legal custodian, the supervising agency shall make reasonable efforts to locate a relative or other suitable person pursuant to RCW 13.34.060(1). In determining placement, the court shall weigh the child's length of stay and attachment to the current provider in determining what is in the best interest of the child.

(d) If a relative or other suitable person is not available, the court shall order continued shelter care and shall set forth its reasons for the order. If the court orders placement of the child with a person not related to the child and not licensed to provide foster care, the placement is subject to all terms and conditions of this section that apply to relative placements.

(e) Any placement with a relative, or other suitable person approved by the court pursuant to this section, shall be contingent upon cooperation with the department's or supervising agency's case plan and compliance with court orders related to the care and supervision of the child including, but not limited to, court orders regarding parent-child contacts, sibling contacts, and any other conditions imposed by the court. Noncompliance with the case plan or court order is grounds for removal of the child from the home of the relative or other suitable person, subject to review by the court.

(f) Uncertainty by a parent, guardian, legal custodian, relative, or other suitable person that the alleged abuser has in fact abused the child shall not, alone, be the basis upon which a child is removed from the care of a parent, guardian, or legal custodian under (a) of this subsection, nor shall it be a basis, alone, to preclude placement with a relative or other suitable person under (b) of this subsection.

(6)(a) A shelter care order issued pursuant to this section shall include the requirement for a case conference as provided in RCW 13.34.067. However, if the parent is not present at the shelter care hearing, or does not agree to the case conference, the court shall not include the requirement for the case conference in the shelter care order.

(b) If the court orders a case conference, the shelter care order shall include notice to all parties and establish the date, time, and location of the case conference which shall be no later than thirty days before the fact-finding hearing.

(c) The court may order another conference, case staffing, or hearing as an alternative to the case conference required under RCW 13.34.067 so long as the conference, case staffing, or hearing ordered by the court meets all requirements under RCW 13.34.067, including the requirement of a written agreement specifying the services to be provided to the parent.

(7)(a) A shelter care order issued pursuant to this section may be amended at any time with notice and hearing thereon. The shelter care decision of placement shall be modified only upon a showing of change in circumstances. No child may be placed in shelter care for longer than thirty days without an order, signed by the judge, authorizing continued shelter care.

(b)(i) An order releasing the child on any conditions specified in this section may at any time be amended, with notice and hearing thereon, so as to return the child to shelter care for failure of the parties to conform to the conditions originally imposed.

(ii) The court shall consider whether nonconformance with any conditions resulted from circumstances beyond the

control of the parent, guardian, or legal custodian and give weight to that fact before ordering return of the child to shelter care.

(8)(a) If a child is returned home from shelter care a second time in the case, or if the supervisor of the caseworker deems it necessary, the multidisciplinary team may be reconvened.

(b) If a child is returned home from shelter care a second time in the case a law enforcement officer must be present and file a report to the department. [2013 c 162 § 6; 2011 c 309 § 24. Prior: 2009 c 520 § 22; 2009 c 491 § 1; 2009 c 477 § 3; 2009 c 397 § 2; 2008 c 267 § 2; 2007 c 413 § 5; 2001 c 332 § 3; 2000 c 122 § 7.]

Findings—Rules—2013 c 162: See notes following RCW 74.13.700.

Findings—Intent—2009 c 477: See note following RCW 13.34.062.

Severability—2007 c 413: See note following RCW 13.34.215.

13.34.067 Shelter care—Case conference—Service agreement. (1)(a) Following shelter care and no later than thirty days prior to fact-finding, the department or supervising agency shall convene a case conference as required in the shelter care order to develop and specify in a written service agreement the expectations of both the department or supervising agency and the parent regarding voluntary services for the parent.

(b) The case conference shall include the parent, counsel for the parent, caseworker, counsel for the state, guardian ad litem, counsel for the child, and any other person agreed upon by the parties. Once the shelter care order is entered, the department or supervising agency is not required to provide additional notice of the case conference to any participants in the case conference.

(c) The written service agreement expectations must correlate with the court's findings at the shelter care hearing. The written service agreement must set forth specific services to be provided to the parent.

(d) The case conference agreement must be agreed to and signed by the parties. The court shall not consider the content of the discussions at the case conference at the time of the fact-finding hearing for the purposes of establishing that the child is a dependent child, and the court shall not consider any documents or written materials presented at the case conference but not incorporated into the case conference agreement, unless the documents or written materials were prepared for purposes other than or as a result of the case conference and are otherwise admissible under the rules of evidence.

(2) At any other stage in a dependency proceeding, the department or supervising agency, upon the parent's request, shall convene a case conference.

(3) If a case conference is convened pursuant to subsection (1) or (2) of this section and the parent is unable to participate in person due to incarceration, the parent must have the option to participate through the use of a teleconference or videoconference. [2013 c 173 § 1; 2009 c 520 § 23; 2004 c 147 § 1; 2001 c 332 § 1.]

Effective date—2004 c 147: "This act takes effect July 1, 2004." [2004 c 147 § 5.]

13.34.069 Shelter care—Order and authorization of health care and education records. If a child is placed in

the custody of the department of social and health services or other supervising agency, immediately following the shelter care hearing, an order and authorization regarding health care and education records for the child shall be entered. The order shall:

(1) Provide the department or other supervising agency with the right to inspect and copy all health, medical, mental health, and education records of the child;

(2) Authorize and direct any agency, hospital, doctor, nurse, dentist, orthodontist, or other health care provider, therapist, drug or alcohol treatment provider, psychologist, psychiatrist, or mental health clinic, or health or medical records custodian or document management company, or school or school organization to permit the department or other supervising agency to inspect and to obtain copies of any records relating to the child involved in the case, without the further consent of the parent or guardian of the child; and

(3) Identify the person who will serve as the educational liaison; and

(4) Grant the department or other supervising agency or its designee the authority and responsibility, where applicable, to:

(a) Notify the child's school that the child is in out-of-home placement;

(b) Enroll the child in school;

(c) Request the school transfer records;

(d) Request and authorize evaluation of special needs;

(e) Attend parent or teacher conferences;

(f) Excuse absences;

(g) Grant permission for extracurricular activities;

(h) Authorize medications which need to be administered during school hours and sign for medical needs that arise during school hours; and

(i) Complete or update school emergency records.

Access to records under this section is subject to the child's consent where required by other state and federal laws. [2013 c 182 § 4; 2007 c 409 § 2.]

Findings—2013 c 182: See note following RCW 13.34.030.

Effective date—2007 c 409: See note following RCW 13.34.096.

13.34.105 Guardian ad litem—Duties—Immunity—

Access to information. (1) Unless otherwise directed by the court, the duties of the guardian ad litem for a child subject to a proceeding under this chapter, including an attorney specifically appointed by the court to serve as a guardian ad litem, include but are not limited to the following:

(a) To investigate, collect relevant information about the child's situation, and report to the court factual information regarding the best interests of the child;

(b) To meet with, interview, or observe the child, depending on the child's age and developmental status, and report to the court any views or positions expressed by the child on issues pending before the court;

(c) To monitor all court orders for compliance and to bring to the court's attention any change in circumstances that may require a modification of the court's order;

(d) To report to the court information on the legal status of a child's membership in any Indian tribe or band;

(e) Court-appointed special advocates and guardians ad litem may make recommendations based upon an independent investigation regarding the best interests of the child,

which the court may consider and weigh in conjunction with the recommendations of all of the parties;

(f) To represent and be an advocate for the best interests of the child;

(g) To inform the child, if the child is twelve years old or older, of his or her right to request counsel and to ask the child whether he or she wishes to have counsel, pursuant to RCW 13.34.100(6). The guardian ad litem shall report to the court that the child was notified of this right and indicate the child's position regarding appointment of counsel. The guardian ad litem shall report to the court his or her independent recommendation as to whether appointment of counsel is in the best interest of the child; and

(h) In the case of an Indian child as defined in RCW 13.38.040, know, understand, and advocate the best interests of the Indian child.

(2) A guardian ad litem shall be deemed an officer of the court for the purpose of immunity from civil liability.

(3) Except for information or records specified in RCW 13.50.100(7), the guardian ad litem shall have access to all information available to the state or agency on the case. Upon presentation of the order of appointment by the guardian ad litem, any agency, hospital, school organization, division or department of the state, doctor, nurse, or other health care provider, psychologist, psychiatrist, police department, or mental health clinic shall permit the guardian ad litem to inspect and copy any records relating to the child or children involved in the case, without the consent of the parent or guardian of the child, or of the child if the child is under the age of thirteen years, unless such access is otherwise specifically prohibited by law.

(4) A guardian ad litem may release confidential information, records, and reports to the office of the family and children's ombuds for the purposes of carrying out its duties under chapter 43.06A RCW.

(5) The guardian ad litem shall release case information in accordance with the provisions of RCW 13.50.100. [2013 c 23 § 5; 2011 c 309 § 26; 2010 c 180 § 3; 2008 c 267 § 13; 2000 c 124 § 4; 1999 c 390 § 2; 1993 c 241 § 3.]

Findings—2010 c 180: See note following RCW 13.34.100.

Additional notes found at www.leg.wa.gov

13.34.130 Order of disposition for a dependent child, alternatives—Petition seeking termination of parent-child relationship—Placement with relatives, foster family home, group care facility, or other suitable persons—Placement of an Indian child in out-of-home care—Contact with siblings.

If, after a fact-finding hearing pursuant to RCW 13.34.110, it has been proven by a preponderance of the evidence that the child is dependent within the meaning of RCW 13.34.030 after consideration of the social study prepared pursuant to RCW 13.34.110 and after a disposition hearing has been held pursuant to RCW 13.34.110, the court shall enter an order of disposition pursuant to this section.

(1) The court shall order one of the following dispositions of the case:

(a) Order a disposition that maintains the child in his or her home, which shall provide a program designed to alleviate the immediate danger to the child, to mitigate or cure any damage the child has already suffered, and to aid the parents so that the child will not be endangered in the future. In

determining the disposition, the court should choose services to assist the parents in maintaining the child in the home, including housing assistance, if appropriate, that least interfere with family autonomy and are adequate to protect the child.

(b)(i) Order the child to be removed from his or her home and into the custody, control, and care of a relative or other suitable person, the department, or a supervising agency for supervision of the child's placement. If the court orders that the child be placed with a caregiver over the objections of the parent or the department, the court shall articulate, on the record, his or her reasons for ordering the placement. The court may not order an Indian child, as defined in RCW 13.38.040, to be removed from his or her home unless the court finds, by clear and convincing evidence including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(ii) The department or supervising agency has the authority to place the child, subject to review and approval by the court (A) with a relative as defined in RCW 74.15.020(2)(a), (B) in the home of another suitable person if the child or family has a preexisting relationship with that person, and the person has completed all required criminal history background checks and otherwise appears to the department or supervising agency to be suitable and competent to provide care for the child, or (C) in a foster family home or group care facility licensed pursuant to chapter 74.15 RCW.

(iii) The department may also consider placing the child, subject to review and approval by the court, with a person with whom the child's sibling or half-sibling is residing or a person who has adopted the sibling or half-sibling of the child being placed as long as the person has completed all required criminal history background checks and otherwise appears to the department or supervising agency to be competent to provide care for the child.

(2) Absent good cause, the department or supervising agency shall follow the wishes of the natural parent regarding the placement of the child in accordance with RCW 13.34.260.

(3) The department or supervising agency may only place a child with a person not related to the child as defined in RCW 74.15.020(2)(a), including a placement provided for in subsection (1)(b)(iii) of this section, when the court finds that such placement is in the best interest of the child. Unless there is reasonable cause to believe that the health, safety, or welfare of the child would be jeopardized or that efforts to reunite the parent and child will be hindered, the child shall be placed with a person who is willing, appropriate, and available to care for the child, and who is: (I) Related to the child as defined in RCW 74.15.020(2)(a) with whom the child has a relationship and is comfortable; or (II) a suitable person as described in subsection (1)(b) of this section. The court shall consider the child's existing relationships and attachments when determining placement.

(4) When placing an Indian child in out-of-home care, the department or supervising agency shall follow the placement preference characteristics in RCW 13.38.180.

(5) Placement of the child with a relative or other suitable person as described in subsection (1)(b) of this section

shall be given preference by the court. An order for out-of-home placement may be made only if the court finds that reasonable efforts have been made to prevent or eliminate the need for removal of the child from the child's home and to make it possible for the child to return home, specifying the services, including housing assistance, that have been provided to the child and the child's parent, guardian, or legal custodian, and that preventive services have been offered or provided and have failed to prevent the need for out-of-home placement, unless the health, safety, and welfare of the child cannot be protected adequately in the home, and that:

(a) There is no parent or guardian available to care for such child;

(b) The parent, guardian, or legal custodian is not willing to take custody of the child; or

(c) The court finds, by clear, cogent, and convincing evidence, a manifest danger exists that the child will suffer serious abuse or neglect if the child is not removed from the home and an order under RCW 26.44.063 would not protect the child from danger.

(6) If the court has ordered a child removed from his or her home pursuant to subsection (1)(b) of this section, the court shall consider whether it is in a child's best interest to be placed with, have contact with, or have visits with siblings.

(a) There shall be a presumption that such placement, contact, or visits are in the best interests of the child provided that:

(i) The court has jurisdiction over all siblings subject to the order of placement, contact, or visitation pursuant to petitions filed under this chapter or the parents of a child for whom there is no jurisdiction are willing to agree; and

(ii) There is no reasonable cause to believe that the health, safety, or welfare of any child subject to the order of placement, contact, or visitation would be jeopardized or that efforts to reunite the parent and child would be hindered by such placement, contact, or visitation. In no event shall parental visitation time be reduced in order to provide sibling visitation.

(b) The court may also order placement, contact, or visitation of a child with a stepbrother or stepsister provided that in addition to the factors in (a) of this subsection, the child has a relationship and is comfortable with the stepsibling.

(7) If the court has ordered a child removed from his or her home pursuant to subsection (1)(b) of this section and placed into nonparental or nonrelative care, the court shall order a placement that allows the child to remain in the same school he or she attended prior to the initiation of the dependency proceeding when such a placement is practical and in the child's best interest.

(8) If the court has ordered a child removed from his or her home pursuant to subsection (1)(b) of this section, the court may order that a petition seeking termination of the parent and child relationship be filed if the requirements of RCW 13.34.132 are met.

(9) If there is insufficient information at the time of the disposition hearing upon which to base a determination regarding the suitability of a proposed placement with a relative or other suitable person, the child shall remain in foster care and the court shall direct the department or supervising agency to conduct necessary background investigations as

provided in chapter 74.15 RCW and report the results of such investigation to the court within thirty days. However, if such relative or other person appears otherwise suitable and competent to provide care and treatment, the criminal history background check need not be completed before placement, but as soon as possible after placement. Any placements with relatives or other suitable persons, pursuant to this section, shall be contingent upon cooperation by the relative or other suitable person with the agency case plan and compliance with court orders related to the care and supervision of the child including, but not limited to, court orders regarding parent-child contacts, sibling contacts, and any other conditions imposed by the court. Noncompliance with the case plan or court order shall be grounds for removal of the child from the relative's or other suitable person's home, subject to review by the court. [2013 c 254 § 1. Prior: 2011 c 309 § 27; 2011 c 292 § 1; 2010 c 288 § 1; prior: 2009 c 520 § 27; 2009 c 491 § 2; 2009 c 397 § 3; prior: 2007 c 413 § 6; 2007 c 412 § 2; 2003 c 227 § 3; 2002 c 52 § 5; 2000 c 122 § 15; prior: 1999 c 267 § 16; 1999 c 267 § 9; 1999 c 173 § 3; prior: 1998 c 314 § 2; 1998 c 130 § 2; 1997 c 280 § 1; prior: 1995 c 313 § 2; 1995 c 311 § 19; 1995 c 53 § 1; 1994 c 288 § 4; 1992 c 145 § 14; 1991 c 127 § 4; prior: 1990 c 284 § 32; 1990 c 246 § 5; 1989 1st ex.s. c 17 § 17; prior: 1988 c 194 § 1; 1988 c 190 § 2; 1988 c 189 § 2; 1984 c 188 § 4; prior: 1983 c 311 § 5; 1983 c 246 § 2; 1979 c 155 § 46; 1977 ex.s. c 291 § 41.]

Severability—2007 c 413: See note following RCW 13.34.215.

Intent—2003 c 227: "It is the intent of the legislature to recognize the importance of emotional ties formed by siblings with each other, especially in those circumstances which warrant court intervention into family relationships. It is the intent of the legislature to encourage the courts and public agencies which deal with families to acknowledge and give thoughtful consideration to the quality and nature of sibling relationships when intervening in family relationships. It is not the intent of the legislature to create legal obligations or responsibilities between siblings and other family members whether by blood or marriage, step families, foster families, or adopted families that do not already exist. Neither is it the intent of the legislature to mandate sibling placement, contact, or visitation if there is reasonable cause to believe that the health, safety, or welfare of a child or siblings would be jeopardized. Finally, it is not the intent of the legislature to manufacture or anticipate family relationships which do not exist at the time of the court intervention, or to disrupt already existing positive family relationships." [2003 c 227 § 1.]

Intent—2002 c 52: See note following RCW 13.34.025.

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

Short title—Purpose—Entitlement not granted—Federal waivers—1999 c 267 §§ 10-26: See RCW 74.15.900 and 74.15.901.

Finding—Effective date—1990 c 284: See notes following RCW 74.13.250.

Legislative finding—1983 c 311: See note following RCW 13.34.030.

Additional notes found at www.leg.wa.gov

13.34.132 Petition seeking termination of parent-child relationship—Requirements. A court may order that a petition seeking termination of the parent and child relationship be filed if the following requirements are met:

- (1) The court has removed the child from his or her home pursuant to RCW 13.34.130;
- (2) Termination is recommended by the department or the supervising agency;
- (3) Termination is in the best interests of the child; and
- (4) Because of the existence of aggravated circumstances, reasonable efforts to unify the family are not

required. Notwithstanding the existence of aggravated circumstances, reasonable efforts may be required if the court or department determines it is in the best interests of the child. In determining whether aggravated circumstances exist by clear, cogent, and convincing evidence, the court shall consider one or more of the following:

(a) Conviction of the parent of rape of the child in the first, second, or third degree as defined in RCW 9A.44.073, 9A.44.076, and 9A.44.079;

(b) Conviction of the parent of criminal mistreatment of the child in the first or second degree as defined in RCW 9A.42.020 and 9A.42.030;

(c) Conviction of the parent of one of the following assault crimes, when the child is the victim: Assault in the first or second degree as defined in RCW 9A.36.011 and 9A.36.021 or assault of a child in the first or second degree as defined in RCW 9A.36.120 or 9A.36.130;

(d) Conviction of the parent of murder, manslaughter, or homicide by abuse of the child's other parent, sibling, or another child;

(e) Conviction of the parent of trafficking, or promoting commercial sexual abuse of a minor when the victim of the crime is the child, the child's other parent, a sibling of the child, or another child;

(f) Conviction of the parent of attempting, soliciting, or conspiring to commit a crime listed in (a), (b), (c), or (d) of this subsection;

(g) A finding by a court that a parent is a sexually violent predator as defined in RCW 71.09.020;

(h) Failure of the parent to complete available treatment ordered under this chapter or the equivalent laws of another state, where such failure has resulted in a prior termination of parental rights to another child and the parent has failed to effect significant change in the interim. In the case of a parent of an Indian child, as defined in RCW 13.38.040, the court shall also consider tribal efforts to assist the parent in completing treatment and make it possible for the child to return home;

(i) An infant under three years of age has been abandoned;

(j) Conviction of the parent, when a child has been born of the offense, of: (A) A sex offense under chapter 9A.44 RCW; or (B) incest under RCW 9A.64.020. [2013 c 302 § 11; 2011 c 309 § 28; 2000 c 122 § 16.]

Effective date—2013 c 302: See note following RCW 9.68A.090.

13.34.136 Permanency plan of care. (1) Whenever a child is ordered removed from the home, a permanency plan shall be developed no later than sixty days from the time the supervising agency assumes responsibility for providing services, including placing the child, or at the time of a hearing under RCW 13.34.130, whichever occurs first. The permanency planning process continues until a permanency planning goal is achieved or dependency is dismissed. The planning process shall include reasonable efforts to return the child to the parent's home.

(2) The agency supervising the dependency shall submit a written permanency plan to all parties and the court not less than fourteen days prior to the scheduled hearing. Responsive reports of parties not in agreement with the department's or supervising agency's proposed permanency plan must be

provided to the department or supervising agency, all other parties, and the court at least seven days prior to the hearing.

The permanency plan shall include:

(a) A permanency plan of care that shall identify one of the following outcomes as a primary goal and may identify additional outcomes as alternative goals: Return of the child to the home of the child's parent, guardian, or legal custodian; adoption, including a tribal customary adoption as defined in RCW 13.38.040; guardianship; permanent legal custody; long-term relative or foster care, until the child is age eighteen, with a written agreement between the parties and the care provider; successful completion of a responsible living skills program; or independent living, if appropriate and if the child is age sixteen or older. The department or supervising agency shall not discharge a child to an independent living situation before the child is eighteen years of age unless the child becomes emancipated pursuant to chapter 13.64 RCW;

(b) Unless the court has ordered, pursuant to RCW 13.34.130(8), that a termination petition be filed, a specific plan as to where the child will be placed, what steps will be taken to return the child home, what steps the supervising agency or the department will take to promote existing appropriate sibling relationships and/or facilitate placement together or contact in accordance with the best interests of each child, and what actions the department or supervising agency will take to maintain parent-child ties. All aspects of the plan shall include the goal of achieving permanence for the child.

(i) The department's or supervising agency's plan shall specify what services the parents will be offered to enable them to resume custody, what requirements the parents must meet to resume custody, and a time limit for each service plan and parental requirement. If the parent is incarcerated, the plan must address how the parent will participate in the case conference and permanency planning meetings and, where possible, must include treatment that reflects the resources available at the facility where the parent is confined. The plan must provide for visitation opportunities, unless visitation is not in the best interests of the child.

(ii)(A) Visitation is the right of the family, including the child and the parent, in cases in which visitation is in the best interest of the child. Early, consistent, and frequent visitation is crucial for maintaining parent-child relationships and making it possible for parents and children to safely reunify. The supervising agency or department shall encourage the maximum parent and child and sibling contact possible, when it is in the best interest of the child, including regular visitation and participation by the parents in the care of the child while the child is in placement.

(B) Visitation shall not be limited as a sanction for a parent's failure to comply with court orders or services where the health, safety, or welfare of the child is not at risk as a result of the visitation.

(C) Visitation may be limited or denied only if the court determines that such limitation or denial is necessary to protect the child's health, safety, or welfare. When a parent or sibling has been identified as a suspect in an active criminal investigation for a violent crime that, if the allegations are true, would impact the safety of the child, the department shall make a concerted effort to consult with the assigned law

enforcement officer in the criminal case before recommending any changes in parent/child or child/sibling contact. In the event that the law enforcement officer has information pertaining to the criminal case that may have serious implications for child safety or well-being, the law enforcement officer shall provide this information to the department during the consultation. The department may only use the information provided by law enforcement during the consultation to inform family visitation plans and may not share or otherwise distribute the information to any person or entity. Any information provided to the department by law enforcement during the consultation is considered investigative information and is exempt from public inspection pursuant to RCW 42.56.240. The results of the consultation shall be communicated to the court.

(D) The court and the department or supervising agency should rely upon community resources, relatives, foster parents, and other appropriate persons to provide transportation and supervision for visitation to the extent that such resources are available, and appropriate, and the child's safety would not be compromised.

(iii)(A) The department, court, or caregiver in the out-of-home placement may not limit visitation or contact between a child and sibling as a sanction for a child's behavior or as an incentive to the child to change his or her behavior.

(B) Any exceptions, limitation, or denial of contacts or visitation must be approved by the supervisor of the department caseworker and documented. The child, parent, department, guardian ad litem, or court-appointed special advocate may challenge the denial of visits in court.

(iv) A child shall be placed as close to the child's home as possible, preferably in the child's own neighborhood, unless the court finds that placement at a greater distance is necessary to promote the child's or parents' well-being.

(v) The plan shall state whether both in-state and, where appropriate, out-of-state placement options have been considered by the department or supervising agency.

(vi) Unless it is not in the best interests of the child, whenever practical, the plan should ensure the child remains enrolled in the school the child was attending at the time the child entered foster care.

(vii) The supervising agency or department shall provide all reasonable services that are available within the department or supervising agency, or within the community, or those services which the department has existing contracts to purchase. It shall report to the court if it is unable to provide such services; and

(c) If the court has ordered, pursuant to RCW 13.34.130(8), that a termination petition be filed, a specific plan as to where the child will be placed, what steps will be taken to achieve permanency for the child, services to be offered or provided to the child, and, if visitation would be in the best interests of the child, a recommendation to the court regarding visitation between parent and child pending a fact-finding hearing on the termination petition. The department or supervising agency shall not be required to develop a plan of services for the parents or provide services to the parents if the court orders a termination petition be filed. However, reasonable efforts to ensure visitation and contact between siblings shall be made unless there is reasonable cause to

believe the best interests of the child or siblings would be jeopardized.

(3) Permanency planning goals should be achieved at the earliest possible date. If the child has been in out-of-home care for fifteen of the most recent twenty-two months, and the court has not made a good cause exception, the court shall require the department or supervising agency to file a petition seeking termination of parental rights in accordance with *RCW 13.34.145(3)(b)(vi). In cases where parental rights have been terminated, the child is legally free for adoption, and adoption has been identified as the primary permanency planning goal, it shall be a goal to complete the adoption within six months following entry of the termination order.

(4) If the court determines that the continuation of reasonable efforts to prevent or eliminate the need to remove the child from his or her home or to safely return the child home should not be part of the permanency plan of care for the child, reasonable efforts shall be made to place the child in a timely manner and to complete whatever steps are necessary to finalize the permanent placement of the child.

(5) The identified outcomes and goals of the permanency plan may change over time based upon the circumstances of the particular case.

(6) The court shall consider the child's relationships with the child's siblings in accordance with RCW 13.34.130(6). Whenever the permanency plan for a child is adoption, the court shall encourage the prospective adoptive parents, birth parents, foster parents, kinship caregivers, and the department or other supervising agency to seriously consider the long-term benefits to the child adoptee and his or her siblings of providing for and facilitating continuing postadoption contact between the siblings. To the extent that it is feasible, and when it is in the best interests of the child adoptee and his or her siblings, contact between the siblings should be frequent and of a similar nature as that which existed prior to the adoption. If the child adoptee or his or her siblings are represented by an attorney or guardian ad litem in a proceeding under this chapter or in any other child custody proceeding, the court shall inquire of each attorney and guardian ad litem regarding the potential benefits of continuing contact between the siblings and the potential detriments of severing contact. This section does not require the department of social and health services or other supervising agency to agree to any specific provisions in an open adoption agreement and does not create a new obligation for the department to provide supervision or transportation for visits between siblings separated by adoption from foster care.

(7) For purposes related to permanency planning:

(a) "Guardianship" means a dependency guardianship or a legal guardianship pursuant to chapter 11.88 RCW or equivalent laws of another state or a federally recognized Indian tribe.

(b) "Permanent custody order" means a custody order entered pursuant to chapter 26.10 RCW.

(c) "Permanent legal custody" means legal custody pursuant to chapter 26.10 RCW or equivalent laws of another state or a federally recognized Indian tribe. [2013 c 316 § 2; 2013 c 254 § 2; 2013 c 173 § 2; 2011 c 309 § 29. Prior: 2009 c 520 § 28; 2009 c 234 § 5; prior: 2008 c 267 § 3; 2008 c 152 § 2; 2007 c 413 § 7; 2004 c 146 § 1; 2003 c 227 § 4; 2002 c 52 § 6; 2000 c 122 § 18.]

Reviser's note: *(1) RCW 13.34.145 was amended by 2013 c 332 § 3, changing subsection (3)(b)(vi) to subsection (4)(b)(vi).

(2) This section was amended by 2013 c 173 § 2, 2013 c 254 § 2, and by 2013 c 316 § 2, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—2013 c 316: "The Washington state legislature recognizes the importance of frequent and meaningful contact for siblings separated due to involvement in the foster care system. The legislature also recognizes that children and youth in foster care have not always been provided adequate opportunities for visitation with their siblings. It is the intent of the legislature to encourage appropriate facilitation of sibling visits." [2013 c 316 § 1.]

Findings—Intent—2008 c 152: "The legislature finds that meeting the needs of vulnerable children who enter the child welfare system includes protecting the child's right to a safe, stable, and permanent home where the child receives basic nurturing. The legislature also finds that according to measures of timely dependency case processing, many children's cases are not meeting the federal and state standards intended to promote child-centered decision making in dependency cases. The legislature intends to encourage a greater focus on children's developmental needs and to promote closer adherence to timeliness standards in the resolution of dependency cases." [2008 c 152 § 1.]

Severability—2007 c 413: See note following RCW 13.34.215.

Intent—2003 c 227: See note following RCW 13.34.130.

Intent—2002 c 52: See note following RCW 13.34.025.

13.34.145 Permanency planning hearing—Purpose—Time limits—Goals—Review hearing—Petition for termination of parental rights—Guardianship petition—Agency responsibility to provide services to parents—Due process rights. (1) The purpose of a permanency planning hearing is to review the permanency plan for the child, inquire into the welfare of the child and progress of the case, and reach decisions regarding the permanent placement of the child.

(a) A permanency planning hearing shall be held in all cases where the child has remained in out-of-home care for at least nine months and an adoption decree, guardianship order, or permanent custody order has not previously been entered. The hearing shall take place no later than twelve months following commencement of the current placement episode.

(b) Whenever a child is removed from the home of a dependency guardian or long-term relative or foster care provider, and the child is not returned to the home of the parent, guardian, or legal custodian but is placed in out-of-home care, a permanency planning hearing shall take place no later than twelve months, as provided in this section, following the date of removal unless, prior to the hearing, the child returns to the home of the dependency guardian or long-term care provider, the child is placed in the home of the parent, guardian, or legal custodian, an adoption decree, guardianship order, or a permanent custody order is entered, or the dependency is dismissed. Every effort shall be made to provide stability in long-term placement, and to avoid disruption of placement, unless the child is being returned home or it is in the best interest of the child.

(c) Permanency planning goals should be achieved at the earliest possible date, preferably before the child has been in out-of-home care for fifteen months. In cases where parental rights have been terminated, the child is legally free for adoption, and adoption has been identified as the primary permanency planning goal, it shall be a goal to complete the adop-

tion within six months following entry of the termination order.

(2) No later than ten working days prior to the permanency planning hearing, the agency having custody of the child shall submit a written permanency plan to the court and shall mail a copy of the plan to all parties and their legal counsel, if any.

(3) When the youth is at least age seventeen years but not older than seventeen years and six months, the department shall provide the youth with written documentation which explains the availability of extended foster care services and detailed instructions regarding how the youth may access such services after he or she reaches age eighteen years.

(4) At the permanency planning hearing, the court shall conduct the following inquiry:

(a) If a goal of long-term foster or relative care has been achieved prior to the permanency planning hearing, the court shall review the child's status to determine whether the placement and the plan for the child's care remain appropriate.

(b) In cases where the primary permanency planning goal has not been achieved, the court shall inquire regarding the reasons why the primary goal has not been achieved and determine what needs to be done to make it possible to achieve the primary goal. The court shall review the permanency plan prepared by the agency and make explicit findings regarding each of the following:

(i) The continuing necessity for, and the safety and appropriateness of, the placement;

(ii) The extent of compliance with the permanency plan by the department or supervising agency and any other service providers, the child's parents, the child, and the child's guardian, if any;

(iii) The extent of any efforts to involve appropriate service providers in addition to department or supervising agency staff in planning to meet the special needs of the child and the child's parents;

(iv) The progress toward eliminating the causes for the child's placement outside of his or her home and toward returning the child safely to his or her home or obtaining a permanent placement for the child;

(v) The date by which it is likely that the child will be returned to his or her home or placed for adoption, with a guardian or in some other alternative permanent placement; and

(vi) If the child has been placed outside of his or her home for fifteen of the most recent twenty-two months, not including any period during which the child was a runaway from the out-of-home placement or the first six months of any period during which the child was returned to his or her home for a trial home visit, the appropriateness of the permanency plan, whether reasonable efforts were made by the department or supervising agency to achieve the goal of the permanency plan, and the circumstances which prevent the child from any of the following:

(A) Being returned safely to his or her home;

(B) Having a petition for the involuntary termination of parental rights filed on behalf of the child;

(C) Being placed for adoption;

(D) Being placed with a guardian;

(E) Being placed in the home of a fit and willing relative of the child; or

(F) Being placed in some other alternative permanent placement, including independent living or long-term foster care.

(5) Following this inquiry, at the permanency planning hearing, the court shall order the department or supervising agency to file a petition seeking termination of parental rights if the child has been in out-of-home care for fifteen of the last twenty-two months since the date the dependency petition was filed unless the court makes a good cause exception as to why the filing of a termination of parental rights petition is not appropriate. Any good cause finding shall be reviewed at all subsequent hearings pertaining to the child.

(a) For purposes of this subsection, "good cause exception" includes but is not limited to the following:

(i) The child is being cared for by a relative;

(ii) The department has not provided to the child's family such services as the court and the department have deemed necessary for the child's safe return home;

(iii) The department has documented in the case plan a compelling reason for determining that filing a petition to terminate parental rights would not be in the child's best interests; or

(iv) The parent is incarcerated, or the parent's prior incarceration is a significant factor in why the child has been in foster care for fifteen of the last twenty-two months, the parent maintains a meaningful role in the child's life, and the department has not documented another reason why it would be otherwise appropriate to file a petition pursuant to this section;

(v) Until June 30, 2015, where a parent has been accepted into a dependency treatment court program or long-term substance abuse or dual diagnoses treatment program and is demonstrating compliance with treatment goals; or

(vi) Until June 30, 2015, where a parent who has been court ordered to complete services necessary for the child's safe return home files a declaration under penalty of perjury stating the parent's financial inability to pay for the same court-ordered services, and also declares the department was unwilling or unable to pay for the same services necessary for the child's safe return home.

(b) The court's assessment of whether a parent who is incarcerated maintains a meaningful role in the child's life may include consideration of the following:

(i) The parent's expressions or acts of manifesting concern for the child, such as letters, telephone calls, visits, and other forms of communication with the child;

(ii) The parent's efforts to communicate and work with the department or supervising agency or other individuals for the purpose of complying with the service plan and repairing, maintaining, or building the parent-child relationship;

(iii) A positive response by the parent to the reasonable efforts of the department or the supervising agency;

(iv) Information provided by individuals or agencies in a reasonable position to assist the court in making this assessment, including but not limited to the parent's attorney, correctional and mental health personnel, or other individuals providing services to the parent;

(v) Limitations in the parent's access to family support programs, therapeutic services, and visiting opportunities, restrictions to telephone and mail services, inability to participate in foster care planning meetings, and difficulty access-

ing lawyers and participating meaningfully in court proceedings; and

(vi) Whether the continued involvement of the parent in the child's life is in the child's best interest.

(c) The constraints of a parent's current or prior incarceration and associated delays or barriers to accessing court-mandated services may be considered in rebuttal to a claim of aggravated circumstances under *RCW 13.34.132(4)(g) for a parent's failure to complete available treatment.

(6)(a) If the permanency plan identifies independent living as a goal, the court at the permanency planning hearing shall make a finding that the provision of services to assist the child in making a transition from foster care to independent living will allow the child to manage his or her financial, personal, social, educational, and nonfinancial affairs prior to approving independent living as a permanency plan of care. The court will inquire whether the child has been provided information about extended foster care services.

(b) The permanency plan shall also specifically identify the services, including extended foster care services, where appropriate, that will be provided to assist the child to make a successful transition from foster care to independent living.

(c) The department or supervising agency shall not discharge a child to an independent living situation before the child is eighteen years of age unless the child becomes emancipated pursuant to chapter 13.64 RCW.

(7) If the child has resided in the home of a foster parent or relative for more than six months prior to the permanency planning hearing, the court shall:

(a) Enter a finding regarding whether the foster parent or relative was informed of the hearing as required in RCW 74.13.280, 13.34.215(6), and 13.34.096; and

(b) If the department or supervising agency is recommending a placement other than the child's current placement with a foster parent, relative, or other suitable person, enter a finding as to the reasons for the recommendation for a change in placement.

(8) In all cases, at the permanency planning hearing, the court shall:

(a)(i) Order the permanency plan prepared by the supervising agency to be implemented; or

(ii) Modify the permanency plan, and order implementation of the modified plan; and

(b)(i) Order the child returned home only if the court finds that a reason for removal as set forth in RCW 13.34.130 no longer exists; or

(ii) Order the child to remain in out-of-home care for a limited specified time period while efforts are made to implement the permanency plan.

(9) Following the first permanency planning hearing, the court shall hold a further permanency planning hearing in accordance with this section at least once every twelve months until a permanency planning goal is achieved or the dependency is dismissed, whichever occurs first.

(10) Prior to the second permanency planning hearing, the agency that has custody of the child shall consider whether to file a petition for termination of parental rights.

(11) If the court orders the child returned home, case-work supervision by the department or supervising agency shall continue for at least six months, at which time a review

hearing shall be held pursuant to RCW 13.34.138, and the court shall determine the need for continued intervention.

(12) The juvenile court may hear a petition for permanent legal custody when: (a) The court has ordered implementation of a permanency plan that includes permanent legal custody; and (b) the party pursuing the permanent legal custody is the party identified in the permanency plan as the prospective legal custodian. During the pendency of such proceeding, the court shall conduct review hearings and further permanency planning hearings as provided in this chapter. At the conclusion of the legal guardianship or permanent legal custody proceeding, a juvenile court hearing shall be held for the purpose of determining whether dependency should be dismissed. If a guardianship or permanent custody order has been entered, the dependency shall be dismissed.

(13) Continued juvenile court jurisdiction under this chapter shall not be a barrier to the entry of an order establishing a legal guardianship or permanent legal custody when the requirements of subsection (12) of this section are met.

(14) Nothing in this chapter may be construed to limit the ability of the agency that has custody of the child to file a petition for termination of parental rights or a guardianship petition at any time following the establishment of dependency. Upon the filing of such a petition, a fact-finding hearing shall be scheduled and held in accordance with this chapter unless the department or supervising agency requests dismissal of the petition prior to the hearing or unless the parties enter an agreed order terminating parental rights, establishing guardianship, or otherwise resolving the matter.

(15) The approval of a permanency plan that does not contemplate return of the child to the parent does not relieve the supervising agency of its obligation to provide reasonable services, under this chapter, intended to effectuate the return of the child to the parent, including but not limited to, visitation rights. The court shall consider the child's relationships with siblings in accordance with RCW 13.34.130.

(16) Nothing in this chapter may be construed to limit the procedural due process rights of any party in a termination or guardianship proceeding filed under this chapter. [2013 c 332 § 3; 2013 c 206 § 1; 2013 c 173 § 3; 2011 c 330 § 6. Prior: 2009 c 520 § 30; 2009 c 491 § 4; 2009 c 477 § 4; 2008 c 152 § 3; 2007 c 413 § 9; 2003 c 227 § 6; prior: 2000 c 135 § 4; 2000 c 122 § 20; 1999 c 267 § 17; prior: 1998 c 314 § 3; 1998 c 130 § 3; prior: 1995 c 311 § 20; 1995 c 53 § 2; 1994 c 288 § 5; 1993 c 412 § 1; 1989 1st ex.s. c 17 § 18; 1988 c 194 § 3.]

Reviser's note: *(1) RCW 13.34.132 was amended by 2013 c 302 § 11, changing subsection (4)(g) to subsection (4)(h).

(2) This section was amended by 2013 c 173 § 3, 2013 c 206 § 1, and by 2013 c 332 § 3, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—Recommendations—Application—2013 c 332: See notes following RCW 13.34.267.

Intent—2011 c 330: See note following RCW 13.04.011.

Findings—Intent—2009 c 477: See note following RCW 13.34.062.

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

Severability—2007 c 413: See note following RCW 13.34.215.

Intent—2003 c 227: See note following RCW 13.34.130.

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

Short title—Purpose—Entitlement not granted—Federal waivers—1999 c 267 §§ 10-26: See RCW 74.15.900 and 74.15.901.

13.34.180 Order terminating parent and child relationship—Petition—Filing—Allegations. (1) A petition seeking termination of a parent and child relationship may be filed in juvenile court by any party, including the supervising agency, to the dependency proceedings concerning that child. Such petition shall conform to the requirements of RCW 13.34.040, shall be served upon the parties as provided in RCW 13.34.070(8), and shall allege all of the following unless subsection (3) or (4) of this section applies:

(a) That the child has been found to be a dependent child;
 (b) That the court has entered a dispositional order pursuant to RCW 13.34.130;

(c) That the child has been removed or will, at the time of the hearing, have been removed from the custody of the parent for a period of at least six months pursuant to a finding of dependency;

(d) That the services ordered under RCW 13.34.136 have been expressly and understandably offered or provided and all necessary services, reasonably available, capable of correcting the parental deficiencies within the foreseeable future have been expressly and understandably offered or provided;

(e) That there is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future. A parent's failure to substantially improve parental deficiencies within twelve months following entry of the dispositional order shall give rise to a rebuttable presumption that there is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future. The presumption shall not arise unless the petitioner makes a showing that all necessary services reasonably capable of correcting the parental deficiencies within the foreseeable future have been clearly offered or provided. In determining whether the conditions will be remedied the court may consider, but is not limited to, the following factors:

(i) Use of intoxicating or controlled substances so as to render the parent incapable of providing proper care for the child for extended periods of time or for periods of time that present a risk of imminent harm to the child, and documented unwillingness of the parent to receive and complete treatment or documented multiple failed treatment attempts;

(ii) Psychological incapacity or mental deficiency of the parent that is so severe and chronic as to render the parent incapable of providing proper care for the child for extended periods of time or for periods of time that present a risk of imminent harm to the child, and documented unwillingness of the parent to receive and complete treatment or documentation that there is no treatment that can render the parent capable of providing proper care for the child in the near future; or

(iii) Failure of the parent to have contact with the child for an extended period of time after the filing of the dependency petition if the parent was provided an opportunity to have a relationship with the child by the department or the court and received documented notice of the potential consequences of this failure, except that the actual inability of a parent to have visitation with the child including, but not limited to, mitigating circumstances such as a parent's current or

prior incarceration or service in the military does not in and of itself constitute failure to have contact with the child; and

(f) That continuation of the parent and child relationship clearly diminishes the child's prospects for early integration into a stable and permanent home. If the parent is incarcerated, the court shall consider whether a parent maintains a meaningful role in his or her child's life based on factors identified in RCW 13.34.145(5)(b); whether the department or supervising agency made reasonable efforts as defined in this chapter; and whether particular barriers existed as described in RCW 13.34.145(5)(b) including, but not limited to, delays or barriers experienced in keeping the agency apprised of his or her location and in accessing visitation or other meaningful contact with the child.

(2) As evidence of rebuttal to any presumption established pursuant to subsection (1)(e) of this section, the court may consider the particular constraints of a parent's current or prior incarceration. Such evidence may include, but is not limited to, delays or barriers a parent may experience in keeping the agency apprised of his or her location and in accessing visitation or other meaningful contact with the child.

(3) In lieu of the allegations in subsection (1) of this section, the petition may allege that the child was found under such circumstances that the whereabouts of the child's parent are unknown and no person has acknowledged paternity or maternity and requested custody of the child within two months after the child was found.

(4) In lieu of the allegations in subsection (1)(b) through (f) of this section, the petition may allege that the parent has been convicted of:

(a) Murder in the first degree, murder in the second degree, or homicide by abuse as defined in chapter 9A.32 RCW against another child of the parent;

(b) Manslaughter in the first degree or manslaughter in the second degree, as defined in chapter 9A.32 RCW against another child of the parent;

(c) Attempting, conspiring, or soliciting another to commit one or more of the crimes listed in (a) or (b) of this subsection; or

(d) Assault in the first or second degree, as defined in chapter 9A.36 RCW, against the surviving child or another child of the parent.

(5) When a parent has been sentenced to a long-term incarceration and has maintained a meaningful role in the child's life considering the factors provided in RCW 13.34.145(5)(b), and it is in the best interest of the child, the department should consider a permanent placement that allows the parent to maintain a relationship with his or her child, such as, but not limited to, a guardianship pursuant to chapter 13.36 RCW.

(6) Notice of rights shall be served upon the parent, guardian, or legal custodian with the petition and shall be in substantially the following form:

"NOTICE

A petition for termination of parental rights has been filed against you. You have important legal rights and you must take steps to protect your interests. This petition could result in permanent loss of your parental rights.

1. You have the right to a fact-finding hearing before a judge.

2. You have the right to have a lawyer represent you at the hearing. A lawyer can look at the files in your case, talk to the department of social and health services or the supervising agency and other agencies, tell you about the law, help you understand your rights, and help you at hearings. If you cannot afford a lawyer, the court will appoint one to represent you. To get a court-appointed lawyer you must contact: (explain local procedure).

3. At the hearing, you have the right to speak on your own behalf, to introduce evidence, to examine witnesses, and to receive a decision based solely on the evidence presented to the judge.

You should be present at this hearing.

You may call (insert agency) for more information about your child. The agency's name and telephone number are (insert name and telephone number)."

[2013 c 173 § 4. Prior: 2009 c 520 § 34; 2009 c 477 § 5; 2001 c 332 § 4; 2000 c 122 § 25; 1998 c 314 § 4; 1997 c 280 § 2; prior: 1993 c 412 § 2; 1993 c 358 § 3; 1990 c 246 § 7; 1988 c 201 § 2; 1987 c 524 § 6; 1979 c 155 § 47; 1977 ex.s. c 291 § 46.]

Findings—Intent—2009 c 477: See note following RCW 13.34.062.

Additional notes found at www.leg.wa.gov

13.34.267 Extended foster care services—Maintenance of dependency proceeding—Placement, care of youth—Appointment of counsel—Case plan. (1) In order to facilitate the delivery of extended foster care services, the court, upon the agreement of the youth to participate in the extended foster care program, shall maintain the dependency proceeding for any youth who is dependent in foster care at the age of eighteen years and who, at the time of his or her eighteenth birthday, is:

(a) Enrolled in a secondary education program or a secondary education equivalency program;

(b) Enrolled and participating in a postsecondary academic or postsecondary vocational program, or has applied for and can demonstrate that he or she intends to timely enroll in a postsecondary academic or postsecondary vocational program; or

(c) Participating in a program or activity designed to promote employment or remove barriers to employment.

(2) If the court maintains the dependency proceeding of a youth pursuant to subsection (1) of this section, the youth is eligible to receive extended foster care services pursuant to RCW 74.13.031, subject to the youth's continuing eligibility and agreement to participate.

(3) A dependent youth receiving extended foster care services is a party to the dependency proceeding. The youth's parent or guardian must be dismissed from the dependency proceeding when the youth reaches the age of eighteen.

(4) The court shall dismiss the dependency proceeding for any youth who is a dependent in foster care and who, at the age of eighteen years, does not meet any of the criteria

described in subsection (1)(a) through (c) of this section or does not agree to participate in the program.

(5) The court shall order a youth participating in extended foster care services to be under the placement and care authority of the department, subject to the youth's continuing agreement to participate in extended foster care services. The department may establish foster care rates appropriate to the needs of the youth participating in extended foster care services. The department's placement and care authority over a youth receiving extended foster care services is solely for the purpose of providing services and does not create a legal responsibility for the actions of the youth receiving extended foster care services.

(6) The court shall appoint counsel to represent a youth, as defined in RCW 13.34.030(2)(b), in dependency proceedings under this section.

(7) The case plan for and delivery of services to a youth receiving extended foster care services is subject to the review requirements set forth in RCW 13.34.138 and 13.34.145, and should be applied in a developmentally appropriate manner, as they relate to youth age eighteen to twenty-one years. Additionally, the court shall consider:

(a) Whether the youth is safe in his or her placement;

(b) Whether the youth continues to be eligible for extended foster care services;

(c) Whether the current placement is developmentally appropriate for the youth;

(d) The youth's development of independent living skills; and

(e) The youth's overall progress toward transitioning to full independence and the projected date for achieving such transition.

(8) Prior to the review hearing, the youth's attorney shall indicate whether there are any contested issues and may provide additional information necessary for the court's review. [2013 c 332 § 4; 2012 c 52 § 4; 2011 c 330 § 7.]

Findings—2013 c 332: "(1) The legislature finds that the federal fostering connections to success and increasing adoptions act of 2008 provides important new opportunities to increase the impact of state funding through maximizing the amount of federal funding available to promote permanency and positive outcomes for dependent youth.

(2) The legislature also finds that children and adolescents who are legal dependents of Washington state have experienced significant trauma and loss, putting them at increased risk for poor life outcomes. Longitudinal research on the adult functioning of former foster youth indicates a disproportionate likelihood that youth aging out of foster care and those who spent several years in care will experience poor outcomes in a variety of areas, including limited human capital upon which to build economic security and inability to fully take advantage of secondary and postsecondary educational opportunities, untreated mental or behavioral health problems, involvement in the criminal justice and corrections systems, and early parenthood combined with second-generation child welfare involvement.

(3) The legislature further finds that research also demonstrates that access to adequate and appropriate supports during the period of transition from foster care to independence can have significant positive impacts on adult functioning and can improve outcomes relating to educational attainment and postsecondary enrollment, employment and earnings, and reduced rates of teen pregnancies." [2013 c 332 § 1.]

Recommendations—2013 c 332: "No later than September 1, 2013, the department of social and health services shall develop recommendations regarding the needs of dependent youth in juvenile rehabilitation administration institutions and report those recommendations to the governor and appropriate legislative committees. The report must include specific recommendations regarding how these youth may access services under the extended foster care program. The recommendations must be developed by the children's administration and the juvenile rehabilitation administration in

consultation with youth who have been involved with the juvenile rehabilitation administration and representatives from community stakeholders and the courts." [2013 c 332 § 14.]

Application—2013 c 332: "This act applies prospectively only and not retroactively. It applies to:

- (1) Dependency matters that have an open court case on July 28, 2013; and
- (2) Dependency matters for which a petition is filed on or after July 28, 2013." [2013 c 332 § 15.]

Intent—2012 c 52: See note following RCW 74.13.031.

Intent—2011 c 330: See note following RCW 13.04.011.

13.34.268 Extended foster care services—Voluntary placement agreement—Decline—Petition for dependency. (1)(a) If a youth prior to reaching age nineteen years requests extended foster care services from the department pursuant to RCW 74.13.336, and the department declines to enter into a voluntary placement agreement with the youth, the department must provide written documentation to the youth which contains:

- (i) The date that the youth requested extended foster care services;
- (ii) The department’s reasons for declining to enter into a voluntary placement agreement with the youth and the date of the department’s decision; and
- (iii) Information regarding the youth’s right to ask the court to establish a dependency for the purpose of providing extended foster care services and his or her right to counsel to assist in making that request.

(b) The written documentation pursuant to (a) of this subsection must be provided to the youth within ten days of the department’s decision not to enter into a voluntary placement agreement with the youth.

(2)(a) A youth seeking to participate in extended foster care after being declined by the department under subsection (1) of this section may file a notice of intent to file a petition for dependency, asking the court to determine his or her eligibility for extended foster care services, and to enter an order of dependency. If the youth chooses to file such notice, it must be filed within thirty days of the date of the department’s decision.

(b) Upon filing the notice, the youth must be provided counsel at no cost to him or her. Upon receipt of the youth’s petition, the court must set a hearing date to determine whether the petition should be granted. [2013 c 332 § 6.]

Findings—Recommendations—Application—2013 c 332: See notes following RCW 13.34.267.

13.34.380 Visitation policies and protocols—Development—Elements. The department shall develop consistent policies and protocols, based on current relevant research, concerning visitation for dependent children to be implemented consistently throughout the state. The department shall develop the policies and protocols in consultation with researchers in the field, community-based agencies, court-appointed special advocates, parents’ representatives, and court representatives. The policies and protocols shall include, but not be limited to: The structure and quality of visitations; consultation with the assigned law enforcement officer in the event the parent or sibling of the child is identified as a suspect in an active criminal investigation for a violent crime that, if the allegations are true, would impact the

safety of the child; and training for department and supervising agency caseworkers, visitation supervisors, and foster parents related to visitation.

The policies and protocols shall be consistent with the provisions of this chapter and implementation of the policies and protocols shall be consistent with relevant orders of the court. [2013 c 254 § 3; 2009 c 520 § 45; 2004 c 146 § 3.]

13.34.410 Psychosexual evaluation. In the event a judge orders a parent to undergo a psychosexual evaluation, and pending the outcome of the evaluation, the department, subject to the approval of the court, may reassess visitation duration, supervision, and location, if appropriate. If the assessment indicates the current visitation plan is contrary to the child’s health, safety, or welfare, the department, subject to approval by the court, may alter the visitation plan pending the outcome of the investigation. [2013 c 254 § 4.]

**Chapter 13.40 RCW
JUVENILE JUSTICE ACT OF 1977**

Sections	
13.40.0357	Juvenile offender sentencing standards. (<i>Effective January 1, 2014.</i>)
13.40.042	Detention of juvenile with mental disorder.
13.40.070	Complaints—Screening—Filing information—Diversion—Modification of community supervision—Notice to parent or guardian—Probation counselor acting for prosecutor—Referral to mediation or reconciliation programs.
13.40.080	Diversion agreement—Scope—Limitations—Restitution orders—Divertee’s rights—Diversion unit’s powers and duties—Interpreters—Modification—Fines.
13.40.127	Deferred disposition.
13.40.466	Reinvesting in youth account.

**13.40.0357 Juvenile offender sentencing standards.
(Effective January 1, 2014.)**

DESCRIPTION AND OFFENSE CATEGORY

JUVENILE DISPOSITION OFFENSE CATEGORY	DESCRIPTION (RCW CITATION)	JUVENILE DISPOSITION CATEGORY FOR ATTEMPT, BAILJUMP, CONSPIRACY, OR SOLICITATION
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Arson and Malicious Mischief

A	Arson 1 (9A.48.020)	B+
B	Arson 2 (9A.48.030)	C
C	Reckless Burning 1 (9A.48.040)	D
D	Reckless Burning 2 (9A.48.050)	E
B	Malicious Mischief 1 (9A.48.070)	C
C	Malicious Mischief 2 (9A.48.080)	D
D	Malicious Mischief 3 (9A.48.090)	E

E	Tampering with Fire Alarm Apparatus (9.40.100)	E
E	Tampering with Fire Alarm Apparatus with Intent to Commit Arson (9.40.105)	E
A	Possession of Incendiary Device (9.40.120)	B+

Assault and Other Crimes Involving Physical Harm

A	Assault 1 (9A.36.011)	B+
B+	Assault 2 (9A.36.021)	C+
C+	Assault 3 (9A.36.031)	D+
D+	Assault 4 (9A.36.041)	E

C+	Extortion 2 (9A.56.130)	D+
C	Identity Theft 1 (9.35.020(2))	D
D	Identity Theft 2 (9.35.020(3))	E
D	Improperly Obtaining Financial Information (9.35.010)	E
B	Possession of a Stolen Vehicle (9A.56.068)	C
B	Possession of Stolen Property 1 (9A.56.150)	C
C	Possession of Stolen Property 2 (9A.56.160)	D
D	Possession of Stolen Property 3 (9A.56.170)	E
B	Taking Motor Vehicle Without Permission 1 (9A.56.070)	C
C	Taking Motor Vehicle Without Permission 2 (9A.56.075)	D
B	Theft of a Motor Vehicle (9A.56.065)	C
Motor Vehicle Related Crimes		
E	Driving Without a License (46.20.005)	E
B+	Hit and Run - Death (46.52.020(4)(a))	C+
C	Hit and Run - Injury (46.52.020(4)(b))	D
D	Hit and Run-Attended (46.52.020(5))	E
E	Hit and Run-Unattended (46.52.010)	E
C	Vehicular Assault (46.61.522)	D
C	Attempting to Elude Pursuing Police Vehicle (46.61.024)	D
E	Reckless Driving (46.61.500)	E
D	Driving While Under the Influence (46.61.502 and 46.61.504)	E
B+	Felony Driving While Under the Influence (46.61.502(6))	B
B+	Felony Physical Control of a Vehicle While Under the Influence (46.61.504(6))	B
Other		
B	Animal Cruelty 1 (16.52.205)	C
B	Bomb Threat (9.61.160)	C
C	Escape 1 ¹ (9A.76.110)	C
C	Escape 2 ¹ (9A.76.120)	C

D	Escape 3 (9A.76.130)	E
E	Obscene, Harassing, Etc., Phone Calls (9.61.230)	E
A	Other Offense Equivalent to an Adult Class A Felony	B+
B	Other Offense Equivalent to an Adult Class B Felony	C
C	Other Offense Equivalent to an Adult Class C Felony	D
D	Other Offense Equivalent to an Adult Gross Misdemeanor	E
E	Other Offense Equivalent to an Adult Misdemeanor	E
V	Violation of Order of Restitution, Community Supervision, or Confinement (13.40.200) ²	V

¹Escape 1 and 2 and Attempted Escape 1 and 2 are classed as C offenses and the standard range is established as follows:

- 1st escape or attempted escape during 12-month period - 4 weeks confinement
- 2nd escape or attempted escape during 12-month period - 8 weeks confinement
- 3rd and subsequent escape or attempted escape during 12-month period - 12 weeks confinement

²If the court finds that a respondent has violated terms of an order, it may impose a penalty of up to 30 days of confinement.

JUVENILE SENTENCING STANDARDS

This schedule must be used for juvenile offenders. The court may select sentencing option A, B, C, D, or RCW 13.40.167.

**OPTION A
JUVENILE OFFENDER SENTENCING GRID
STANDARD RANGE**

	A+	180 weeks to age 21 for all category A+ offenses				
	A	103-129 weeks for all category A offenses				
	A-	15-36 weeks Except 30-40 weeks for 15 to 17 year olds	52-65 weeks	80-100 weeks	103-129 weeks	103-129 weeks
CURRENT OFFENSE CATEGORY	B+	15-36 weeks	15-36 weeks	52-65 weeks	80-100 weeks	103-129 weeks
	B	LS	LS	15-36 weeks	15-36 weeks	52-65 weeks
	C+	LS	LS	LS	15-36 weeks	15-36 weeks
	C	LS	LS	LS	LS	15-36 weeks
	D+	LS	LS	LS	LS	LS
	D	LS	LS	LS	LS	LS
	E	LS	LS	LS	LS	LS
PRIOR ADJUDICATIONS		0	1	2	3	4 or more

NOTE: References in the grid to days or weeks mean periods of confinement. "LS" means "local sanctions" as defined in RCW 13.40.020.

(1) The vertical axis of the grid is the current offense category. The current offense category is determined by the offense of adjudication.

(2) The horizontal axis of the grid is the number of prior adjudications included in the juvenile's criminal history. Each prior felony adjudication shall count as one point. Each prior violation, misdemeanor, and gross misdemeanor adjudication shall count as 1/4 point. Fractional points shall be rounded down.

(3) The standard range disposition for each offense is determined by the intersection of the column defined by the prior adjudications and the row defined by the current offense category.

(4) RCW 13.40.180 applies if the offender is being sentenced for more than one offense.

(5) A current offense that is a violation is equivalent to an offense category of E. However, a disposition for a violation shall not include confinement.

OR

**OPTION B
SUSPENDED DISPOSITION ALTERNATIVE**

(1) If the offender is subject to a standard range disposition involving confinement by the department, the court may impose the standard range and suspend the disposition on condition that the offender comply with one or more local sanctions and any educational or treatment requirement. The treatment programs provided to the offender must be either research-based best practice programs as identified by the Washington state institute for public policy or the joint legislative audit and review committee, or for chemical dependency treatment programs or services, they must be evidence-based or research-based best practice programs. For the purposes of this subsection:

(a) "Evidence-based" means a program or practice that has had multiple site random controlled trials across heterogeneous populations demonstrating that the program or practice is effective for the population; and

(b) "Research-based" means a program or practice that has some research demonstrating effectiveness, but that does not yet meet the standard of evidence-based practices.

(2) If the offender fails to comply with the suspended disposition, the court may impose sanctions pursuant to RCW 13.40.200 or may revoke the suspended disposition and order the disposition's execution.

(3) An offender is ineligible for the suspended disposition option under this section if the offender is:

(a) Adjudicated of an A+ offense;

(b) Fourteen years of age or older and is adjudicated of one or more of the following offenses:

(i) A class A offense, or an attempt, conspiracy, or solicitation to commit a class A offense;

(ii) Manslaughter in the first degree (RCW 9A.32.060);

or
(iii) Assault in the second degree (RCW 9A.36.021), extortion in the first degree (RCW 9A.56.120), kidnapping in the second degree (RCW 9A.40.030), robbery in the second degree (RCW 9A.56.210), residential burglary (RCW 9A.52.025), burglary in the second degree (RCW 9A.52.030), drive-by shooting (RCW 9A.36.045), vehicular

homicide (RCW 46.61.520), hit and run death (RCW 46.52.020(4)(a)), intimidating a witness (RCW 9A.72.110), violation of the uniform controlled substances act (RCW 69.50.401 (2)(a) and (b)), or manslaughter 2 (RCW 9A.32.070), when the offense includes infliction of bodily harm upon another or when during the commission or immediate withdrawal from the offense the respondent was armed with a deadly weapon;

(c) Ordered to serve a disposition for a firearm violation under RCW 13.40.193; or

(d) Adjudicated of a sex offense as defined in RCW 9.94A.030.

OR

**OPTION C
CHEMICAL DEPENDENCY
DISPOSITION ALTERNATIVE**

If the juvenile offender is subject to a standard range disposition of local sanctions or 15 to 36 weeks of confinement and has not committed an A- or B+ offense, the court may impose a disposition under RCW 13.40.160(4) and 13.40.165.

OR

**OPTION D
MANIFEST INJUSTICE**

If the court determines that a disposition under option A, B, or C would effectuate a manifest injustice, the court shall impose a disposition outside the standard range under RCW 13.40.160(2). [2013 c 20 § 2; 2012 c 177 § 4. Prior: 2008 c 230 § 3; 2008 c 158 § 1; 2007 c 199 § 11; 2006 c 73 § 14; 2004 c 117 § 1; prior: 2003 c 378 § 2; 2003 c 335 § 6; 2003 c 53 § 97; prior: 2002 c 324 § 3; 2002 c 175 § 20; 2001 c 217 § 13; 2000 c 66 § 3; 1998 c 290 § 5; prior: 1997 c 338 § 12; (1997 c 338 § 11 expired July 1, 1998); 1997 c 66 § 6; 1996 c 205 § 6; 1995 c 395 § 3; 1994 sp.s. c 7 § 522; 1989 c 407 § 7.]

Effective date—2013 c 20: See note following RCW 9A.84.010.

Delayed effective date—2008 c 230 §§ 1-3: See note following RCW 9A.44.130.

Findings—Intent—Short title—2007 c 199: See notes following RCW 9A.56.065.

Effective date—2006 c 73: See note following RCW 46.61.502.

Effective date—2004 c 117: "This act takes effect July 1, 2004." [2004 c 117 § 3.]

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

Finding—Evaluation—Report—1997 c 338: "The legislature finds it critical to evaluate the effectiveness of the revisions made in this act to juvenile sentencing for purposes of measuring improvements in public safety and reduction of recidivism.

To accomplish this evaluation, the Washington state institute for public policy shall conduct a study of the sentencing revisions. The study shall: (1) Be conducted starting January 1, 2001; (2) examine whether the revisions have affected the rate of initial offense commission and recidivism; (3) determine the impacts of the revisions by age, race, and gender impacts of the revisions; (4) compare the utilization and effectiveness of sentencing alternatives and manifest injustice determinations before and after the revisions; and (5) examine the impact and effectiveness of changes made in the exclusive original jurisdiction of juvenile court over juvenile offenders.

The institute shall report the results of the study to the governor and legislature not later than July 1, 2002." [1997 c 338 § 59.]

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

Additional notes found at www.leg.wa.gov

13.40.042 Detention of juvenile with mental disorder.

(1) When a police officer has reasonable cause to believe that a juvenile has committed acts constituting a nonfelony crime that is not a serious offense as identified in RCW 10.77.092, and the officer believes that the juvenile suffers from a mental disorder, and the local prosecutor has entered into an agreement with law enforcement regarding the detention of juveniles who may have a mental disorder, the arresting officer, instead of taking the juvenile to the local juvenile detention facility, may take the juvenile to:

(a) An evaluation and treatment facility as defined in RCW 71.34.020 if the facility has been identified as an alternative location by agreement of the prosecutor, law enforcement, and the mental health provider;

(b) A facility or program identified by agreement of the prosecutor and law enforcement; or

(c) A location already identified and in use by law enforcement for the purpose of mental health diversion.

(2) For the purposes of this section, an "alternative location" means a facility or program that has the capacity to evaluate a youth and, if determined to be appropriate, develop a behavioral health intervention plan and initiate treatment.

(3) If a juvenile is taken to any location described in subsection (1)(a) or (b) of this section, the juvenile may be held for up to twelve hours and must be examined by a mental health professional within three hours of arrival.

(4) The authority provided pursuant to this section is in addition to existing authority under RCW 10.31.110. [2013 c 179 § 2.]

Finding—2013 c 179: "The legislature finds that the large number of youth involved in the juvenile justice system with mental health challenges is of significant concern. Access to effective treatment is critical to the successful treatment of youth in the early stages of their contact with the juvenile justice system. Such access may prevent further involvement in the system after an initial contact or assist a youth in avoiding any further contact with the juvenile justice system altogether. There is growing evidence that mental health diversion strategies, in particular, are effective in connecting youth with needed treatment and preventing additional offending behaviors. These strategies allow a continuum of opportunities for connecting youth who may be facing a mental illness or disorder to community mental health services at multiple decision points, such as law enforcement diversion, prosecutor diversion, court-based diversion, and court disposition. The effective use of these strategies can result not only in significant cost savings for the juvenile justice system, but can create the benefit of improved lives of the youth who face mental health challenges and barriers." [2013 c 179 § 1.]

13.40.070 Complaints—Screening—Filing information—Diversion—Modification of community supervision—Notice to parent or guardian—Probation counselor acting for prosecutor—Referral to mediation or reconciliation programs. (1) Complaints referred to the juvenile court alleging the commission of an offense shall be referred directly to the prosecutor. The prosecutor, upon receipt of a complaint, shall screen the complaint to determine whether:

(a) The alleged facts bring the case within the jurisdiction of the court; and

(b) On a basis of available evidence there is probable cause to believe that the juvenile did commit the offense.

(2) If the identical alleged acts constitute an offense under both the law of this state and an ordinance of any city or county of this state, state law shall govern the prosecutor's screening and charging decision for both filed and diverted cases.

(3) If the requirements of subsections (1)(a) and (b) of this section are met, the prosecutor shall either file an information in juvenile court or divert the case, as set forth in subsections (5), (6), and (8) of this section. If the prosecutor finds that the requirements of subsection (1)(a) and (b) of this section are not met, the prosecutor shall maintain a record, for one year, of such decision and the reasons therefor. In lieu of filing an information or diverting an offense a prosecutor may file a motion to modify community supervision where such offense constitutes a violation of community supervision.

(4) An information shall be a plain, concise, and definite written statement of the essential facts constituting the offense charged. It shall be signed by the prosecuting attorney and conform to chapter 10.37 RCW.

(5) Except as provided in RCW 13.40.213 and subsection (7) of this section, where a case is legally sufficient, the prosecutor shall file an information with the juvenile court if:

(a) An alleged offender is accused of a class A felony, a class B felony, an attempt to commit a class B felony, a class C felony listed in RCW 9.94A.411(2) as a crime against persons or listed in RCW 9A.46.060 as a crime of harassment, or a class C felony that is a violation of RCW 9.41.080 or 9.41.040(2)(a)(iii); or

(b) An alleged offender is accused of a felony and has a criminal history of any felony, or at least two gross misdemeanors, or at least two misdemeanors; or

(c) An alleged offender has previously been committed to the department; or

(d) An alleged offender has been referred by a diversion unit for prosecution or desires prosecution instead of diversion; or

(e) An alleged offender has three or more diversion agreements on the alleged offender's criminal history; or

(f) A special allegation has been filed that the offender or an accomplice was armed with a firearm when the offense was committed.

(6) Where a case is legally sufficient the prosecutor shall divert the case if the alleged offense is a misdemeanor or gross misdemeanor or violation and the alleged offense is the offender's first offense or violation. If the alleged offender is charged with a related offense that must or may be filed under subsections (5) and (8) of this section, a case under this subsection may also be filed.

(7) Where a case is legally sufficient to charge an alleged offender with either prostitution or prostitution loitering and the alleged offense is the offender's first prostitution or prostitution loitering offense, the prosecutor shall divert the case.

(8) Where a case is legally sufficient and falls into neither subsection (5) nor (6) of this section, it may be filed or diverted. In deciding whether to file or divert an offense under this section the prosecutor shall be guided only by the length, seriousness, and recency of the alleged offender's criminal history and the circumstances surrounding the commission of the alleged offense.

(9) Whenever a juvenile is placed in custody or, where not placed in custody, referred to a diversion interview, the parent or legal guardian of the juvenile shall be notified as soon as possible concerning the allegation made against the juvenile and the current status of the juvenile. Where a case involves victims of crimes against persons or victims whose property has not been recovered at the time a juvenile is referred to a diversion unit, the victim shall be notified of the referral and informed how to contact the unit.

(10) The responsibilities of the prosecutor under subsections (1) through (9) of this section may be performed by a juvenile court probation counselor for any complaint referred to the court alleging the commission of an offense which would not be a felony if committed by an adult, if the prosecutor has given sufficient written notice to the juvenile court that the prosecutor will not review such complaints.

(11) The prosecutor, juvenile court probation counselor, or diversion unit may, in exercising their authority under this section or RCW 13.40.080, refer juveniles to mediation or victim offender reconciliation programs. Such mediation or victim offender reconciliation programs shall be voluntary for victims. [2013 c 179 § 3; 2010 c 289 § 7; 2009 c 252 § 3; 2003 c 53 § 98; 2001 c 175 § 2; 1997 c 338 § 17; 1994 sp.s. c 7 § 543; 1992 c 205 § 107; 1989 c 407 § 9; 1983 c 191 § 18; 1981 c 299 § 7; 1979 c 155 § 60; 1977 ex.s. c 291 § 61.]

Finding—2013 c 179: See note following RCW 13.40.042.

Findings—2009 c 252: See note following RCW 13.40.213.

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

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

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

Additional notes found at www.leg.wa.gov

13.40.080 Diversion agreement—Scope—Limitations—Restitution orders—Divertee’s rights—Diversion unit’s powers and duties—Interpreters—Modification—Fines. (1) A diversion agreement shall be a contract between a juvenile accused of an offense and a diversion unit whereby the juvenile agrees to fulfill certain conditions in lieu of prosecution. Such agreements may be entered into only after the prosecutor, or probation counselor pursuant to this chapter, has determined that probable cause exists to believe that a crime has been committed and that the juvenile committed it. Such agreements shall be entered into as expeditiously as possible.

(2) A diversion agreement shall be limited to one or more of the following:

(a) Community restitution not to exceed one hundred fifty hours, not to be performed during school hours if the juvenile is attending school;

(b) Restitution limited to the amount of actual loss incurred by any victim;

(c) Attendance at up to ten hours of counseling and/or up to twenty hours of educational or informational sessions at a community agency. The educational or informational sessions may include sessions relating to respect for self, others, and authority; victim awareness; accountability; self-worth; responsibility; work ethics; good citizenship; literacy; and life skills. If an assessment identifies mental health needs, a

youth may access up to thirty hours of counseling. The counseling sessions may include services demonstrated to improve behavioral health and reduce recidivism. For purposes of this section, "community agency" may also mean a community-based nonprofit organization, a physician, a counselor, a school, or a treatment provider, if approved by the diversion unit. The state shall not be liable for costs resulting from the diversion unit exercising the option to permit diversion agreements to mandate attendance at up to thirty hours of counseling and/or up to twenty hours of educational or informational sessions;

(d) A fine, not to exceed one hundred dollars;

(e) Requirements to remain during specified hours at home, school, or work, and restrictions on leaving or entering specified geographical areas; and

(f) Upon request of any victim or witness, requirements to refrain from any contact with victims or witnesses of offenses committed by the juvenile.

(3) Notwithstanding the provisions of subsection (2) of this section, youth courts are not limited to the conditions imposed by subsection (2) of this section in imposing sanctions on juveniles pursuant to RCW 13.40.630.

(4) In assessing periods of community restitution to be performed and restitution to be paid by a juvenile who has entered into a diversion agreement, the court officer to whom this task is assigned shall consult with the juvenile’s custodial parent or parents or guardian. To the extent possible, the court officer shall advise the victims of the juvenile offender of the diversion process, offer victim impact letter forms and restitution claim forms, and involve members of the community. Such members of the community shall meet with the juvenile and advise the court officer as to the terms of the diversion agreement and shall supervise the juvenile in carrying out its terms.

(5)(a) A diversion agreement may not exceed a period of six months and may include a period extending beyond the eighteenth birthday of the divertee.

(b) If additional time is necessary for the juvenile to complete restitution to a victim, the time period limitations of this subsection may be extended by an additional six months.

(c) If the juvenile has not paid the full amount of restitution by the end of the additional six-month period, then the juvenile shall be referred to the juvenile court for entry of an order establishing the amount of restitution still owed to the victim. In this order, the court shall also determine the terms and conditions of the restitution, including a payment plan extending up to ten years if the court determines that the juvenile does not have the means to make full restitution over a shorter period. For the purposes of this subsection (5)(c), the juvenile shall remain under the court’s jurisdiction for a maximum term of ten years after the juvenile’s eighteenth birthday. Prior to the expiration of the initial ten-year period, the juvenile court may extend the judgment for restitution an additional ten years. The court may relieve the juvenile of the requirement to pay full or partial restitution if the juvenile reasonably satisfies the court that he or she does not have the means to make full or partial restitution and could not reasonably acquire the means to pay the restitution over a ten-year period. If the court relieves the juvenile of the requirement to pay full or partial restitution, the court may order an amount of community restitution that the court deems appropriate.

The county clerk shall make disbursements to victims named in the order. The restitution to victims named in the order shall be paid prior to any payment for other penalties or monetary assessments. A juvenile under obligation to pay restitution may petition the court for modification of the restitution order.

(6) The juvenile shall retain the right to be referred to the court at any time prior to the signing of the diversion agreement.

(7) Divertees and potential divertees shall be afforded due process in all contacts with a diversion unit regardless of whether the juveniles are accepted for diversion or whether the diversion program is successfully completed. Such due process shall include, but not be limited to, the following:

(a) A written diversion agreement shall be executed stating all conditions in clearly understandable language;

(b) Violation of the terms of the agreement shall be the only grounds for termination;

(c) No divertee may be terminated from a diversion program without being given a court hearing, which hearing shall be preceded by:

(i) Written notice of alleged violations of the conditions of the diversion program; and

(ii) Disclosure of all evidence to be offered against the divertee;

(d) The hearing shall be conducted by the juvenile court and shall include:

(i) Opportunity to be heard in person and to present evidence;

(ii) The right to confront and cross-examine all adverse witnesses;

(iii) A written statement by the court as to the evidence relied on and the reasons for termination, should that be the decision; and

(iv) Demonstration by evidence that the divertee has substantially violated the terms of his or her diversion agreement;

(e) The prosecutor may file an information on the offense for which the divertee was diverted:

(i) In juvenile court if the divertee is under eighteen years of age; or

(ii) In superior court or the appropriate court of limited jurisdiction if the divertee is eighteen years of age or older.

(8) The diversion unit shall, subject to available funds, be responsible for providing interpreters when juveniles need interpreters to effectively communicate during diversion unit hearings or negotiations.

(9) The diversion unit shall be responsible for advising a divertee of his or her rights as provided in this chapter.

(10) The diversion unit may refer a juvenile to a restorative justice program, community-based counseling, or treatment programs.

(11) The right to counsel shall inure prior to the initial interview for purposes of advising the juvenile as to whether he or she desires to participate in the diversion process or to appear in the juvenile court. The juvenile may be represented by counsel at any critical stage of the diversion process, including intake interviews and termination hearings. The juvenile shall be fully advised at the intake of his or her right to an attorney and of the relevant services an attorney can provide. For the purpose of this section, intake interviews

mean all interviews regarding the diversion agreement process.

The juvenile shall be advised that a diversion agreement shall constitute a part of the juvenile's criminal history as defined by RCW 13.40.020(7). A signed acknowledgment of such advisement shall be obtained from the juvenile, and the document shall be maintained by the diversion unit together with the diversion agreement, and a copy of both documents shall be delivered to the prosecutor if requested by the prosecutor. The supreme court shall promulgate rules setting forth the content of such advisement in simple language.

(12) When a juvenile enters into a diversion agreement, the juvenile court may receive only the following information for dispositional purposes:

(a) The fact that a charge or charges were made;

(b) The fact that a diversion agreement was entered into;

(c) The juvenile's obligations under such agreement;

(d) Whether the alleged offender performed his or her obligations under such agreement; and

(e) The facts of the alleged offense.

(13) A diversion unit may refuse to enter into a diversion agreement with a juvenile. When a diversion unit refuses to enter a diversion agreement with a juvenile, it shall immediately refer such juvenile to the court for action and shall forward to the court the criminal complaint and a detailed statement of its reasons for refusing to enter into a diversion agreement. The diversion unit shall also immediately refer the case to the prosecuting attorney for action if such juvenile violates the terms of the diversion agreement.

(14) A diversion unit may, in instances where it determines that the act or omission of an act for which a juvenile has been referred to it involved no victim, or where it determines that the juvenile referred to it has no prior criminal history and is alleged to have committed an illegal act involving no threat of or instance of actual physical harm and involving not more than fifty dollars in property loss or damage and that there is no loss outstanding to the person or firm suffering such damage or loss, counsel and release or release such a juvenile without entering into a diversion agreement. A diversion unit's authority to counsel and release a juvenile under this subsection includes the authority to refer the juvenile to community-based counseling or treatment programs or a restorative justice program. Any juvenile released under this subsection shall be advised that the act or omission of any act for which he or she had been referred shall constitute a part of the juvenile's criminal history as defined by RCW 13.40.020(7). A signed acknowledgment of such advisement shall be obtained from the juvenile, and the document shall be maintained by the unit, and a copy of the document shall be delivered to the prosecutor if requested by the prosecutor. The supreme court shall promulgate rules setting forth the content of such advisement in simple language. A juvenile determined to be eligible by a diversion unit for release as provided in this subsection shall retain the same right to counsel and right to have his or her case referred to the court for formal action as any other juvenile referred to the unit.

(15) A diversion unit may supervise the fulfillment of a diversion agreement entered into before the juvenile's eighteenth birthday and which includes a period extending beyond the divertee's eighteenth birthday.

(16) If a fine required by a diversion agreement cannot reasonably be paid due to a change of circumstance, the diversion agreement may be modified at the request of the divertee and with the concurrence of the diversion unit to convert an unpaid fine into community restitution. The modification of the diversion agreement shall be in writing and signed by the divertee and the diversion unit. The number of hours of community restitution in lieu of a monetary penalty shall be converted at the rate of the prevailing state minimum wage per hour.

(17) Fines imposed under this section shall be collected and paid into the county general fund in accordance with procedures established by the juvenile court administrator under RCW 13.04.040 and may be used only for juvenile services. In the expenditure of funds for juvenile services, there shall be a maintenance of effort whereby counties exhaust existing resources before using amounts collected under this section. [2013 c 179 § 4; 2012 c 201 § 2; 2004 c 120 § 3. Prior: 2002 c 237 § 8; 2002 c 175 § 21; 1999 c 91 § 1; 1997 c 338 § 70; 1997 c 121 § 8; 1996 c 124 § 1; 1994 sp.s. c 7 § 544; 1992 c 205 § 108; 1985 c 73 § 2; 1983 c 191 § 16; 1981 c 299 § 8; 1979 c 155 § 61; 1977 ex.s. c 291 § 62.]

Finding—2013 c 179: See note following RCW 13.40.042.

Effective date—2004 c 120: See note following RCW 13.40.010.

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

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

Additional notes found at www.leg.wa.gov

13.40.127 Deferred disposition. (1) A juvenile is eligible for deferred disposition unless he or she:

- (a) Is charged with a sex or violent offense;
- (b) Has a criminal history which includes any felony;
- (c) Has a prior deferred disposition or deferred adjudication; or
- (d) Has two or more adjudications.

(2) The juvenile court may, upon motion at least fourteen days before commencement of trial and, after consulting the juvenile's custodial parent or parents or guardian and with the consent of the juvenile, continue the case for disposition for a period not to exceed one year from the date the juvenile is found guilty. The court shall consider whether the offender and the community will benefit from a deferred disposition before deferring the disposition. The court may waive the fourteen-day period anytime before the commencement of trial for good cause.

(3) Any juvenile who agrees to a deferral of disposition shall:

- (a) Stipulate to the admissibility of the facts contained in the written police report;
- (b) Acknowledge that the report will be entered and used to support a finding of guilt and to impose a disposition if the juvenile fails to comply with terms of supervision;
- (c) Waive the following rights to: (i) A speedy disposition; and (ii) call and confront witnesses; and
- (d) Acknowledge the direct consequences of being found guilty and the direct consequences that will happen if an order of disposition is entered.

The adjudicatory hearing shall be limited to a reading of the court's record.

(4) Following the stipulation, acknowledgment, waiver, and entry of a finding or plea of guilt, the court shall defer entry of an order of disposition of the juvenile.

(5) Any juvenile granted a deferral of disposition under this section shall be placed under community supervision. The court may impose any conditions of supervision that it deems appropriate including posting a probation bond. Payment of restitution under RCW 13.40.190 shall be a condition of community supervision under this section.

The court may require a juvenile offender convicted of animal cruelty in the first degree to submit to a mental health evaluation to determine if the offender would benefit from treatment and such intervention would promote the safety of the community. After consideration of the results of the evaluation, as a condition of community supervision, the court may order the offender to attend treatment to address issues pertinent to the offense.

The court may require the juvenile to undergo a mental health or substance abuse assessment, or both. If the assessment identifies a need for treatment, conditions of supervision may include treatment for the assessed need that has been demonstrated to improve behavioral health and reduce recidivism.

(6) A parent who signed for a probation bond has the right to notify the counselor if the juvenile fails to comply with the bond or conditions of supervision. The counselor shall notify the court and surety of any failure to comply. A surety shall notify the court of the juvenile's failure to comply with the probation bond. The state shall bear the burden to prove, by a preponderance of the evidence, that the juvenile has failed to comply with the terms of community supervision.

(7)(a) Anytime prior to the conclusion of the period of supervision, the prosecutor or the juvenile's juvenile court community supervision counselor may file a motion with the court requesting the court revoke the deferred disposition based on the juvenile's lack of compliance or treat the juvenile's lack of compliance as a violation pursuant to RCW 13.40.200.

(b) If the court finds the juvenile failed to comply with the terms of the deferred disposition, the court may:

- (i) Revoke the deferred disposition and enter an order of disposition; or
- (ii) Impose sanctions for the violation pursuant to RCW 13.40.200.

(8) At any time following deferral of disposition the court may, following a hearing, continue supervision for an additional one-year period for good cause.

(9)(a) At the conclusion of the period of supervision, the court shall determine whether the juvenile is entitled to dismissal of the deferred disposition only when the court finds:

- (i) The deferred disposition has not been previously revoked;
- (ii) The juvenile has completed the terms of supervision;
- (iii) There are no pending motions concerning lack of compliance pursuant to subsection (7) of this section; and
- (iv) The juvenile has either paid the full amount of restitution, or, made a good faith effort to pay the full amount of restitution during the period of supervision.

(b) If the court finds the juvenile is entitled to dismissal of the deferred disposition pursuant to (a) of this subsection,

the juvenile's conviction shall be vacated and the court shall dismiss the case with prejudice, except that a conviction under RCW 16.52.205 shall not be vacated. Whenever a case is dismissed with restitution still owing, the court shall enter a restitution order pursuant to RCW 13.40.190 for any unpaid restitution. Jurisdiction to enforce payment and modify terms of the restitution order shall be the same as those set forth in RCW 13.40.190.

(c) If the court finds the juvenile is not entitled to dismissal of the deferred disposition pursuant to (a) of this subsection, the court shall revoke the deferred disposition and enter an order of disposition. A deferred disposition shall remain a conviction unless the case is dismissed and the conviction is vacated pursuant to (b) of this subsection or sealed pursuant to RCW 13.50.050.

(10)(a)(i) Any time the court vacates a conviction pursuant to subsection (9) of this section, if the juvenile is eighteen years of age or older and the full amount of restitution ordered has been paid, the court shall enter a written order sealing the case.

(ii) Any time the court vacates a conviction pursuant to subsection (9) of this section, if the juvenile is not eighteen years of age or older and full restitution ordered has been paid, the court shall schedule an administrative sealing hearing to take place no later than thirty days after the respondent's eighteenth birthday, at which time the court shall enter a written order sealing the case. The respondent's presence at the administrative sealing hearing is not required.

(iii) Any deferred disposition vacated prior to June 7, 2012, is not subject to sealing under this subsection.

(b) Nothing in this subsection shall preclude a juvenile from petitioning the court to have the records of his or her deferred dispositions sealed under RCW 13.50.050 (11) and (12).

(c) Records sealed under this provision shall have the same legal status as records sealed under RCW 13.50.050. [2013 c 179 § 5; 2012 c 177 § 1; 2009 c 236 § 1; 2004 c 117 § 2; 2001 c 175 § 3; 1997 c 338 § 21.]

Finding—2013 c 179: See note following RCW 13.40.042.

Effective date—2004 c 117: See note following RCW 13.40.0357.

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Additional notes found at www.leg.wa.gov

13.40.466 Reinvesting in youth account. (1) The reinvesting in youth account is created in the state treasury. Moneys in the account shall be spent only after appropriation. Expenditures from the account may be used to reimburse local governments for the implementation of the reinvesting in youth program established in RCW 13.40.462 and 13.40.464. During the 2013-2015 fiscal biennium, the legislature may appropriate moneys from the reinvesting in youth account for juvenile rehabilitation purposes.

(2) Revenues to the reinvesting in youth account consist of revenues appropriated to or deposited in the account.

(3) The department of social and health services juvenile rehabilitation administration shall review and monitor the expenditures made by any county or group of counties that is funded, in whole or in part, with funds provided through the reinvesting in youth account. Counties shall repay any funds

that are not spent in accordance with RCW 13.40.462 and 13.40.464. [2013 2nd sp.s. c 4 § 953; 2006 c 304 § 4.]

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

Finding—Intent—Entitlement not created—Effective date—2006 c 304: See notes following RCW 13.40.462.

Chapter 13.50 RCW

KEEPING AND RELEASE OF RECORDS BY JUVENILE JUSTICE OR CARE AGENCIES

Sections

- 13.50.010 Definitions—Conditions when filing petition or information—Duties to maintain accurate records and access.
- 13.50.100 Records not relating to commission of juvenile offenses—Maintenance and access—Release of information for child custody hearings—Disclosure of unfounded allegations prohibited.
- 13.50.140 Disclosure of privileged information to office of the family and children's ombuds—Privilege not waived as to others.

13.50.010 Definitions—Conditions when filing petition or information—Duties to maintain accurate records and access. (1) For purposes of this chapter:

(a) "Juvenile justice or care agency" means any of the following: Police, diversion units, court, prosecuting attorney, defense attorney, detention center, attorney general, the legislative children's oversight committee, the office of the family and children's ombuds, the department of social and health services and its contracting agencies, schools; persons or public or private agencies having children committed to their custody; and any placement oversight committee created under RCW 72.05.415;

(b) "Official juvenile court file" means the legal file of the juvenile court containing the petition or information, motions, memorandums, briefs, findings of the court, and court orders;

(c) "Records" means the official juvenile court file, the social file, and records of any other juvenile justice or care agency in the case;

(d) "Social file" means the juvenile court file containing the records and reports of the probation counselor.

(2) Each petition or information filed with the court may include only one juvenile and each petition or information shall be filed under a separate docket number. The social file shall be filed separately from the official juvenile court file.

(3) It is the duty of any juvenile justice or care agency to maintain accurate records. To this end:

(a) The agency may never knowingly record inaccurate information. Any information in records maintained by the department of social and health services relating to a petition filed pursuant to chapter 13.34 RCW that is found by the court to be false or inaccurate shall be corrected or expunged from such records by the agency;

(b) An agency shall take reasonable steps to assure the security of its records and prevent tampering with them; and

(c) An agency shall make reasonable efforts to insure the completeness of its records, including action taken by other agencies with respect to matters in its files.

(4) Each juvenile justice or care agency shall implement procedures consistent with the provisions of this chapter to facilitate inquiries concerning records.

(5) Any person who has reasonable cause to believe information concerning that person is included in the records of a juvenile justice or care agency and who has been denied access to those records by the agency may make a motion to the court for an order authorizing that person to inspect the juvenile justice or care agency record concerning that person. The court shall grant the motion to examine records unless it finds that in the interests of justice or in the best interests of the juvenile the records or parts of them should remain confidential.

(6) A juvenile, or his or her parents, or any person who has reasonable cause to believe information concerning that person is included in the records of a juvenile justice or care agency may make a motion to the court challenging the accuracy of any information concerning the moving party in the record or challenging the continued possession of the record by the agency. If the court grants the motion, it shall order the record or information to be corrected or destroyed.

(7) The person making a motion under subsection (5) or (6) of this section shall give reasonable notice of the motion to all parties to the original action and to any agency whose records will be affected by the motion.

(8) The court may permit inspection of records by, or release of information to, any clinic, hospital, or agency which has the subject person under care or treatment. The court may also permit inspection by or release to individuals or agencies, including juvenile justice advisory committees of county law and justice councils, engaged in legitimate research for educational, scientific, or public purposes. The court shall release to the caseload forecast council records needed for its research and data-gathering functions. Access to records or information for research purposes shall be permitted only if the anonymity of all persons mentioned in the records or information will be preserved. Each person granted permission to inspect juvenile justice or care agency records for research purposes shall present a notarized statement to the court stating that the names of juveniles and parents will remain confidential.

(9) Juvenile detention facilities shall release records to the caseload forecast council upon request. The commission shall not disclose the names of any juveniles or parents mentioned in the records without the named individual's written permission.

(10) Requirements in this chapter relating to the court's authority to compel disclosure shall not apply to the legislative children's oversight committee or the office of the family and children's ombuds.

(11) For the purpose of research only, the administrative office of the courts shall maintain an electronic research copy of all records in the judicial information system related to juveniles. Access to the research copy is restricted to the Washington state center for court research. The Washington state center for court research shall maintain the confidentiality of all confidential records and shall preserve the anonymity of all persons identified in the research copy. The research copy may not be subject to any records retention schedule and must include records destroyed or removed from the judicial information system pursuant to RCW 13.50.050 (17) and (18) and 13.50.100(3).

(12) The court shall release to the Washington state office of public defense records needed to implement the

agency's oversight, technical assistance, and other functions as required by RCW 2.70.020. Access to the records used as a basis for oversight, technical assistance, or other agency functions is restricted to the Washington state office of public defense. The Washington state office of public defense shall maintain the confidentiality of all confidential information included in the records. [2013 c 23 § 6; 2011 1st sp.s. c 40 § 30; 2010 c 150 § 3; 2009 c 440 § 1; 1998 c 269 § 4. Prior: 1997 c 386 § 21; 1997 c 338 § 39; 1996 c 232 § 6; 1994 sp.s. c 7 § 541; 1993 c 374 § 1; 1990 c 246 § 8; 1986 c 288 § 11; 1979 c 155 § 8.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Intent—Finding—Effective date—1998 c 269: See notes following RCW 72.05.020.

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

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

Additional notes found at www.leg.wa.gov

13.50.100 Records not relating to commission of juvenile offenses—Maintenance and access—Release of information for child custody hearings—Disclosure of unfounded allegations prohibited. (1) This section governs records not covered by RCW 13.50.050.

(2) Records covered by this section shall be confidential and shall be released only pursuant to this section and RCW 13.50.010.

(3) Records retained or produced by any juvenile justice or care agency may be released to other participants in the juvenile justice or care system only when an investigation or case involving the juvenile in question is being pursued by the other participant or when that other participant is assigned the responsibility of supervising the juvenile. Records covered under this section and maintained by the juvenile courts which relate to the official actions of the agency may be entered in the statewide judicial information system. However, truancy records associated with a juvenile who has no other case history, and records of a juvenile's parents who have no other case history, shall be removed from the judicial information system when the juvenile is no longer subject to the compulsory attendance laws in chapter 28A.225 RCW. A county clerk is not liable for unauthorized release of this data by persons or agencies not in his or her employ or otherwise subject to his or her control, nor is the county clerk liable for inaccurate or incomplete information collected from litigants or other persons required to provide identifying data pursuant to this section.

(4) Subject to (a) of this subsection, the department of social and health services may release information retained in the course of conducting child protective services investigations to a family or juvenile court hearing a petition for custody under chapter 26.10 RCW.

(a) Information that may be released shall be limited to information regarding investigations in which: (i) The juvenile was an alleged victim of abandonment or abuse or neglect; or (ii) the petitioner for custody of the juvenile, or any individual aged sixteen or older residing in the petitioner's household, is the subject of a founded or currently

pending child protective services investigation made by the department subsequent to October 1, 1998.

(b) Additional information may only be released with the written consent of the subject of the investigation and the juvenile alleged to be the victim of abandonment or abuse and neglect, or the parent, custodian, guardian, or personal representative of the juvenile, or by court order obtained with notice to all interested parties.

(5) Any disclosure of records or information by the department of social and health services pursuant to this section shall not be deemed a waiver of any confidentiality or privilege attached to the records or information by operation of any state or federal statute or regulation, and any recipient of such records or information shall maintain it in such a manner as to comply with such state and federal statutes and regulations and to protect against unauthorized disclosure.

(6) A contracting agency or service provider of the department of social and health services that provides counseling, psychological, psychiatric, or medical services may release to the office of the family and children's ombuds information or records relating to services provided to a juvenile who is dependent under chapter 13.34 RCW without the consent of the parent or guardian of the juvenile, or of the juvenile if the juvenile is under the age of thirteen years, unless such release is otherwise specifically prohibited by law.

(7) A juvenile, his or her parents, the juvenile's attorney, and the juvenile's parent's attorney, shall, upon request, be given access to all records and information collected or retained by a juvenile justice or care agency which pertain to the juvenile except:

(a) If it is determined by the agency that release of this information is likely to cause severe psychological or physical harm to the juvenile or his or her parents the agency may withhold the information subject to other order of the court: PROVIDED, That if the court determines that limited release of the information is appropriate, the court may specify terms and conditions for the release of the information; or

(b) If the information or record has been obtained by a juvenile justice or care agency in connection with the provision of counseling, psychological, psychiatric, or medical services to the juvenile, when the services have been sought voluntarily by the juvenile, and the juvenile has a legal right to receive those services without the consent of any person or agency, then the information or record may not be disclosed to the juvenile's parents without the informed consent of the juvenile unless otherwise authorized by law; or

(c) That the department of social and health services may delete the name and identifying information regarding persons or organizations who have reported alleged child abuse or neglect.

(8) A juvenile or his or her parent denied access to any records following an agency determination under subsection (7) of this section may file a motion in juvenile court requesting access to the records. The court shall grant the motion unless it finds access may not be permitted according to the standards found in subsection (7)(a) and (b) of this section.

(9) The person making a motion under subsection (8) of this section shall give reasonable notice of the motion to all parties to the original action and to any agency whose records will be affected by the motion.

(10) Subject to the rules of discovery in civil cases, any party to a proceeding seeking a declaration of dependency or a termination of the parent-child relationship and any party's counsel and the guardian ad litem of any party, shall have access to the records of any natural or adoptive child of the parent, subject to the limitations in subsection (7) of this section. A party denied access to records may request judicial review of the denial. If the party prevails, he or she shall be awarded attorneys' fees, costs, and an amount not less than five dollars and not more than one hundred dollars for each day the records were wrongfully denied.

(11) No unfounded allegation of child abuse or neglect as defined in RCW 26.44.020(1) may be disclosed to a child-placing agency, private adoption agency, or any other licensed provider. [2013 c 23 § 7; 2003 c 105 § 2; 2001 c 162 § 2; 2000 c 162 § 18; 1999 c 390 § 3; 1997 c 386 § 22; 1995 c 311 § 16; 1990 c 246 § 9; 1983 c 191 § 20; 1979 c 155 § 10.]

Additional notes found at www.leg.wa.gov

13.50.140 Disclosure of privileged information to office of the family and children's ombuds—Privilege not waived as to others. Any communication or advice privileged under RCW 5.60.060 that is disclosed by the office of the attorney general or the department of social and health services to the office of the family and children's ombuds may not be deemed to be a waiver of the privilege as to others. [2013 c 23 § 8; 1999 c 390 § 8.]

Chapter 13.60 RCW

MISSING CHILDREN CLEARINGHOUSE

Sections

- | | |
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| 13.60.010 | Missing children and endangered person clearinghouse—Hotline—Distribution of information—Amber alert plan. |
| 13.60.020 | Entry of information on missing children or endangered persons into missing person computer network—Access. |

13.60.010 Missing children and endangered person clearinghouse—Hotline—Distribution of information—Amber alert plan. (1) The Washington state patrol shall establish a missing children and endangered person clearinghouse which shall include the maintenance and operation of a toll-free telephone hotline. The clearinghouse shall distribute information to local law enforcement agencies, school districts, the department of social and health services, and the general public regarding missing children and endangered persons. The information shall include pictures, bulletins, training sessions, reports, and biographical materials that will assist in local law enforcement efforts to locate missing children and endangered persons. The state patrol shall also maintain a regularly updated computerized link with national and other statewide missing person systems or clearinghouses, and within existing resources, shall develop and implement a plan, commonly known as an "amber alert plan" or an "endangered missing person advisory plan," for voluntary cooperation between local, state, tribal, and other law enforcement agencies, state government agencies, radio and television stations, cable and satellite systems, and social media pages and sites to enhance the public's ability to assist in recovering abducted children and missing endangered per-

sons consistent with the state endangered missing person advisory plan.

(2) For the purposes of this chapter:

(a) "Child" or "children" means an individual under eighteen years of age.

(b) "Missing endangered person" means a person with a developmental disability as defined in RCW 71A.10.020(4) or a vulnerable adult as defined in RCW 74.34.020(17), believed to be in danger because of age, health, mental or physical disability, in combination with environmental or weather conditions, or is believed to be unable to return to safety without assistance. [2013 c 285 § 1; 2009 c 20 § 1; 1985 c 443 § 22.]

Additional notes found at www.leg.wa.gov

13.60.020 Entry of information on missing children or endangered persons into missing person computer network—Access. Local law enforcement agencies shall file an official missing person report and enter biographical information into the state missing person computerized network within six hours after notification of a missing child or endangered person is received under RCW 13.32A.050(1) (a), (c), or (d), or an endangered missing person received pursuant to the state endangered missing person advisory plan. The patrol shall collect such information as will enable it to retrieve immediately the following information about a missing child or endangered person: Name, date of birth, social security number, fingerprint classification, relevant physical descriptions, and known associates and locations. Access to the preceding information shall be available to appropriate law enforcement agencies, and to parents and legal guardians, when appropriate. [2013 c 285 § 2; 1985 c 443 § 23.]

Additional notes found at www.leg.wa.gov

Title 15

AGRICULTURE AND MARKETING

Chapters

- 15.13 Horticultural plants, Christmas trees, and facilities—Inspection and licensing.**
- 15.17 Standards of grades and packs.**
- 15.36 Milk and milk products.**
- 15.49 Seeds.**
- 15.54 Fertilizers, minerals, and limes.**
- 15.58 Washington pesticide control act.**
- 15.65 Washington state agricultural commodity boards.**

Chapter 15.13 RCW

HORTICULTURAL PLANTS, CHRISTMAS TREES, AND FACILITIES—INSPECTION AND LICENSING

Sections

- 15.13.250 Definitions. (*Effective until July 1, 2014.*)
- 15.13.250 Definitions. (*Effective July 1, 2014, until July 1, 2020.*)
- 15.13.250 Definitions. (*Effective July 1, 2020.*)
- 15.13.280 Nursery dealer licenses—Farmers markets—Application—Fees—Expiration—Posting—Audit.
- 15.13.290 Nursery dealer licenses—Additional charge for late renewal.

15.13.250 Definitions. (*Effective until July 1, 2014.*)
For the purpose of this chapter:

(1) "Business licensing system" means the mechanism established by chapter 19.02 RCW by which business licenses, endorsed for individual state-issued licenses, are issued and renewed utilizing a business license application and a business license expiration date common to each renewable license endorsement.

(2) "Certificate" or "certificate of inspection" means an official document certifying compliance with the requirements of this chapter. The term "certificate" includes labels, rubber stamp imprints, tags, permits, written statements, or any other form of certification document that accompanies the movement of inspected and certified plant material, including Christmas trees.

(3) "Christmas tree" means a cut evergreen tree:

(a) Of a marketable species;

(b) Managed to produce trees meeting United States number 2 or better standards for Christmas trees as specified by the United States department of agriculture; and

(c) Evidencing periodic maintenance practices of shearing or culturing, or both; weed and brush control; and one or more of the following practices: Basal pruning, fertilization, insect and disease control, stump culture, soil cultivation, and irrigation.

(4) "Christmas tree grower" means any person who grows Christmas trees for sale.

(5) "Compliance agreement" means a written agreement between the department and a person engaged in growing, handling, or moving articles, plants, or plant products regulated under this chapter or title, in which the person agrees to comply with stipulated requirements.

(6) "Consignor" means the person named in the invoice, bill, or other shipping document accompanying a horticultural plant as the person from whom the horticultural plant has been received for shipment.

(7) "Department" means the department of agriculture of the state of Washington.

(8) "Director" means the director of the department or the director's duly authorized representative.

(9) "Horticultural facilities" means, but is not limited to, the premises where horticultural plants or Christmas trees are grown, stored, handled or delivered for sale or transportation, or where records required under this chapter are stored or kept, and all vehicles and equipment used to transport horticultural plants or Christmas trees.

(10) "Horticultural plant" includes, but is not limited to, any horticultural, floricultural, or viticultural plant, or turf, for planting, propagation or ornamentation growing or otherwise. The term does not apply to potato, garlic, or onion planting stock or to cut plant material, except plant parts used for propagative purposes.

(11) "Inspection and/or certification" means, but is not limited to, the inspection by the director of horticultural plants or Christmas trees at any time prior to, during, or subsequent to harvest or sale and the issuance by the director of a written certificate stating if the horticultural plants or Christmas trees are in compliance with the provisions of this chapter and rules adopted under this chapter. Inspection may include, but is not limited to, examination of horticultural plants or Christmas trees, taking samples, destructive testing, conducting interviews, taking photographs, and examining records.

(12) "Nursery dealer" means any person who sells horticultural plants or plants, grows, receives, or handles horticultural plants for the purpose of selling or planting for another person.

(13) "Person" means any individual, firm, partnership, corporation, company, society and association, and every officer, agent or employee thereof.

(14) "Plant pests" means, but is not limited to, a living stage of insect, mite, or other arthropod; nematode; slug, snail, or other mollusk; protozoa or other invertebrate animals; bacteria; fungus; virus; viroid; phytoplasma; weed or parasitic plant; or any organisms similar to or allied with any of the plant pests listed in this section; or any infectious substance; which can directly or indirectly injure or cause disease or damage to any plant or plant product or that threatens the diversity or abundance of native species.

(15) "Sell" means to sell, hold for sale, offer for sale, handle, or to use as an inducement for the sale of another article or product.

(16) "This chapter" means this chapter and the rules adopted under this chapter.

(17) "Turf" means field-cultivated turf grass sod consisting of grass varieties, or blends of grass varieties, and dichondra for use in residential and commercial landscapes. [2013 c 144 § 1; 2007 c 335 § 1; 2000 c 144 § 1; 1993 c 120 § 1; 1990 c 261 § 1; 1985 c 36 § 1; 1982 c 182 § 19; 1971 ex.s. c 33 § 1.]

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

Expiration date—2013 c 144 § 1: "Section 1 of this act expires July 1, 2014." [2013 c 144 § 58.]

Expiration date—2013 c 72; 2007 c 335: "This act expires July 1, 2020." [2013 c 72 § 1; 2007 c 335 § 19.]

15.13.250 Definitions. (Effective July 1, 2014, until July 1, 2020.) For the purpose of this chapter:

(1) "Business licensing system" means the mechanism established by chapter 19.02 RCW by which business licenses, endorsed for individual state-issued licenses, are issued and renewed utilizing a business license application and a business license expiration date common to each renewable license endorsement.

(2) "Certificate" or "certificate of inspection" means an official document certifying compliance with the requirements of this chapter. The term "certificate" includes labels, rubber stamp imprints, tags, permits, written statements, or any other form of certification document that accompanies the movement of inspected and certified plant material, including Christmas trees.

(3) "Christmas tree" means a cut evergreen tree:

(a) Of a marketable species;

(b) Managed to produce trees meeting United States number 2 or better standards for Christmas trees as specified by the United States department of agriculture; and

(c) Evidencing periodic maintenance practices of shearing or culturing, or both; weed and brush control; and one or more of the following practices: Basal pruning, fertilization, insect and disease control, stump culture, soil cultivation, and irrigation.

(4) "Christmas tree grower" means any person who grows Christmas trees for sale.

(5) "Compliance agreement" means a written agreement between the department and a person engaged in growing, handling, or moving articles, plants, or plant products regulated under this chapter or title, in which the person agrees to comply with stipulated requirements.

(6) "Consignor" means the person named in the invoice, bill, or other shipping document accompanying a horticultural plant as the person from whom the horticultural plant has been received for shipment.

(7) "Department" means the department of agriculture of the state of Washington.

(8) "Director" means the director of the department or the director's duly authorized representative.

(9) "Horticultural facilities" means, but is not limited to, the premises where horticultural plants or Christmas trees are grown, stored, handled or delivered for sale or transportation, or where records required under this chapter are stored or kept, and all vehicles and equipment used to transport horticultural plants or Christmas trees.

(10) "Horticultural plant" includes, but is not limited to, any horticultural, floricultural, or viticultural plant, or turf, for planting, propagation or ornamentation growing or otherwise. The term does not apply to potato, garlic, or onion planting stock or to cut plant material, except plant parts used for propagative purposes.

(11) "Inspection and/or certification" means, but is not limited to, the inspection by the director of horticultural plants or Christmas trees at any time prior to, during, or subsequent to harvest or sale and the issuance by the director of a written certificate stating if the horticultural plants or Christmas trees are in compliance with the provisions of this chapter and rules adopted under this chapter. Inspection may include, but is not limited to, examination of horticultural plants or Christmas trees, taking samples, destructive testing, conducting interviews, taking photographs, and examining records.

(12) "Nursery dealer" means any person who sells horticultural plants or plants, grows, receives, or handles horticultural plants for the purpose of selling or planting for another person.

(13) "Person" means any individual, firm, partnership, corporation, company, society and association, and every officer, agent or employee thereof.

(14) "Plant pests" means, but is not limited to, a living stage of insect, mite, or other arthropod; nematode; slug, snail, or other mollusk; protozoa or other invertebrate animals; bacteria; fungus; virus; viroid; phytoplasma; weed or parasitic plant; or any organisms similar to or allied with any of the plant pests listed in this section; or any infectious substance; which can directly or indirectly injure or cause disease or damage to any plant or plant product or that threatens the diversity or abundance of native species.

(15) "Sell" means to sell, hold for sale, offer for sale, handle, or to use as an inducement for the sale of another article or product.

(16) "This chapter" means this chapter and the rules adopted under this chapter.

(17) "Turf" means field-cultivated turf grass sod consisting of grass varieties, or blends of grass varieties, and dichondra or use in residential and commercial landscapes. [2013 c 144 § 2; 2013 c 144 § 1; 2007 c 335 § 1; 2000 c 144 § 1; 1993

c 120 § 1; 1990 c 261 § 1; 1985 c 36 § 1; 1982 c 182 § 19; 1971 ex.s. c 33 § 1.]

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

Effective date—2013 c 144 § 2: "Section 2 of this act takes effect July 1, 2014." [2013 c 144 § 57.]

Expiration date—2013 c 72; 2007 c 335: "This act expires July 1, 2020." [2013 c 72 § 1; 2007 c 335 § 19.]

15.13.250 Definitions. (Effective July 1, 2020.) For the purpose of this chapter:

(1) "Business licensing system" means the mechanism established by chapter 19.02 RCW by which business licenses, endorsed for individual state-issued licenses, are issued and renewed utilizing a business license application and a business license expiration date common to each renewable license endorsement.

(2) "Certificate" or "certificate of inspection" means an official document certifying compliance with the requirements of this chapter. The term "certificate" includes labels, rubber stamp imprints, tags, permits, written statements, or any other form of certification document that accompanies the movement of inspected and certified plant material.

(3) "Compliance agreement" means a written agreement between the department and a person engaged in growing, handling, or moving articles, plants, or plant products regulated under this chapter or title, in which the person agrees to comply with stipulated requirements.

(4) "Consignor" means the person named in the invoice, bill, or other shipping document accompanying a horticultural plant as the person from whom the horticultural plant has been received for shipment.

(5) "Department" means the department of agriculture of the state of Washington.

(6) "Director" means the director of the department or the director's duly authorized representative.

(7) "Horticultural facilities" means, but is not limited to, the premises where horticultural plants are grown, stored, handled or delivered for sale or transportation, or where records required under this chapter are stored or kept, and all vehicles and equipment used to transport horticultural plants.

(8) "Horticultural plant" includes, but is not limited to, any horticultural, floricultural, or viticultural plant, or turf, for planting, propagation or ornamentation growing or otherwise. The term does not apply to potato, garlic, or onion planting stock or to cut plant material, except plant parts used for propagative purposes.

(9) "Inspection and/or certification" means, but is not limited to, the inspection by the director of horticultural plants at any time prior to, during, or subsequent to harvest or sale and the issuance by the director of a written certificate stating if the horticultural plants are in compliance with the provisions of this chapter and rules adopted under this chapter. Inspection may include, but is not limited to, examination of horticultural plants, taking samples, destructive testing, conducting interviews, taking photographs, and examining records.

(10) "Nursery dealer" means any person who sells horticultural plants or plants, grows, receives, or handles horticultural plants for the purpose of selling or planting for another person.

(11) "Person" means any individual, firm, partnership, corporation, company, society and association, and every officer, agent or employee thereof.

(12) "Plant pests" means, but is not limited to, a living stage of insect, mite, or other arthropod; nematode; slug, snail, or other mollusk; protozoa or other invertebrate animals; bacteria; fungus; virus; viroid; phytoplasma; weed or parasitic plant; or any organisms similar to or allied with any of the plant pests listed in this section; or any infectious substance; which can directly or indirectly injure or cause disease or damage to any plant or plant product or that threatens the diversity or abundance of native species.

(13) "Sell" means to sell, hold for sale, offer for sale, handle, or to use as an inducement for the sale of another article or product.

(14) "This chapter" means this chapter and the rules adopted under this chapter.

(15) "Turf" means field-cultivated turf grass sod consisting of grass varieties, or blends of grass varieties, and dichondra for use in residential and commercial landscapes. [2013 c 144 § 2; 2000 c 144 § 1; 1993 c 120 § 1; 1990 c 261 § 1; 1985 c 36 § 1; 1982 c 182 § 19; 1971 ex.s. c 33 § 1.]

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

Effective date—2013 c 144 § 2: "Section 2 of this act takes effect July 1, 2014." [2013 c 144 § 57.]

15.13.280 Nursery dealer licenses—Farmers markets—Application—Fees—Expiration—Posting—Audit.

(1) No person may act as a nursery dealer without a license for each place of business where horticultural plants are sold except as provided in RCW 15.13.270. Any person applying for such a license must apply through the business licensing system. The application must be accompanied by the appropriate fee. The director must establish a schedule of fees for retail and wholesale nursery dealer licenses based upon the person's gross annual sales of horticultural plants at each place of business. The schedule for retail licenses must include separate fees for at least the following two categories:

(a) A person whose gross annual sales of horticultural plants do not exceed two thousand five hundred dollars; and

(b) A person whose gross annual sales of horticultural plants exceed two thousand five hundred dollars.

(2) A person conducting both retail and wholesale sales of horticultural plants at the same place of business must secure one of the following:

(a) A retail nursery dealer license if retail sales of the horticultural plants exceed such wholesale sales; or

(b) A wholesale nursery dealer license if wholesale sales of the horticultural plants exceed such retail sales.

(3) The director may issue a wholesale nursery dealer license to a person operating as a farmers market at which individual producers are selling directly to consumers. The license must be at the appropriate level to cover all persons selling horticultural plants at each site at which the person operates a market.

(4) The licensing fee that must accompany an application for a new license must be based upon the applicant's estimated gross sales of horticultural plants for the ensuing licensing year. The fee for renewing a license must be based

upon the licensee's gross sales of these products during the preceding licensing year.

(5) The license expires on the business license expiration date unless it has been revoked or suspended prior to the expiration date by the director for cause. Each license must be posted in a conspicuous place open to the public in the location for which it was issued.

(6) The department may audit licensees during normal business hours to determine that appropriate fees have been paid. [2013 c 144 § 3; 2000 c 144 § 6; 1993 c 120 § 4; 1987 c 35 § 1; 1985 c 36 § 4; 1983 1st ex.s. c 73 § 3; 1982 c 182 § 20; 1971 ex.s. c 33 § 4.]

Business licensing

expiration date: RCW 19.02.090.

system

generally: RCW 15.13.250.

to include additional licenses: RCW 19.02.110.

15.13.290 Nursery dealer licenses—Additional charge for late renewal. If any application for renewal of a nursery dealer license is not filed prior to the business license expiration date, the business license delinquency fee must be assessed under chapter 19.02 RCW and must be paid by the applicant before the renewal license is issued. [2013 c 144 § 4; 2000 c 144 § 8; 1982 c 182 § 21; 1971 ex.s. c 33 § 5.]

Business licensing

delinquency fee—Rate—Disposition: RCW 19.02.085.

expiration date: RCW 19.02.090.

Chapter 15.17 RCW

STANDARDS OF GRADES AND PACKS

Sections

15.17.247 District two—Transfer of funds—Control of *Rhagoletis pomonella*. (*Expires July 1, 2020.*)

15.17.247 District two—Transfer of funds—Control of *Rhagoletis pomonella*. (*Expires July 1, 2020.*) (1) The district manager for district two as defined in WAC 16-390-010 is authorized to transfer one hundred fifty thousand dollars from the fruit and vegetable district fund to the plant pest account within the agricultural local fund. The amount transferred is to be derived from fees collected for state inspections of tree fruits and is to be used solely for activities related to the control of *Rhagoletis pomonella* in district two. The transfer of money must occur by September 1, 2009.

(2) In addition to the transfer identified in subsection (1) of this section, the district manager for district two as defined in WAC 16-390-010 is authorized to transfer an additional one hundred fifty thousand dollars from the fruit and vegetable district fund to the plant pest account within the agricultural local fund for the same purposes identified in subsection (1) of this section. The transfer of money must occur by September 1, 2013.

(3) This section expires July 1, 2020. [2013 c 46 § 1; 2009 c 208 § 1.]

Effective date—2013 c 46: "Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect June 30, 2013." [2013 c 46 § 2.]

[2013 RCW Supp—page 122]

Chapter 15.36 RCW

MILK AND MILK PRODUCTS

(Formerly: Fluid milk)

Sections

15.36.201 Examination of milk and milk products—Violations—Director's options—Penalty.
 15.36.451 Regrading of milk or milk products—Reinstatement of license.
 15.36.454 Failure to comply with chapter or rules—Civil penalties.
 15.36.457 Repealed.
 15.36.471 Repealed.

15.36.201 Examination of milk and milk products—Violations—Director's options—Penalty. (1) During any consecutive six-month period, at least four samples of: (a) Either raw milk or raw milk for pasteurization, or both, from each milk producer; or (b)(i) raw milk for pasteurization after receipt by the milk processing plant and prior to pasteurization; (ii) heat-treated milk products; and (iii) pasteurized milk and milk products from each milk processing plant shall be collected and examined in an official laboratory to determine compliance with bacteriological or cooling temperature standards for milk or milk products established in this chapter and rules adopted under this chapter. However, in the case of raw milk for pasteurization, the director may accept the results of an officially designated laboratory.

(2) If a bacterial count, somatic cell count, coliform determination, or cooling temperature exceeds the standard, the director shall send written notice to the milk producer or milk processor. The director may initiate proceedings to degrade or suspend the milk producer's license or milk processing plant license and may assess a civil penalty whenever the standard is again violated. [2013 c 7 § 1; 1999 c 291 § 12. Prior: 1994 c 143 § 401; 1994 c 46 § 11; 1989 c 354 § 17; 1981 c 297 § 1; 1961 c 11 § 15.36.110; prior: 1955 c 238 § 10; 1949 c 168 § 6; Rem. Supp. 1949 § 6266-35. Formerly RCW 15.36.110.]

Additional notes found at www.leg.wa.gov

15.36.451 Regrading of milk or milk products—Reinstatement of license. Any producer or milk processing plant whose milk has been degraded by the director, or whose license has been suspended may at any time make application for the regrading of his or her products or the reinstatement of his or her license.

In case the lowered grade or the license suspension was the result of violation of the bacteriological or cooling temperature standards, the director may take further samples of the applicant's output, at a rate of not more than two samples per week. The director shall regrade the milk or milk products upward or reinstate the license on compliance with grade requirements as determined in accordance with the provisions of RCW 15.36.201.

In case the lowered grade of the applicant's product or the license suspension was due to a violation of an item other than bacteriological standard or cooling temperature, the said application must be accompanied by a statement signed by the applicant to the effect that the violated item of the specifications had been conformed with. Within one week of the receipt of such an application and statement the director shall make a reinspection of the applicant's establishment and thereafter as many additional reinspections as he or she may

deem necessary to assure himself or herself that the applicant is again complying with the higher grade requirements. The higher grade or license shall be reinstated upon confirmation that all violated items are corrected and any period for reduction in grade or license suspensions as ordered by the director has been completed. [2013 c 7 § 2; 1999 c 291 § 17; 1996 c 189 § 2; 1994 c 143 § 506; 1961 c 11 § 15.36.480. Prior: 1949 c 168 § 9; Rem. Supp. 1949 § 6266-37a. Formerly RCW 15.36.480.]

Additional notes found at www.leg.wa.gov

15.36.454 Failure to comply with chapter or rules—Civil penalties. (1) Any person who fails to comply with this chapter or the rules adopted under this chapter may be subject to a civil penalty in an amount of not more than one thousand dollars per violation per day.

(2) The director may adopt by rule a penalty matrix that establishes procedures for civil penalties assessed under this chapter.

(3) Whenever the results of an antibiotic, pesticide, or other drug residue test on a producer's milk are above the actionable level established in the PMO, the producer is subject to a civil penalty under this section in addition to any other action taken under this chapter.

(4) The director may impose a civil penalty under this section for violations of the standards for component parts of fluid dairy products that are established in this chapter or rules adopted under this chapter.

(5) Each violation is a separate and distinct offense. The director shall impose the civil penalty in accordance with chapter 34.05 RCW. Moneys collected under this section shall be remitted to the department and deposited into the revolving fund of the Washington state dairy products commission. [2013 c 7 § 3; 1999 c 291 § 18.]

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

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

Chapter 15.49 RCW

SEEDS

(Formerly: Washington state seed act)

Sections

15.49.011	Definitions.
15.49.380	Dealer's license to distribute seeds.
15.49.390	Renewal of dealer's license.

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

(1) "Advertisement" means all representations, other than those on the label, disseminated in any manner or by any means, relating to seed within the scope of this chapter.

(2) "Agricultural seed" includes grass, forage, cereal, oil, fiber, and other kinds of crop seeds commonly recognized within this state as agricultural seeds, lawn seeds, and combinations of such seeds, and may include common and

restricted noxious weed seeds but not prohibited noxious weed seeds.

(3) "Blend" means seed consisting of more than one variety of a kind, each in excess of five percent by weight of the whole.

(4) "Bulk seed" means seed distributed in a nonpackage form.

(5) "Business licensing system" means the mechanism established by chapter 19.02 RCW by which business licenses, endorsed for individual state-issued licenses, are issued and renewed using a business license application and a business license expiration date common to each renewable license endorsement.

(6) "Certifying agency" means (a) an agency authorized under the laws of any state, territory, or possession to certify seed officially and which has standards and procedures approved by the United States secretary of agriculture to assure the genetic purity and identity of the seed certified; or (b) an agency of a foreign country determined by the United States secretary of agriculture to adhere to procedures and standards for seed certification comparable to those adhered to generally by seed-certifying agencies under (a) of this subsection.

(7) "Coated seed" means seed that has been treated and has received an application of inert material during the treatment process.

(8) "Conditioning" means drying, cleaning, scarifying, and other operations that could change the purity or germination of the seed and require the seed lot to be retested to determine the label information.

(9) "Dealer" means any person who distributes.

(10) "Department" means the department of agriculture of the state of Washington or its duly authorized representative.

(11) "Director" means the director of the department of agriculture.

(12) "Distribute" means to import, consign, offer for sale, hold for sale, sell, barter, or otherwise supply seed in this state.

(13) "Flower seeds" includes seeds of herbaceous plants grown from their blooms, ornamental foliage, or other ornamental parts, and commonly known and sold under the name of flower seeds in this state.

(14) The terms "foundation seed," "registered seed," and "certified seed" mean seed that has been produced and labeled in compliance with the regulations of the department.

(15) "Germination" means the emergence and development from the seed embryo of those essential structures which, for the kind of seed in question, are indicative of the ability to produce a normal plant under favorable conditions.

(16) "Hard seeds" means seeds that remain hard at the end of the prescribed test period because they have not absorbed water due to an impermeable seed coat.

(17) "Hybrid" means the first generation seed of a cross produced by controlling the pollination and by combining (a) two or more inbred lines; (b) one inbred or a single cross with an open pollinated variety; or (c) two varieties or species, except open-pollinated varieties of corn (*Zea mays*). The second generation or subsequent generations from such crosses are not regarded as hybrids. Hybrid designations must be treated as variety names.

(18) "Inert matter" means all matter not seed, that includes broken seeds, sterile florets, chaff, fungus bodies, and stones as determined by methods defined by rule.

(19) "Inoculant" means a commercial preparation containing nitrogen fixing bacteria applied to the seed.

(20) "Kind" means one or more related species or subspecies that singly or collectively is known by one common name, for example, corn, oats, alfalfa, and timothy.

(21) "Label" includes a tag or other device attached to or written, stamped, or printed on any container or accompanying any lot of bulk seeds purporting to set forth the information required on the seed label by this chapter, and it may include any other information relating to the labeled seed.

(22) "Lot" means a definite quantity of seed identified by a lot number or other mark, every portion or bag of which is uniform within recognized tolerances for the factors that appear in the labeling.

(23) "Lot number" must identify the producer or dealer and year of production or the year distributed for each lot of seed. This requirement may be satisfied by use of a conditioner's or dealer's code.

(24) "Mixture," "mix," or "mixed" means seed consisting of more than one kind, each in excess of five percent by weight of the whole.

(25) "Official sample" means any sample of seed taken and designated as official by the department.

(26) "Other crop seed" means seed of plants grown as crops, other than the kind or variety included in the pure seed, as determined by methods defined by rule.

(27) "Person" means an individual, partnership, corporation, company, association, receiver, trustee, or agent.

(28) "Prohibited (primary) noxious weed seeds" are the seeds of weeds which when established are highly destructive, competitive, and/or difficult to control by cultural or chemical practices.

(29) "Pure live seed" means the product of the percent of germination plus hard or dormant seed multiplied by the percent of pure seed divided by one hundred. The result is expressed as a whole number.

(30) "Pure seed" means seed exclusive of inert matter and all other seeds not of the seed being considered as determined by methods defined by rule.

(31) "Restricted (secondary) noxious weed seeds" are the seeds of weeds which are objectionable in fields, lawns, and gardens of this state, but which can be controlled by cultural or chemical practices.

(32) "Retail" means to distribute to the ultimate consumer.

(33) "Screenings" mean chaff, seed, weed seed, inert matter, and other materials removed from seed in cleaning or conditioning.

(34) "Seed labeling registrant" means a person who has obtained a permit to label seed for distribution in this state.

(35) "Seeds" mean agricultural or vegetable seeds or other seeds as determined by rules adopted by the department.

(36) "Stop sale, use, or removal order" means an administrative order restraining the sale, use, disposition, and movement of a specific amount of seed.

(37) "Treated" means that the seed has received an application of a substance, or that it has been subjected to a process for which a claim is made.

(38) "Type" means a group of varieties so nearly similar that the individual varieties cannot be clearly differentiated except under special conditions.

(39) "Variety" means a subdivision of a kind that is distinct, uniform, and stable; "distinct" in the sense that the variety can be differentiated by one or more identifiable morphological, physiological, or other characteristics from all other varieties of public knowledge; "uniform" in the sense that variations in essential and distinctive characteristics are describable; and "stable" in the sense that the variety will remain unchanged in its essential and distinctive characteristics and its uniformity when reproduced or reconstituted as required by the different categories of varieties.

(40) "Vegetable seeds" includes the seeds of those crops that are grown in gardens and on truck farms and are generally known and sold under the name of vegetable or herb seeds in this state.

(41) "Weed seeds" include the seeds of all plants generally recognized as weeds within this state, and includes the seeds of prohibited and restricted noxious weeds as determined by regulations adopted by the department. [2013 c 144 § 5; 1989 c 354 § 73.]

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

Additional notes found at www.leg.wa.gov

15.49.380 Dealer's license to distribute seeds. (1) No person may distribute seeds without having obtained a dealer's license for each regular place of business. However, a license is not required of a person who distributes seeds only in sealed packages of eight ounces or less, packed by a seed labeling registrant and bearing the name and address of the registrant. Moreover, a license is not required of any grower selling seeds of his or her own production exclusively. Such seed sold by such grower must be properly labeled as provided in this chapter. Each dealer's license costs one hundred twenty-five dollars, must be issued through the business license [licensing] system, must bear the date of issue, must expire on the business licensing [license] expiration date, and must be prominently displayed in each place of business.

(2) Persons custom conditioning and/or custom treating seeds for others for remuneration are considered dealers for the purpose of this chapter.

(3) Application for a license to distribute seed must be through the business licensing system and must include the name and address of the person applying for the license, the name of a person domiciled in this state authorized to receive and accept service or legal notices of all kinds, and any other reasonable and practical information prescribed by the department necessary to carry out the purposes and provisions of this chapter. [2013 c 144 § 6; 2012 c 61 § 1; 2010 c 8 § 6064; 1982 c 182 § 24; 1981 c 297 § 15; 1969 c 63 § 38.]

Business licensing system to include additional licenses: RCW 19.02.110.

Additional notes found at www.leg.wa.gov

15.49.390 Renewal of dealer's license. If an application for renewal of the dealer's license provided for in RCW

15.49.380, is not filed prior to the business license expiration date, the business license delinquency fee must be assessed under chapter 19.02 RCW and must be paid by the applicant before the renewal license is issued. [2013 c 144 § 7; 1982 c 182 § 25; 1969 c 63 § 39.]

Business licensing

*delinquency fee—Rate—Disposition: RCW 19.02.085.
expiration date: RCW 19.02.090.*

Chapter 15.54 RCW

FERTILIZERS, MINERALS, AND LIMES

Sections

15.54.275 Bulk fertilizer distribution license.

15.54.275 Bulk fertilizer distribution license. (1) No person may distribute a bulk fertilizer in this state until a license to distribute has been obtained by that person. An annual license is required for each out-of-state or in-state location that distributes bulk fertilizer in Washington state. An application for each location must be filed on forms provided by the business licensing system established under chapter 19.02 RCW and must be accompanied by an annual fee of twenty-five dollars per location. The license expires on the business license expiration date.

(2) An application for license must include the following:

(a) The name and address of licensee.

(b) Any other information required by the department by rule.

(3) The name and address shown on the license must be shown on all labels, pertinent invoices, and storage facilities for fertilizer distributed by the licensee in this state.

(4) If an application for license renewal provided for in this section is not filed prior to the business license expiration date, a delinquency fee of twenty-five dollars must be assessed and added to the original fee and must be paid by the applicant before the renewal license is issued. The assessment of this delinquency fee does not prevent the department from taking any other action as provided for in this chapter. The penalty does not apply if the applicant furnishes an affidavit that he or she has not distributed this commercial fertilizer subsequent to the expiration of his or her prior license. [2013 c 144 § 8; 1998 c 36 § 3; 1993 c 183 § 2.]

Additional notes found at www.leg.wa.gov

Chapter 15.58 RCW

WASHINGTON PESTICIDE CONTROL ACT

Sections

15.58.030 Definitions.

15.58.180 Pesticide dealer license—Generally.

15.58.235 Renewal of licenses—Delinquency.

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

(1) "Active ingredient" means any ingredient which will prevent, destroy, repel, control, or mitigate pests, or which will act as a plant regulator, defoliant, desiccant, or spray adjuvant.

(2) "Antidote" means the most practical immediate treatment in case of poisoning and includes first aid treatment.

(3) "Arthropod" means any invertebrate animal that belongs to the phylum arthropoda, which in addition to insects, includes allied classes whose members are wingless and usually have more than six legs; for example, spiders, mites, ticks, centipedes, and isopod crustaceans.

(4) "Business licensing system" means the mechanism established by chapter 19.02 RCW by which business licenses, endorsed for individual state-issued licenses, are issued and renewed using a business license application and a business license expiration date common to each renewable license endorsement.

(5) "Complete wood destroying organism inspection" means inspection for the purpose of determining evidence of infestation, damage, or conducive conditions as part of the transfer, exchange, or refinancing of any structure in Washington state. Complete wood destroying organism inspections include any wood destroying organism inspection that is conducted as the result of telephone solicitation by an inspection, pest control, or other business, even if the inspection would fall within the definition of a specific wood destroying organism inspection.

(6) "Defoliant" means any substance or mixture of substances intended to cause the leaves or foliage to drop from a plant with or without causing abscission.

(7) "Department" means the Washington state department of agriculture.

(8) "Desiccant" means any substance or mixture of substances intended to artificially accelerate the drying of plant tissues.

(9) "Device" means any instrument or contrivance intended to trap, destroy, control, repel, or mitigate pests, or to destroy, control, repel or mitigate fungi, nematodes, or such other pests, as may be designated by the director, but not including equipment used for the application of pesticides when sold separately from the pesticides.

(10) "Director" means the director of the department or a duly authorized representative.

(11) "Distribute" means to offer for sale, hold for sale, sell, barter, or supply pesticides in this state.

(12) "EPA" means the United States environmental protection agency.

(13) "EPA restricted use pesticide" means any pesticide with restricted uses as classified for restricted use by the administrator, EPA.

(14) "FIFRA" means the federal insecticide, fungicide, and rodenticide act as amended (61 Stat. 163, 7 U.S.C. Sec. 136 et seq.).

(15) "Fungi" means all nonchlorophyll-bearing thallophytes (all nonchlorophyll-bearing plants of a lower order than mosses and liverworts); for example, rusts, smuts, mildews, molds, yeasts, and bacteria, except those on or in living persons or other animals.

(16) "Fungicide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any fungi.

(17) "Herbicide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any weed.

(18) "Inert ingredient" means an ingredient which is not an active ingredient.

(19) "Ingredient statement" means a statement of the name and percentage of each active ingredient together with the total percentage of the inert ingredients in the pesticide, and when the pesticide contains arsenic in any form, the ingredient statement must also include percentages of total and water soluble arsenic, each calculated as elemental arsenic. The ingredient statement for a spray adjuvant must be consistent with the labeling requirements adopted by rule.

(20) "Insect" means any of the numerous small invertebrate animals whose bodies are more or less obviously segmented, and which for the most part belong to the class insecta, comprising six-legged, usually winged forms, for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, for example, spiders, mites, ticks, centipedes, and isopod crustaceans.

(21) "Insecticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any insects which may be present in any environment whatsoever.

(22) "Inspection control number" means a number obtained from the department that is recorded on wood destroying organism inspection reports issued by a structural pest inspector in conjunction with the transfer, exchange, or refinancing of any structure.

(23) "Label" means the written, printed, or graphic matter on, or attached to, the pesticide, device, or immediate container, and the outside container or wrapper of the retail package.

(24) "Labeling" means all labels and other written, printed, or graphic matter:

(a) Upon the pesticide, device, or any of its containers or wrappers;

(b) Accompanying the pesticide, or referring to it in any other media used to disseminate information to the public; and

(c) To which reference is made on the label or in literature accompanying or referring to the pesticide or device except when accurate nonmisleading reference is made to current official publications of the department, United States departments of agriculture; interior; education; health and human services; state agricultural colleges; and other similar federal or state institutions or agencies authorized by law to conduct research in the field of pesticides.

(25) "Land" means all land and water areas, including airspace and all plants, animals, structures, buildings, devices and contrivances, appurtenant thereto or situated thereon, fixed or mobile, including any used for transportation.

(26) "Nematocide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate nematodes.

(27) "Nematode" means any invertebrate animal of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle, and inhabiting soil, water, plants or plant parts, may also be called nemas or eelworms.

(28) "Person" means any individual, partnership, association, corporation, or organized group of persons whether or not incorporated.

(29) "Pest" means, but is not limited to, any insect, rodent, nematode, snail, slug, weed and any form of plant or animal life or virus, except virus on or in a living person or other animal, which is normally considered to be a pest or which the director may declare to be a pest.

(30) "Pest control consultant" means any individual who sells or offers for sale at other than a licensed pesticide dealer outlet or location where they are employed, or who offers or supplies technical advice or makes recommendations to the user of:

(a) Highly toxic pesticides, as determined under RCW 15.58.040;

(b) EPA restricted use pesticides or restricted use pesticides which are restricted by rule to distribution by licensed pesticide dealers only; or

(c) Any other pesticide except those pesticides which are labeled and intended for home and garden use only.

(31) "Pesticide" means, but is not limited to:

(a) Any substance or mixture of substances intended to prevent, destroy, control, repel, or mitigate any insect, rodent, snail, slug, fungus, weed, and any other form of plant or animal life or virus, except virus on or in a living person or other animal which is normally considered to be a pest or which the director may declare to be a pest;

(b) Any substance or mixture of substances intended to be used as a plant regulator, defoliant or desiccant; and

(c) Any spray adjuvant.

(32) "Pesticide dealer" means any person who distributes any of the following pesticides:

(a) Highly toxic pesticides, as determined under RCW 15.58.040;

(b) EPA restricted use pesticides or restricted use pesticides which are restricted by rule to distribution by licensed pesticide dealers only; or

(c) Any other pesticide except those pesticides which are labeled and intended for home and garden use only.

(33) "Pesticide dealer manager" means the owner or other individual supervising pesticide distribution at one outlet holding a pesticide dealer license.

(34) "Plant regulator" means any substance or mixture of substances intended through physiological action, to accelerate or retard the rate of growth or maturation, or to otherwise alter the behavior of ornamental or crop plants or their produce, but does not include substances insofar as they are intended to be used as plant nutrients, trace elements, nutritional chemicals, plant inoculants, or soil amendments.

(35) "Registrant" means the person registering any pesticide under the provisions of this chapter.

(36) "Restricted use pesticide" means any pesticide or device which, when used as directed or in accordance with a widespread and commonly recognized practice, the director determines, subsequent to a hearing, requires additional restrictions for that use to prevent unreasonable adverse effects on the environment including people, lands, beneficial insects, animals, crops, and wildlife, other than pests.

(37) "Rodenticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate rodents, or any other vertebrate animal which the director may declare by rule to be a pest.

(38) "Special local needs registration" means a registration issued by the director pursuant to provisions of section 24(c) of FIFRA.

(39) "Specific wood destroying organism inspection" means an inspection of a structure for purposes of identifying or verifying evidence of an infestation of wood destroying organisms prior to pest management activities.

(40) "Spray adjuvant" means any product intended to be used with a pesticide as an aid to the application or to the effect of the pesticide, and which is in a package or container separate from the pesticide. Spray adjuvant includes, but is not limited to, acidifiers, compatibility agents, crop oil concentrates, defoaming agents, drift control agents, modified vegetable oil concentrates, nonionic surfactants, organosilicone surfactants, stickers, and water conditioning agents. Spray adjuvant does not include products that are only intended to mark the location where a pesticide is applied.

(41) "Structural pest inspector" means any individual who performs the service of conducting a complete wood destroying organism inspection or a specific wood destroying organism inspection.

(42) "Unreasonable adverse effects on the environment" means any unreasonable risk to people or the environment taking into account the economic, social, and environmental costs and benefits of the use of any pesticide, or as otherwise determined by the director.

(43) "Weed" means any plant which grows where not wanted.

(44) "Wood destroying organism" means insects or fungi that consume, excavate, develop in, or otherwise modify the integrity of wood or wood products. Wood destroying organism includes, but is not limited to, carpenter ants, moisture ants, subterranean termites, dampwood termites, beetles in the family Anobiidae, and wood decay fungi (wood rot).

(45) "Wood destroying organism inspection report" means any written document that reports or comments on the presence or absence of wood destroying organisms, their damage, and/or conducive conditions leading to the establishment of such organisms. [2013 c 144 § 9. Prior: 2011 c 103 § 35; 2004 c 100 § 6; 2003 c 212 § 1; 2000 c 96 § 1; 1992 c 170 § 1; 1991 c 264 § 1; 1989 c 380 § 1; 1982 c 182 § 26; 1979 c 146 § 1; 1971 ex.s. c 190 § 3.]

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

Purpose—2011 c 103: See note following RCW 15.26.120.

Effective date—2004 c 100: See note following RCW 17.21.020.

15.58.180 Pesticide dealer license—Generally. (1) Except as provided in subsections (4) and (5) of this section, it is unlawful for any person to act in the capacity of a pesticide dealer or advertise as or assume to act as a pesticide dealer without first having obtained an annual license from the director. The license expires on the business license expiration date. A license is required for each location or outlet located within this state from which pesticides are distributed. A manufacturer, registrant, or distributor who has no pesticide dealer outlet licensed within this state and who distributes pesticides directly into this state must obtain a pesticide dealer license for his or her principal out-of-state location or outlet, but such a licensed out-of-state pesticide dealer is exempt from the pesticide dealer manager requirements.

(2) Application for a license must be accompanied by a fee of sixty-seven dollars and must be made through the business licensing system and must include the full name of the person applying for the license and the name of the individual within the state designated as the pesticide dealer manager. If the applicant is a partnership, association, corporation, or organized group of persons, the full name of each member of the firm or partnership or the names of the officers of the association or corporation must be given on the application. The application must state the principal business address of the applicant in the state and elsewhere, the name of a person domiciled in this state authorized to receive and accept service of summons of legal notices of all kinds for the applicant, and any other necessary information prescribed by the director.

(3) It is unlawful for any licensed dealer outlet to operate without a pesticide dealer manager who has a license of qualification.

(4) This section does not apply to (a) a licensed pesticide applicator who sells pesticides only as an integral part of the applicator's pesticide application service when pesticides are dispensed only through apparatuses used for pesticide application, or (b) any federal, state, county, or municipal agency that provides pesticides only for its own programs.

(5) A user of a pesticide may distribute a properly labeled pesticide to another user who is legally entitled to use that pesticide without obtaining a pesticide dealer's license if the exclusive purpose of distributing the pesticide is keeping it from becoming a hazardous waste as defined in chapter 70.105 RCW. [2013 c 144 § 10; 2008 c 285 § 16; 1997 c 242 § 4; 1989 c 380 § 14; 1983 c 95 § 4; 1982 c 182 § 27; 1971 ex.s. c 190 § 18.]

Effective date—2008 c 285 §§ 15-26: See note following RCW 15.58.070.

Intent—Captions not law—2008 c 285: See notes following RCW 43.22.434.

Business licensing system: Chapter 19.02 RCW.

Additional notes found at www.leg.wa.gov

15.58.235 Renewal of licenses—Delinquency. (1) If an application for renewal of a pesticide dealer license is not filed on or before the business license expiration date, the business license delinquency fee must be assessed under chapter 19.02 RCW and must be paid by the applicant before the renewal license is issued.

(2) If application for renewal of any license provided for in this chapter other than the pesticide dealer license is not filed on or before the expiration date of the license, a penalty equivalent to the license fee must be assessed and added to the original fee, and must be paid by the applicant before the renewal license is issued. However, such penalty does not apply if the applicant furnishes an affidavit certifying that he or she has not acted as a licensee subsequent to the expiration of the license.

(3) Any license for which a renewal application has been made, all other requirements have been met, and the proper fee paid, continues in full force and effect until the director notifies the applicant that the license has been renewed or the application has been denied. [2013 c 144 § 11; 1989 c 380 § 19.]

Chapter 15.65 RCW

WASHINGTON STATE AGRICULTURAL
COMMODITY BOARDS(Formerly: Washington state agricultural enabling act of 1961—
Commodity boards)

Sections

15.65.680 Appointment of nonvoting advisory members.

15.65.680 Appointment of nonvoting advisory members. (1) A commodity board may appoint up to two nonvoting advisory members to the board who have expertise in marketing, operations, or other topics relevant to the work of the board. The term of office for each nonvoting advisory member must be established in each board's marketing order or agreement, but may not exceed three years. Nonvoting advisory members may serve additional consecutive terms of office if reappointed by the board.

(2) Nonvoting advisory members do not count toward establishing a quorum of the board.

(3) Nonvoting advisory members must be compensated in the same manner as board members under RCW 15.65.270(4). [2013 c 40 § 1.]

Title 16

ANIMALS AND LIVESTOCK

(Formerly: Animals, estrays, brands, and fences)

Chapters

16.36 Animal health.**16.52 Prevention of cruelty to animals.****16.57 Identification of livestock.**

Chapter 16.36 RCW

ANIMAL HEALTH

(Formerly: Diseases—Quarantine—Garbage feeding)

Sections

16.36.025 Recovery of costs.

16.36.025 Recovery of costs. (1) The director may collect moneys to recover the reasonable costs of purchasing, printing, and distributing official individual identification devices or methods, regulatory forms, and other supplies.

(2) In addition to the costs identified in subsection (1) of this section, the director may also collect moneys to recover the reasonable costs associated with the data entry and processing related to animal health documents that facilitate disease control and traceability.

(3) All funds received under this section must be deposited in the animal disease traceability account in the agricultural local fund created in RCW 43.23.230 to cover the costs associated with this chapter. [2013 c 45 § 1; 2011 c 204 § 1; 1998 c 8 § 19.]

Chapter 16.52 RCW

PREVENTION OF CRUELTY TO ANIMALS

Sections

16.52.330 Veterinarians—Animal cruelty—Liability immunity.

16.52.330 Veterinarians—Animal cruelty—Liability immunity. A veterinarian lawfully licensed in this state to practice veterinary medicine, surgery, and dentistry who reports, in good faith and in the normal course of business, a suspected incident of animal cruelty that is punishable under this chapter to the proper authorities is immune from liability in any civil or criminal action brought against such veterinarian for reporting the suspected incident. The immunity provided in this section applies only if the veterinarian receives no financial benefit from the suspected incident of animal cruelty beyond charges for services rendered prior to the veterinarian making the initial report. [2013 c 245 § 1.]

Chapter 16.57 RCW

IDENTIFICATION OF LIVESTOCK

Sections

16.57.160 Cattle or horses—Rules—Mandatory inspection points—Self-inspection certificates—Dairy cattle identification tags—Fees.

16.57.300 Proceeds from sale of impounded cattle and horses—Paid to director.

16.57.303 Repealed.

16.57.370 Disposition of fees.

16.57.160 Cattle or horses—Rules—Mandatory inspection points—Self-inspection certificates—Dairy cattle identification tags—Fees. (1) The director may adopt rules:

(a) Designating any point for mandatory inspection of cattle or horses or the furnishing of proof that cattle or horses passing or being transported through the point have been inspected or identified and are lawfully being transported;

(b) Providing for issuance of individual horse and cattle identification certificates or other means of horse and cattle identification;

(c) Designating the documents that constitute other satisfactory proof of ownership for cattle and horses. A bill of sale may not be designated as documenting satisfactory proof of ownership for cattle; and

(d) Designating when inspection certificates, certificates of permit, or other transportation documents required by law or rule must designate a physical address of a destination. Cattle and horses must be delivered or transported directly to the physical address of that destination.

(2) A self-inspection certificate may be accepted as satisfactory proof of ownership for cattle if the director determines that the self-inspection certificate, together with other available documentation, sufficiently establishes ownership. Self-inspection certificates completed after June 10, 2010, are not satisfactory proof of ownership for cattle.

(3)(a) Upon request by a milk producer licensed under chapter 15.36 RCW, the department must issue an official individual identification tag to be placed by the producer before the first point of sale on bull calves and free-martins (infertile female calves) under thirty days of age. The fee for each tag is the cost to the department for manufacture, purchase, and distribution of the tag plus the applicable beef commission assessment. As used in this subsection (3), "green tag" means the official individual identification issued by the department.

(b) Transactions involving unbranded dairy breed bull calves or free-martins (infertile female calves) not being

moved or transported out of Washington are exempt from inspection requirements under this chapter only if:

(i) The animal is under thirty days old and has not been previously bought or sold;

(ii) The seller holds a valid milk producer's license under chapter 15.36 RCW;

(iii) The sale does not take place at or through a public livestock market or special sale authorized by chapter 16.65 RCW;

(iv) Each animal is officially identified as provided in (a) of this subsection; and

(v) A certificate of permit and a bill of sale listing each animal's green tag accompanies the animal to the buyer's location. These documents do not constitute proof of ownership under this chapter.

(c) All fees received under (a) of this subsection, except for the beef commission assessment, must be deposited in the animal disease traceability account in the agricultural local fund created in RCW 43.23.230. [2013 c 313 § 1; 2011 c 204 § 13; 2010 c 66 § 6; 2006 c 156 § 3; 2003 c 326 § 18; 1991 c 110 § 3; 1981 c 296 § 16; 1971 ex.s. c 135 § 4; 1959 c 54 § 16.]

Effective date—2006 c 156: See note following RCW 16.57.220.

Additional notes found at www.leg.wa.gov

16.57.300 Proceeds from sale of impounded cattle and horses—Paid to director. The proceeds from the sale of cattle and horses when impounded under RCW 16.57.290, after paying the cost thereof, shall be paid to the director, who shall make a record showing the brand or marks or other method of identification of the animals and the amount realized from the sale thereof. However, the proceeds from a sale of the cattle or horses at a licensed public livestock market shall be held by the licensee for a reasonable period not to exceed thirty days to permit the consignor to establish ownership or the right to sell the cattle or horses. If the consignor fails to establish legal ownership or the right to sell the cattle or horses, the proceeds shall be paid to the director to be disposed of as any other stray proceeds. [2013 c 313 § 4; 2003 c 326 § 36; 1989 c 286 § 24; 1981 c 296 § 21; 1959 c 54 § 30.]

Additional notes found at www.leg.wa.gov

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

16.57.370 Disposition of fees. All fees collected under the provisions of this chapter shall be deposited in an account in the agricultural local fund and used to carry out the purposes of this chapter, except as otherwise provided. [2013 c 313 § 2; 2003 c 326 § 43; 1959 c 54 § 37.]

Fees provided in chapter 16.58 RCW to be used to carry out provisions of chapters 16.57 and 16.58 RCW: RCW 16.58.130.

Title 17

WEEDS, RODENTS, AND PESTS

Chapters

17.28 Mosquito control districts.

Chapter 17.28 RCW

MOSQUITO CONTROL DISTRICTS

Sections

17.28.160 Powers of district.

17.28.160 Powers of district. A mosquito control district organized under this chapter may:

(1) Take all necessary or proper steps for the extermination of mosquitoes.

(2) Subject to the paramount control of the county or city in which they exist, abate as nuisances all stagnant pools of water and other breeding places for mosquitoes.

(3) If necessary or proper, in the furtherance of the objects of this chapter, build, construct, repair, and maintain necessary dikes, levees, cuts, canals, or ditches upon any land, and acquire by purchase, condemnation, or by other lawful means, in the name of the district, any lands, rights-of-way, easements, property, or material necessary for any of those purposes.

(4) Make contracts to indemnify or compensate any owner of land or other property for any injury or damage necessarily caused by the use or taking of property for dikes, levees, cuts, canals, or ditches.

(5)(a) Enter upon without hindrance any lands within the district and adjacent thereto for the purpose of inspection to ascertain whether breeding places of mosquitoes exist upon such lands; or to abate public nuisances in accordance with this chapter; or to ascertain if notices to abate the breeding of mosquitoes upon such lands have been complied with; or to treat using integrated pest management, as defined in RCW 17.15.010, methods in places where mosquitoes are found or are likely to exist upon such lands.

(b) For land adjacent to land within the district, a district must give prior written notice to the property owner of the district's intent to enter upon the land for the purposes specified in (a) of this subsection.

(6) Sell or lease any land, rights-of-way, easements, property or material acquired by the district.

(7) Issue warrants payable at the time stated therein to evidence the obligation to repay money borrowed or any other obligation incurred by the district, warrants so issued to draw interest at a rate fixed by the board payable annually or semiannually as the board may prescribe.

(8) Make contracts with the United States, or any state, municipality, or any department of those entities for carrying out the general purpose for which the district is formed.

(9) Acquire by gift, devise, bequest, lease, or purchase, real and personal property necessary or convenient for its purposes.

(10) Make contracts, employ engineers, health officers, sanitarians, physicians, laboratory personnel, attorneys, and other technical or professional assistants; and publish information or literature and do any and all other things necessary or incident to the powers granted by, and to carry out the projects specified in this chapter.

(11) Subject to management considerations identified during consultation with the landowner, cut or remove shrubbery or undergrowth as necessary or proper in order to carry out this chapter. [2013 c 208 § 1; 1981 c 156 § 1; 1957 c 153 § 16.]

Title 18
BUSINESSES AND PROFESSIONS

Chapters

- 18.16 Cosmetologists, barbers, and manicurists.
18.19 Counselors.
18.20 Boarding homes.
18.25 Chiropractic.
18.27 Registration of contractors.
18.29 Dental hygienists.
18.30 Denturists.
18.32 Dentistry.
18.43 Engineers and land surveyors.
18.44 Escrow agent registration act.
18.50 Midwifery.
18.53 Optometry.
18.55 Ocularists.
18.57A Osteopathic physician assistants.
18.64 Pharmacists.
18.64A Pharmacy assistants.
18.71 Physicians.
18.71A Physician assistants.
18.74 Physical therapy.
18.79 Nursing care.
18.85 Real estate brokers and managing brokers.
18.86 Real estate brokerage relationships.
18.88B Long-term care workers.
18.92 Veterinary medicine, surgery, and dentistry.
18.106 Plumbers.
18.130 Regulation of health professions—Uniform disciplinary act.
18.225 Mental health counselors, marriage and family therapists, social workers.
18.235 Uniform regulation of business and professions act.
18.260 Dental professionals.
18.310 Appraisal management companies.
18.360 Medical assistants.

Chapter 18.16 RCW
COSMETOLOGISTS, BARBERS, AND MANICURISTS

Sections

- 18.16.020 Definitions.
18.16.030 Director—Powers and duties.
18.16.050 Advisory board—Members—Compensation.
18.16.060 License required—Penalty—Exemptions.
18.16.130 Issuance of licenses—Persons licensed in other jurisdictions.
18.16.170 Expiration of licenses.
18.16.175 Salon/shop or mobile unit requirements—Liability insurance—Complaints—Inspection—Registration—Use of motor homes—Posting of licenses.
18.16.180 Salon/shop—Apprenticeship shop—Notice required.
18.16.190 Location of practice—Penalty—Placebound clients.
18.16.200 Disciplinary action—Grounds.
18.16.260 License renewal—Fee—Examination—Fee.
18.16.290 License—Inactive status.
18.16.305 Recognition as institution of postsecondary study.

18.16.020 Definitions. As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise:

(1) "Apprentice" means a person who is engaged in a state-approved apprenticeship program and who must receive a wage or compensation while engaged in the program.

(2) "Apprentice monthly report" means the apprentice record of daily activities and the number of hours completed in each course of a curriculum that is prepared monthly by the approved apprenticeship program and provided to the apprentice, audited annually by the department, and kept on file by the approved apprenticeship program for three years.

(3) "Apprentice trainer" means a person who gives training to an apprentice in an approved apprenticeship program and who is approved under RCW 18.16.280.

(4) "Apprenticeship program" means a state-approved apprenticeship program pursuant to chapter 49.04 RCW and approved under RCW 18.16.280 for the training of cosmetology, barbering, esthetics, master esthetics, and manicuring.

(5) "Apprenticeship training committee" means a committee approved by the Washington apprenticeship and training council established in chapter 49.04 RCW.

(6) "Approved apprenticeship shop" means a salon/shop that has been approved under RCW 18.16.280 and chapter 49.04 RCW to participate in an apprenticeship program.

(7) "Approved security" means surety bond.

(8) "Barber" means a person licensed under this chapter to engage in the practice of barbering.

(9) "Board" means the cosmetology, barbering, esthetics, and manicuring advisory board.

(10) "Cosmetologist" means a person licensed under this chapter to engage in the practice of cosmetology.

(11) "Crossover training" means training approved by the director as training hours that may be credited to current licensees for similar training received in another profession licensed under this chapter.

(12) "Curriculum" means the courses of study taught at a school, or in an approved apprenticeship program established by the Washington state apprenticeship and training council and conducted in an approved salon/shop, set by rule under this chapter, and approved by the department. After consulting with the board, the director may set by rule a percentage of hours in a curriculum, up to a maximum of ten percent, that could include hours a student receives while training in a salon/shop under a contract approved by the department. Each curriculum must include at least the following required hours:

(a) School curriculum:

(i) Cosmetologist, one thousand six hundred hours;

(ii) Barber, one thousand hours;

(iii) Manicurist, six hundred hours;

(iv) Esthetician, seven hundred fifty hours;

(v) Master esthetician either:

(A) One thousand two hundred hours; or

(B) Esthetician licensure plus four hundred fifty hours of training;

(vi) Instructor-trainee, five hundred hours.

(b) Apprentice training curriculum:

(i) Cosmetologist, two thousand hours;

(ii) Barber, one thousand two hundred hours;

(iii) Manicurist, eight hundred hours;

(iv) Esthetician, eight hundred hours;

(v) Master esthetician, one thousand four hundred hours.

(13) "Department" means the department of licensing.

(14) "Director" means the director of the department of licensing or the director's designee.

(15) "Esthetician" means a person licensed under this chapter to engage in the practice of esthetics.

(16) "Individual license" means a cosmetology, barber, manicurist, esthetician, master esthetician, or instructor license issued under this chapter.

(17) "Instructor" means a person who gives instruction in a school, or who provides classroom theory training to apprentices in locations other than in a school, in a curriculum in which he or she holds a license under this chapter, has completed at least five hundred hours of instruction in teaching techniques and lesson planning in a school, and has passed a licensing examination approved or administered by the director. An applicant who holds a degree in education from an accredited postsecondary institution shall upon application be licensed as an instructor to give instruction in a school, or to provide classroom theory training to apprentices in locations other than in a school, in a curriculum in which he or she holds a license under this chapter. An applicant who holds an instructional credential from an accredited community or technical college and who has passed a licensing examination approved or administered by the director shall upon application be licensed as an instructor to give instruction in a school, or to provide classroom theory training to apprentices in locations other than in a school, in a curriculum in which he or she holds a license under this chapter. To be approved as an "instructor" in an approved apprenticeship program, the instructor must be a competent instructor as defined in rules adopted under chapter 49.04 RCW.

(18) "Instructor-trainee" means a person who is currently licensed in this state as a cosmetologist, barber, manicurist, esthetician, or master esthetician, and is enrolled in an instructor-trainee curriculum in a school licensed under this chapter.

(19) "Location license" means a license issued under this chapter for a salon/shop, school, personal services, or mobile unit.

(20) "Manicurist" means a person licensed under this chapter to engage in the practice of manicuring.

(21) "Master esthetician" means a person licensed under this chapter to engage in the practice of master esthetics.

(22) "Mobile unit" is a location license under this chapter where the practice of cosmetology, barbering, esthetics, master esthetics, or manicuring is conducted in a mobile structure. Mobile units must conform to the health and safety standards set by rule under this chapter.

(23) "Person" means any individual, partnership, professional service corporation, joint stock association, joint venture, or any other entity authorized to do business in this state.

(24) "Personal services" means a location licensed under this chapter where the practice of cosmetology, barbering, manicuring, esthetics, or master esthetics is performed for clients in the client's home, office, or other location that is convenient for the client.

(25) "The practice of barbering" means the cutting, trimming, arranging, dressing, curling, shampooing, shaving, and mustache and beard design of the hair of the face, neck, and scalp.

(26) "The practice of cosmetology" means arranging, dressing, cutting, trimming, styling, shampooing, permanent waving, chemical relaxing, straightening, curling, bleaching, lightening, coloring, waxing, tweezing, shaving, and mus-

tache and beard design of the hair of the face, neck, and scalp; temporary removal of superfluous hair by use of depilatories, waxing, or tweezing; manicuring and pedicuring, limited to cleaning, shaping, polishing, decorating, and caring for and treatment of the cuticles and nails of the hands and feet, excluding the application and removal of sculptured or otherwise artificial nails; esthetics limited to toning the skin of the scalp, stimulating the skin of the body by the use of preparations, tonics, lotions, or creams; and tinting eyelashes and eyebrows.

(27) "Practice of esthetics" means the care of the skin for compensation by application, use of preparations, antiseptics, tonics, essential oils, exfoliants, superficial and light peels, or by any device, except laser, or equipment, electrical or otherwise, or by wraps, compresses, cleansing, conditioning, stimulation, superficial skin stimulation, pore extraction, or product application and removal; temporary removal of superfluous hair by means of lotions, creams, appliance, waxing, threading, tweezing, or depilatories, including chemical means; and application of product to the eyelashes and eyebrows, including extensions, design and treatment, tinting and lightening of the hair, excluding the scalp. Under no circumstances does the practice of esthetics include the administration of injections.

(28) "Practice of manicuring" means the cleaning, shaping, polishing, decorating, and caring for and treatment of the cuticles and the nails of the hands or feet, and the application and removal of sculptured or otherwise artificial nails by hand or with mechanical or electrical apparatus or appliances.

(29) "Practice of master esthetics" means the care of the skin for compensation including all of the methods allowed in the definition of the practice of esthetics. It also includes the performance of medium depth peels and the use of medical devices for care of the skin and permanent hair reduction. The medical devices include, but are not limited to, lasers, light, radio frequency, plasma, intense pulsed light, and ultrasound. The use of a medical device must comply with state law and rules, including any laws or rules that require delegation or supervision by a licensed health professional acting within the scope of practice of that health profession.

(30) "Salon/shop" means any building, structure, or any part thereof, other than a school, where the commercial practice of cosmetology, barbering, esthetics, master esthetics, or manicuring is conducted; provided that any person, except employees of a salon/shop, who operates from a salon/shop is required to meet all salon/shop licensing requirements and may participate in the apprenticeship program when certified as established by the Washington state apprenticeship and training council established in chapter 49.04 RCW.

(31) "School" means any establishment that offers curriculum of instruction in the practice of cosmetology, barbering, esthetics, master esthetics, manicuring, or instructor-trainee to students and is licensed under this chapter.

(32) "Student" means a person sixteen years of age or older who is enrolled in a school licensed under this chapter and receives instruction in any of the curricula of cosmetology, barbering, esthetics, master esthetics, manicuring, or instructor-training with or without tuition, fee, or cost, and who does not receive any wage or commission.

(33) "Student monthly report" means the student record of daily activities and the number of hours completed in each

course of a curriculum that is prepared monthly by the school and provided to the student, audited annually by the department, and kept on file by the school for three years. [2013 c 187 § 1; 2008 c 20 § 1; 2003 c 400 § 2; 2002 c 111 § 2; 1991 c 324 § 1; 1984 c 208 § 2.]

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

Effective date—2003 c 400: See note following RCW 18.16.280.

Additional notes found at www.leg.wa.gov

18.16.030 Director—Powers and duties. In addition to any other duties imposed by law, including RCW 18.235.030 and 18.235.040, the director shall have the following powers and duties:

- (1) To set all license, examination, and renewal fees in accordance with RCW 43.24.086;
- (2) To adopt rules necessary to implement this chapter;
- (3) To prepare and administer or approve the preparation and administration of licensing examinations;
- (4) To establish minimum safety and sanitation standards for schools, instructors, cosmetologists, barbers, manicurists, estheticians, master estheticians, salons/shops, personal services, and mobile units;
- (5) To establish curricula for the training of students and apprentices under this chapter;
- (6) To maintain the official department record of applicants and licensees;
- (7) To establish by rule the procedures for an appeal of an examination failure;
- (8) To set license expiration dates and renewal periods for all licenses consistent with this chapter;
- (9) To ensure that all informational notices produced and mailed by the department regarding statutory and regulatory changes affecting any particular class of licensees are mailed to each licensee in good standing or on inactive status in the affected class whose mailing address on record with the department has not resulted in mail being returned as undeliverable for any reason; and
- (10) To make information available to the department of revenue to assist in collecting taxes from persons required to be licensed under this chapter. [2013 c 187 § 2; 2008 c 20 § 2; 2004 c 51 § 7. Prior: 2002 c 111 § 3; 2002 c 86 § 213; 1991 c 324 § 2; 1984 c 208 § 7.]

Notice of chapter 51, Laws of 2004—Effective date—2004 c 51: See notes following RCW 18.16.060.

Additional notes found at www.leg.wa.gov

18.16.050 Advisory board—Members—Compensation. (1) There is created a state cosmetology, barbering, esthetics, and manicuring advisory board consisting of a maximum of ten members appointed by the director. These members of the board shall include: A representative of private schools licensed under this chapter; a representative from an approved apprenticeship program conducted in an approved salon/shop; a representative of public vocational technical schools licensed under this chapter; a consumer who is unaffiliated with the cosmetology, barbering, esthetics, master esthetics, or manicuring industry; and six members who are currently practicing licensees who have been engaged in the practice of manicuring, esthetics, master esthetics, barbering, or cosmetology for at least three years.

Members shall serve a term of three years. Any board member may be removed for just cause. The director may appoint a new member to fill any vacancy on the board for the remainder of the unexpired term.

(2) Board members shall be entitled to compensation pursuant to RCW 43.03.240 for each day spent conducting official business and to reimbursement for travel expenses as provided by RCW 43.03.050 and 43.03.060.

(3) The board may seek the advice and input of officials from the following state agencies: (a) The workforce training and education coordinating board; (b) the employment security department; (c) the department of labor and industries; (d) the department of health; (e) the department of licensing; and (f) the department of revenue. [2013 c 187 § 3; 2008 c 20 § 3; 2002 c 111 § 4. Prior: 1998 c 245 § 5; 1998 c 20 § 1; 1997 c 179 § 1; 1995 c 269 § 402; 1991 c 324 § 3; 1984 c 208 § 9.]

Findings—1995 c 269: "The legislature finds that the economic opportunities for cosmetologists, barbers, estheticians, and manicurists have deteriorated in this state as a result of the lack of skilled practitioners, inadequate licensing controls, and inadequate enforcement of health standards. To increase the opportunities for individuals to earn viable incomes in these professions and to protect the general health of the public, the state cosmetology, barbering, esthetics, and manicuring advisory board should be reconstituted and given a new charge to develop appropriate responses to this situation, including legislative proposals." [1995 c 269 § 401.]

Additional notes found at www.leg.wa.gov

18.16.060 License required—Penalty—Exemptions.

(1) It is unlawful for any person to engage in a practice listed in subsection (2) of this section unless the person has a license in good standing as required by this chapter. A license issued under this chapter shall be considered to be "in good standing" except when:

- (a) The license has expired or has been canceled and has not been renewed in accordance with RCW 18.16.110;
- (b) The license has been denied, revoked, or suspended under RCW 18.16.210, 18.16.230, or 18.16.240, and has not been reinstated;
- (c) The license is held by a person who has not fully complied with an order of the director issued under RCW 18.16.210 requiring the licensee to pay restitution or a fine, or to acquire additional training; or
- (d) The license has been placed on inactive status at the request of the licensee, and has not been reinstated in accordance with RCW 18.16.110(3).

(2) The director may take action under RCW 18.235.150 and 18.235.160 against any person who does any of the following without first obtaining, and maintaining in good standing, the license required by this chapter:

- (a) Except as provided in subsections (3) and (4) of this section, engages in the commercial practice of cosmetology, barbering, esthetics, master esthetics, or manicuring;
- (b) Instructs in a school;
- (c) Operates a school; or
- (d) Operates a salon/shop, personal services, or mobile unit.

(3) A person who receives a license as an instructor may engage in the commercial practice for which he or she held a license when applying for the instructor license without also renewing the previously held license. However, a person licensed as an instructor whose license to engage in a com-

mercial practice is not or at any time was not renewed may not engage in the commercial practice previously permitted under that license unless that person renews the previously held license.

(4) An apprentice actively enrolled in an apprenticeship program for cosmetology, barbering, esthetics, master esthetics, or manicuring may engage in the commercial practice as required for the apprenticeship program. [2013 c 187 § 4; 2008 c 20 § 4; 2004 c 51 § 1. Prior: 2002 c 111 § 5; 2002 c 86 § 214; 1991 c 324 § 4; 1984 c 208 § 3.]

Notice of chapter 51, Laws of 2004—2004 c 51: "The department of licensing shall:

(1) Within ninety days after March 22, 2004, notify each person who held a cosmetology, barber, manicurist, or esthetician license between June 30, 1999, and June 30, 2003, of the provisions of this act by mailing a notice as specified in this section to the licensee's last known mailing address;

(2) Include in the notice required by this section:

(a) A summary of this act, including a summary of the requirements for (i) renewing and obtaining additional licenses; and (ii) requesting placement on inactive status;

(b) A telephone number within the department for obtaining further information;

(c) The department's internet address; and

(d) On the outside of the notice, a facsimile of the state seal, the department's return address, and the words "Notice of Legislative Changes — Cosmetology, Barbering, Manicuring, and Esthetics Licensing Information Enclosed" in conspicuous bold face type." [2004 c 51 § 6.]

Effective date—2004 c 51: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 22, 2004]." [2004 c 51 § 11.]

Additional notes found at www.leg.wa.gov

18.16.130 Issuance of licenses—Persons licensed in other jurisdictions. (1) Any person who is properly licensed in any state, territory, or possession of the United States, or foreign country shall be eligible for examination if the applicant submits the approved application and fee and provides proof to the director that he or she is currently licensed in good standing as a cosmetologist, barber, manicurist, esthetician, instructor, or the equivalent in that jurisdiction. Upon passage of the required examinations the appropriate license will be issued.

(2)(a) The director shall, upon passage of the required examinations, issue a license as master esthetician to an applicant who submits the approved application and fee and provides proof to the director that the applicant is currently licensed in good standing in esthetics in any state, territory, or possession of the United States, or foreign country and holds a diplomate of the comite international d'esthetique et de cosmetologie diploma, or an international therapy examination council diploma, or a certified credential awarded by the national coalition of estheticians, manufacturers/distributors & associations.

(b) The director may upon passage of the required examinations, issue a master esthetician license to an applicant that is currently licensed in esthetics in any other state, territory, or possession of the United States, or foreign country and submits an approved application and fee and provides proof to the director that he or she is licensed in good standing and:

(i) The licensing state, territory, or possession of the United States, or foreign country has licensure requirements that the director determines are substantially equivalent to a master esthetician license in this state; or

(ii) The applicant has certification or a diploma or other credentials that the director determines has licensure requirements that are substantially equivalent to the degree listed in (a) of this subsection. [2013 c 187 § 5; 1991 c 324 § 10; 1984 c 208 § 11.]

18.16.170 Expiration of licenses. (1) Subject to subsection (2) of this section, licenses issued under this chapter expire as follows:

(a) A salon/shop, personal services, or mobile unit license expires one year from issuance or when the insurance required by RCW 18.16.175(1)(g) expires, whichever occurs first;

(b) A school license expires one year from issuance; and

(c) Cosmetologist, barber, manicurist, esthetician, master esthetician, and instructor licenses expire two years from issuance.

(2) The director may provide for expiration dates other than those set forth in subsection (1) of this section for the purpose of establishing staggered renewal periods. [2013 c 187 § 6; 2002 c 111 § 10; 1991 c 324 § 9.]

Additional notes found at www.leg.wa.gov

18.16.175 Salon/shop or mobile unit requirements—Liability insurance—Complaints—Inspection—Registration—Use of motor homes—Posting of licenses. (1) A salon/shop or mobile unit shall meet the following minimum requirements:

(a) Maintain an outside entrance separate from any rooms used for sleeping or residential purposes;

(b) Provide and maintain for the use of its customers adequate toilet facilities located within or adjacent to the salon/shop or mobile unit;

(c) Any room used wholly or in part as a salon/shop or mobile unit shall not be used for residential purposes, except that toilet facilities may be used for both residential and business purposes;

(d) Meet the zoning requirements of the county, city, or town, as appropriate;

(e) Provide for safe storage and labeling of chemicals used in the practices under this chapter;

(f) Meet all applicable local and state fire codes; and

(g) Certify that the salon/shop or mobile unit is covered by a public liability insurance policy in an amount not less than one hundred thousand dollars for combined bodily injury and property damage liability.

(2) The director may by rule determine other requirements that are necessary for safety and sanitation of salons/shops, personal services, or mobile units. The director may consult with the state board of health and the department of labor and industries in establishing minimum salon/shop, personal services, and mobile unit safety requirements.

(3) Personal services license holders shall certify coverage of a public liability insurance policy in an amount not less than one hundred thousand dollars for combined bodily injury and property damage liability.

(4) Upon receipt of a written complaint that a salon/shop or mobile unit has violated any provisions of this chapter, chapter 18.235 RCW, or the rules adopted under either chapter, or at least once every two years for an existing salon/shop or mobile unit, the director or the director's designee shall

inspect each salon/shop or mobile unit. If the director determines that any salon/shop or mobile unit is not in compliance with this chapter, the director shall send written notice to the salon/shop or mobile unit. A salon/shop or mobile unit which fails to correct the conditions to the satisfaction of the director within a reasonable time shall, upon due notice, be subject to the penalties imposed by the director under RCW 18.235.110. The director may enter any salon/shop or mobile unit during business hours for the purpose of inspection. The director may contract with health authorities of local governments to conduct the inspections under this subsection.

(5) A salon/shop, personal services, or mobile unit shall obtain a certificate of registration from the department of revenue.

(6) This section does not prohibit the use of motor homes as mobile units if the motor home meets the health and safety standards of this section.

(7) Salon/shop or mobile unit licenses issued by the department must be posted in the salon/shop or mobile unit's reception area.

(8) Cosmetology, barbering, esthetics, master esthetics, and manicuring licenses issued by the department must be posted at the licensed person's work station. [2013 c 187 § 7; 2008 c 20 § 6. Prior: 2002 c 111 § 11; 2002 c 86 § 216; 1997 c 178 § 2; 1991 c 324 § 15.]

Additional notes found at www.leg.wa.gov

18.16.180 Salon/shop—Apprenticeship shop—Notice required. (1) The director shall prepare and provide to all licensed salons/shops a notice to consumers. At a minimum, the notice shall state that cosmetology, barber, esthetics, master esthetics, and manicure salons/shops are required to be licensed, that salons/shops are required to maintain minimum safety and sanitation standards, that customer complaints regarding salons/shops may be reported to the department, and a telephone number and address where complaints may be made.

(2) An approved apprenticeship shop must post a notice to consumers in the reception area of the salon/shop stating that services may be provided by an apprentice. At a minimum, the notice must state: "This shop is a participant in a state-approved apprenticeship program. Apprentices in this program are in training and have not yet received a license." [2013 c 187 § 8; 2008 c 20 § 7; 1991 c 324 § 16.]

18.16.190 Location of practice—Penalty—Placebound clients. It is a violation of this chapter for any person to engage in the commercial practice of cosmetology, barbering, esthetics, master esthetics, or manicuring, except in a licensed salon/shop or the home, office, or other location selected by the client for obtaining the services of a personal service operator, or with the appropriate individual license when delivering services to placebound clients. Placebound clients are defined as persons who are ill, disabled, or otherwise unable to travel to a salon/shop. [2013 c 187 § 9; 1991 c 324 § 20.]

18.16.200 Disciplinary action—Grounds. In addition to the unprofessional conduct described in RCW 18.235.130, the director may take disciplinary action against any applicant or licensee under this chapter if the licensee or applicant:

(1) Has been found to have violated any provisions of chapter 19.86 RCW;

(2) Has engaged in a practice prohibited under RCW 18.16.060 without first obtaining, and maintaining in good standing, the license required by this chapter;

(3) Has engaged in the commercial practice of cosmetology, barbering, manicuring, esthetics, or master esthetics in a school;

(4) Has not provided a safe, sanitary, and good moral environment for students in a school or the public;

(5) Has failed to display licenses required in this chapter; or

(6) Has violated any provision of this chapter or any rule adopted under it. [2013 c 187 § 10; 2004 c 51 § 4. Prior: 2002 c 111 § 12; 2002 c 86 § 217; 1991 c 324 § 14; 1984 c 208 § 13.]

Notice of chapter 51, Laws of 2004—Effective date—2004 c 51: See notes following RCW 18.16.060.

Additional notes found at www.leg.wa.gov

18.16.260 License renewal—Fee—Examination—Fee. (1)(a) Prior to July 1, 2005, (i) a cosmetology licensee who held a license in good standing between June 30, 1999, and June 30, 2003, may request a renewal of the license or an additional license in barbering, manicuring, and/or esthetics; and (ii) a licensee who held a barber, manicurist, or esthetics license between June 30, 1999, and June 30, 2003, may request a renewal of such licenses held during that period.

(b) A license renewal fee, including, if applicable, a renewal fee, at the current rate, for each year the licensee did not hold a license in good standing between July 1, 2001, and the date of the renewal request, must be paid prior to issuance of each type of license requested. After June 30, 2005, any cosmetology licensee wishing to renew an expired license or obtain additional licenses must meet the applicable renewal, training, and examination requirements of this chapter.

(2)(a) Any person holding an active license in good standing as an esthetician prior to January 1, 2015, may be licensed as an esthetician licensee after paying the appropriate license fee.

(b) Prior to January 1, 2015, an applicant for a master esthetician license must have an active license in good standing as an esthetician, pay the appropriate license fee, and provide the department with proof of having satisfied one or more of the following requirements:

(i)(A)(I) A minimum of thirty-five hours employment as a provider of medium depth peels under the delegation or supervision of a licensed physician, advanced registered nurse practitioner, or physician assistant, or other licensed professional whose licensure permits such delegation or supervision; or

(II) Seven hours of training in theory and application of medium depth peels; and

(B)(I) A minimum of one hundred fifty hours employment as a laser operator under the delegation or supervision of a licensed physician, advanced registered nurse practitioner, or physician assistant, or other licensed professional whose licensure permits such delegation or supervision; or

(II) Seventy-five hours of laser training;

(ii) A national or international diploma or certification in esthetics that is recognized by the department by rule;

(iii) An instructor in esthetics who has been licensed as an instructor in esthetics by the department for a minimum of three years; or

(iv) Completion of one thousand two hundred hours of an esthetic curriculum approved by the department.

(3) The director may, as provided in RCW 43.24.140, modify the duration of any additional license granted under this section to make all licenses issued to a person expire on the same date. [2013 c 187 § 11; 2004 c 51 § 5; 2002 c 111 § 16.]

Notice of chapter 51, Laws of 2004—Effective date—2004 c 51: See notes following RCW 18.16.060.

Additional notes found at www.leg.wa.gov

18.16.290 License—Inactive status. (1) If the holder of an individual license in good standing submits a written and notarized request that the licensee's cosmetology, barber, manicurist, esthetician and master esthetician, or instructor license be placed on inactive status, together with a fee equivalent to that established by rule for a duplicate license, the department shall place the license on inactive status until the expiration date of the license. If the date of the request is no more than six months before the expiration date of the license, a request for a two-year extension of the inactive status, as provided under subsection (2) of this section, may be submitted at the same time as the request under this subsection.

(2) If the holder of a license placed on inactive status under this section submits, by the expiration date of the license, a written and notarized request to extend that status for an additional two years, the department shall, without additional fee, extend the expiration date of: (a) The licensee's individual license; and (b) the inactive status for two years from the expiration date of the license.

(3) A license placed on inactive status under this section may not be extended more frequently than once in any twenty-four month period or for more than six consecutive years.

(4) If, by the expiration date of a license placed on inactive status under this section, a licensee is unable, or fails, to request that the status be extended and the license is not renewed, the license shall be canceled. [2013 c 187 § 12; 2004 c 51 § 2.]

Notice of chapter 51, Laws of 2004—Effective date—2004 c 51: See notes following RCW 18.16.060.

18.16.305 Recognition as institution of postsecondary study. Schools shall be recognized as institutions of postsecondary study under the following conditions:

(1) The school admits as regular students only those individuals who have earned a recognized high school diploma or the equivalent of a recognized high school diploma, or who are beyond the age of compulsory education as provided in RCW 28A.225.010; and

(2) The school is licensed by name by the department under this chapter to offer one or more training programs beyond the secondary level. [2013 c 201 § 2.]

Intent—2013 c 201: "It is the intent of the legislature to maintain and expand access to postsecondary education and improve opportunities for students. The legislature recognizes that access to federal financial aid is a major avenue for overcoming financial barriers to higher education for many students in Washington. The legislature recognizes that recent federal

changes in federal regulations require the adjustment of definitions of certain postsecondary institutions in state statutes to ensure that those schools that currently meet the requirements are eligible for student financial aid programs provided by the federal government." [2013 c 201 § 1.]

Chapter 18.19 RCW COUNSELORS

Sections

18.19.210 Agency affiliated counselors—Employment status—Duty to notify department.

18.19.210 Agency affiliated counselors—Employment status—Duty to notify department. (1)(a) An applicant for registration as an agency affiliated counselor who applies to the department within seven days of employment by an agency may work as an agency affiliated counselor for up to sixty days while the application is processed. The applicant must stop working on the sixtieth day of employment if the registration has not been granted for any reason.

(b) The applicant may not provide unsupervised counseling prior to completion of a criminal background check performed by either the employer or the secretary. For purposes of this subsection, "unsupervised" means the supervisor is not physically present at the location where the counseling occurs.

(2) Agency affiliated counselors shall notify the department if they are either no longer employed by the agency identified on their application or are now employed with another agency, or both. Agency affiliated counselors may not engage in the practice of counseling unless they are currently affiliated with an agency. [2013 c 338 § 6; 2008 c 135 § 9.]

Task force—2013 c 338: See note following RCW 43.20A.895.

Effective date—2008 c 135 §§ 1, 2, 7-9, and 11-19: See note following RCW 18.19.020.

Chapter 18.20 RCW BOARDING HOMES

Sections

18.20.185 Complaints—Toll-free telephone number—Investigation and referral—Rules—Retaliation prohibited.

18.20.270 Long-term caregiver training.

18.20.305 Disclosure to nonresidents.

18.20.390 Quality assurance committee.

18.20.420 Temporary management.

18.20.185 Complaints—Toll-free telephone number—Investigation and referral—Rules—Retaliation prohibited. (1) The department shall establish and maintain a toll-free telephone number for receiving complaints regarding a facility that the department licenses.

(2) All facilities that are licensed under this chapter shall post in a place and manner clearly visible to residents and visitors the department's toll-free complaint telephone number and the toll-free number and program description of the long-term care ombuds as provided by RCW 43.190.050.

(3) The department shall investigate complaints if the subject of the complaint is within its authority unless the department determines that: (a) The complaint is intended to willfully harass a licensee or employee of the licensee; or (b) there is no reasonable basis for investigation; or (c) corrective

action has been taken as determined by the ombuds or the department.

(4) The department shall refer complaints to appropriate state agencies, law enforcement agencies, the attorney general, the long-term care ombuds, or other entities if the department lacks authority to investigate or if its investigation reveals that a follow-up referral to one or more of these entities is appropriate.

(5) The department shall adopt rules that include the following complaint investigation protocols:

(a) Upon receipt of a complaint, the department shall make a preliminary review of the complaint, assess the severity of the complaint, and assign an appropriate response time. Complaints involving imminent danger to the health, safety, or well-being of a resident must be responded to within two days. When appropriate, the department shall make an on-site investigation within a reasonable time after receipt of the complaint or otherwise ensure that complaints are responded to.

(b) The complainant must be: Promptly contacted by the department, unless anonymous or unavailable despite several attempts by the department, and informed of the right to discuss alleged violations with the inspector and to provide other information the complainant believes will assist the inspector; informed of the department's course of action; and informed of the right to receive a written copy of the investigation report.

(c) In conducting the investigation, the department shall interview the complainant, unless anonymous, and shall use its best efforts to interview the resident or residents allegedly harmed by the violations, and, in addition to facility staff, any available independent sources of relevant information, including if appropriate the family members of the resident.

(d) Substantiated complaints involving harm to a resident, if an applicable law or regulation has been violated, shall be subject to one or more of the actions provided in RCW 18.20.190. Whenever appropriate, the department shall also give consultation and technical assistance to the facility.

(e) After a department finding of a violation for which a stop placement has been imposed, the department shall make an on-site revisit of the provider within fifteen working days from the request for revisit, to ensure correction of the violation. For violations that are serious or recurring or uncorrected following a previous citation, and create actual or threatened harm to one or more residents' well-being, including violations of residents' rights, the department shall make an on-site revisit as soon as appropriate to ensure correction of the violation. Verification of correction of all other violations may be made by either a department on-site revisit or by written or photographic documentation found by the department to be credible. This subsection does not prevent the department from enforcing license suspensions or revocations. Nothing in this subsection shall interfere with or diminish the department's authority and duty to ensure that the provider adequately cares for residents, including to make departmental on-site revisits as needed to ensure that the provider protects residents, and to enforce compliance with this chapter.

(f) Substantiated complaints of neglect, abuse, exploitation, or abandonment of residents, or suspected criminal vio-

lations, shall also be referred by the department to the appropriate law enforcement agencies, the attorney general, and appropriate professional disciplining authority.

(6) The department may provide the substance of the complaint to the licensee before the completion of the investigation by the department unless such disclosure would reveal the identity of a complainant, witness, or resident who chooses to remain anonymous. Neither the substance of the complaint provided to the licensee or contractor nor any copy of the complaint or related report published, released, or made otherwise available shall disclose, or reasonably lead to the disclosure of, the name, title, or identity of any complainant, or other person mentioned in the complaint, except that the name of the provider and the name or names of any officer, employee, or agent of the department conducting the investigation shall be disclosed after the investigation has been closed and the complaint has been substantiated. The department may disclose the identity of the complainant if such disclosure is requested in writing by the complainant. Nothing in this subsection shall be construed to interfere with the obligation of the long-term care ombuds program to monitor the department's licensing, contract, and complaint investigation files for long-term care facilities.

(7) The resident has the right to be free of interference, coercion, discrimination, and reprisal from a facility in exercising his or her rights, including the right to voice grievances about treatment furnished or not furnished. A facility licensed under this chapter shall not discriminate or retaliate in any manner against a resident, employee, or any other person on the basis or for the reason that such resident or any other person made a complaint to the department, the attorney general, law enforcement agencies, or the long-term care ombuds, provided information, or otherwise cooperated with the investigation of such a complaint. Any attempt to discharge a resident against the resident's wishes, or any type of retaliatory treatment of a resident by whom or upon whose behalf a complaint substantiated by the department has been made to the department, the attorney general, law enforcement agencies, or the long-term care ombuds, within one year of the filing of the complaint, raises a rebuttable presumption that such action was in retaliation for the filing of the complaint. "Retaliatory treatment" means, but is not limited to, monitoring a resident's phone, mail, or visits; involuntary seclusion or isolation; transferring a resident to a different room unless requested or based upon legitimate management reasons; withholding or threatening to withhold food or treatment unless authorized by a terminally ill resident or his or her representative pursuant to law; or persistently delaying responses to a resident's request for service or assistance. A facility licensed under this chapter shall not willfully interfere with the performance of official duties by a long-term care ombuds. The department shall sanction and may impose a civil penalty of not more than three thousand dollars for a violation of this subsection. [2013 c 23 § 9; 2001 c 193 § 2; 1997 c 392 § 214.]

Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392: See notes following RCW 74.39A.009.

18.20.270 Long-term caregiver training. (1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Caregiver" includes any person who provides residents with hands-on personal care on behalf of an assisted living facility, except volunteers who are directly supervised.

(b) "Direct supervision" means oversight by a person who has demonstrated competency in the core areas or has been fully exempted from the training requirements pursuant to this section, is on the premises, and is quickly and easily available to the caregiver.

(2) Training must have the following components: Orientation, basic training, specialty training as appropriate, and continuing education. All assisted living facility employees or volunteers who routinely interact with residents shall complete orientation. Assisted living facility administrators, or their designees, and caregivers shall complete orientation, basic training, specialty training as appropriate, and continuing education.

(3) Orientation consists of introductory information on residents' rights, communication skills, fire and life safety, and universal precautions. Orientation must be provided at the facility by appropriate assisted living facility staff to all assisted living facility employees before the employees have routine interaction with residents.

(4) Basic training consists of modules on the core knowledge and skills that caregivers need to learn and understand to effectively and safely provide care to residents. Basic training must be outcome-based, and the effectiveness of the basic training must be measured by demonstrated competency in the core areas through the use of a competency test. Basic training must be completed by caregivers within one hundred twenty days of the date on which they begin to provide hands-on care. Until competency in the core areas has been demonstrated, caregivers shall not provide hands-on personal care to residents without direct supervision. Assisted living facility administrators, or their designees, must complete basic training and demonstrate competency within one hundred twenty days of employment.

(5) For assisted living facilities that serve residents with special needs such as dementia, developmental disabilities, or mental illness, specialty training is required of administrators, or designees, and caregivers.

(a) Specialty training consists of modules on the core knowledge and skills that caregivers need to effectively and safely provide care to residents with special needs. Specialty training should be integrated into basic training wherever appropriate. Specialty training must be outcome-based, and the effectiveness of the specialty training measured by demonstrated competency in the core specialty areas through the use of a competency test.

(b) Specialty training must be completed by caregivers within one hundred twenty days of the date on which they begin to provide hands-on care to a resident having special needs. However, if specialty training is not integrated with basic training, the specialty training must be completed within ninety days of completion of basic training. Until competency in the core specialty areas has been demonstrated, caregivers shall not provide hands-on personal care to residents with special needs without direct supervision.

(c) Assisted living facility administrators, or their designees, must complete specialty training and demonstrate competency within one hundred twenty days from the date on which the administrator or his or her designee is hired, if the assisted living facility serves one or more residents with special needs.

(6) Continuing education consists of ongoing delivery of information to caregivers on various topics relevant to the care setting and care needs of residents. Competency testing is not required for continuing education. Continuing education is not required in the same calendar year in which basic or modified basic training is successfully completed. Continuing education is required in each calendar year thereafter. If specialty training is completed, the specialty training applies toward any continuing education requirement for up to two years following the completion of the specialty training.

(7) Persons who successfully challenge the competency test for basic training are fully exempt from the basic training requirements of this section. Persons who successfully challenge the specialty training competency test are fully exempt from the specialty training requirements of this section.

(8)(a) Registered nurses and licensed practical nurses licensed under chapter 18.79 RCW are exempt from any continuing education requirement established under this section.

(b) The department may adopt rules that would exempt licensed persons from all or part of the training requirements under this chapter, if they are (i) performing the tasks for which they are licensed and (ii) subject to chapter 18.130 RCW.

(9) In an effort to improve access to training and education and reduce costs, especially for rural communities, the coordinated system of long-term care training and education must include the use of innovative types of learning strategies such as internet resources, videotapes, and distance learning using satellite technology coordinated through community colleges or other entities, as defined by the department.

(10) The department shall develop criteria for the approval of orientation, basic training, and specialty training programs.

(11) Assisted living facilities that desire to deliver facility-based training with facility designated trainers, or assisted living facilities that desire to pool their resources to create shared training systems, must be encouraged by the department in their efforts. The department shall develop criteria for reviewing and approving trainers and training materials that are substantially similar to or better than the materials developed by the department. The department may approve a curriculum based upon attestation by an assisted living facility administrator that the assisted living facility's training curriculum addresses basic and specialty training competencies identified by the department, and shall review a curriculum to verify that it meets these requirements. The department may conduct the review as part of the next regularly scheduled yearly inspection and investigation required under RCW 18.20.110. The department shall rescind approval of any curriculum if it determines that the curriculum does not meet these requirements.

(12) The department shall adopt rules for the implementation of this section.

(13)(a) Except as provided in (b) of this subsection, the orientation, basic training, specialty training, and continuing education requirements of this section commence September 1, 2002, or one hundred twenty days from the date of employment, whichever is later, and shall be applied to (i) employees hired subsequent to September 1, 2002; and (ii) existing employees that on September 1, 2002, have not successfully completed the training requirements under RCW 74.39A.010 or 74.39A.020 and this section. Existing employees who have not successfully completed the training requirements under RCW 74.39A.010 or 74.39A.020 shall be subject to all applicable requirements of this section.

(b) Beginning January 7, 2012, long-term care workers, as defined in RCW 74.39A.009, employed by facilities licensed under this chapter are also subject to the training requirements under RCW 74.39A.074. [2013 c 259 § 4. Prior: 2012 c 164 § 702; 2012 c 10 § 16; 2002 c 233 § 1; 2000 c 121 § 2.]

Finding—Intent—Rules—Effective date—2012 c 164: See notes following RCW 18.88B.010.

Application—2012 c 10: See note following RCW 18.20.010.
Additional notes found at www.leg.wa.gov

18.20.305 Disclosure to nonresidents. (1) An assisted living facility must provide each nonresident a disclosure statement upon admission and at the time that additional services are requested by a nonresident.

(2) The disclosure statement shall notify the nonresident that:

(a) The resident rights of chapter 70.129 RCW do not apply to nonresidents;

(b) Licensing requirements for boarding homes under this chapter do not apply to nonresident units; and

(c) The jurisdiction of the long-term care ombuds does not apply to nonresidents and nonresident units. [2013 c 23 § 10; 2011 c 366 § 4.]

Findings—Purpose—Conflict with federal requirements—2011 c 366: See notes following RCW 18.20.020.

18.20.390 Quality assurance committee. (1) To ensure the proper delivery of services and the maintenance and improvement in quality of care through self-review, any assisted living facility licensed under this chapter may maintain a quality assurance committee that, at a minimum, includes:

(a) A licensed registered nurse under chapter 18.79 RCW;

(b) The administrator; and

(c) Three other members from the staff of the assisted living facility.

(2) When established, the quality assurance committee shall meet at least quarterly to identify issues that may adversely affect quality of care and services to residents and to develop and implement plans of action to correct identified quality concerns or deficiencies in the quality of care provided to residents.

(3) To promote quality of care through self-review without the fear of reprisal, and to enhance the objectivity of the review process, the department shall not require, and the long-term care ombuds program shall not request, disclosure of any quality assurance committee records or reports, unless

the disclosure is related to the committee's compliance with this section, if:

(a) The records or reports are not maintained pursuant to statutory or regulatory mandate; and

(b) The records or reports are created for and collected and maintained by the committee.

(4) If the assisted living facility refuses to release records or reports that would otherwise be protected under this section, the department may then request only that information that is necessary to determine whether the assisted living facility has a quality assurance committee and to determine that it is operating in compliance with this section. However, if the assisted living facility offers the department documents generated by, or for, the quality assurance committee as evidence of compliance with assisted living facility requirements, the documents are protected as quality assurance committee documents under subsections (6) and (8) of this section when in the possession of the department. The department is not liable for an inadvertent disclosure, a disclosure related to a required federal or state audit, or disclosure of documents incorrectly marked as quality assurance committee documents by the facility.

(5) Good faith attempts by the committee to identify and correct quality deficiencies shall not be used as a basis for sanctions.

(6) Information and documents, including the analysis of complaints and incident reports, created specifically for, and collected and maintained by, a quality assurance committee are not subject to discovery or introduction into evidence in any civil action, and no person who was in attendance at a meeting of such committee or who participated in the creation, collection, or maintenance of information or documents specifically for the committee shall be permitted or required to testify as to the content of such proceedings or the documents and information prepared specifically for the committee. This subsection does not preclude:

(a) In any civil action, the discovery of the identity of persons involved in the care that is the basis of the civil action whose involvement was independent of any quality improvement committee activity;

(b) In any civil action, the testimony of any person concerning the facts which form the basis for the institution of such proceedings of which the person had personal knowledge acquired independently of their participation in the quality assurance committee activities.

(7) A quality assurance committee under subsection (1) of this section, RCW 70.41.200, 74.42.640, 4.24.250, or 43.70.510 may share information and documents, including the analysis of complaints and incident reports, created specifically for, and collected and maintained by, the committee, with one or more other quality assurance committees created under subsection (1) of this section, RCW 70.41.200, 74.42.640, 4.24.250, or 43.70.510 for the improvement of the quality of care and services rendered to assisted living facility residents. Information and documents disclosed by one quality assurance committee to another quality assurance committee and any information and documents created or maintained as a result of the sharing of information and documents shall not be subject to the discovery process and confidentiality shall be respected as required by subsections (6) and (8) of this section, RCW 43.70.510(4), 70.41.200(3), 4.24.250(1),

and 74.42.640 (7) and (9). The privacy protections of chapter 70.02 RCW and the federal health insurance portability and accountability act of 1996 and its implementing regulations apply to the sharing of individually identifiable patient information held by a coordinated quality improvement program. Any rules necessary to implement this section shall meet the requirements of applicable federal and state privacy laws.

(8) Information and documents, including the analysis of complaints and incident reports, created specifically for, and collected and maintained by, a quality assurance committee are exempt from disclosure under chapter 42.56 RCW.

(9) Notwithstanding any records created for the quality assurance committee, the facility shall fully set forth in the resident's records, available to the resident, the department, and others as permitted by law, the facts concerning any incident of injury or loss to the resident, the steps taken by the facility to address the resident's needs, and the resident outcome. [2013 c 23 § 11; 2012 c 10 § 28; 2006 c 209 § 3; 2005 c 33 § 2; 2004 c 144 § 2.]

Application—2012 c 10: See note following RCW 18.20.010.

Effective date—2006 c 209: See RCW 42.56.903.

Findings—2005 c 33: "The legislature finds that facilitation of the quality assurance process in licensed boarding homes and nursing homes will promote safe patient care. The legislature also finds that communication and quality assurance efforts by boarding homes and nursing homes will achieve the goal of providing high quality of care to citizens residing in licensed boarding homes and nursing homes, and may reduce property and liability insurance premium costs for such facilities. The legislature further finds that sharing of quality assurance information between boarding homes, nursing homes, coordinated quality improvement plans, peer review organizations, and hospitals will promote safe patient care and ensure consistency of care across organizations and practices." [2005 c 33 § 1.]

Finding—2004 c 144: "The legislature finds that quality assurance efforts will promote compliance with regulations by providers and achieve the goal of providing high quality of care to citizens residing in licensed boarding homes, and may reduce property and liability insurance premium costs for such facilities." [2004 c 144 § 1.]

Effective date—2004 c 144: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 26, 2004]." [2004 c 144 § 5.]

18.20.420 Temporary management. (1) If the department determines that the health, safety, or welfare of residents is immediately jeopardized by an assisted living facility's failure or refusal to comply with the requirements of this chapter or the rules adopted under this chapter, and the department summarily suspends the assisted living facility license, the department may appoint a temporary manager of the assisted living facility, or the licensee may, subject to the department's approval, voluntarily participate in the temporary management program.

The purposes of the temporary management program are as follows:

(a) To mitigate dislocation and transfer trauma of residents while the department and licensee may pursue dispute resolution or appeal of a summary suspension of license;

(b) To facilitate the continuity of safe and appropriate resident care and services;

(c) To protect the health, safety, and welfare of residents, by providing time for an orderly closure of the assisted living facility, or for the deficiencies that necessitated temporary management to be corrected; and

(d) To preserve a residential option that meets a specialized service need or is in a geographical area that has a lack of available providers.

(2) The department may recruit, approve, and appoint qualified individuals, partnerships, corporations, and other entities interested in serving as a temporary manager of an assisted living facility. These individuals and entities shall satisfy the criteria established under this chapter or by the department for approving licensees. The department shall not approve or appoint any person, including partnerships and other entities, if that person is affiliated with the assisted living facility subject to the temporary management, or has owned or operated an assisted living facility ordered into temporary management or receivership in any state. When approving or appointing a temporary manager, the department shall consider the temporary manager's past experience in long-term care, the quality of care provided, the temporary manager's availability, and the person's familiarity with applicable state and federal laws. Subject to the provisions of this section and RCW 18.20.430, the department's authority to approve or appoint a temporary manager is discretionary and not subject to the administrative procedure act, chapter 34.05 RCW.

(3) When the department appoints a temporary manager, the department shall enter into a contract with the temporary manager and shall order the licensee to cease operating the assisted living facility and immediately turn over to the temporary manager possession and control of the assisted living facility, including but not limited to all resident care records, financial records, and other records necessary for operation of the facility while temporary management is in effect. If the department has not appointed a temporary manager and the licensee elects to participate in the temporary management program, the licensee shall select the temporary manager, subject to the department's approval, and enter into a contract with the temporary manager, consistent with this section. The department has the discretion to approve or revoke any temporary management arrangements made by the licensee.

(4) When the department appoints a temporary manager, the costs associated with the temporary management may be paid for through the assisted living facility temporary management account established by RCW 18.20.430, or from other departmental funds, or a combination thereof. All funds must be administered according to department procedures. The department may enter into an agreement with the licensee allowing the licensee to pay for some of the costs associated with a temporary manager appointed by the department. If the department has not appointed a temporary manager and the licensee elects to participate in the temporary management program, the licensee is responsible for all costs related to administering the temporary management program at the assisted living facility and contracting with the temporary manager.

(5) The temporary manager shall assume full responsibility for the daily operations of the assisted living facility and is responsible for correcting cited deficiencies and ensuring that all minimum licensing requirements are met. The temporary manager must comply with all state and federal laws and regulations applicable to assisted living facilities. The temporary manager shall protect the health, safety, and

welfare of the residents for the duration of the temporary management and shall perform all acts reasonably necessary to ensure residents' needs are met. The temporary management contract shall address the responsibility of the temporary manager to pay past due debts. The temporary manager's specific responsibilities may include, but are not limited to:

(a) Receiving and expending in a prudent and business-like manner all current revenues of the assisted living facility, provided that priority is given to debts and expenditures directly related to providing care and meeting residents' needs;

(b) Hiring and managing all consultants and employees and firing them for good cause;

(c) Making necessary purchases, repairs, and replacements, provided that such expenditures in excess of five thousand dollars by a temporary manager appointed by the department must be approved by the department;

(d) Entering into contracts necessary for the operation of the assisted living facility;

(e) Preserving resident trust funds and resident records; and

(f) Preparing all department-required reports, including a detailed monthly accounting of all expenditures and liabilities, which shall be sent to the department and the licensee.

(6) The licensee and department shall provide written notification immediately to all residents, resident representatives, interested family members, and the state long-term care ombuds program of the temporary management and the reasons for it. This notification shall include notice that residents may move from the assisted living facility without notifying the licensee or temporary manager in advance, and without incurring any charges, fees, or costs otherwise available for insufficient advance notice, during the temporary management period. The notification shall also inform residents and their families or representatives that the temporary management team will provide residents help with relocation and appropriate discharge planning and coordination if desired. The department shall provide assistance with relocation to residents who are department clients and may provide such assistance to other residents. The temporary manager shall meet regularly with staff, residents, residents' representatives, and families to inform them of the plans for and progress achieved in the correction of deficiencies, and of the plans for facility closure or continued operation.

(7) The department shall terminate temporary management:

(a) After sixty days unless good cause is shown to continue the temporary management. Good cause for continuing the temporary management exists when returning the assisted living facility to its former licensee would subject residents to a threat to health, safety, or welfare;

(b) When all residents are transferred and the assisted living facility is closed;

(c) When deficiencies threatening residents' health, safety, or welfare are eliminated and the former licensee agrees to department-specified conditions regarding the continued facility operation; or

(d) When a new licensee assumes control of the assisted living facility.

Nothing in this section precludes the department from revoking its approval of the temporary management or exercising its licensing enforcement authority under this chapter. The department's decision whether to approve or to revoke a temporary management arrangement is not subject to the administrative procedure act, chapter 34.05 RCW.

(8) The department shall indemnify, defend, and hold harmless any temporary manager appointed or approved under this section against claims made against the temporary manager for any actions by the temporary manager or its agents that do not amount to intentional torts or criminal behavior.

(9) The department may adopt rules implementing this section. In the development of rules or policies implementing this section, the department shall consult with residents and their representatives, resident advocates, financial professionals, assisted living facility providers, and organizations representing assisted living facilities. [2013 c 23 § 12; 2012 c 10 § 31; 2007 c 162 § 1.]

Application—2012 c 10: See note following RCW 18.20.010.

Chapter 18.25 RCW CHIROPRACTIC

Sections

18.25.0181 Commission—Information to legislature.

18.25.210 Pilot project—Commission—Authority over budget.

18.25.0181 Commission—Information to legislature.

In addition to the authority provided in RCW 42.52.804, the commission, its members, or staff as directed by the commission, may communicate, present information requested, volunteer information, testify before legislative committees, and educate the legislature, as the commission may from time to time see fit. [2013 c 81 § 2.]

Effective date—2013 c 81: See note following RCW 18.25.210.

18.25.210 Pilot project—Commission—Authority over budget.

(1) The commission may conduct a pilot project to evaluate the effect of granting the commission additional authority over budget development, spending, and staffing. If the commission intends to conduct a pilot project, it must provide a notice in writing to the secretary by July 1, 2013. If the commission chooses to conduct a pilot project, the pilot project shall begin on July 1, 2013, and conclude on June 30, 2018.

(2) The pilot project shall include the following provisions:

(a) That the secretary shall employ an executive director that is:

(i) Hired by and serves at the pleasure of the commission;

(ii) Exempt from the provisions of the civil service law, chapter 41.06 RCW and whose salary is established by the commission in accordance with RCW 43.03.028; and

(iii) Responsible for performing all administrative duties of the commission, including preparing an annual budget, and any other duties as delegated to the executive director by the commission;

(b) Consistent with the budgeting and accounting act:

(i) With regard to budget for the remainder of the 2013-2015 biennium, the commission has authority to spend the remaining funds allocated with respect to chiropractors licensed under this chapter; and

(ii) Beginning with the 2015-2017 biennium, the commission is responsible for proposing its own biennial budget which the secretary must submit to the office of financial management;

(c) That, prior to adopting credentialing fees under RCW 43.70.250, the secretary shall collaborate with the commission to determine the appropriate fees necessary to support the activities of the commission;

(d) That, prior to the secretary exercising the secretary's authority to adopt uniform rules and guidelines, or any other actions that might impact the licensing or disciplinary authority of the commission, the secretary shall first meet with the commission to determine how those rules or guidelines, or changes to rules or guidelines, might impact the commission's ability to effectively carry out its statutory duties. If the commission, in consultation with the secretary, determines that the proposed rules or guidelines, or changes to existing rules or guidelines, will negatively impact the commission's ability to effectively carry out its statutory duties, then the individual commission shall collaborate with the secretary to develop alternative solutions to mitigate the impacts. If an alternative solution cannot be reached, the parties may resolve the dispute through a mediator as set forth in (f) of this subsection;

(e) That the commission shall negotiate with the secretary to develop performance-based expectations, including identification of key performance measures. The performance expectations should focus on consistent, timely regulation of health care professionals; and

(f) That in the event there is a disagreement between the commission and the secretary, that is unable to be resolved through negotiation, a representative of both parties shall agree on the designation of a third party to mediate the dispute.

(3) By December 15, 2017, the secretary and the commission shall report to the governor and the legislature on the results of the pilot project. The report shall:

(a) Compare the effectiveness of licensing and disciplinary activities of the commission during the pilot project with the licensing and disciplinary activities of the commission prior to the pilot project and the disciplinary activities of other disciplining authorities during the same time period as the pilot project;

(b) Compare the efficiency of the commission with respect to the timeliness and personnel resources during the pilot project to the efficiency of the commission prior to the pilot project and the efficiency of other disciplining authorities during the same period as the pilot project;

(c) Compare the budgetary activity of the commission during the pilot project to the budgetary activity of the commission prior to the pilot project and to the budgetary activity of other disciplining authorities during the same period as the pilot project;

(d) Evaluate the commission's regulatory activities, including timelines, consistency of decision making, and performance levels in comparison to other disciplining authorities; and

(e) Review summaries of national research and data regarding regulatory effectiveness and patient safety.

(4) The secretary shall employ staff that are hired and managed by the executive director provided that nothing contained in this section may be construed to alter any existing collective bargaining unit or the provisions of any existing collective bargaining agreement. [2013 c 81 § 1; 2011 c 60 § 5; 2008 c 134 § 31.]

Effective date—2013 c 81: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2013." [2013 c 81 § 9.]

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

Finding—Intent—Severability—2008 c 134: See notes following RCW 18.130.020.

Chapter 18.27 RCW REGISTRATION OF CONTRACTORS

Sections

18.27.090 Exemptions.

18.27.090 Exemptions. The registration provisions of this chapter do not apply to:

(1) An authorized representative of the United States government, the state of Washington, or any incorporated city, town, county, township, irrigation district, reclamation district, or other municipal or political corporation or subdivision of this state;

(2) Officers of a court when they are acting within the scope of their office;

(3) Public utilities operating under the regulations of the utilities and transportation commission in construction, maintenance, or development work incidental to their own business;

(4) Any construction, repair, or operation incidental to the discovering or producing of petroleum or gas, or the drilling, testing, abandoning, or other operation of any petroleum or gas well or any surface or underground mine or mineral deposit when performed by an owner or lessee;

(5) The sale of any finished products, materials, or articles of merchandise that are not fabricated into and do not become a part of a structure under the common law of fixtures;

(6) Any construction, alteration, improvement, or repair of personal property performed by the registered or legal owner, or by a mobile/manufactured home retail dealer or manufacturer licensed under chapter 46.70 RCW who shall warranty service and repairs under chapter 46.70 RCW;

(7) Any construction, alteration, improvement, or repair carried on within the limits and boundaries of any site or reservation under the legal jurisdiction of the federal government;

(8) Any person who only furnished materials, supplies, or equipment without fabricating them into, or consuming them in the performance of, the work of the contractor;

(9) Any work or operation on one undertaking or project by one or more contracts, the aggregate contract price of which for labor and materials and all other items is less than five hundred dollars, such work or operations being considered as of a casual, minor, or inconsequential nature. The

exemption prescribed in this subsection does not apply in any instance wherein the work or construction is only a part of a larger or major operation, whether undertaken by the same or a different contractor, or in which a division of the operation is made into contracts of amounts less than five hundred dollars for the purpose of evasion of this chapter or otherwise. The exemption prescribed in this subsection does not apply to a person who advertises or puts out any sign or card or other device which might indicate to the public that he or she is a contractor, or that he or she is qualified to engage in the business of contractor;

(10) Any construction or operation incidental to the construction and repair of irrigation and drainage ditches of regularly constituted irrigation districts or reclamation districts; or to farming, dairying, agriculture, viticulture, horticulture, or stock or poultry raising; or to clearing or other work upon land in rural districts for fire prevention purposes; except when any of the above work is performed by a registered contractor;

(11) An owner who contracts for a project with a registered contractor, except that this exemption shall not deprive the owner of the protections of this chapter against registered and unregistered contractors. The exemption prescribed in this subsection does not apply to a person who performs the activities of a contractor for the purpose of leasing or selling improved property he or she has owned for less than twelve months;

(12) Any person working on his or her own property, whether occupied by him or her or not, and any person working on his or her personal residence, whether owned by him or her or not but this exemption shall not apply to any person who performs the activities of a contractor on his or her own property for the purpose of selling, demolishing, or leasing the property;

(13) An owner who performs maintenance, repair, and alteration work in or upon his or her own properties, or who uses his or her own employees to do such work;

(14) A licensed architect or civil or professional engineer acting solely in his or her professional capacity, an electrician certified under the laws of the state of Washington, or a plumber certified under the laws of the state of Washington or licensed by a political subdivision of the state of Washington while operating within the boundaries of such political subdivision. The exemption provided in this subsection is applicable only when the person certified is operating within the scope of his or her certification;

(15) Any person who engages in the activities herein regulated as an employee of a registered contractor with wages as his or her sole compensation or as an employee with wages as his or her sole compensation;

(16) Contractors on highway projects who have been prequalified as required by RCW 47.28.070, with the department of transportation to perform highway construction, reconstruction, or maintenance work;

(17) A mobile/manufactured home dealer or manufacturer who subcontracts the installation, set-up, or repair work to actively registered contractors. This exemption only applies to the installation, set-up, or repair of the mobile/manufactured homes that were manufactured or sold by the mobile/manufactured home dealer or manufacturer;

(18) An entity who holds a valid electrical contractor's license under chapter 19.28 RCW that employs a certified journey level electrician, a certified residential specialty electrician, or an electrical trainee meeting the requirements of chapter 19.28 RCW to perform plumbing work that is incidentally, directly, and immediately appropriate to the like-kind replacement of a household appliance or other small household utilization equipment that requires limited electric power and limited waste and/or water connections. An electrical trainee must be supervised by a certified electrician while performing plumbing work. [2013 c 23 § 13; 2007 c 436 § 6; 2003 c 399 § 401; 2001 c 159 § 7; 1997 c 314 § 8; 1987 c 313 § 1; 1983 c 4 § 1; 1980 c 68 § 2; 1974 ex.s. c 25 § 2. Prior: 1973 1st ex.s. c 161 § 1; 1973 1st ex.s. c 153 § 6; 1967 c 126 § 3; 1965 ex.s. c 170 § 50; 1963 c 77 § 9.]

Part headings not law—2003 c 399: See note following RCW 19.28.006.

Chapter 18.29 RCW DENTAL HYGIENISTS

Sections

18.29.050	Scope of licensee's functions—Employment—Supervision.
18.29.056	Employment by health care facilities authorized—Limitations—Requirements for services performed in senior centers.
18.29.058	Delegated acts—Homebound patients.

18.29.050 Scope of licensee's functions—Employment—Supervision. Any person licensed as a dental hygienist in this state may remove deposits and stains from the surfaces of the teeth, may apply topical preventive or prophylactic agents, may polish and smooth restorations, may perform root planing and soft-tissue curettage, and may perform other dental operations and services delegated to them by a licensed dentist. Any person licensed as a dental hygienist in this state may apply topical anesthetic agents under the general supervision, as defined in RCW 18.260.010, of a dentist: PROVIDED HOWEVER, That licensed dental hygienists shall in no event perform the following dental operations or services:

- (1) Any surgical removal of tissue of the oral cavity;
- (2) Any prescription of drugs or medications requiring the written order or prescription of a licensed dentist or physician, except that a hygienist may place antimicrobials pursuant to the order of a licensed dentist and under the dentist's required supervision;
- (3) Any diagnosis for treatment or treatment planning; or
- (4) The taking of any impression of the teeth or jaw, or the relationships of the teeth or jaws, for the purpose of fabricating any intra-oral restoration, appliance, or prosthesis.

Such licensed dental hygienists may perform dental operations and services only under the supervision of a licensed dentist, and under such supervision may be employed by hospitals, boards of education of public or private schools, county boards, boards of health, or public or charitable institutions, or in dental offices. [2013 c 87 § 1; 2003 c 257 § 1; 1997 c 37 § 1; 1971 ex.s. c 235 § 1; 1969 c 47 § 4; 1923 c 16 § 27; RRS § 10030-27.]

18.29.056 Employment by health care facilities authorized—Limitations—Requirements for services

performed in senior centers. (1)(a) Subject to RCW 18.29.230 and (e) of this subsection, dental hygienists licensed under this chapter with two years' practical clinical experience with a licensed dentist within the preceding five years may be employed, retained, or contracted by health care facilities and senior centers to perform authorized dental hygiene operations and services without dental supervision.

(b) Subject to RCW 18.29.230 and (e) of this subsection, dental hygienists licensed under this chapter with two years' practical clinical experience with a licensed dentist within the preceding five years may perform authorized dental hygiene operations and services without dental supervision under a lease agreement with a health care facility or senior center.

(c) Dental hygienists performing operations and services under (a) or (b) of this subsection are limited to removal of deposits and stains from the surfaces of the teeth, application of topical preventive or prophylactic agents, application of topical anesthetic agents, polishing and smoothing restorations, and performance of root planing and soft-tissue curettage, but shall not perform injections of anesthetic agents, administration of nitrous oxide, or diagnosis for dental treatment.

(d) The performance of dental hygiene operations and services in health care facilities shall be limited to patients, students, and residents of the facilities.

(e) A dental hygienist employed, retained, or contracted to perform services under this section or otherwise performing services under a lease agreement under this section in a senior center must, before providing services:

(i) Enter into a written practice arrangement plan, approved by the department, with a dentist licensed in this state, under which the dentist will provide off-site supervision of the dental services provided. This agreement does not create an obligation for the dentist to accept referrals of patients receiving services under the program;

(ii) Collect data on the patients treated by dental hygienists under the program, including age, treatments rendered, insurance coverage, if any, and patient referral to dentists. This data must be submitted to the department of health at the end of each annual quarter, during the period of time between October 1, 2007, and October 1, 2013; and

(iii) Obtain information from the patient's primary health care provider about any health conditions of the patient that would be relevant to the provision of preventive dental care. The information may be obtained by the dental hygienist's direct contact with the provider or through a written document from the provider that the patient presents to the dental hygienist.

(f) For dental planning and dental treatment, dental hygienists shall refer patients to licensed dentists.

(2) For the purposes of this section:

(a) "Health care facilities" are limited to hospitals; nursing homes; home health agencies; group homes serving the elderly, individuals with disabilities, and juveniles; state-operated institutions under the jurisdiction of the department of social and health services or the department of corrections; and federal, state, and local public health facilities, state or federally funded community and migrant health centers, and tribal clinics.

(b) "Senior center" means a multipurpose community facility operated and maintained by a nonprofit organization

or local government for the organization and provision of a combination of some of the following: Health, social, nutritional, educational services, and recreational activities for persons sixty years of age or older. [2013 c 87 § 2; 2009 c 321 § 1; 2007 c 270 § 1; 1997 c 37 § 2; 1984 c 279 § 63.]

Report—2009 c 321: "The secretary of health, in consultation with representatives of dental hygienists and dentists, shall provide a report to the appropriate committees of the legislature by December 1, 2013, that provides a summary of the information about patients receiving dental hygiene services in senior centers that is collected under RCW 18.29.056(1)(e)(ii), and in community-based sealant programs carried out in schools under RCW 18.29.220. This report must also include the following:

(1) For patients receiving scaling and root planning [planing] in senior center practices, an evaluation of the patient's need for pain control;

(2) For community-based sealant programs in schools, the number of sealants applied; the teeth cleaning method selected for the patient; whether the patient was reevaluated at a recall appointment; and the need for reapplication of the sealant at the recall appointment; and

(3) For patients receiving treatment in either the senior center practices or the community-based sealant programs in schools, the number of referred patients that are seen by a dentist; the lessons learned from these practices; and any unintended consequences or outcomes." [2009 c 321 § 3.]

Effective date—2009 c 321: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2009." [2009 c 321 § 4.]

Report—2007 c 270: "The secretary of health, in consultation with representatives of dental hygienists and dentists, shall provide a report to the appropriate committees of the legislature by December 1, 2008, that:

(1) Provides a summary of the information about patients receiving dental services in senior centers that is collected under *RCW 18.29.056(1)(c)(ii), and in community-based sealant programs carried out in schools under RCW 18.29.220, and describing the dental health outcomes, including both effects on dental health and adverse incidents, if any, related to the services these patients receive under the programs; and

(2) Makes recommendations, as appropriate, with regard to the services that could be appropriately provided by dental hygienists in senior centers and community-based sealant programs carried out in schools, and the effects on dental health of patients treated." [2007 c 270 § 4.]

***Reviser's note:** RCW 18.29.056 was amended by 2009 c 321 § 1, changing subsection (1)(c) to subsection (1)(e).

Additional notes found at www.leg.wa.gov

18.29.058 Delegated acts—Homebound patients.

(1)(a) Any person licensed in this state as a dental hygienist with two years of practical clinical experience within the preceding five years may perform delegated acts specified in (b) of this subsection on a homebound patient under the general supervision of a dentist licensed under chapter 18.32 RCW if the patient has first been examined by the supervising dentist within a time frame deemed appropriate by the supervising dentist.

(b) The acts that may be performed under (a) of this subsection are limited to the acts, specified in rule by the dental quality assurance commission, that a dental hygienist is authorized to perform under the general supervision of a dentist.

(2) Prior to performing acts under this section, the dental hygienist shall:

(a) Obtain information from the patient's primary health care provider about any health conditions of the patient that would be relevant to the provision of preventive dental care. The dental hygienist shall review and discuss any changes in health condition with the supervising dentist prior to treatment;

(b) Discuss appropriateness of care with the supervising dentist; and

(c) Obtain written consent from the supervising dentist.

(3) For purposes of this section:

(a) "General supervision" has the same meaning as in RCW 18.260.010; and

(b) "Homebound patient" means a patient incapable of travel due to age or disability. [2013 c 87 § 3.]

Chapter 18.30 RCW DENTURISTS

Sections

18.30.010	Definitions. (<i>Effective July 1, 2014.</i>)
18.30.030	Licensing required.
18.30.065	Duties of board.
18.30.090	Licensing requirements.
18.30.095	Licensing requirements—Military training or experience.
18.30.130	License renewal.
18.30.135	Discipline.
18.30.160	Education and training—Nonorthodontic removable oral devices and teeth whitening services. (<i>Effective July 1, 2014.</i>)

18.30.010 Definitions. (*Effective July 1, 2014.*) Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Board" means the Washington state board of denturists.

(2) "Denture" means a removable full or partial upper or lower dental appliance to be worn in the mouth to replace missing natural teeth.

(3) "Denturist" means a person licensed under this chapter to engage in the practice of denturism.

(4) "Department" means the department of health.

(5) "Practice of denturism" means:

(a) Making, placing, constructing, altering, reproducing, or repairing a denture;

(b) Taking impressions and furnishing or supplying a denture directly to a person or advising the use of a denture, and maintaining a facility for the same;

(c) Making, placing, constructing, altering, reproducing, or repairing the following nonorthodontic removable oral devices, excluding devices intended to treat obstructive sleep apnea or to treat temporomandibular joint dysfunction, where accompanied by written encouragement to have regular dental checkups with a licensed dentist:

(i) Bruxism devices;

(ii) Sports mouth guards;

(iii) Removable cosmetic appliances, regardless of whether the patient is missing teeth; and

(iv) Snoring devices, only after a physician has ruled out snoring associated with sleep breathing disorders, including obstructive sleep apnea; and

(d) Providing teeth whitening services, including fabricating whitening trays, providing whitening solutions determined to be safe for public use, and providing required follow-up care and instructions for use of the trays and solutions at home.

(6) "Secretary" means the secretary of health or the secretary's designee. [2013 c 172 § 1; 2002 c 160 § 1; 1995 c 1 § 2 (Initiative Measure No. 607, approved November 8, 1994).]

Effective date—2013 c 172: "This act takes effect July 1, 2014." [2013 c 172 § 3.]

18.30.030 Licensing required. No person may represent himself or herself as a licensed denturist or use any title or description of services without applying for licensure, meeting the required qualifications, and being licensed as a denturist by the board, unless otherwise exempted by this chapter. [2013 c 171 § 1; 1995 c 1 § 4 (Initiative Measure No. 607, approved November 8, 1994).]

18.30.065 Duties of board. The board shall:

(1) Determine the qualifications of persons applying for licensure under this chapter;

(2) Prescribe, administer, and determine the requirements for examinations under this chapter and establish a passing grade for licensure under this chapter;

(3) Adopt rules under chapter 34.05 RCW to carry out the provisions of this chapter;

(4) Have authority to provide requirements for continuing competency as a condition of license renewal by rule; and

(5) Evaluate and approve those schools from which graduation is accepted as proof of an applicant's completion of coursework requirements for licensure. [2013 c 171 § 2; 2002 c 160 § 5.]

18.30.090 Licensing requirements. The secretary shall issue a license to practice denturism to an applicant who submits a completed application, pays the appropriate fees, and meets the following requirements:

(1) A person currently licensed to practice denturism under statutory provisions of another state, territory of the United States, District of Columbia, or Puerto Rico, with substantially equivalent licensing standards to this chapter shall be licensed without examination upon providing the board with the following:

(a) Proof of successfully passing a written and clinical examination for denturism in a state, territory of the United States, District of Columbia, or Puerto Rico, that the board has determined has substantially equivalent licensing standards as those in this chapter, including but not limited to both the written and clinical examinations; and

(b) An affidavit from the licensing agency where the person is licensed or certified attesting to the fact of the person's licensure or certification.

(2) A person graduating from a formal denturism program shall be licensed if he or she:

(a) Documents successful completion of formal training with a major course of study in denturism of not less than two years in duration at an educational institution approved by the board; and

(b) Passes a written and clinical examination approved by the board. [2013 c 171 § 3; 2002 c 160 § 6; 1995 c 198 § 20; 1995 c 1 § 10 (Initiative Measure No. 607, approved November 8, 1994).]

Additional notes found at www.leg.wa.gov

18.30.095 Licensing requirements—Military training or experience. An applicant with military training or experience satisfies the training or experience requirements of this chapter unless the board determines that the military training or experience is not substantially equivalent to the standards of the state. [2013 c 171 § 4; 2011 c 32 § 1.]

18.30.130 License renewal. The board shall establish by rule the requirements for renewal of licenses to practice denturism, but shall not increase the licensure requirements provided in this chapter. The secretary shall establish administrative procedures, administrative requirements, and fees for license periods and renewals as provided in RCW 43.70.250 and 43.70.280. [2013 c 171 § 5; 1996 c 191 § 13; 1995 c 198 § 23; 1995 c 1 § 14 (Initiative Measure No. 607, approved November 8, 1994).]

Additional notes found at www.leg.wa.gov

18.30.135 Discipline. The Uniform Disciplinary Act, chapter 18.130 RCW, shall govern the issuance and denial of licenses, unauthorized practice, and the discipline of persons licensed under this chapter. The board shall be the disciplinary authority under this chapter. [2013 c 171 § 6; 1995 c 336 § 3.]

Additional notes found at www.leg.wa.gov

18.30.160 Education and training—Nonorthodontic removable oral devices and teeth whitening services. (Effective July 1, 2014.) Prior to providing the services mentioned in RCW 18.30.010(5) (c) and (d), a licensed dentist must provide documentation to the board that he or she received education and training on providing the services. The board must, by rule, specify the education and training necessary to provide the services mentioned in RCW 18.30.010(5) (c) and (d). [2013 c 172 § 2.]

Effective date—2013 c 172: See note following RCW 18.30.010.

Chapter 18.32 RCW DENTISTRY

Sections

18.32.534 Impaired dentist program—Content—License surcharge.

18.32.534 Impaired dentist program—Content—License surcharge. (1) To implement an impaired dentist program as authorized by RCW 18.130.175, the commission shall enter into a contract with a voluntary substance abuse monitoring program. The impaired dentist program may include any or all of the following:

- (a) Contracting with providers of treatment programs;
- (b) Receiving and evaluating reports of suspected impairment from any source;
- (c) Intervening in cases of verified impairment;
- (d) Referring impaired dentists to treatment programs;
- (e) Monitoring the treatment and rehabilitation of impaired dentists including those ordered by the commission;
- (f) Providing education, prevention of impairment, post-treatment monitoring, and support of rehabilitated impaired dentists; and
- (g) Performing other related activities as determined by the commission.

(2) A contract entered into under subsection (1) of this section shall be financed by a surcharge of up to fifty dollars on each license issuance or renewal to be collected by the department of health from every dentist licensed under chapter 18.32 RCW. These moneys shall be placed in the health professions account to be used solely for the implementation

of the impaired dentist program. [2013 c 129 § 1; 1999 c 179 § 1; 1994 sp.s. c 9 § 220; 1991 c 3 § 72; 1989 c 125 § 1.]

Chapter 18.43 RCW ENGINEERS AND LAND SURVEYORS

Sections

18.43.150 Disposition of fees.

18.43.150 Disposition of fees. All fees collected under the provisions of RCW 18.43.050, 18.43.060, 18.43.080, 18.43.100, and 18.43.130 and fines collected under RCW 18.43.110 shall be paid into the professional engineers' account, which account is hereby established in the state treasury to be used to carry out the purposes and provisions of RCW 18.43.050, 18.43.060, 18.43.080, 18.43.100, 18.43.110, 18.43.120, 18.43.130, and all other duties required for operation and enforcement of this chapter. During the 2013-2015 fiscal biennium, the legislature may transfer moneys from the professional engineers' account to the state general fund such amounts as reflect the excess fund balance of the fund. [2013 2nd sp.s. c 4 § 954; 1991 c 277 § 2; 1985 c 57 § 5; 1965 ex.s. c 126 § 3.]

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

Additional notes found at www.leg.wa.gov

Chapter 18.44 RCW ESCROW AGENT REGISTRATION ACT

Sections

18.44.011 Definitions.
18.44.031 License—Application, requisites.
18.44.201 Financial responsibility—Fidelity bond—Errors and omissions policy—Surety bond.
18.44.457 Possession of property and business—Scope of director's authority.

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

(1) "Committee" means the escrow advisory committee of the state of Washington created by RCW 18.44.500.

(2) "Controlling person" is any person who owns or controls ten percent or more of the beneficial ownership of any escrow agent, regardless of the form of business organization employed and regardless of whether such interest stands in such person's true name or in the name of a nominee.

(3) "Department" means the department of financial institutions.

(4) "Designated escrow officer" means any licensed escrow officer designated by a licensed escrow agent and approved by the director as the licensed escrow officer responsible for supervising that agent's handling of escrow transactions, management of the agent's trust account, and supervision of all other licensed escrow officers employed by the agent.

(5) "Director" means the director of financial institutions, or his or her duly authorized representative.

(6) "Director of licensing" means the director of the department of licensing, or his or her duly authorized representative.

(7) "Escrow" means any transaction, except the acts of a qualified intermediary in facilitating an exchange under section 1031 of the internal revenue code, wherein any person or persons, for the purpose of effecting and closing the sale, purchase, exchange, transfer, encumbrance, or lease of real or personal property to another person or persons, delivers any written instrument, money, evidence of title to real or personal property, or other thing of value to a third person to be held by such third person until the happening of a specified event or the performance of a prescribed condition or conditions, when it is then to be delivered by such third person, in compliance with instructions under which he or she is to act, to a grantee, grantor, promisee, promisor, obligee, obligor, lessee, lessor, bailee, bailor, or any agent or employee thereof. "Escrow" includes the collection and processing of payments and the performance of related services by a third party on seller-financed loans secured by a lien on real or personal property but excludes vessel transfers.

(8) "Escrow agent" means any person engaged in the business of performing for compensation the duties of the third person referred to in subsection (7) of this section.

(9) "Licensed escrow agent" means any sole proprietorship, firm, association, partnership, or corporation holding a license as an escrow agent under the provisions of this chapter.

(10) "Licensed escrow officer" means any natural person handling escrow transactions and licensed as such by the director.

(11) "Person" means a natural person, firm, association, partnership, corporation, limited liability company, or the plural thereof, whether resident, nonresident, citizen, or not.

(12) "Split escrow" means a transaction in which two or more escrow agents act to effect and close an escrow transaction. [2013 c 64 § 1; 2011 1st sp.s. c 21 § 45. Prior: 2010 c 34 § 1; 1999 c 30 § 1; 1995 c 238 § 1; 1985 c 7 § 47; 1979 c 158 § 42; 1977 ex.s. c 156 § 1; 1971 ex.s. c 245 § 1; 1965 c 153 § 1. Formerly RCW 18.44.010.]

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

Additional notes found at www.leg.wa.gov

18.44.031 License—Application, requisites. An application for an escrow agent license must be in writing in such form as is prescribed by the director, and must be verified on oath by the applicant. An application for an escrow agent license must include the following:

(1) The applicant's form of business organization and place of organization;

(2) Information concerning the identity of the applicant, and its officers, directors, owners, partners, controlling persons, and employees, including fingerprints for submission to the Washington state patrol, the federal bureau of investigation, and any government agency or subdivision authorized to receive information for state and national criminal history background checks; personal history; experience; business record; purposes; and other pertinent facts, as the director may reasonably require. The director may also request criminal history record information, including nonconviction data, as defined by RCW 10.97.030. The department may disseminate nonconviction data obtained under this section only to criminal justice agencies. The applicant must pay the

cost of fingerprinting and processing the fingerprints by the department;

(3) If the applicant is a corporation or limited liability company, the address of its physical location, a list of officers, controlling persons, and directors of such corporation or company and their residential addresses, telephone numbers, and other identifying information as the director may determine by rule. If the applicant is a sole proprietorship or partnership, the address of its business location, a list of owners, partners, or controlling persons and their residential addresses, telephone numbers, and other identifying information as the director may determine by rule. Any information in the application regarding the personal residential address or telephone number of any officer, director, partner, owner, controlling person, or employee is exempt from the public records disclosure requirements of chapter 42.56 RCW;

(4) In the event the applicant is doing business under an assumed name, a copy of the business license issued through the business licensing system established under chapter 19.02 RCW, with the registered trade name shown;

(5) The qualifications and business history of the applicant and all of its officers, directors, owners, partners, and controlling persons;

(6) A personal credit report from a recognized credit reporting bureau satisfactory to the director on all officers, directors, owners, partners, and controlling persons of the applicant;

(7) Whether any of the officers, directors, owners, partners, or controlling persons have been convicted of any crime within the preceding ten years which relates directly to the business or duties of escrow agents, or have suffered a judgment within the preceding five years in any civil action involving fraud, misrepresentation, any unfair or deceptive act or practice, or conversion;

(8) The identity of the licensed escrow officer designated by the escrow agent as the designated escrow officer responsible for supervising the agent's escrow activity;

(9) Evidence of compliance with the bonding and insurance requirements of RCW 18.44.201; and

(10) Any other information the director may require by rule. The director may share any information contained within a license application, including fingerprints, with the federal bureau of investigation and other regulatory or law enforcement agencies. [2013 c 144 § 12; 2010 c 34 § 3; 2005 c 274 § 224; 1999 c 30 § 3; 1977 ex.s. c 156 § 3; 1965 c 153 § 3. Formerly RCW 18.44.030.]

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

18.44.201 Financial responsibility—Fidelity bond—Errors and omissions policy—Surety bond. (1) At the time of filing an application for an escrow agent license, or any renewal or reinstatement of an escrow agent license, the applicant shall provide satisfactory evidence to the director of having obtained the following as evidence of financial responsibility:

(a) A fidelity bond providing coverage in the aggregate amount of one million dollars with a deductible no greater than ten thousand dollars covering each corporate officer, partner, escrow officer, and employee of the applicant engaged in escrow transactions;

(b) An errors and omissions policy issued to the escrow agent providing coverage in the minimum aggregate amount of fifty thousand dollars or, alternatively, cash or securities in the principal amount of fifty thousand dollars deposited in an approved depository on condition that they be available for payment of any claim payable under an equivalent errors and omissions policy in that amount and pursuant to rules and regulations adopted by the department for that purpose; and

(c) A surety bond in the amount of ten thousand dollars executed by the applicant as obligor and by a surety company authorized to do a surety business in this state as surety, unless the fidelity bond obtained by the licensee to satisfy the requirement in (a) of this subsection does not have a deductible. The bond shall run to the state of Washington as obligee, and shall run to the benefit of the state and any person or persons who suffer loss by reason of the applicant's or its employee's violation of this chapter. The bond shall be conditioned that the obligor as licensee will faithfully conform to and abide by this chapter and all rules adopted under this chapter, and shall reimburse all persons who suffer loss by reason of a violation of this chapter or rules adopted under this chapter. The bond shall be continuous and may be canceled by the surety upon the surety giving written notice to the director of its intent to cancel the bond. The cancellation shall be effective thirty days after the notice is received by the director. Whether or not the bond is renewed, continued, reinstated, reissued, or otherwise extended, replaced, or modified, including increases or decreases in the penal sum, it shall be considered one continuous obligation, and the surety upon the bond shall not be liable in an aggregate amount exceeding the penal sum set forth on the face of the bond. In no event shall the penal sum, or any portion thereof, at two or more points in time be added together in determining the surety's liability. The bond shall not be liable for any penalties imposed on the licensee, including but not limited to, any increased damages or attorneys' fees, or both, awarded under RCW 19.86.090.

(2) For the purposes of this section, a "fidelity bond" shall mean a primary commercial blanket bond or its equivalent satisfactory to the director and written by an insurer authorized to transact this line of business in the state of Washington. Such bond shall provide fidelity coverage for any fraudulent or dishonest acts committed by any one or more of the corporate officers, partners, sole practitioners, escrow officers, and employees of the applicant engaged in escrow transactions acting alone or in collusion with others. This bond shall be for the sole benefit of the escrow agent and under no circumstances whatsoever shall the bonding company be liable under the bond to any other party unless the corporate officer, partner, or sole practitioner commits a fraudulent or dishonest act, in which case, the bond shall be for the benefit of the harmed consumer. The bond shall name the escrow agent as obligee and shall protect the obligee against the loss of money or other real or personal property belonging to the obligee, or in which the obligee has a pecuniary interest, or for which the obligee is legally liable or held by the obligee in any capacity, whether the obligee is legally liable therefor or not. An escrow agent's bond must be maintained until all accounts have been reconciled and the escrow trust account balance is zero. The bond may be canceled by the insurer upon delivery of thirty days' written notice to the

director and to the escrow agent. In the event that the fidelity bond required under this subsection is not reasonably available, the director may adopt rules to implement a surety bond requirement.

(3) For the purposes of this section, an "errors and omissions policy" shall mean a group or individual insurance policy satisfactory to the director and issued by an insurer authorized to transact insurance business in the state of Washington. Such policy shall provide coverage for unintentional errors and omissions of the escrow agent and its employees, and may be canceled by the insurer upon delivery of thirty days' written notice to the director and to the escrow agent.

(4) Except as provided in RCW 18.44.221, the fidelity bond, surety bond, and the errors and omissions policy required by this section shall be kept in full force and effect as a condition precedent to the escrow agent's authority to transact escrow business in this state, and the escrow agent shall supply the director with satisfactory evidence thereof upon request. [2013 c 64 § 4; 2010 c 34 § 7; 1999 c 30 § 5; 1979 c 70 § 1; 1977 ex.s. c 156 § 5; 1971 ex.s. c 245 § 4; 1965 c 153 § 5. Formerly RCW 18.44.050.]

18.44.457 Possession of property and business—Scope of director's authority. (1) During the time that the director retains possession of the property and business of a licensee, the director has the power and authority to conduct the licensee's business and take any action on behalf of the licensee to protect consumers, including but not limited to discontinuing any violations and unsafe or injurious practices, making good any deficiencies, and making claims against the licensee's fidelity bond, errors and omissions bond, or surety bond on behalf of the company.

(2) The director, the department, and its employees are not subject to liability for actions under this section and RCW 18.44.455 and no moneys from the department's fund may be required to be expended on behalf of the licensee or the licensee's clients, creditors, employees, shareholders, members, investors, or any other party or entity. [2013 c 64 § 3; 2010 c 34 § 12.]

Chapter 18.50 RCW MIDWIFERY

Sections

18.50.115 Administration of drugs and medications—Rules.

18.50.115 Administration of drugs and medications—Rules. A midwife licensed under this chapter may obtain and administer prophylactic ophthalmic medication, postpartum oxytocic, vitamin K, Rho immune globulin (human), and local anesthetic and may administer such other drugs or medications as prescribed by a physician. A pharmacist who dispenses such drugs to a licensed midwife shall not be liable for any adverse reactions caused by any method of use by the midwife.

The secretary, after consultation with representatives of the midwife advisory committee, the pharmacy quality assurance commission, and the medical quality assurance commission, may adopt rules that authorize licensed midwives to purchase and use legend drugs and devices in addition to the

drugs authorized in this chapter. [2013 c 19 § 1; 1994 sp.s. c 9 § 707; 1991 c 3 § 112; 1987 c 467 § 6.]

Additional notes found at www.leg.wa.gov

Chapter 18.53 RCW OPTOMETRY

Sections

18.53.010 Definition—Scope of practice.

18.53.010 Definition—Scope of practice. (1) The practice of optometry is defined as the examination of the human eye, the examination and ascertaining any defects of the human vision system and the analysis of the process of vision. The practice of optometry may include, but not necessarily be limited to, the following:

(a) The employment of any objective or subjective means or method, including the use of drugs, for diagnostic and therapeutic purposes by those licensed under this chapter and who meet the requirements of subsections (2) and (3) of this section, and the use of any diagnostic instruments or devices for the examination or analysis of the human vision system, the measurement of the powers or range of human vision, or the determination of the refractive powers of the human eye or its functions in general; and

(b) The prescription and fitting of lenses, prisms, therapeutic or refractive contact lenses and the adaption or adjustment of frames and lenses used in connection therewith; and

(c) The prescription and provision of visual therapy, therapeutic aids, and other optical devices; and

(d) The ascertainment of the perceptive, neural, muscular, or pathological condition of the visual system; and

(e) The adaptation of prosthetic eyes.

(2)(a) Those persons using topical drugs for diagnostic purposes in the practice of optometry shall have a minimum of sixty hours of didactic and clinical instruction in general and ocular pharmacology as applied to optometry, as established by the board, and certification from an institution of higher learning, accredited by those agencies recognized by the United States office of education or the council on postsecondary accreditation to qualify for certification by the optometry board of Washington to use drugs for diagnostic purposes.

(b) Those persons using or prescribing topical drugs for therapeutic purposes in the practice of optometry must be certified under (a) of this subsection, and must have an additional minimum of seventy-five hours of didactic and clinical instruction as established by the board, and certification from an institution of higher learning, accredited by those agencies recognized by the United States office of education or the council on postsecondary accreditation to qualify for certification by the optometry board of Washington to use drugs for therapeutic purposes.

(c) Those persons using or prescribing drugs administered orally for diagnostic or therapeutic purposes in the practice of optometry shall be certified under (b) of this subsection, and shall have an additional minimum of sixteen hours of didactic and eight hours of supervised clinical instruction as established by the board, and certification from an institution of higher learning, accredited by those agencies recog-

nized by the United States office of education or the council on postsecondary accreditation to qualify for certification by the optometry board of Washington to administer, dispense, or prescribe oral drugs for diagnostic or therapeutic purposes.

(d) Those persons administering epinephrine by injection for treatment of anaphylactic shock in the practice of optometry must be certified under (b) of this subsection and must have an additional minimum of four hours of didactic and supervised clinical instruction, as established by the board, and certification from an institution of higher learning, accredited by those agencies recognized by the United States office of education or the council on postsecondary accreditation to qualify for certification by the optometry board to administer epinephrine by injection.

(e) Such course or courses shall be the fiscal responsibility of the participating and attending optometrist.

(f)(i) All persons receiving their initial license under this chapter on or after January 1, 2007, must be certified under (a), (b), (c), and (d) of this subsection.

(ii) All persons licensed under this chapter on or after January 1, 2009, must be certified under (a) and (b) of this subsection.

(iii) All persons licensed under this chapter on or after January 1, 2011, must be certified under (a), (b), (c), and (d) of this subsection.

(3) The board shall establish a list of topical drugs for diagnostic and treatment purposes limited to the practice of optometry, and no person licensed pursuant to this chapter shall prescribe, dispense, purchase, possess, or administer drugs except as authorized and to the extent permitted by the board.

(4) The board must establish a list of oral Schedule III through V controlled substances and any oral legend drugs, with the approval of and after consultation with the pharmacy quality assurance commission. No person licensed under this chapter may use, prescribe, dispense, purchase, possess, or administer these drugs except as authorized and to the extent permitted by the board. No optometrist may use, prescribe, dispense, or administer oral corticosteroids.

(a) The board, with the approval of and in consultation with the pharmacy quality assurance commission, must establish, by rule, specific guidelines for the prescription and administration of drugs by optometrists, so that licensed optometrists and persons filling their prescriptions have a clear understanding of which drugs and which dosages or forms are included in the authority granted by this section.

(b) An optometrist may not:

(i) Prescribe, dispense, or administer a controlled substance for more than seven days in treating a particular patient for a single trauma, episode, or condition or for pain associated with or related to the trauma, episode, or condition; or

(ii) Prescribe an oral drug within ninety days following ophthalmic surgery unless the optometrist consults with the treating ophthalmologist.

(c) If treatment exceeding the limitation in (b)(i) of this subsection is indicated, the patient must be referred to a physician licensed under chapter 18.71 RCW.

(d) The prescription or administration of drugs as authorized in this section is specifically limited to those drugs appropriate to treatment of diseases or conditions of the

human eye and the adnexa that are within the scope of practice of optometry. The prescription or administration of drugs for any other purpose is not authorized by this section.

(5) The board shall develop a means of identification and verification of optometrists certified to use therapeutic drugs for the purpose of issuing prescriptions as authorized by this section.

(6) Nothing in this chapter may be construed to authorize the use, prescription, dispensing, purchase, possession, or administration of any Schedule I or II controlled substance. The provisions of this subsection must be strictly construed.

(7) With the exception of the administration of epinephrine by injection for the treatment of anaphylactic shock, no injections or infusions may be administered by an optometrist.

(8) Nothing in this chapter may be construed to authorize optometrists to perform ophthalmic surgery. Ophthalmic surgery is defined as any invasive procedure in which human tissue is cut, ablated, or otherwise penetrated by incision, injection, laser, ultrasound, or other means, in order to: Treat human eye diseases; alter or correct refractive error; or alter or enhance cosmetic appearance. Nothing in this chapter limits an optometrist's ability to use diagnostic instruments utilizing laser or ultrasound technology. Ophthalmic surgery, as defined in this subsection, does not include removal of superficial ocular foreign bodies, epilation of misaligned eyelashes, placement of punctal or lacrimal plugs, diagnostic dilation and irrigation of the lacrimal system, orthokeratology, prescription and fitting of contact lenses with the purpose of altering refractive error, or other similar procedures within the scope of practice of optometry. [2013 c 19 § 2; 2006 c 232 § 1; 2003 c 142 § 1; 1989 c 36 § 1; 1981 c 58 § 2; 1975 1st ex.s. c 69 § 2; 1919 c 144 § 1; RRS § 10147. Prior: 1909 c 235 § 1.]

Severability—2003 c 142: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2003 c 142 § 5.]

Chapter 18.55 RCW OCULARISTS

Sections

18.55.040 License applicants—Qualifications—Examination.

18.55.040 License applicants—Qualifications—Examination. No applicant shall be licensed under this chapter until the applicant complies with administrative procedures, administrative requirements, and fees determined by the secretary according to RCW 43.70.250 and 43.70.280. Qualifications must require that the applicant:

- (1) Is eighteen years or more of age;
- (2) Has graduated from high school or has received a high school equivalency certificate as provided in RCW 28B.50.536;
- (3) Is of good moral character; and
- (4)(a) Had at least ten thousand hours of apprenticeship training under the direct supervision of a licensed ocularist; or
- (b) Successfully completed a prescribed course in ocularist training programs approved by the secretary; or

(c) Has had at least ten thousand hours of apprenticeship training under the direct supervision of a practicing ocularist, or has the equivalent experience as a practicing ocularist, or any combination of training and supervision, not in the state of Washington; and

(5) Successfully passes an examination conducted or approved by the secretary. [2013 c 39 § 2; 1996 c 191 § 32; 1991 c 180 § 4; (1991 c 3 § 144 repealed by 1991 sp.s. c 11 § 2); 1985 c 7 § 53; 1980 c 101 § 4.]

Chapter 18.57A RCW OSTEOPATHIC PHYSICIAN ASSISTANTS

Sections

18.57A.030 Limitations on practice.
18.57A.035 Limitation on practice—Remote sites.
18.57A.040 Practice arrangements.
18.57A.080 Signing and attesting to required documentation.

18.57A.030 Limitations on practice. An osteopathic physician assistant as defined in this chapter may practice osteopathic medicine in this state only with the approval of the delegation agreement by the board and only to the extent permitted by the board. An osteopathic physician assistant who has received a license but who has not received board approval of the delegation agreement under RCW 18.57A.040 may not practice. An osteopathic physician assistant shall be subject to discipline by the board under the provisions of chapter 18.130 RCW. [2013 c 203 § 3; 1993 c 28 § 2; 1986 c 259 § 95; 1971 ex.s. c 30 § 9.]

Rules—2013 c 203: See note following RCW 18.57A.035.

Additional notes found at www.leg.wa.gov

18.57A.035 Limitation on practice—Remote sites. (1) No licensee may be utilized in a remote site without approval by the board or its designee. A "remote site" is defined as a setting physically separate from the sponsoring or supervising physician's primary place for meeting patients or a setting where the physician is present less than twenty-five percent of the practice time of the licensee.

(2)(a) Approval by the commission or its designee may be granted to utilize a licensee in a remote site if:

- (i) There is a demonstrated need for the utilization;
- (ii) Adequate provision for timely communication between the primary or alternate physician and the licensee exists;

(iii) The responsible sponsoring or supervising physician spends at least ten percent of the practice time of the licensee in the remote site unless the sponsoring physician demonstrates that adequate supervision is being maintained by an alternate method such as telecommunication.

(b) The names of the sponsoring or supervising physician and the licensee must be prominently displayed at the entrance to the clinic or in the reception area.

(3) No physician assistant holding an interim permit may be utilized in a remote site setting. [2013 c 203 § 1.]

Rules—2013 c 203: "The medical quality assurance commission and board of osteopathic medicine and surgery, working in collaboration with a statewide organization representing the interests of physician assistants, shall adopt new rules modernizing the current rules regulating physician assistants and report to the legislature by December 31, 2014." [2013 c 203 § 8.]

18.57A.040 Practice arrangements. (1) No osteopathic physician assistant practicing in this state shall be employed or supervised by an osteopathic physician or physician group without the approval of the board.

(2) Prior to commencing practice, an osteopathic physician assistant licensed in this state shall apply to the board for permission to be employed or supervised by an osteopathic physician or physician group. The delegation agreement shall be jointly submitted by the osteopathic physician or physician group and osteopathic physician assistant. The secretary may charge a fee as provided in RCW 43.70.250 to recover the cost for the plan review. The delegation agreement shall delineate the manner and extent to which the physician assistant would practice and be supervised. Whenever an osteopathic physician assistant is practicing in a manner inconsistent with the approved delegation agreement, the board may take disciplinary action under chapter 18.130 RCW.

(3) An osteopathic physician may enter into delegation agreements with five physician assistants, but may petition the board for a waiver of this limit. However, no osteopathic physician may have under his or her supervision: (a) More than three physician assistants who are working in remote sites; or (b) more physician assistants than the osteopathic physician can adequately supervise. [2013 c 203 § 4; 1993 c 28 § 3; 1991 c 3 § 152. Prior: 1986 c 259 § 96; 1985 c 7 § 57; 1975 1st ex.s. c 30 § 60; 1971 ex.s. c 30 § 10.]

Rules—2013 c 203: See note following RCW 18.57A.035.

Additional notes found at www.leg.wa.gov

18.57A.080 Signing and attesting to required documentation. An osteopathic physician assistant may sign and attest to any certificates, cards, forms, or other required documentation that the osteopathic physician assistant's supervising osteopathic physician or osteopathic physician group may sign, provided that it is within the osteopathic physician assistant's scope of practice and is consistent with the terms of the osteopathic physician assistant's delegation agreement as required by this chapter. [2013 c 203 § 5; 2007 c 264 § 2.]

Rules—2013 c 203: See note following RCW 18.57A.035.

Finding—Intent—2007 c 264: See note following RCW 18.71A.090.

Chapter 18.64 RCW PHARMACISTS

Sections

18.64.001	Pharmacy quality assurance commission—Creation—Membership—Oath—Vacancies.
18.64.003	Commission—Meetings—Chairperson—Compensation and travel expenses.
18.64.005	Commission—Powers and duties.
18.64.009	Department of health—Enforcement employees declared to be peace officers—Authority.
18.64.011	Definitions.
18.64.044	Shopkeeper's registration—Penalty—Ephedrine/pseudoephedrine/phenylpropanolamine.
18.64.046	Wholesaler's license—Required—Authority of licensee—Penalty—Ephedrine/pseudoephedrine/phenylpropanolamine.
18.64.047	Itinerant vendor's or peddler's registration—Fee—Penalties—Ephedrine/pseudoephedrine/phenylpropanolamine.
18.64.080	Licensing of pharmacists—Registration of interns—Prerequisites—Examinations—Reciprocity—Fees—Renewal.
18.64.140	License—Fees—Display—Inactive license.
18.64.160	Disciplinary action against pharmacist's and intern's licenses—Grounds.

18.64.165	Refusal, suspension, and revocation of other licenses.
18.64.200	Refusal, suspension, and revocation of other licenses—Appeal procedure.
18.64.205	Retired active license status.
18.64.245	Prescription records—Penalty.
18.64.246	Prescriptions—Labels—Cover or cap to meet safety standards—Penalty.
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18.64.257	Prescription of legend drugs by dialysis programs.
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18.64.310	Department of health—Powers and duties.
18.64.360	Nonresident pharmacies—Definition—Requirements—Exemption—Reciprocity with Canadian pharmacies.
18.64.390	Nonresident pharmacies—Violations—Penalties.
18.64.410	Nonresident pharmacies—Rules.
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18.64.450	Health care entity—License requirements for legend drugs and controlled substances—Exception.
18.64.470	Health care entity—Records.
18.64.480	Waiver request to allow importation of prescription drugs from Canada.
18.64.490	Waiver request to authorize the state to license Canadian, United Kingdom, Irish, and other nondomestic prescription drug wholesalers under RCW 18.64.046—Implementation—Rules.
18.64.500	Tamper-resistant prescription pads or paper.
18.64.510	Limitation on authority to regulate or establish standards regarding a jail.
18.64.520	Dispensing of drug other than controlled substance—Supply limit.

18.64.001 Pharmacy quality assurance commission—Creation—Membership—Oath—Vacancies.

There shall be a state pharmacy quality assurance commission consisting of fifteen members, to be appointed by the governor by and with the advice and consent of the senate. Ten of the members shall be designated as pharmacist members, four of the members shall be designated a public member, and one member shall be a pharmacy technician.

Each pharmacist member shall be a citizen of the United States and a resident of this state, and at the time of his or her appointment shall have been a duly registered pharmacist under the laws of this state for a period of at least five consecutive years immediately preceding his or her appointment and shall at all times during his or her incumbency continue to be a duly licensed pharmacist: PROVIDED, That subject to the availability of qualified candidates the governor shall appoint pharmacist members representative of the areas of practice and geographically representative of the state of Washington.

The public member shall be a citizen of the United States and a resident of this state. The public member shall be appointed from the public at large, but shall not be affiliated with any aspect of pharmacy.

Members of the commission shall hold office for a term of four years, and the terms shall be staggered so that the terms of office of not more than two members will expire simultaneously on the third Monday in January of each year.

No person who has been appointed to and served for two four year terms shall be eligible for appointment to the commission.

Each member shall qualify by taking the usual oath of a state officer, which shall be filed with the secretary of state, and each member shall hold office for the term of his or her appointment and until his or her successor is appointed and qualified.

In case of the resignation or disqualification of a member, or a vacancy occurring from any cause, the governor

shall appoint a successor for the unexpired term. [2013 c 19 § 3; 2011 c 336 § 493; 1984 c 153 § 1; 1981 c 338 § 17; 1973 1st ex.s. c 18 § 1; 1963 c 38 § 16; 1935 c 98 § 1; RRS § 10132. Formerly RCW 43.69.010.]

18.64.003 Commission—Meetings—Chairperson—Compensation and travel expenses. Members of the commission shall meet at such places and times as it shall determine and as often as necessary to discharge the duties imposed upon it. The commission shall elect a chairperson and a vice chairperson from among its members. Each member shall be compensated in accordance with RCW 43.03.240 and shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060. [2013 c 19 § 4; 1984 c 287 § 43; 1979 c 90 § 1; 1975-'76 2nd ex.s. c 34 § 40; 1963 c 38 § 17; 1935 c 98 § 2; RRS § 10132-1. Formerly RCW 43.69.020.]

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

Additional notes found at www.leg.wa.gov

18.64.005 Commission—Powers and duties. The commission shall:

(1) Regulate the practice of pharmacy and enforce all laws placed under its jurisdiction;

(2) Prepare or determine the nature of, and supervise the grading of, examinations for applicants for pharmacists' licenses;

(3) Establish the qualifications for licensure of pharmacists or pharmacy interns;

(4) Conduct hearings for the revocation or suspension of licenses, permits, registrations, certificates, or any other authority to practice granted by the commission, which hearings may also be conducted by an administrative law judge appointed under chapter 34.12 RCW;

(5) Issue subpoenas and administer oaths in connection with any hearing, or disciplinary proceeding held under this chapter or any other chapter assigned to the commission;

(6) Assist the regularly constituted enforcement agencies of this state in enforcing all laws pertaining to drugs, controlled substances, and the practice of pharmacy, or any other laws or rules under its jurisdiction;

(7) Promulgate rules for the dispensing, distribution, wholesaling, and manufacturing of drugs and devices and the practice of pharmacy for the protection and promotion of the public health, safety, and welfare. Violation of any such rules shall constitute grounds for refusal, suspension, or revocation of licenses or any other authority to practice issued by the commission;

(8) Adopt rules establishing and governing continuing education requirements for pharmacists and other licensees applying for renewal of licenses under this chapter;

(9) Be immune, collectively and individually, from suit in any action, civil or criminal, based upon any disciplinary proceedings or other official acts performed as members of the commission. Such immunity shall apply to employees of the department when acting in the course of disciplinary proceedings;

(10) Suggest strategies for preventing, reducing, and eliminating drug misuse, diversion, and abuse, including pro-

fessional and public education, and treatment of persons misusing and abusing drugs;

(11) Conduct or encourage educational programs to be conducted to prevent the misuse, diversion, and abuse of drugs for health care practitioners and licensed or certified health care facilities;

(12) Monitor trends of drug misuse, diversion, and abuse and make periodic reports to disciplinary boards of licensed health care practitioners and education, treatment, and appropriate law enforcement agencies regarding these trends;

(13) Enter into written agreements with all other state and federal agencies with any responsibility for controlling drug misuse, diversion, or abuse and with health maintenance organizations, health care service contractors, and health care providers to assist and promote coordination of agencies responsible for ensuring compliance with controlled substances laws and to monitor observance of these laws and cooperation between these agencies. The department of social and health services, the department of labor and industries, and any other state agency including licensure disciplinary boards, shall refer all apparent instances of over-prescribing by practitioners and all apparent instances of legend drug overuse to the department. The department shall also encourage such referral by health maintenance organizations, health service contractors, and health care providers. [2013 c 19 § 5; 1990 c 83 § 1; 1989 1st ex.s. c 9 § 409; 1984 c 153 § 2; 1981 c 67 § 21; 1979 c 90 § 2; 1973 1st ex.s. c 18 § 2; 1963 c 38 § 18; 1935 c 98 § 3; RRS § 10132-2. Formerly RCW 43.69.030.]

Additional notes found at www.leg.wa.gov

18.64.009 Department of health—Enforcement employees declared to be peace officers—Authority. Employees of the department, who are designated by the commission as enforcement officers, are declared to be peace officers and shall be vested with police powers to enforce chapters 18.64, 69.04, 69.36, 69.40, 69.41, and 69.50 RCW and all other laws enforced by the commission. [2013 c 19 § 6; 1989 1st ex.s. c 9 § 411; 1985 c 7 § 59; 1979 c 90 § 4; 1969 ex.s. c 82 § 1.]

Additional notes found at www.leg.wa.gov

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

(1) "Administer" means the direct application of a drug or device, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject.

(2) "Business licensing system" means the mechanism established by chapter 19.02 RCW by which business licenses, endorsed for individual state-issued licenses, are issued and renewed utilizing a business license application and a business license expiration date common to each renewable license endorsement.

(3) "Commission" means the pharmacy quality assurance commission.

(4) "Compounding" means the act of combining two or more ingredients in the preparation of a prescription.

(5) "Controlled substance" means a drug or substance, or an immediate precursor of such drug or substance, so desig-

nated under or pursuant to the provisions of chapter 69.50 RCW.

(6) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a drug or device, whether or not there is an agency relationship.

(7) "Department" means the department of health.

(8) "Device" means instruments, apparatus, and contrivances, including their components, parts, and accessories, intended (a) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in human beings or other animals, or (b) to affect the structure or any function of the body of human beings or other animals.

(9) "Dispense" means the interpretation of a prescription or order for a drug, biological, or device and, pursuant to that prescription or order, the proper selection, measuring, compounding, labeling, or packaging necessary to prepare that prescription or order for delivery.

(10) "Distribute" means the delivery of a drug or device other than by administering or dispensing.

(11) "Drug" and "devices" do not include surgical or dental instruments or laboratory materials, gas and oxygen, therapy equipment, X-ray apparatus or therapeutic equipment, their component parts or accessories, or equipment, instruments, apparatus, or contrivances used to render such articles effective in medical, surgical, or dental treatment, or for use or consumption in or for mechanical, industrial, manufacturing, or scientific applications or purposes. "Drug" also does not include any article or mixture covered by the Washington pesticide control act (chapter 15.58 RCW), as enacted or hereafter amended, nor medicated feed intended for and used exclusively as a feed for animals other than human beings.

(12) "Drugs" means:

(a) Articles recognized in the official United States pharmacopoeia or the official homeopathic pharmacopoeia of the United States;

(b) Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in human beings or other animals;

(c) Substances (other than food) intended to affect the structure or any function of the body of human beings or other animals; or

(d) Substances intended for use as a component of any substances specified in (a), (b), or (c) of this subsection, but not including devices or their component parts or accessories.

(13) "Health care entity" means an organization that provides health care services in a setting that is not otherwise licensed by the state. Health care entity includes a freestanding outpatient surgery center or a freestanding cardiac care center. It does not include an individual practitioner's office or a multipractitioner clinic.

(14) "Labeling" means the process of preparing and affixing a label to any drug or device container. The label must include all information required by current federal and state law and pharmacy rules.

(15) "Legend drugs" means any drugs which are required by any applicable federal or state law or regulation to be dispensed on prescription only or are restricted to use by practitioners only.

(16) "Manufacture" means the production, preparation, propagation, compounding, or processing of a drug or other

substance or device or the packaging or repackaging of such substance or device, or the labeling or relabeling of the commercial container of such substance or device, but does not include the activities of a practitioner who, as an incident to his or her administration or dispensing such substance or device in the course of his or her professional practice, personally prepares, compounds, packages, or labels such substance or device. "Manufacture" includes the distribution of a licensed pharmacy compounded drug product to other state licensed persons or commercial entities for subsequent resale or distribution, unless a specific product item has approval of the board. The term does not include:

(a) The activities of a licensed pharmacy that compounds a product on or in anticipation of an order of a licensed practitioner for use in the course of their professional practice to administer to patients, either personally or under their direct supervision;

(b) The practice of a licensed pharmacy when repackaging commercially available medication in small, reasonable quantities for a practitioner legally authorized to prescribe the medication for office use only;

(c) The distribution of a drug product that has been compounded by a licensed pharmacy to other appropriately licensed entities under common ownership or control of the facility in which the compounding takes place; or

(d) The delivery of finished and appropriately labeled compounded products dispensed pursuant to a valid prescription to alternate delivery locations, other than the patient's residence, when requested by the patient, or the prescriber to administer to the patient, or to another licensed pharmacy to dispense to the patient.

(17) "Manufacturer" means a person, corporation, or other entity engaged in the manufacture of drugs or devices.

(18) "Nonlegend" or "nonprescription" drugs means any drugs which may be lawfully sold without a prescription.

(19) "Person" means an individual, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

(20) "Pharmacist" means a person duly licensed by the commission to engage in the practice of pharmacy.

(21) "Pharmacy" means every place properly licensed by the commission where the practice of pharmacy is conducted.

(22) "Poison" does not include any article or mixture covered by the Washington pesticide control act (chapter 15.58 RCW), as enacted or hereafter amended.

(23) "Practice of pharmacy" includes the practice of and responsibility for: Interpreting prescription orders; the compounding, dispensing, labeling, administering, and distributing of drugs and devices; the monitoring of drug therapy and use; the initiating or modifying of drug therapy in accordance with written guidelines or protocols previously established and approved for his or her practice by a practitioner authorized to prescribe drugs; the participating in drug utilization reviews and drug product selection; the proper and safe storing and distributing of drugs and devices and maintenance of proper records thereof; the providing of information on legend drugs which may include, but is not limited to, the advising of therapeutic values, hazards, and the uses of drugs and devices.

(24) "Practitioner" means a physician, dentist, veterinarian, nurse, or other person duly authorized by law or rule in the state of Washington to prescribe drugs.

(25) "Prescription" means an order for drugs or devices issued by a practitioner duly authorized by law or rule in the state of Washington to prescribe drugs or devices in the course of his or her professional practice for a legitimate medical purpose.

(26) "Secretary" means the secretary of health or the secretary's designee.

(27) "Wholesaler" means a corporation, individual, or other entity which buys drugs or devices for resale and distribution to corporations, individuals, or entities other than consumers. [2013 c 146 § 1; 2013 c 144 § 13; 2013 c 19 § 7. Prior: 2009 c 549 § 1008; 1997 c 129 § 1; 1995 c 319 § 2; 1989 1st ex.s. c 9 § 412; 1984 c 153 § 3; 1982 c 182 § 29; 1979 c 90 § 5; 1963 c 38 § 1.]

Reviser's note: (1) The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

(2) This section was amended by 2013 c 19 § 7, 2013 c 144 § 13, and by 2013 c 146 § 1, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2013 c 146: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 7, 2013]." [2013 c 146 § 3.]

Additional notes found at www.leg.wa.gov

18.64.044 Shopkeeper's registration—Penalty—Ephedrine/pseudoephedrine/phenylpropanolamine. (1) A shopkeeper registered as provided in this section may sell nonprescription drugs, if such drugs are sold in the original package of the manufacturer.

(2) Every shopkeeper not a licensed pharmacist, desiring to secure the benefits and privileges of this section, is required to register as a shopkeeper through the business licensing system established under chapter 19.02 RCW, and he or she must pay the fee determined by the secretary for registration, and on a date to be determined by the secretary thereafter the fee determined by the secretary for renewal of the registration; and must at all times keep said registration or the current renewal thereof conspicuously exposed in the location to which it applies. In event such shopkeeper's registration is not renewed by the business license expiration date, no renewal or new registration may be issued except upon payment of the registration renewal fee and the business license delinquency fee under chapter 19.02 RCW. This registration fee does not authorize the sale of legend drugs or controlled substances.

(3) The registration fees determined by the secretary under subsection (2) of this section may not exceed the cost of registering the shopkeeper.

(4) Any shopkeeper who vends or sells, or offers to sell to the public any such nonprescription drug or preparation without having registered to do so as provided in this section, is guilty of a misdemeanor and each sale or offer to sell constitutes a separate offense.

(5) A shopkeeper who is not a licensed pharmacy may purchase products containing any detectable quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, only from a whole-

saler licensed by the department under RCW 18.64.046 or from a manufacturer licensed by the department under RCW 18.64.045. The commission must issue a warning to a shopkeeper who violates this subsection, and may suspend or revoke the registration of the shopkeeper for a subsequent violation.

(6) A shopkeeper who has purchased products containing any detectable quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, in a suspicious transaction as defined in RCW 69.43.035, is subject to the following requirements:

(a) The shopkeeper may not sell any quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, if the total monthly sales of these products exceed ten percent of the shopkeeper's total prior monthly sales of nonprescription drugs in March through October. In November through February, the shopkeeper may not sell any quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, if the total monthly sales of these products exceed twenty percent of the shopkeeper's total prior monthly sales of nonprescription drugs. For purposes of this section, "monthly sales" means total dollars paid by buyers. The commission may suspend or revoke the registration of a shopkeeper who violates this subsection.

(b) The shopkeeper must maintain inventory records of the receipt and disposition of nonprescription drugs, utilizing existing inventory controls if an auditor or investigator can determine compliance with (a) of this subsection, and otherwise in the form and manner required by the commission. The records must be available for inspection by the commission or any law enforcement agency and must be maintained for two years. The commission may suspend or revoke the registration of a shopkeeper who violates this subsection. For purposes of this subsection, "disposition" means the return of product to the wholesaler or distributor. [2013 c 144 § 14; 2013 c 19 § 8; 2005 c 388 § 5; 2004 c 52 § 2. Prior: 1989 1st ex.s. c 9 § 401; 1989 c 352 § 1; 1984 c 153 § 5; 1982 c 182 § 30; 1979 c 90 § 17.]

Reviser's note: This section was amended by 2013 c 19 § 8 and by 2013 c 144 § 14, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Finding—Effective dates—Severability—2005 c 388: See notes following RCW 69.43.105.

Finding—2004 c 52: "The legislature finds that quantities of ephedrine, pseudoephedrine, and phenylpropanolamine continue to be sold at the wholesale and retail levels far in excess of legitimate consumer needs. The excess quantities being sold are most likely used in the criminal manufacture of methamphetamine. It is therefore necessary for the legislature to further regulate the sales of these drugs, including sales from out-of-state sources, in order to reduce the threat that methamphetamine presents to the people of the state." [2004 c 52 § 1.]

Severability—2004 c 52: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2004 c 52 § 8.]

Effective date—2004 c 52: "This act takes effect July 1, 2004." [2004 c 52 § 9.]

Business licensing

delinquency fee—Rate—Disposition: RCW 19.02.085.

expiration date: RCW 19.02.090.

system

generally: RCW 18.64.011(3).

to include additional licenses: RCW 19.02.110.

Additional notes found at www.leg.wa.gov

18.64.046 Wholesaler's license—Required—Authority of licensee—Penalty—Ephedrine/pseudoephedrine/phenylpropanolamine. (1) The owner of each place of business which sells legend drugs and nonprescription drugs, or nonprescription drugs at wholesale shall pay a license fee to be determined by the secretary, and thereafter, on or before a date to be determined by the secretary as provided in RCW 43.70.250 and 43.70.280, a like fee to be determined by the secretary, for which the owner shall receive a license of location from the department, which shall entitle such owner to either sell legend drugs and nonprescription drugs or nonprescription drugs at wholesale at the location specified for the period ending on a date to be determined by the secretary, and each such owner shall at the time of payment of such fee file with the department, on a blank therefor provided, a declaration of ownership and location, which declaration of ownership and location so filed as aforesaid shall be deemed presumptive evidence of the ownership of such place of business mentioned therein. It shall be the duty of the owner to notify immediately the department of any change of location and ownership and to keep the license of location or the renewal thereof properly exhibited in such place of business.

(2) Failure to conform with this section is a misdemeanor, and each day that the failure continues is a separate offense.

(3) In event the license fee remains unpaid on the date due, no renewal or new license shall be issued except upon compliance with administrative procedures, administrative requirements, and fees determined as provided in RCW 43.70.250 and 43.70.280.

(4) No wholesaler may sell any quantity of drug products containing ephedrine, pseudoephedrine, phenylpropanolamine, or their salts, isomers, or salts of isomers, if the total monthly sales of these products to persons within the state of Washington exceed five percent of the wholesaler's total prior monthly sales of nonprescription drugs to persons within the state in March through October. In November through February, no wholesaler may sell any quantity of drug products containing ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers if the total monthly sales of these products to persons within the state of Washington exceed ten percent of the wholesaler's total prior monthly sales of nonprescription drugs to persons within the state. For purposes of this section, monthly sales means total dollars paid by buyers. The commission may suspend or revoke the license of any wholesaler that violates this section.

(5) The commission may exempt a wholesaler from the limitations of subsection (4) of this section if it finds that the wholesaler distributes nonprescription drugs only through transactions between divisions, subsidiaries, or related companies when the wholesaler and the retailer are related by common ownership, and that neither the wholesaler nor the retailer has a history of suspicious transactions in precursor drugs as defined in RCW 69.43.035.

(6) The requirements for a license apply to all persons, in Washington and outside of Washington, who sell both legend

drugs and nonprescription drugs and to those who sell only nonprescription drugs, at wholesale to pharmacies, practitioners, and shopkeepers in Washington.

(7)(a) No wholesaler may sell any product containing any detectable quantity of ephedrine, pseudoephedrine, phenylpropanolamine, or their salts, isomers, or salts of isomers, to any person in Washington other than a pharmacy licensed under this chapter, a shopkeeper or itinerant vendor registered under this chapter, a practitioner as defined in RCW 18.64.011, or a traditional Chinese herbal practitioner as defined in RCW 69.43.105.

(b) A violation of this subsection is punishable as a class C felony according to chapter 9A.20 RCW, and each sale in violation of this subsection constitutes a separate offense. [2013 c 19 § 9; 2005 c 388 § 6; 2004 c 52 § 3; 2003 c 53 § 133; 1996 c 191 § 45; 1991 c 229 § 5; 1989 1st ex.s. c 9 § 417; 1984 c 153 § 7; 1979 c 90 § 18.]

Finding—Effective dates—Severability—2005 c 388: See notes following RCW 69.43.105.

Finding—Severability—Effective date—2004 c 52: See notes following RCW 18.64.044.

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

Additional notes found at www.leg.wa.gov

18.64.047 Itinerant vendor's or peddler's registration—Fee—Penalties—Ephedrine/pseudoephedrine/phenylpropanolamine. (1) Any itinerant vendor or any peddler of any nonprescription drug or preparation for the treatment of disease or injury, shall pay a registration fee determined by the secretary on a date to be determined by the secretary as provided in RCW 43.70.250 and 43.70.280. The department may issue a registration to such vendor on an approved application made to the department.

(2) Any itinerant vendor or peddler who shall vend or sell, or offer to sell to the public any such nonprescription drug or preparation without having registered to do so as provided in this section, is guilty of a misdemeanor and each sale or offer to sell shall constitute a separate offense.

(3) In event the registration fee remains unpaid on the date due, no renewal or new registration shall be issued except upon compliance with administrative procedures, administrative requirements, and fees determined as provided in RCW 43.70.250 and 43.70.280. This registration shall not authorize the sale of legend drugs or controlled substances.

(4) An itinerant vendor may purchase products containing any detectable quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers only from a wholesaler licensed by the department under RCW 18.64.046 or from a manufacturer licensed by the department under RCW 18.64.045. The commission shall issue a warning to an itinerant vendor who violates this subsection, and may suspend or revoke the registration of the vendor for a subsequent violation.

(5) An itinerant vendor who has purchased products containing any detectable quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, in a suspicious transaction as defined in RCW 69.43.035, is subject to the following requirements:

(a) The itinerant vendor may not sell any quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, or

their salts, isomers, or salts of isomers, if the total monthly sales of these products exceed ten percent of the vendor's total prior monthly sales of nonprescription drugs in March through October. In November through February, the vendor may not sell any quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, if the total monthly sales of these products exceed twenty percent of the vendor's total prior monthly sales of nonprescription drugs. For purposes of this section, "monthly sales" means total dollars paid by buyers. The commission may suspend or revoke the registration of an itinerant vendor who violates this subsection.

(b) The itinerant vendor shall maintain inventory records of the receipt and disposition of nonprescription drugs, utilizing existing inventory controls if an auditor or investigator can determine compliance with (a) of this subsection, and otherwise in the form and manner required by the commission. The records must be available for inspection by the commission or any law enforcement agency and must be maintained for two years. The commission may suspend or revoke the registration of an itinerant vendor who violates this subsection. For purposes of this subsection, "disposition" means the return of product to the wholesaler or distributor. [2013 c 19 § 10; 2005 c 388 § 7; 2004 c 52 § 4; 2003 c 53 § 134; 1996 c 191 § 46; 1991 c 229 § 6; 1989 1st ex.s. c 9 § 418; 1984 c 153 § 8; 1979 c 90 § 10; 1971 ex.s. c 201 § 4; 1963 c 38 § 5; 1949 c 153 § 3; 1935 c 98 § 7; 1899 c 121 § 16; Rem. Supp. 1949 § 10141. Formerly RCW 18.60.010 through 18.60.030.]

Finding—Effective dates—Severability—2005 c 388: See notes following RCW 69.43.105.

Finding—Severability—Effective date—2004 c 52: See notes following RCW 18.64.044.

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

Additional notes found at www.leg.wa.gov

18.64.080 Licensing of pharmacists—Registration of interns—Prerequisites—Examinations—Reciprocity—Fees—Renewal. (1) The department may license as a pharmacist any person who has filed an application therefor, subscribed by the person under oath or affirmation, containing such information as the commission may by regulation require, and who—

- (a) Is at least eighteen years of age;
- (b) Has satisfied the commission that he or she is of good moral and professional character, that he or she will carry out the duties and responsibilities required of a pharmacist, and that he or she is not unfit or unable to practice pharmacy by reason of the extent or manner of his or her proven use of alcoholic beverages, drugs, or controlled substances, or by reason of a proven physical or mental disability;
- (c) Holds a baccalaureate degree in pharmacy or a doctor of pharmacy degree granted by a school or college of pharmacy which is accredited by the commission;
- (d) Has completed or has otherwise met the internship requirements as set forth in commission rules;
- (e) Has satisfactorily passed the necessary examinations approved by the commission and administered by the department.

(2) The department shall, at least once in every calendar year, offer an examination to all applicants for a pharmacist license who have completed their educational and internship requirements pursuant to rules promulgated by the commission. The examination shall be determined by the commission. In case of failure at a first examination, the applicant shall have within three years the privilege of a second and third examination. In case of failure in a third examination, the applicant shall not be eligible for further examination until he or she has satisfactorily completed additional preparation as directed and approved by the commission. The applicant must pay the examination fee determined by the secretary for each examination taken. Upon passing the required examinations and complying with all the rules and regulations of the commission and the provisions of this chapter, the department shall grant the applicant a license as a pharmacist and issue to him or her a certificate qualifying him or her to enter into the practice of pharmacy.

(3) Any person enrolled as a student of pharmacy in an accredited college may file with the department an application for registration as a pharmacy intern in which application he or she shall be required to furnish such information as the commission may, by regulation, prescribe and, simultaneously with the filing of said application, shall pay to the department a fee to be determined by the secretary. All certificates issued to pharmacy interns shall be valid for a period to be determined by the commission, but in no instance shall the certificate be valid if the individual is no longer making timely progress toward graduation, provided however, the commission may issue an intern certificate to a person to complete an internship to be eligible for initial licensure or for the reinstatement of a previously licensed pharmacist.

(4) To assure adequate practical instruction, pharmacy internship experience as required under this chapter shall be obtained after registration as a pharmacy intern by practice in any licensed pharmacy or other program meeting the requirements promulgated by regulation of the commission, and shall include such instruction in the practice of pharmacy as the commission by regulation shall prescribe.

(5) The department may, without examination other than one in the laws relating to the practice of pharmacy, license as a pharmacist any person who, at the time of filing application therefor, is currently licensed as a pharmacist in any other state, territory, or possession of the United States. The person shall produce evidence satisfactory to the department of having had the required secondary and professional education and training and who was licensed as a pharmacist by examination in another state prior to June 13, 1963, shall be required to satisfy only the requirements which existed in this state at the time he or she became licensed in such other state, and that the state in which the person is licensed shall under similar conditions grant reciprocal licenses as pharmacist without examination to pharmacists duly licensed by examination in this state. Every application under this subsection shall be accompanied by a fee determined by the department.

(6) The department shall provide for, regulate, and require all persons licensed as pharmacists to renew their license periodically, and shall prescribe the form of such license and information required to be submitted by all applicants. [2013 c 19 § 11. Prior: 1989 1st ex.s. c 9 §§ 403, 420;

1989 c 352 § 3; 1984 c 153 § 10; 1981 c 147 § 1; 1979 c 90 § 11; 1972 ex.s. c 9 § 1; prior: 1971 ex.s. c 292 § 25; 1971 ex.s. c 201 § 5; 1963 c 38 § 7; 1931 c 56 § 1; 1927 c 253 § 1; 1923 c 180 § 3; RRS § 10126-3. Formerly RCW 18.64.010, part, 18.64.080 and 18.64.090, part.]

Additional notes found at www.leg.wa.gov

18.64.140 License—Fees—Display—Inactive license.

Every licensed pharmacist who desires to practice pharmacy shall secure from the department a license, the fee for which shall be determined by the secretary under RCW 43.70.250 and 43.70.280. The administrative procedures, administrative requirements, renewal fee, and late renewal fee shall also be determined under RCW 43.70.250 and 43.70.280. Payment of this fee shall entitle the licensee to a pharmacy law book, subsequent current mailings of all additions, changes, or deletions in the pharmacy practice act, chapter 18.64 RCW, and all additions, changes, or deletions of commission and department regulations. The current license shall be conspicuously displayed to the public in the pharmacy to which it applies. Any licensed pharmacist who desires to leave the active practice of pharmacy in this state may secure from the department an inactive license. The initial license and renewal fees shall be determined by the secretary under RCW 43.70.250 and 43.70.280. The holder of an inactive license may reactivate his or her license to practice pharmacy in accordance with rules adopted by the commission. [2013 c 19 § 12; 1996 c 191 § 47; 1991 c 229 § 7; 1989 1st ex.s. c 9 § 421; 1984 c 153 § 11; 1979 c 90 § 12; 1971 ex.s. c 201 § 6; 1963 c 38 § 9; 1949 c 153 § 2; 1935 c 98 § 5; 1899 c 121 § 11; Rem. Supp. 1949 § 10136. Formerly RCW 18.64.140 and 18.64.150.]

Additional notes found at www.leg.wa.gov

18.64.160 Disciplinary action against pharmacist's and intern's licenses—Grounds. In addition to the grounds under RCW 18.130.170 and 18.130.180, the commission may take disciplinary action against the license of any pharmacist or intern upon proof that:

- (1) His or her license was procured through fraud, misrepresentation, or deceit;
- (2) In the event that a pharmacist is determined by a court of competent jurisdiction to be mentally incompetent, the pharmacist shall automatically have his or her license suspended by the commission upon the entry of the judgment, regardless of the pendency of an appeal;
- (3) He or she has knowingly violated or permitted the violation of any provision of any state or federal law, rule, or regulation governing the possession, use, distribution, or dispensing of drugs, including, but not limited to, the violation of any provision of this chapter, Title 69 RCW, or rule or regulation of the commission;
- (4) He or she has knowingly allowed any unlicensed person to take charge of a pharmacy or engage in the practice of pharmacy, except a pharmacy intern or pharmacy assistant acting as authorized in this chapter or chapter 18.64A RCW in the presence of and under the immediate supervision of a licensed pharmacist;
- (5) He or she has compounded, dispensed, or caused the compounding or dispensing of any drug or device which contains more or less than the equivalent quantity of ingredient

or ingredients specified by the person who prescribed such drug or device: PROVIDED, HOWEVER, That nothing herein shall be construed to prevent the pharmacist from exercising professional judgment in the preparation or providing of such drugs or devices. [2013 c 19 § 13; 1993 c 367 § 13; 1985 c 7 § 60; 1984 c 153 § 12; 1979 c 90 § 13; 1963 c 38 § 10; 1909 c 213 § 10; RRS § 10143. Formerly RCW 18.64.160 through 18.64.190.]

18.64.165 Refusal, suspension, and revocation of other licenses. The commission shall have the power to refuse, suspend, or revoke the license of any manufacturer, wholesaler, pharmacy, shopkeeper, itinerant vendor, peddler, poison distributor, health care entity, or precursor chemical distributor upon proof that:

- (1) The license was procured through fraud, misrepresentation, or deceit;
- (2) The licensee has violated or has permitted any employee to violate any of the laws of this state or the United States relating to drugs, controlled substances, cosmetics, or nonprescription drugs, or has violated any of the rules and regulations of the commission or has been convicted of a felony. [2013 c 19 § 14; 1995 c 319 § 5. Prior: 1989 1st ex.s. c 9 § 404; 1989 c 352 § 4; 1979 c 90 § 14; 1963 c 38 § 15.]

Violation of chapter 69.50 RCW, the Uniform Controlled Substances Act—Suspension of license: RCW 69.50.413.

Additional notes found at www.leg.wa.gov

18.64.200 Refusal, suspension, and revocation of other licenses—Appeal procedure. In any case of the refusal, suspension or revocation of a license by the commission under the provisions of this chapter, appeal may be taken in accordance with the administrative procedure act. [2013 c 19 § 15; 1963 c 38 § 11; 1909 c 213 § 11; RRS § 10144. Formerly RCW 18.64.200 through 18.64.240.]

Administrative Procedure Act: Title 34 RCW.

18.64.205 Retired active license status. The commission may adopt rules pursuant to this section authorizing a retired active license status. An individual licensed pursuant to this chapter, who is practicing only in emergent or intermittent circumstances as defined by rule established by the commission, may hold a retired active license at a reduced renewal fee established by the secretary under RCW 43.70.250 and 43.70.280. Such a license shall meet the continuing education requirements, if any, established by the commission for renewals, and is subject to the provisions of the uniform disciplinary act, chapter 18.130 RCW. Individuals who have entered into retired status agreements with the disciplinary authority in any jurisdiction shall not qualify for a retired active license under this section. [2013 c 19 § 16; 1996 c 191 § 48; 1991 c 229 § 2.]

18.64.245 Prescription records—Penalty. (1) Every proprietor or manager of a pharmacy shall keep readily available a suitable record of prescriptions which shall preserve for a period of not less than two years the record of every prescription dispensed at such pharmacy which shall be numbered, dated, and filed, and shall produce the same in court or before any grand jury whenever lawfully required to do so. The record shall be maintained either separately from all

other records of the pharmacy or in such form that the information required is readily retrievable from ordinary business records of the pharmacy. All recordkeeping requirements for controlled substances must be complied with. Such record of prescriptions shall be for confidential use in the pharmacy, only. The record of prescriptions shall be open for inspection by the commission or any officer of the law, who is authorized to enforce chapter 18.64, 69.41, or 69.50 RCW.

(2) A person violating this section is guilty of a misdemeanor. [2013 c 19 § 17; 2003 c 53 § 135. Prior: 1989 1st ex.s. c 9 § 402; 1989 c 352 § 2; 1979 c 90 § 15; 1939 c 28 § 1; RRS § 6154-1. Formerly RCW 18.67.090.]

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

Additional notes found at www.leg.wa.gov

18.64.246 Prescriptions—Labels—Cover or cap to meet safety standards—Penalty. (1) To every box, bottle, jar, tube or other container of a prescription which is dispensed there shall be fixed a label bearing the name and address of the dispensing pharmacy, the prescription number, the name of the prescriber, the prescriber's directions, the name and strength of the medication, the name of the patient, the date, and the expiration date. The security of the cover or cap on every bottle or jar shall meet safety standards adopted by the commission. At the prescriber's request, the name and strength of the medication need not be shown. If the prescription is for a combination medication product, the generic names of the medications combined or the trade name used by the manufacturer or distributor for the product shall be noted on the label. The identification of the licensed pharmacist responsible for each dispensing of medication must either be recorded in the pharmacy's record system or on the prescription label. This section shall not apply to the dispensing of medications to in-patients in hospitals.

(2) A person violating this section is guilty of a misdemeanor. [2013 c 19 § 18; 2003 c 53 § 136; 2002 c 96 § 1; 1984 c 153 § 13; 1971 ex.s. c 99 § 1; 1939 c 28 § 2; RRS § 6154-2. Formerly RCW 18.67.080.]

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

18.64.255 Authorized practices. Nothing in this chapter shall operate in any manner:

(1) To restrict the scope of authorized practice of any practitioner other than a pharmacist, duly licensed as such under the laws of this state. However, a health care entity shall comply with all state and federal laws and rules relating to the dispensing of drugs and the practice of pharmacy; or

(2) In the absence of the pharmacist from the hospital pharmacy, to prohibit a registered nurse designated by the hospital and the responsible pharmacist from obtaining from the hospital pharmacy such drugs as are needed in an emergency: PROVIDED, That proper record is kept of such emergency, including the date, time, name of prescriber, the name of the nurse obtaining the drugs, and a list of what drugs and quantities of same were obtained; or

(3) To prevent shopkeepers, itinerant vendors, peddlers, or salespersons from dealing in and selling nonprescription drugs, if such drugs are sold in the original packages of the manufacturer, or in packages put up by a licensed pharmacist

in the manner provided by the commission, if such shopkeeper, itinerant vendor, salesperson, or peddler shall have obtained a registration. [2013 c 19 § 19; 2011 c 336 § 495; 1995 c 319 § 7; 1984 c 153 § 14; 1981 c 147 § 3; 1979 c 90 § 19.]

18.64.257 Prescription of legend drugs by dialysis programs. This chapter shall not prevent a medicare-approved dialysis center or facility operating a medicare-approved home dialysis program from selling, delivering, possessing, or dispensing directly to its dialysis patients, in case or full shelf lots, if prescribed by a physician licensed under chapter 18.57 or 18.71 RCW, those legend drugs determined by the commission pursuant to rule. [2013 c 19 § 20; 1987 c 41 § 1.]

Application of legend drug statutes to dialysis programs: RCW 69.41.032.

18.64.270 Responsibility for drug purity—Compounding—Adulteration—Penalty. (1) Every proprietor of a wholesale or retail drug store shall be held responsible for the quality of all drugs, chemicals or medicines sold or dispensed by him or her except those sold in original packages of the manufacturer and except those articles or preparations known as patent or proprietary medicines.

(2) Any medicinal products that are compounded for patient administration or distribution to a licensed practitioner for patient use or administration shall, at a minimum, meet the standards of the official United States pharmacopeia as it applies to nonsterile products and sterile administered products.

(3) Any person who shall knowingly, willfully or fraudulently falsify or adulterate any drug or medicinal substance or preparation authorized or recognized by an official compendium or used or intended to be used in medical practice, or shall willfully, knowingly or fraudulently offer for sale, sell or cause the same to be sold for medicinal purposes, is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine in any sum not less than seventy-five nor more than one hundred and fifty dollars or by imprisonment in the county jail for a period of not less than one month nor more than three months, and any person convicted a third time for violation of this section may suffer both fine and imprisonment. In any case he or she shall forfeit to the state of Washington all drugs or preparations so falsified or adulterated. [2013 c 146 § 2; 2003 c 53 § 137; 1963 c 38 § 13; 1899 c 121 § 14; RRS § 10139. Prior: 1891 c 153 § 15. Formerly RCW 18.67.100 and 18.67.120.]

Effective date—2013 c 146: See note following RCW 18.64.011.

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

18.64.310 Department of health—Powers and duties. The department shall:

(1) Establish reasonable license and examination fees and fees for services to other agencies in accordance with RCW 43.70.250 and 43.70.280. In cases where there are unanticipated demands for services, the department may request payment for services directly from the agencies for whom the services are performed, to the extent that revenues or other funds are available. Drug-related investigations regarding licensed health care practitioners shall be funded

by an appropriation to the department from the health professions account. The payment may be made on either an advance or a reimbursable basis as approved by the director of financial management;

(2) Employ, with confirmation by the commission, an executive officer, who shall be exempt from the provisions of chapter 41.06 RCW and who shall be a pharmacist licensed in Washington, and employ inspectors, investigators, chemists, and other persons as necessary to assist it for any purpose which it may deem necessary;

(3) Investigate and prosecute, at the direction of the commission, including use of subpoena powers, violations of law or regulations under its jurisdiction or the jurisdiction of the commission;

(4) Make, at the direction of the commission, inspections and investigations of pharmacies and other places, including dispensing machines, in which drugs or devices are stored, held, compounded, dispensed, sold, or administered to the ultimate consumer, to take and analyze any drugs or devices and to seize and condemn any drugs or devices which are adulterated, misbranded, stored, held, dispensed, distributed, administered, or compounded in violation of or contrary to law. The written operating agreement between the department and the commission, as required by RCW 43.70.240 shall include provisions for the department to involve the commission in carrying out its duties required by this section. [2013 c 19 § 21; 1996 c 191 § 49; 1989 1st ex.s. c 9 § 410.]

Additional notes found at www.leg.wa.gov

18.64.360 Nonresident pharmacies—Definition—Requirements—Exemption—Reciprocity with Canadian pharmacies. (1) For the purposes of this chapter any pharmacy located outside this state that ships, mails, or delivers, in any manner, except when delivered in person to an individual, controlled substances, legend drugs, or devices into this state is a nonresident pharmacy, and shall be licensed by the department of health, and shall disclose to the department the following:

(a) The location, names, and titles of all owners including corporate officers and all pharmacists employed by the pharmacy who are dispensing controlled substances, legend drugs, or devices to residents of this state. A report containing this information shall be made on an annual basis and within ninety days after a change of location, corporate officer, or pharmacist;

(b) Proof of compliance with all lawful directions and requests for information from the regulatory or licensing agency of the state or Canadian province in which it is licensed as well as with all requests for information made by the department of health under this section. The nonresident pharmacy shall maintain, at all times, a valid unexpired license, permit, or registration to operate the pharmacy in compliance with the laws of the state or Canadian province in which it is located. As a prerequisite to be licensed by the department of health, the nonresident pharmacy shall submit a copy of the most recent inspection report issued by the regulatory licensing agency of the state or Canadian province in which it is located;

(c) Proof that it maintains its records of controlled substances, legend drugs, or devices dispensed to patients in this

state so that the records are readily retrievable from the records of other drugs dispensed.

(2) Any pharmacy subject to this section shall, during its regular hours of operation, provide a toll-free telephone service to facilitate communication between patients in this state and a pharmacist at the pharmacy who has access to the patient's records. This toll-free number shall be disclosed on the label affixed to each container of drugs dispensed to patients in this state.

(3) A pharmacy subject to this section shall comply with commission rules regarding the maintenance and use of patient medication record systems.

(4) A pharmacy subject to this section shall comply with commission rules regarding the provision of drug information to the patient. Drug information may be contained in written form setting forth directions for use and any additional information necessary to assure the proper utilization of the medication prescribed. A label bearing the expiration date of the prescription must be affixed to each box, bottle, jar, tube, or other container of a prescription that is dispensed in this state by a pharmacy subject to this section.

(5) A pharmacy subject to this section shall not dispense medication in a quantity greater than authorized by the prescriber.

(6) The license fee specified by the secretary, in accordance with the provisions of RCW 43.70.250, shall not exceed the fee charged to a pharmacy located in this state.

(7) The license requirements of this section apply to non-resident pharmacies that ship, mail, or deliver controlled substances, legend drugs, and devices into this state only under a prescription. The commission may grant an exemption from licensing under this section upon application by an out-of-state pharmacy that restricts its dispensing activity in Washington to isolated transactions.

(8) Each nonresident pharmacy that ships, mails, or delivers legend drugs or devices into this state shall designate a resident agent in Washington for service of process. The designation of such an agent does not indicate that the non-resident pharmacy is a resident of Washington for tax purposes.

(9) The commission shall attempt to develop a reciprocal licensing agreement for licensure of nonresident pharmacies with Health Canada or an applicable Canadian province. If the commission is unable to develop such an agreement, the commission shall develop a process to license participating Canadian nonresident pharmacies through on-site inspection and certification. [2013 c 19 § 22; 2005 c 275 § 3; 1996 c 109 § 1; 1991 c 87 § 2.]

Finding—Intent—2005 c 275: See note following RCW 18.64.350.

Additional notes found at www.leg.wa.gov

18.64.390 Nonresident pharmacies—Violations—Penalties. (1) The commission may deny, revoke, or suspend a nonresident pharmacy license or impose a fine not to exceed one thousand dollars per violation for failure to comply with any requirement of RCW 18.64.350 through 18.64.400.

(2) The commission may deny, revoke, or suspend a nonresident pharmacy license or impose a fine not to exceed one thousand dollars per violation for conduct that causes serious bodily or psychological injury to a resident of this

state if the secretary has referred the matter to the regulatory or licensing agency in the state in which the pharmacy is located and that regulatory or licensing agency fails to initiate an investigation within forty-five days of the referral under this subsection or fails to make a determination on the referral. [2013 c 19 § 23; 1991 c 87 § 5.]

Additional notes found at www.leg.wa.gov

18.64.410 Nonresident pharmacies—Rules. The commission may adopt rules to implement the provisions of RCW 18.64.350 through 18.64.400 and 18.64.420. [2013 c 19 § 24; 1991 c 87 § 11.]

Additional notes found at www.leg.wa.gov

18.64.420 Nonresident pharmacies—Information confidential—Exceptions. All records, reports, and information obtained by the department from or on behalf of an entity licensed under chapter 48.20, 48.21, 48.44, or 48.46 RCW shall be confidential and exempt from inspection and copying under chapter 42.56 RCW. Nothing in this section restricts the investigation or the proceedings of the commission or the department so long as the commission and the department comply with the provisions of chapter 42.56 RCW. Nothing in this section or in chapter 42.56 RCW shall restrict the commission or the department from complying with any mandatory reporting requirements that exist or may exist under federal law, nor shall the commission or the department be restricted from providing to any person the name of any nonresident pharmacy that is or has been licensed or disciplined under RCW 18.64.350 through 18.64.400. [2013 c 19 § 25; 2005 c 274 § 226; 1991 c 87 § 12.]

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

Additional notes found at www.leg.wa.gov

18.64.450 Health care entity—License requirements for legend drugs and controlled substances—Exception.

(1) In order for a health care entity to purchase, administer, dispense, and deliver legend drugs, the health care entity must be licensed by the department.

(2) In order for a health care entity to purchase, administer, dispense, and deliver controlled substances, the health care entity must annually obtain a license from the department in accordance with the commission's rules.

(3) The receipt, administration, dispensing, and delivery of legend drugs or controlled substances by a health care entity must be performed under the supervision or at the direction of a pharmacist.

(4) A health care entity may only administer, dispense, or deliver legend drugs and controlled substances to patients who receive care within the health care entity and in compliance with rules of the commission. Nothing in this subsection shall prohibit a practitioner, in carrying out his or her licensed responsibilities within a health care entity, from dispensing or delivering to a patient of the health care entity drugs for that patient's personal use in an amount not to exceed seventy-two hours of usage. [2013 c 19 § 26; 1995 c 319 § 3.]

18.64.470 Health care entity—Records. Every proprietor or manager of a health care entity shall keep readily available a suitable record of drugs, which shall preserve for a period of not less than two years the record of every drug used at such health care entity. The record shall be maintained either separately from all other records of the health care entity or in such form that the information required is readily retrievable from ordinary business records of the health care entity. All recordkeeping requirements for controlled substances must be complied with. Such record of drugs shall be for confidential use in the health care entity, only. The record of drugs shall be open for inspection by the commission, who is authorized to enforce chapter 18.64, 69.41, or 69.50 RCW. [2013 c 19 § 27; 1995 c 319 § 6.]

18.64.480 Waiver request to allow importation of prescription drugs from Canada. (1) By September 1, 2005, the commission shall, in consultation with the department and the health care authority, submit a waiver request to the federal food and drug administration that authorizes the importation of prescription drugs from Canada.

(2) Upon approval of the federal waiver allowing for the importation of prescription drugs from Canada, the commission, in consultation with the department and the health care authority, shall license Canadian pharmacies that provide services to Washington residents under RCW 18.64.350 and 18.64.360. [2013 c 19 § 28; 2005 c 275 § 4.]

Finding—Intent—2005 c 275: See note following RCW 18.64.350.

18.64.490 Waiver request to authorize the state to license Canadian, United Kingdom, Irish, and other non-domestic prescription drug wholesalers under RCW 18.64.046—Implementation—Rules. (1) By September 1, 2005, the commission shall, in consultation with the department and the health care authority, submit a waiver request to the federal food and drug administration that will authorize the state of Washington to license Canadian, United Kingdom, Irish, and other nondomestic prescription drug wholesalers under RCW 18.64.046, thereby providing retail pharmacies licensed in Washington state the opportunity to purchase prescription drugs from approved wholesalers and pass those savings on to consumers. The waiver shall provide that:

(a) Canadian, United Kingdom, Irish, and other nondomestic prescription drug wholesalers meet the requirements of RCW 18.64.046 and any rules adopted by the commission to implement those requirements;

(b) The commission must ensure the integrity of the prescription drug products being distributed by:

(i) Requiring that prescription drugs purchased from Canadian, United Kingdom, Irish, and other nondomestic wholesalers originate only from approved manufacturing locations;

(ii) Routinely testing prescription drugs purchased from Canadian, United Kingdom, Irish, and other nondomestic wholesalers for safety;

(iii) Establishing safe labeling, tracking, and shipping procedures for prescription drugs purchased from Canadian, United Kingdom, Irish, and other nondomestic wholesalers; and

(iv) Establishing safe labeling, tracking, and shipping procedures for prescription drugs purchased from Canadian, United Kingdom, Irish, and other nondomestic wholesalers; and

(v) Establishing safe labeling, tracking, and shipping procedures for prescription drugs purchased from Canadian, United Kingdom, Irish, and other nondomestic wholesalers; and

(iv) Closely monitoring compliance with RCW 18.64.046 and any rules adopted to implement the waiver;

(c) The prescription drugs purchased from Canadian, United Kingdom, Irish, and other nondomestic wholesalers must be limited to those that are not temperature sensitive or infused and for which potential savings to consumers can be demonstrated and those available through purchase by individuals only at licensed retail pharmacies;

(d) To ensure that the program benefits those consumers without insurance coverage for prescription drugs who are most in need of price relief, prescription drug purchases from pharmacies under the waiver will be limited to those not eligible for reimbursement by third party insurance coverage, whether public or private, for the particular drug being purchased; and

(e) Savings associated with purchasing prescription drugs from Canadian, United Kingdom, Irish, and other nondomestic wholesalers will be passed on to consumers.

(2) Upon approval of the federal waiver submitted in accordance with subsection (1) of this section, the commission, in consultation with the department and the health care authority, shall submit a detailed implementation plan to the governor and appropriate committees of the legislature that details the mechanisms that the commission will use to implement each component of the waiver under subsection (1) of this section.

(3) The commission shall adopt rules as necessary to implement chapter 293, Laws of 2005. [2013 c 19 § 29; 2005 c 293 § 2.]

Finding—Intent—2005 c 293: "The legislature finds that as consumers' prescription drug costs continue to rise, people across the state of Washington are seeking opportunities to purchase lower cost prescription drugs from Canada, the United Kingdom, Ireland, and other countries for their personal use. The state has a strong interest in promoting the safe use of prescription drugs by consumers in Washington state. To address this interest, the legislature intends to seek authorization from the federal government to license Canadian, United Kingdom, Irish, and other nondomestic prescription drug wholesalers, thereby providing licensed retail pharmacies the opportunity to purchase prescription drugs from approved wholesalers and pass those savings on to consumers, and providing consumers the opportunity to purchase prescription drugs from a trusted community pharmacist who is aware of all of their prescription drug needs." [2005 c 293 § 1.]

Conflict with federal requirements—2005 c 293: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [2005 c 293 § 3.]

18.64.500 Tamper-resistant prescription pads or paper. (1) Effective July 1, 2010, every prescription written in this state by a licensed practitioner must be written on a tamper-resistant prescription pad or paper approved by the commission.

(2) A pharmacist may not fill a written prescription from a licensed practitioner unless it is written on an approved tamper-resistant prescription pad or paper, except that a pharmacist may provide emergency supplies in accordance with the commission and other insurance contract requirements.

(3) If a hard copy of an electronic prescription is given directly to the patient, the manually signed hard copy pre-

scription must be on approved tamper-resistant paper that meets the requirements of this section.

(4) For the purposes of this section, "tamper-resistant prescription pads or paper" means a prescription pad or paper that has been approved by the commission for use and contains the following characteristics:

(a) One or more industry-recognized features designed to prevent unauthorized copying of a completed or blank prescription form;

(b) One or more industry-recognized features designed to prevent the erasure or modification of information written on the prescription form by the practitioner; and

(c) One or more industry-recognized features designed to prevent the use of counterfeit prescription forms.

(5) Practitioners shall employ reasonable safeguards to assure against theft or unauthorized use of prescriptions.

(6) All vendors must have their tamper-resistant prescription pads or paper approved by the commission prior to the marketing or sale of pads or paper in Washington state.

(7) The commission shall create a seal of approval that confirms that a pad or paper contains all three industry-recognized characteristics required by this section. The seal must be affixed to all prescription pads or paper used in this state.

(8) The commission may adopt rules necessary for the administration of chapter 328, Laws of 2009.

(9) The tamper-resistant prescription pad or paper requirements in this section shall not apply to:

(a) Prescriptions that are transmitted to the pharmacy by telephone, facsimile, or electronic means; or

(b) Prescriptions written for inpatients of a hospital, outpatients of a hospital, residents of a nursing home, inpatients or residents of a mental health facility, or individuals incarcerated in a local, state, or federal correction facility, when the health care practitioner authorized to write prescriptions writes the order into the patient's medical or clinical record, the order is given directly to the pharmacy, and the patient never has the opportunity to handle the written order.

(10) All acts related to the prescribing, dispensing, and records maintenance of all prescriptions shall be in compliance with applicable federal and state laws, rules, and regulations. [2013 c 19 § 30; 2009 c 328 § 1.]

18.64.510 Limitation on authority to regulate or establish standards regarding a jail. Nothing in this chapter or in any provision of law shall be interpreted to invest the commission with the authority to regulate or establish standards regarding a jail as defined in RCW 70.48.020 that does not operate, in whole or in part, a pharmacy or a correctional pharmacy. This section does not limit the commission's authority to regulate a pharmacist that has entered into an agreement with a jail for the provision of pharmaceutical services. [2013 c 19 § 31; 2009 c 411 § 2.]

18.64.520 Dispensing of drug other than controlled substance—Supply limit. (1) A pharmacist may dispense not more than a ninety-day supply of a drug other than a controlled substance pursuant to a valid prescription that specifies an initial quantity of less than a ninety-day supply followed by periodic refills of that amount if all of the following requirements are satisfied:

(a) The patient has completed an initial thirty-day supply of the drug. However, if the prescription continues the same medication as previously dispensed in a ninety-day supply, the initial thirty-day supply under this subsection (1) is not required;

(b) The total quantity of dosage units dispensed does not exceed the total quantity of dosage units authorized by the prescriber on the prescription including refills;

(c) The prescriber has not specified on the prescription that dispensing the prescription in an initial amount followed by periodic refills is medically necessary; and

(d) The pharmacist is exercising his or her professional judgment.

(2) In no case may a pharmacist dispense a greater supply of a drug pursuant to this section if the prescriber personally indicates, either orally or in their own handwriting, "no change to quantity," or words of similar meaning. Nothing in this section prohibits a prescriber from checking a box on a prescription marked "no change to quantity," provided that the prescriber personally initials the box or checkmark.

(3) A pharmacist dispensing an increased supply of a drug pursuant to this section shall notify the prescriber of the increase in the quantity of dosage units dispensed.

(4) Nothing in this section may be construed to require a health benefit plan, health carrier, workers' compensation insurance plan, pharmacy benefit manager, or any other person or entity including, but not limited to, a state program or state employer, to provide coverage in a manner inconsistent with the beneficiary's or enrollee's plan benefit. [2013 c 262 § 1.]

Chapter 18.64A RCW PHARMACY ASSISTANTS

Sections

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18.64A.010 Definitions. Terms used in this chapter shall have the meaning set forth in this section unless the context clearly indicates otherwise:

(1) "Commission" means the pharmacy quality assurance commission;

(2) "Department" means the department of health;

(3) "Pharmacist" means a person duly licensed by the commission to engage in the practice of pharmacy;

(4) "Pharmacy" means every place properly licensed by the commission where the practice of pharmacy is conducted;

(5) "Pharmacy ancillary personnel" means pharmacy technicians and pharmacy assistants;

(6) "Pharmacy technician" means:

(a) A person who is enrolled in, or who has satisfactorily completed, a commission-approved training program

designed to prepare persons to perform nondiscretionary functions associated with the practice of pharmacy; or

(b) A person who is a graduate with a degree in pharmacy or medicine of a foreign school, university, or college recognized by the commission;

(7) "Pharmacy assistant" means a person registered by the commission to perform limited functions in the pharmacy;

(8) "Practice of pharmacy" means the definition given in RCW 18.64.011;

(9) "Secretary" means the secretary of health or the secretary's designee. [2013 c 19 § 32; 1997 c 417 § 1; 1989 1st ex.s. c 9 § 422; 1977 ex.s. c 101 § 1.]

Additional notes found at www.leg.wa.gov

18.64A.020 Rules—Qualifications and training programs. (1)(a) The commission shall adopt, in accordance with chapter 34.05 RCW, rules fixing the classification and qualifications and the educational and training requirements for persons who may be employed as pharmacy technicians or who may be enrolled in any pharmacy technician training program. Such rules shall provide that:

(i) Licensed pharmacists shall supervise the training of pharmacy technicians;

(ii) Training programs shall assure the competence of pharmacy technicians to aid and assist pharmacy operations. Training programs shall consist of instruction and/or practical training; and

(iii) Pharmacy technicians shall complete continuing education requirements established in rule by the commission.

(b) Such rules may include successful completion of examinations for applicants for pharmacy technician certificates. If such examination rules are adopted, the commission shall prepare or determine the nature of, and supervise the grading of the examinations. The commission may approve an examination prepared or administered by a private testing agency or association of licensing authorities.

(2) The commission may disapprove or revoke approval of any training program for failure to conform to commission rules. In the case of the disapproval or revocation of approval of a training program by the commission, a hearing shall be conducted in accordance with RCW 18.64.160, and appeal may be taken in accordance with the administrative procedure act, chapter 34.05 RCW. [2013 c 19 § 33; 2011 c 71 § 1; 1997 c 417 § 2; 1995 c 198 § 8; 1977 ex.s. c 101 § 2.]

18.64A.025 Qualifications—Military training and experience. An applicant with military training or experience satisfies the training and experience requirements of this chapter unless the commission determines that the military training or experience is not substantially equivalent to the standards of this state. [2013 c 19 § 34; 2011 c 32 § 5.]

18.64A.030 Rules—Duties of technicians, assistants. The commission shall adopt, in accordance with chapter 34.05 RCW, rules governing the extent to which pharmacy ancillary personnel may perform services associated with the practice of pharmacy. These rules shall provide for the certification of pharmacy technicians by the department at a fee determined by the secretary under RCW 43.70.250:

(1) "Pharmacy technicians" may assist in performing, under the supervision and control of a licensed pharmacist, manipulative, nondiscretionary functions associated with the practice of pharmacy and other such duties and subject to such restrictions as the commission may by rule adopt.

(2) "Pharmacy assistants" may perform, under the supervision of a licensed pharmacist, duties including but not limited to, typing of prescription labels, filing, refiling, book-keeping, pricing, stocking, delivery, nonprofessional phone inquiries, and documentation of third party reimbursements and other such duties and subject to such restrictions as the commission may by rule adopt. [2013 c 19 § 35; 1997 c 417 § 3; 1996 c 191 § 50; 1989 1st ex.s. c 9 § 423; 1977 ex.s. c 101 § 3.]

Additional notes found at www.leg.wa.gov

18.64A.040 Limitations on practice. (1) Pharmacy ancillary personnel shall practice pharmacy in this state only after authorization by the commission and only to the extent permitted by the commission in accordance with this chapter.

(2) A pharmacist shall be assisted by pharmacy ancillary personnel in the practice of pharmacy in this state only after authorization by the commission and only to the extent permitted by the commission in accordance with this chapter: PROVIDED, That no pharmacist may supervise more than one pharmacy technician: PROVIDED FURTHER, That in pharmacies operating in connection with facilities licensed pursuant to chapter 70.41, 71.12, 71A.20, or 74.42 RCW, whether or not situated within the said facility which shall be physically separated from any area of a pharmacy where dispensing of prescriptions to the general public occurs, the ratio of pharmacists to pharmacy technicians shall be as follows: In the preparation of medicine or other materials used by patients within the facility, one pharmacist supervising no more than three pharmacy technicians; in the preparation of medicine or other materials dispensed to persons not patients within the facility, one pharmacist supervising not more than one pharmacy technician.

(3) The commission may by rule modify the standard ratios set out in subsection (2) of this section governing the utilization of pharmacy technicians by pharmacies and pharmacists. Should a pharmacy desire to use more pharmacy technicians than the standard ratios, the pharmacy must submit to the commission a pharmacy services plan for approval.

(a) The pharmacy services plan shall include, at a minimum, the following information: Pharmacy design and equipment, information systems, workflow, and quality assurance procedures. In addition, the pharmacy services plan shall demonstrate how it facilitates the provision of pharmaceutical care by the pharmacy.

(b) Prior to approval of a pharmacy services plan, the commission may require additional information to ensure appropriate oversight of pharmacy ancillary personnel.

(c) The commission may give conditional approval for pilot or demonstration projects.

(d) Variance from the approved pharmacy services plan is grounds for disciplinary action under RCW 18.64A.050. [2013 c 19 § 36; 1997 c 417 § 4; 1992 c 40 § 1; 1977 ex.s. c 101 § 4.]

18.64A.050 Disciplinary action against certificate—
Grounds. In addition to the grounds under RCW 18.130.170 and 18.130.180, the commission may take disciplinary action against the certificate of any pharmacy technician upon proof that:

(1) His or her certificate was procured through fraud, misrepresentation or deceit;

(2) He or she has been found guilty of any offense in violation of the laws of this state relating to drugs, poisons, cosmetics or drug sundries by any court of competent jurisdiction. Nothing herein shall be construed to affect or alter the provisions of RCW 9.96A.020;

(3) He or she has exhibited gross incompetency in the performance of his or her duties;

(4) He or she has willfully or repeatedly violated any of the rules and regulations of the commission or of the department;

(5) He or she has willfully or repeatedly performed duties beyond the scope of his or her certificate in violation of the provisions of this chapter; or

(6) He or she has impersonated a licensed pharmacist. [2013 c 19 § 37; 1997 c 417 § 5; 1993 c 367 § 15; 1989 1st ex.s. c 9 § 424; 1977 ex.s. c 101 § 5.]

*Violation of chapter 69.50 RCW, the Uniform Controlled Substances Act—
Suspension of license: RCW 69.50.413.*

Additional notes found at www.leg.wa.gov

18.64A.060 Pharmacy's application for ancillary personnel—Fee—Approval or rejection by commission—Hearing—Appeal. No pharmacy licensed in this state shall utilize the services of pharmacy ancillary personnel without approval of the commission.

Any pharmacy licensed in this state may apply to the commission for permission to use the services of pharmacy ancillary personnel. The application shall be accompanied by a fee and shall comply with administrative procedures and administrative requirements set pursuant to RCW 43.70.250 and 43.70.280, shall detail the manner and extent to which the pharmacy ancillary personnel would be used and supervised, and shall provide other information in such form as the secretary may require.

The commission may approve or reject such applications. In addition, the commission may modify the proposed utilization of pharmacy ancillary personnel and approve the application as modified. Whenever it appears to the commission that pharmacy ancillary personnel are being utilized in a manner inconsistent with the approval granted, the commission may withdraw such approval. In the event a hearing is requested upon the rejection of an application, or upon the withdrawal of approval, a hearing shall be conducted in accordance with chapter 18.64 RCW, as now or hereafter amended, and appeal may be taken in accordance with the administrative procedure act, chapter 34.05 RCW. [2013 c 19 § 38; 1997 c 417 § 6; 1996 c 191 § 51; 1989 1st ex.s. c 9 § 425; 1977 ex.s. c 101 § 6.]

Additional notes found at www.leg.wa.gov

18.64A.070 Persons presently acting as technicians—Pharmacies presently employing those persons. (1) Persons presently assisting a pharmacist by performing the functions of a pharmacy technician may continue to do so under

the supervision of a licensed pharmacist: PROVIDED, That within eighteen months after May 28, 1977, such persons shall be in compliance with the provisions of this chapter.

(2) Pharmacies presently employing persons to perform the functions of a pharmacy technician may continue to do so while obtaining commission approval for the use of certified pharmacy technicians: PROVIDED, That within eighteen months after May 28, 1977, such pharmacies shall be in compliance with the provisions of this chapter. [2013 c 19 § 39; 1997 c 417 § 7; 1977 ex.s. c 101 § 7.]

18.64A.080 Pharmacy's or pharmacist's liability, responsibility. A pharmacy or pharmacist which utilizes the services of pharmacy ancillary personnel with approval by the commission, is not aiding and abetting an unlicensed person to practice pharmacy within the meaning of chapter 18.64 RCW: PROVIDED, HOWEVER, That the pharmacy or pharmacist shall retain responsibility for any act performed by pharmacy ancillary personnel in the course of employment. [2013 c 19 § 40; 1997 c 417 § 8; 1977 ex.s. c 101 § 8.]

Chapter 18.71 RCW PHYSICIANS

Sections

18.71.0191	Repealed.
18.71.430	Secretary and commission relationship.
18.71.460	Commission—Information to legislature.

18.71.0191 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

18.71.430 Secretary and commission relationship.

- (1) The secretary shall employ an executive director that is:
- Hired by and serves at the pleasure of the commission;
 - Exempt from the provisions of the civil service law, chapter 41.06 RCW and whose salary is established by the commission in accordance with RCW 43.03.028; and
 - Responsible for performing all administrative duties of the commission, including preparing an annual budget, and any other duties as delegated to the executive director by the commission.
- (2) Consistent with the budgeting and accounting act, the commission is responsible for proposing its own biennial budget which the secretary must submit to the office of financial management.
- (3) Prior to adopting credentialing fees under RCW 43.70.250, the secretary shall collaborate with the commission to determine the appropriate fees necessary to support the activities of the commission.
- (4) Prior to the secretary exercising the secretary's authority to adopt uniform rules and guidelines, or any other actions that might impact the licensing or disciplinary authority of the commission, the secretary shall first meet with the commission to determine how those rules or guidelines, or changes to rules or guidelines, might impact the commission's ability to effectively carry out its statutory duties. If the commission, in consultation with the secretary, determines that the proposed rules or guidelines, or changes to existing rules or guidelines, will negatively impact the com-

mission's ability to effectively carry out its statutory duties, then the individual commission shall collaborate with the secretary to develop alternative solutions to mitigate the impacts. If an alternative solution cannot be reached, the parties may resolve the dispute through a mediator as set forth in subsection (6) of this section.

(5) The commission shall negotiate with the secretary to develop performance-based expectations, including identification of key performance measures. The performance expectations should focus on consistent, timely regulation of health care professionals.

(6) In the event there is a disagreement between the commission and the secretary, that is unable to be resolved through negotiation, a representative of both parties shall agree on the designation of a third party to mediate the dispute.

(7) The secretary shall employ staff that are hired and managed by the executive director provided that nothing contained in this section may be construed to alter any existing collective bargaining unit or the provisions of any existing collective bargaining agreement. [2013 c 81 § 3; 2011 c 60 § 7; 2008 c 134 § 29.]

Effective date—2013 c 81: See note following RCW 18.25.210.

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

Finding—Intent—Severability—2008 c 134: See notes following RCW 18.130.020.

18.71.460 Commission—Information to legislature.

In addition to the authority provided in RCW 42.52.804, the commission, its members, or staff as directed by the commission, may communicate, present information requested, volunteer information, testify before legislative committees, and educate the legislature, as the commission may from time to time see fit. [2013 c 81 § 4.]

Effective date—2013 c 81: See note following RCW 18.25.210.

Chapter 18.71A RCW PHYSICIAN ASSISTANTS

Sections

18.71A.030	Limitations on practice.
18.71A.035	Limitation on practice—Remote sites.
18.71A.040	Commission approval required—Application—Fee—Discipline.

18.71A.030 Limitations on practice. A physician assistant may practice medicine in this state only with the approval of the delegation agreement by the commission and only to the extent permitted by the commission. A physician assistant who has received a license but who has not received commission approval of the delegation agreement under RCW 18.71A.040 may not practice. A physician assistant shall be subject to discipline under chapter 18.130 RCW. [2013 c 203 § 6; 1994 sp.s. c 9 § 320; 1993 c 28 § 6; 1990 c 196 § 3; 1971 ex.s. c 30 § 3.]

Rules—2013 c 203: See note following RCW 18.57A.035.

Additional notes found at www.leg.wa.gov

18.71A.035 Limitation on practice—Remote sites.

(1) No licensee may be utilized in a remote site without approval by the commission or its designee. A "remote site"

is defined as a setting physically separate from the sponsoring or supervising physician's primary place for meeting patients or a setting where the physician is present less than twenty-five percent of the practice time of the licensee.

(2)(a) Approval by the commission or its designee may be granted to utilize a licensee in a remote site if:

- (i) There is a demonstrated need for the utilization;
- (ii) Adequate provision for timely communication between the primary or alternate physician and the licensee exists;
- (iii) The responsible sponsoring or supervising physician spends at least ten percent of the practice time of the licensee in the remote site unless the sponsoring physician demonstrates that adequate supervision is being maintained by an alternate method such as telecommunication.

(b) The names of the sponsoring or supervising physician and the licensee must be prominently displayed at the entrance to the clinic or in the reception area.

(3) No physician assistant holding an interim permit may be utilized in a remote site setting. [2013 c 203 § 2.]

Rules—2013 c 203: See note following RCW 18.57A.035.

18.71A.040 Commission approval required—Application—Fee—Discipline. (1) No physician assistant practicing in this state shall be employed or supervised by a physician or physician group without the approval of the commission.

(2) Prior to commencing practice, a physician assistant licensed in this state shall apply to the commission for permission to be employed or supervised by a physician or physician group. The delegation agreement shall be jointly submitted by the physician or physician group and physician assistant. Administrative procedures, administrative requirements, and fees shall be established as provided in RCW 43.70.250 and 43.70.280. The delegation agreement shall delineate the manner and extent to which the physician assistant would practice and be supervised. Whenever a physician assistant is practicing in a manner inconsistent with the approved delegation agreement, the commission may take disciplinary action under chapter 18.130 RCW.

(3) A physician may enter into delegation agreements with five physician assistants, but may petition the commission for a waiver of this limit. However, no physician may have under his or her supervision: (a) More than three physician assistants who are working in remote sites; or (b) more physician assistants than the physician can adequately supervise. [2013 c 203 § 7. Prior: 1996 c 191 § 58; 1996 c 191 § 40; 1994 sp.s. c 9 § 321; 1993 c 28 § 7; 1990 c 196 § 4; prior: 1986 c 259 § 113; 1985 c 7 § 61; 1975 1st ex.s. c 30 § 64; 1975 1st ex.s. c 190 § 2; 1971 ex.s. c 30 § 4.]

Rules—2013 c 203: See note following RCW 18.57A.035.

Additional notes found at www.leg.wa.gov

Chapter 18.74 RCW PHYSICAL THERAPY

Sections

- 18.74.150 Unlawful activities—Persons exempt from licensure under chapter.
- 18.74.180 Professional and legal responsibility—Supervision of assistive personnel.

[2013 RCW Supp—page 164]

18.74.150 Unlawful activities—Persons exempt from licensure under chapter. (1) It is unlawful for any person to practice or in any manner hold himself or herself out to practice physical therapy or designate himself or herself as a physical therapist or physical therapist assistant, unless he or she is licensed in accordance with this chapter.

(2) This chapter does not restrict persons licensed under any other law of this state from engaging in the profession or practice for which they are licensed, if they are not representing themselves to be physical therapists, physical therapist assistants, or providers of physical therapy.

(3) The following persons are exempt from licensure as physical therapists under this chapter when engaged in the following activities:

(a) A person who is pursuing a course of study leading to a degree as a physical therapist in an approved professional education program and is satisfying supervised clinical education requirements related to his or her physical therapy education while under direct supervision of a licensed physical therapist;

(b) A physical therapist while practicing in the United States armed services, United States public health service, or veterans administration as based on requirements under federal regulations for state licensure of health care providers; and

(c) A physical therapist licensed in another United States jurisdiction, or a foreign-educated physical therapist credentialed in another country, performing physical therapy as part of teaching or participating in an educational seminar of no more than sixty days in a calendar year.

(4) The following persons are exempt from licensure as physical therapist assistants under this chapter when engaged in the following activities:

(a) A person who is pursuing a course of study leading to a degree as a physical therapist assistant in an approved professional education program and is satisfying supervised clinical education requirements related to his or her physical therapist assistant education while under direct supervision of a licensed physical therapist or licensed physical therapist assistant;

(b) A physical therapist assistant while practicing in the United States armed services, United States public health service, or veterans administration as based on requirements under federal regulations for state licensure of health care providers; and

(c) A physical therapist assistant licensed in another United States jurisdiction, or a foreign-educated physical therapist assistant credentialed in another country, or a physical therapist assistant who is teaching or participating in an educational seminar of no more than sixty days in a calendar year. [2013 c 280 § 1; 2007 c 98 § 13; 2005 c 501 § 4.]

18.74.180 Professional and legal responsibility—Supervision of assistive personnel. A physical therapist is professionally and legally responsible for patient care given by assistive personnel under his or her supervision. If a physical therapist fails to adequately supervise patient care given by assistive personnel, the board may take disciplinary action against the physical therapist.

(1) Regardless of the setting in which physical therapy services are provided, only the licensed physical therapist may perform the following responsibilities:

- (a) Interpretation of referrals;
- (b) Initial examination, problem identification, and diagnosis for physical therapy;
- (c) Development or modification of a plan of care that is based on the initial examination and includes the goals for physical therapy intervention;
- (d) Determination of which tasks require the expertise and decision-making capacity of the physical therapist and must be personally rendered by the physical therapist, and which tasks may be delegated;
- (e) Assurance of the qualifications of all assistive personnel to perform assigned tasks through written documentation of their education or training that is maintained and available at all times;
- (f) Delegation and instruction of the services to be rendered by the physical therapist, physical therapist assistant, or physical therapy aide including, but not limited to, specific tasks or procedures, precautions, special problems, and contraindicated procedures;
- (g) Timely review of documentation, reexamination of the patient, and revision of the plan of care when indicated;
- (h) Establishment of a discharge plan.

(2) Supervision requires that the patient reevaluation is performed:

- (a) Every fifth visit, or if treatment is performed more than five times per week, reevaluation must be performed at least once a week;
 - (b) When there is any change in the patient's condition not consistent with planned progress or treatment goals.
- (3) Supervision of assistive personnel means:
- (a) Physical therapist assistants may function under direct or indirect supervision;
 - (b) Physical therapy aides must function under direct supervision;
 - (c)(i) The physical therapist may supervise a total of two assistive personnel at any one time.
 - (ii) In addition to the two assistive personnel authorized in (c)(i) of this subsection, the physical therapist may supervise a total of two persons who are pursuing a course of study leading to a degree as a physical therapist or a physical therapist assistant. [2013 c 280 § 2; 2007 c 98 § 16.]

Chapter 18.79 RCW NURSING CARE

Sections

18.79.110	Commission—Duties and powers—Rules—Successor to boards.
18.79.130	Repealed.
18.79.2021	Repealed.
18.79.390	Secretary and commission relationship.
18.79.410	Commission—Information to legislature.

18.79.110 Commission—Duties and powers—Rules—Successor to boards. (1) The commission shall keep a record of all of its proceedings and make such reports to the governor as may be required. The commission shall define by rules what constitutes specialized and advanced levels of nursing practice as recognized by the medical and

nursing profession. The commission may adopt rules or issue advisory opinions in response to questions put to it by professional health associations, nursing practitioners, and consumers in this state concerning the authority of various categories of nursing practitioners to perform particular acts.

(2) The commission shall approve curricula and shall establish criteria for minimum standards for schools preparing persons for licensing as registered nurses, advanced registered nurse practitioners, and licensed practical nurses under this chapter. The commission shall approve such schools of nursing as meet the requirements of this chapter and the commission, and the commission shall approve establishment of basic nursing education programs and shall establish criteria as to the need for and the size of a program and the type of program and the geographical location. The commission shall establish criteria for proof of reasonable currency of knowledge and skill as a basis for safe practice after three years' inactive or lapsed status. The commission shall establish criteria for licensing by endorsement. The commission shall determine examination requirements for applicants for licensing as registered nurses, advanced registered nurse practitioners, and licensed practical nurses under this chapter, and shall certify to the secretary for licensing duly qualified applicants.

(3) The commission shall adopt rules on continuing competency. The rules must include exemptions from the continuing competency requirements for registered nurses seeking advanced nursing degrees. Nothing in this subsection prohibits the commission from providing additional exemptions for any person credentialed under this chapter who is enrolled in an advanced education program.

(4) The commission shall adopt such rules under chapter 34.05 RCW as are necessary to fulfill the purposes of this chapter.

(5) The commission is the successor in interest of the board of nursing and the board of practical nursing. All contracts, undertakings, agreements, rules, regulations, decisions, orders, and policies of the former board of nursing or the board of practical nursing continue in full force and effect under the commission until the commission amends or rescinds those rules, regulations, decisions, orders, or policies.

(6) The members of the commission are immune from suit in an action, civil or criminal, based on its disciplinary proceedings or other official acts performed in good faith as members of the commission.

(7) Whenever the workload of the commission requires, the commission may request that the secretary appoint pro tempore members of the commission. When serving, pro tempore members of the commission have all of the powers, duties, and immunities, and are entitled to all of the emoluments, including travel expenses, of regularly appointed members of the commission. [2013 c 229 § 1; 1994 sp.s. c 9 § 411.]

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

18.79.2021 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

18.79.390 Secretary and commission relationship.

(1) The secretary shall employ an executive director that is:

(a) Hired by and serves at the pleasure of the commission;

(b) Exempt from the provisions of the civil service law, chapter 41.06 RCW and whose salary is established by the commission in accordance with RCW 43.03.028; and

(c) Responsible for performing all administrative duties of the commission, including preparing an annual budget, and any other duties as delegated to the executive director by the commission.

(2) Consistent with the budgeting and accounting act, the commission is responsible for proposing its own biennial budget which the secretary must submit to the office of financial management.

(3) Prior to adopting credentialing fees under RCW 43.70.250, the secretary shall collaborate with the commission to determine the appropriate fees necessary to support the activities of the commission.

(4) Prior to the secretary exercising the secretary's authority to adopt uniform rules and guidelines, or any other actions that might impact the licensing or disciplinary authority of the commission, the secretary shall first meet with the commission to determine how those rules or guidelines, or changes to rules or guidelines, might impact the commission's ability to effectively carry out its statutory duties. If the commission, in consultation with the secretary, determines that the proposed rules or guidelines, or changes to existing rules or guidelines, will negatively impact the commission's ability to effectively carry out its statutory duties, then the individual commission shall collaborate with the secretary to develop alternative solutions to mitigate the impacts. If an alternative solution cannot be reached, the parties may resolve the dispute through a mediator as set forth in subsection (6) of this section.

(5) The commission shall negotiate with the secretary to develop performance-based expectations, including identification of key performance measures. The performance expectations should focus on consistent, timely regulation of health care professionals.

(6) In the event there is a disagreement between the commission and the secretary, that is unable to be resolved through negotiation, a representative of both parties shall agree on the designation of a third party to mediate the dispute.

(7) The secretary shall employ staff that are hired and managed by the executive director provided that nothing contained in this section may be construed to alter any existing collective bargaining unit or the provisions of any existing collective bargaining agreement.

(8) By December 31, 2013, the commission must present a report with recommendations to the governor and the legislature regarding:

(a) Evidence-based practices and research-based practices used by boards of nursing when conducting licensing, educational, disciplinary, and financial activities and the use of such practices by the commission; and

(b) A comparison of the commission's licensing, education, disciplinary, and financial outcomes with those of other boards of nursing using a national database. [2013 c 81 § 5; 2011 c 60 § 8; 2008 c 134 § 30.]

Effective date—2013 c 81: See note following RCW 18.25.210.

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

Finding—Intent—Severability—2008 c 134: See notes following RCW 18.130.020.

18.79.410 Commission—Information to legislature.

In addition to the authority provided in RCW 42.52.804, the commission, its members, or staff as directed by the commission, may communicate, present information requested, volunteer information, testify before legislative committees, and educate the legislature, as the commission may from time to time see fit. [2013 c 81 § 6.]

Effective date—2013 c 81: See note following RCW 18.25.210.

Chapter 18.85 RCW**REAL ESTATE BROKERS AND MANAGING BROKERS**

Sections

18.85.061 License fees—Real estate commission account.

18.85.061 License fees—Real estate commission account. All fees required under this chapter shall be set by the director in accordance with RCW 43.24.086 and shall be paid to the state treasurer. All fees paid under the provisions of this chapter shall be placed in the real estate commission account in the state treasury. All money derived from fines imposed under this chapter shall be deposited in the real estate education program account created in RCW 18.85.321. During the 2013-2015 fiscal biennium, the legislature may transfer to the state general fund such amounts as reflect the excess fund balance in the real estate commission account. [2013 2nd sp.s. c 4 § 955; 2008 c 23 § 29; 1993 c 50 § 1; 1991 c 277 § 1; 1987 c 332 § 8; 1967 c 22 § 1; 1953 c 235 § 11; 1941 c 252 § 7; Rem. Supp. 1941 § 8340-30. Formerly RCW 18.85.220.]

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

Additional notes found at www.leg.wa.gov

Chapter 18.86 RCW**REAL ESTATE BROKERAGE RELATIONSHIPS**

Sections

18.86.010 Definitions.
 18.86.020 Agency relationship.
 18.86.030 Duties of broker.
 18.86.031 Violation of licensing law.
 18.86.040 Seller's agent—Duties.
 18.86.050 Buyer's agent—Duties.
 18.86.060 Dual agent—Duties.
 18.86.070 Duration of agency relationship.
 18.86.080 Compensation.
 18.86.090 Vicarious liability.
 18.86.100 Imputed knowledge and notice.
 18.86.110 Application.
 18.86.120 Pamphlet on the law of real estate agency—Content—Definition.

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

(1) "Agency relationship" means the agency relationship created under this chapter or by written agreement between a

real estate firm and a buyer and/or seller relating to the performance of real estate brokerage services.

(2) "Agent" means a broker who has entered into an agency relationship with a buyer or seller.

(3) "Broker" means broker, managing broker, and designated broker, collectively, as defined in chapter 18.85 RCW, unless the context requires the terms to be considered separately.

(4) "Business opportunity" means and includes a business, business opportunity, and goodwill of an existing business, or any one or combination thereof when the transaction or business includes an interest in real property.

(5) "Buyer" means an actual or prospective purchaser in a real estate transaction, or an actual or prospective tenant in a real estate rental or lease transaction, as applicable.

(6) "Buyer's agent" means a broker who has entered into an agency relationship with only the buyer in a real estate transaction, and includes subagents engaged by a buyer's agent.

(7) "Confidential information" means information from or concerning a principal of a broker that:

(a) Was acquired by the broker during the course of an agency relationship with the principal;

(b) The principal reasonably expects to be kept confidential;

(c) The principal has not disclosed or authorized to be disclosed to third parties;

(d) Would, if disclosed, operate to the detriment of the principal; and

(e) The principal personally would not be obligated to disclose to the other party.

(8) "Dual agent" means a broker who has entered into an agency relationship with both the buyer and seller in the same transaction.

(9) "Material fact" means information that substantially adversely affects the value of the property or a party's ability to perform its obligations in a real estate transaction, or operates to materially impair or defeat the purpose of the transaction. The fact or suspicion that the property, or any neighboring property, is or was the site of a murder, suicide or other death, rape or other sex crime, assault or other violent crime, robbery or burglary, illegal drug activity, gang-related activity, political or religious activity, or other act, occurrence, or use not adversely affecting the physical condition of or title to the property is not a material fact.

(10) "Principal" means a buyer or a seller who has entered into an agency relationship with a broker.

(11) "Real estate brokerage services" means the rendering of services for which a real estate license is required under chapter 18.85 RCW.

(12) "Real estate firm" or "firm" have the same meaning as defined in chapter 18.85 RCW.

(13) "Real estate transaction" or "transaction" means an actual or prospective transaction involving a purchase, sale, option, or exchange of any interest in real property or a business opportunity, or a lease or rental of real property. For purposes of this chapter, a prospective transaction does not exist until a written offer has been signed by at least one of the parties.

(14) "Seller" means an actual or prospective seller in a real estate transaction, or an actual or prospective landlord in a real estate rental or lease transaction, as applicable.

(15) "Seller's agent" means a broker who has entered into an agency relationship with only the seller in a real estate transaction, and includes subagents engaged by a seller's agent.

(16) "Subagent" means a broker who is engaged to act on behalf of a principal by the principal's agent where the principal has authorized the broker in writing to appoint subagents. [2013 c 58 § 1; 1996 c 179 § 1.]

18.86.020 Agency relationship. (1) A broker who performs real estate brokerage services for a buyer is a buyer's agent unless the:

(a) Broker's firm has appointed the broker to represent the seller pursuant to a written agency agreement between the firm and the seller, in which case the broker is a seller's agent;

(b) Broker has entered into a subagency agreement with the seller's agent's firm, in which case the broker is a seller's agent;

(c) Broker's firm has appointed the broker to represent the seller pursuant to a written agency agreement between the firm and the seller, and the broker's firm has appointed the broker to represent the buyer pursuant to a written agency agreement between the firm and the buyer, in which case the broker is a dual agent;

(d) Broker is the seller or one of the sellers; or

(e) Parties agree otherwise in writing after the broker has complied with RCW 18.86.030(1)(f).

(2) In a transaction in which different brokers affiliated with the same firm represent different parties, the firm's designated broker and any managing broker responsible for the supervision of both brokers, is a dual agent, and must obtain the written consent of both parties as required under RCW 18.86.060. In such case, each of the brokers shall solely represent the party with whom the broker has an agency relationship, unless all parties agree in writing that the broker is a dual agent.

(3) A broker may work with a party in separate transactions pursuant to different relationships, including, but not limited to, representing a party in one transaction and at the same time not representing that party in a different transaction involving that party, if the broker complies with this chapter in establishing the relationships for each transaction. [2013 c 58 § 2; 1997 c 217 § 1; 1996 c 179 § 2.]

Additional notes found at www.leg.wa.gov

18.86.030 Duties of broker. (1) Regardless of whether a broker is an agent, the broker owes to all parties to whom the broker renders real estate brokerage services the following duties, which may not be waived:

(a) To exercise reasonable skill and care;

(b) To deal honestly and in good faith;

(c) To present all written offers, written notices and other written communications to and from either party in a timely manner, regardless of whether the property is subject to an existing contract for sale or the buyer is already a party to an existing contract to purchase;

(d) To disclose all existing material facts known by the broker and not apparent or readily ascertainable to a party; provided that this subsection shall not be construed to imply any duty to investigate matters that the broker has not agreed to investigate;

(e) To account in a timely manner for all money and property received from or on behalf of either party;

(f) To provide a pamphlet on the law of real estate agency in the form prescribed in RCW 18.86.120 to all parties to whom the broker renders real estate brokerage services, before the party signs an agency agreement with the broker, signs an offer in a real estate transaction handled by the broker, consents to dual agency, or waives any rights, under RCW 18.86.020(1)(e), 18.86.040(1)(e), 18.86.050(1)(e), or 18.86.060(2)(e) or (f), whichever occurs earliest; and

(g) To disclose in writing to all parties to whom the broker renders real estate brokerage services, before the party signs an offer in a real estate transaction handled by the broker, whether the broker represents the buyer, the seller, both parties, or neither party. The disclosure shall be set forth in a separate paragraph entitled "Agency Disclosure" in the agreement between the buyer and seller or in a separate writing entitled "Agency Disclosure."

(2) Unless otherwise agreed, a broker owes no duty to conduct an independent inspection of the property or to conduct an independent investigation of either party's financial condition, and owes no duty to independently verify the accuracy or completeness of any statement made by either party or by any source reasonably believed by the broker to be reliable. [2013 c 58 § 3; 1996 c 179 § 3.]

18.86.031 Violation of licensing law. A violation of RCW 18.86.030 is a violation of RCW 18.85.361. [2013 c 58 § 4; 1996 c 179 § 14.]

18.86.040 Seller's agent—Duties. (1) Unless additional duties are agreed to in writing signed by a seller's agent, the duties of a seller's agent are limited to those set forth in RCW 18.86.030 and the following, which may not be waived except as expressly set forth in (e) of this subsection:

(a) To be loyal to the seller by taking no action that is adverse or detrimental to the seller's interest in a transaction;

(b) To timely disclose to the seller any conflicts of interest;

(c) To advise the seller to seek expert advice on matters relating to the transaction that are beyond the agent's expertise;

(d) Not to disclose any confidential information from or about the seller, except under subpoena or court order, even after termination of the agency relationship; and

(e) Unless otherwise agreed to in writing after the seller's agent has complied with RCW 18.86.030(1)(f), to make a good faith and continuous effort to find a buyer for the property; except that a seller's agent is not obligated to seek additional offers to purchase the property while the property is subject to an existing contract for sale.

(2)(a) The showing of properties not owned by the seller to prospective buyers or the listing of competing properties for sale by a seller's agent does not in and of itself breach the duty of loyalty to the seller or create a conflict of interest.

(b) The representation of more than one seller by different brokers affiliated with the same firm in competing transactions involving the same buyer does not in and of itself breach the duty of loyalty to the sellers or create a conflict of interest. [2013 c 58 § 5; 1997 c 217 § 2; 1996 c 179 § 4.]

Additional notes found at www.leg.wa.gov

18.86.050 Buyer's agent—Duties. (1) Unless additional duties are agreed to in writing signed by a buyer's agent, the duties of a buyer's agent are limited to those set forth in RCW 18.86.030 and the following, which may not be waived except as expressly set forth in (e) of this subsection:

(a) To be loyal to the buyer by taking no action that is adverse or detrimental to the buyer's interest in a transaction;

(b) To timely disclose to the buyer any conflicts of interest;

(c) To advise the buyer to seek expert advice on matters relating to the transaction that are beyond the agent's expertise;

(d) Not to disclose any confidential information from or about the buyer, except under subpoena or court order, even after termination of the agency relationship; and

(e) Unless otherwise agreed to in writing after the buyer's agent has complied with RCW 18.86.030(1)(f), to make a good faith and continuous effort to find a property for the buyer; except that a buyer's agent is not obligated to: (i) Seek additional properties to purchase while the buyer is a party to an existing contract to purchase; or (ii) show properties as to which there is no written agreement to pay compensation to the buyer's agent.

(2)(a) The showing of property in which a buyer is interested to other prospective buyers by a buyer's agent does not in and of itself breach the duty of loyalty to the buyer or create a conflict of interest.

(b) The representation of more than one buyer by different brokers affiliated with the same firm in competing transactions involving the same property does not in and of itself breach the duty of loyalty to the buyer or create a conflict of interest. [2013 c 58 § 6; 1997 c 217 § 3; 1996 c 179 § 5.]

Additional notes found at www.leg.wa.gov

18.86.060 Dual agent—Duties. (1) Notwithstanding any other provision of this chapter, a broker may act as a dual agent only with the written consent of both parties to the transaction after the dual agent has complied with RCW 18.86.030(1)(f), which consent must include a statement of the terms of compensation.

(2) Unless additional duties are agreed to in writing signed by a dual agent, the duties of a dual agent are limited to those set forth in RCW 18.86.030 and the following, which may not be waived except as expressly set forth in (e) and (f) of this subsection:

(a) To take no action that is adverse or detrimental to either party's interest in a transaction;

(b) To timely disclose to both parties any conflicts of interest;

(c) To advise both parties to seek expert advice on matters relating to the transaction that are beyond the dual agent's expertise;

(d) Not to disclose any confidential information from or about either party, except under subpoena or court order, even after termination of the agency relationship;

(e) Unless otherwise agreed to in writing after the dual agent has complied with RCW 18.86.030(1)(f), to make a good faith and continuous effort to find a buyer for the property; except that a dual agent is not obligated to seek additional offers to purchase the property while the property is subject to an existing contract for sale; and

(f) Unless otherwise agreed to in writing after the dual agent has complied with RCW 18.86.030(1)(f), to make a good faith and continuous effort to find a property for the buyer; except that a dual agent is not obligated to: (i) Seek additional properties to purchase while the buyer is a party to an existing contract to purchase; or (ii) show properties as to which there is no written agreement to pay compensation to the dual agent.

(3)(a) The showing of properties not owned by the seller to prospective buyers or the listing of competing properties for sale by a dual agent does not in and of itself constitute action that is adverse or detrimental to the seller or create a conflict of interest.

(b) The representation of more than one seller by different brokers licensed to the same firm in competing transactions involving the same buyer does not in and of itself constitute action that is adverse or detrimental to the sellers or create a conflict of interest.

(4)(a) The showing of property in which a buyer is interested to other prospective buyers or the presentation of additional offers to purchase property while the property is subject to a transaction by a dual agent does not in and of itself constitute action that is adverse or detrimental to the buyer or create a conflict of interest.

(b) The representation of more than one buyer by different brokers licensed to the same firm in competing transactions involving the same property does not in and of itself constitute action that is adverse or detrimental to the buyers or create a conflict of interest. [2013 c 58 § 7; 1997 c 217 § 4; 1996 c 179 § 6.]

Additional notes found at www.leg.wa.gov

18.86.070 Duration of agency relationship. (1) The agency relationships set forth in this chapter commence at the time that the broker undertakes to provide real estate brokerage services to a principal and continue until the earliest of the following:

- (a) Completion of performance by the broker;
- (b) Expiration of the term agreed upon by the parties;
- (c) Termination of the relationship by mutual agreement of the parties; or
- (d) Termination of the relationship by notice from either party to the other. However, such a termination does not affect the contractual rights of either party.

(2) Except as otherwise agreed to in writing, a broker owes no further duty after termination of the agency relationship, other than the duties of:

- (a) Accounting for all moneys and property received during the relationship; and
- (b) Not disclosing confidential information. [2013 c 58 § 8; 1997 c 217 § 5; 1996 c 179 § 7.]

Additional notes found at www.leg.wa.gov

18.86.080 Compensation. (1) In any real estate transaction, a firm's compensation may be paid by the seller, the buyer, a third party, or by sharing the compensation between firms.

(2) An agreement to pay or payment of compensation does not establish an agency relationship between the party who paid the compensation and the broker.

(3) A seller may agree that a seller's agent's firm may share with another firm the compensation paid by the seller.

(4) A buyer may agree that a buyer's agent's firm may share with another firm the compensation paid by the buyer.

(5) A firm may be compensated by more than one party for real estate brokerage services in a real estate transaction, if those parties consent in writing at or before the time of signing an offer in the transaction.

(6) A firm may receive compensation based on the purchase price without breaching any duty to the buyer or seller.

(7) Nothing contained in this chapter negates the requirement that an agreement authorizing or employing a broker to sell or purchase real estate for compensation or a commission be in writing and signed by the seller or buyer. [2013 c 58 § 9; 1997 c 217 § 6; 1996 c 179 § 8.]

Additional notes found at www.leg.wa.gov

18.86.090 Vicarious liability. (1) A principal is not liable for an act, error, or omission by an agent or subagent of the principal arising out of an agency relationship:

(a) Unless the principal participated in or authorized the act, error, or omission; or

(b) Except to the extent that: (i) The principal benefited from the act, error, or omission; and (ii) the court determines that it is highly probable that the claimant would be unable to enforce a judgment against the agent or subagent.

(2) A broker is not liable for an act, error, or omission of a subagent under this chapter, unless that broker participated in or authorized the act, error or omission. This subsection does not limit the liability of a firm for an act, error, or omission by a broker licensed to the firm. [2013 c 58 § 10; 1996 c 179 § 9.]

18.86.100 Imputed knowledge and notice. (1) Unless otherwise agreed to in writing, a principal does not have knowledge or notice of any facts known by an agent or subagent of the principal that are not actually known by the principal.

(2) Unless otherwise agreed to in writing, a broker does not have knowledge or notice of any facts known by a subagent that are not actually known by the broker. This subsection does not limit the knowledge imputed to the designated broker or any managing broker responsible for the supervision of the broker of any facts known by the broker. [2013 c 58 § 11; 1996 c 179 § 10.]

18.86.110 Application. The duties under this chapter are statutory duties and not fiduciary duties. This chapter supersedes the fiduciary duties of an agent to a principal under the common law. The common law continues to apply to the parties in all other respects. This chapter does not affect the duties of a broker while engaging in the authorized or unauthorized practice of law as determined by the courts of

this state. This chapter shall be construed broadly. [2013 c 58 § 12; 1996 c 179 § 11.]

18.86.120 Pamphlet on the law of real estate agency—Content—Definition. (1) The pamphlet required under RCW 18.86.030(1)(f) shall consist of the entire text of RCW 18.86.010 through 18.86.030 and 18.86.040 through 18.86.110 with a separate cover page. The pamphlet shall be 8 1/2 by 11 inches in size, the text shall be in print no smaller than 10-point type, the cover page shall be in print no smaller than 12-point type, and the title of the cover page "The Law of Real Estate Agency" shall be in print no smaller than 18-point type. The cover page shall be in the following form:

The Law of Real Estate Agency

This pamphlet describes your legal rights in dealing with a real estate firm or broker. Please read it carefully before signing any documents.

The following is only a brief summary of the attached law:

Sec. 1. Definitions. Defines the specific terms used in the law.

Sec. 2. Relationships between Brokers and the Public. Prescribes that a broker who works with a buyer or tenant represents that buyer or tenant—unless the broker is the listing agent, a seller's subagent, a dual agent, the seller personally or the parties agree otherwise. Also prescribes that in a transaction involving two different brokers licensed to the same real estate firm, the firm's designated broker and any managing broker responsible for the supervision of both brokers, are dual agents and each broker solely represents his or her client—unless the parties agree in writing that both brokers are dual agents.

Sec. 3. Duties of a Broker Generally. Prescribes the duties that are owed by all brokers, regardless of who the broker represents. Requires disclosure of the broker's agency relationship in a specific transaction.

Sec. 4. Duties of a Seller's Agent. Prescribes the additional duties of a broker representing the seller or landlord only.

Sec. 5. Duties of a Buyer's Agent. Prescribes the additional duties of a broker representing the buyer or tenant only.

Sec. 6. Duties of a Dual Agent. Prescribes the additional duties of a broker representing both parties in the same transaction, and requires the written consent of both parties to the broker acting as a dual agent.

Sec. 7. Duration of Agency Relationship. Describes when an agency relationship begins and ends. Provides that the duties of accounting and confidentiality continue after the termination of an agency relationship.

Sec. 8. Compensation. Allows real estate firms to share compensation with cooperating real estate firms. States that payment of compensation does not necessarily establish an agency relationship. Allows brokers to receive compensation from more

than one party in a transaction with the parties' consent.

Sec. 9. Vicarious Liability. Eliminates the liability of a party for the conduct of the party's agent or subagent, unless the principal participated in or benefited from the conduct or the agent or subagent is insolvent. Also limits the liability of a broker for the conduct of a subagent.

Sec. 10. Imputed Knowledge and Notice. Eliminates the common law rule that notice to or knowledge of an agent constitutes notice to or knowledge of the principal.

Sec. 11. Interpretation. This law establishes statutory duties which replace common law fiduciary duties owed by an agent to a principal.

Sec. 12. Short Sale. Prescribes an additional duty of a firm representing the seller of owner-occupied real property in a short sale.

(2)(a) The pamphlet required under RCW 18.86.030(1)(f) must also include the following disclosure: When the seller of owner-occupied residential real property enters into a listing agreement with a real estate firm where the proceeds from the sale may be insufficient to cover the costs at closing, it is the responsibility of the real estate firm to disclose to the seller in writing that the decision by any beneficiary or mortgagee, or its assignees, to release its interest in the real property, for less than the amount the borrower owes, does not automatically relieve the seller of the obligation to pay any debt or costs remaining at closing, including fees such as the real estate firm's commission.

(b) For the purposes of this subsection, "owner-occupied real property" means real property consisting solely of a single-family residence, a residential condominium unit, or a residential cooperative unit that is the principal residence of the borrower. [2013 c 58 § 13; 2012 c 185 § 2; 1997 c 217 § 7; 1996 c 179 § 13.]

Additional notes found at www.leg.wa.gov

Chapter 18.88B RCW LONG-TERM CARE WORKERS

Sections

18.88B.021 Certification requirements.

18.88B.035 Provisional certification. (*Expires July 1, 2016.*)

18.88B.021 Certification requirements. (1) Beginning January 7, 2012, except as provided in RCW 18.88B.041, any person hired as a long-term care worker must be certified as a home care aide as provided in this chapter within two hundred calendar days after the date of being hired. In computing the time periods in this subsection, the first day is the date of hire.

(2)(a) No person may practice or, by use of any title or description, represent himself or herself as a certified home care aide without being certified as provided in this chapter.

(b) This section does not prohibit a person: (i) From practicing a profession for which the person has been issued a license or which is specifically authorized under this state's laws; or (ii) who is exempt from certification under RCW

18.88B.041 from providing services as a long-term care worker.

(c) In consultation with consumer and worker representatives, the department shall, by January 1, 2013, establish by rule a single scope of practice that encompasses both long-term care workers who are certified home care aides and long-term care workers who are exempted from certification under RCW 18.88B.041.

(3) The department shall adopt rules to implement this section. [2013 c 259 § 1; 2012 c 164 § 301; 2012 c 1 § 103 (Initiative Measure No. 1163, approved November 8, 2011).]

Reviser's note: The language of this section, as enacted by 2012 c 1 § 103, was identical to RCW 18.88B.020 as amended by 2009 c 580 § 18, which was repealed by 2012 c 1 § 115.

Finding—Intent—Rules—Effective date—2012 c 164: See notes following RCW 18.88B.010.

Intent—Findings—Performance audits—Spending limits—Continuing effective dates—Application—Construction—Effective date—Short title—2012 c 1 (Initiative Measure No. 1163): See notes following RCW 74.39A.056.

18.88B.035 Provisional certification. (Expires July 1, 2016.) (1) The department may issue a provisional certification to a long-term care worker who is limited English proficient to allow the person additional time to comply with the requirement that a long-term care worker become certified as a home care aide within two hundred calendar days after the date of hire as provided in RCW 18.88B.021, if the long-term care worker:

- (a) Is limited English proficient; and
- (b) Complies with other requirements established by the department in rule.

(2) The department shall issue a provisional certification to a long-term care worker who has met the requirements of subsection (1) of this section. The provisional certification may only be issued once and is valid for no more than sixty days after the expiration of the two hundred calendar day requirement for becoming certified.

(3) The department shall adopt rules to implement this section.

(4) For the purposes of this section, "limited English proficient" means that an individual is limited in his or her ability to read, write, or speak English.

(5) The department may not issue any provisional certifications after March 1, 2016.

(6) This section expires July 1, 2016. [2013 c 259 § 2.]

**Chapter 18.92 RCW
VETERINARY MEDICINE, SURGERY,
AND DENTISTRY**

Sections

18.92.012	Authority to dispense legend drugs prescribed by other veterinarians.
18.92.013	Dispensing of drugs by registered or licensed personnel.
18.92.015	Definitions.

18.92.012 Authority to dispense legend drugs prescribed by other veterinarians. A veterinarian licensed under this chapter may dispense veterinary legend drugs prescribed by other veterinarians licensed under this chapter, so long as, during any year, the total drugs so dispensed do not constitute more than five percent of the total dosage units of

legend drugs the veterinarian dispenses and the veterinarian maintains records of his or her dispensing activities consistent with the requirements of chapters 18.64, 69.04, 69.41, and 69.50 RCW. For purposes of this section, a "veterinary legend drug" is a legend drug, as defined in chapter 69.41 RCW, which is either: (1) Restricted to use by licensed veterinarians by any law or regulation of the federal government, or (2) designated by rule by the pharmacy quality assurance commission as being a legend drug that one licensed veterinarian may dispense for another licensed veterinarian under this section. [2013 c 19 § 41; 1991 c 47 § 1.]

18.92.013 Dispensing of drugs by registered or licensed personnel. (1) A veterinarian legally prescribing drugs may delegate to a registered veterinary medication clerk, while under the veterinarian's direct supervision, certain nondiscretionary functions defined by the board and used in the preparing of legend and nonlegend drugs (except controlled substances as defined in or under chapter 69.50 RCW) associated with the practice of veterinary medicine. A veterinarian legally prescribing drugs may delegate to a licensed veterinary technician, while under the veterinarian's indirect supervision, certain nondiscretionary functions defined by the board and used in the preparing of legend drugs, nonlegend drugs, and controlled substances associated with the practice of veterinary medicine. Upon final approval of the packaged prescription following a direct physical inspection of the packaged prescription for proper formulation, packaging, and labeling by the veterinarian, the veterinarian may delegate the delivery of the prescription to a registered veterinary medication clerk or licensed veterinary technician, while under the veterinarian's indirect supervision. Dispensing of drugs by veterinarians, licensed veterinary technicians, and registered veterinary medication clerks shall meet the applicable requirements of chapters 18.64, 69.40, 69.41, and 69.50 RCW and is subject to inspection by the pharmacy quality assurance commission investigators.

(2) A licensed veterinary technician may administer legend drugs under chapter 69.41 RCW and controlled substances under chapter 69.50 RCW under indirect supervision of a veterinarian.

(3) For the purposes of this section:

- (a) "Direct supervision" means the veterinarian is on the premises and is quickly and easily available; and
- (b) "Indirect supervision" means the veterinarian is not on the premises but has given written or oral instructions for the delegated task. [2013 c 19 § 42; 2009 c 136 § 1; 2007 c 235 § 5; 2000 c 93 § 8; 1993 c 78 § 2.]

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

- (1) "Board" means the Washington state veterinary board of governors.
- (2) "Department" means the department of health.
- (3) "Secretary" means the secretary of the department of health.
- (4) "Veterinary medication clerk" means a person who has satisfactorily completed a board-approved training program developed in consultation with the pharmacy quality assurance commission and designed to prepare persons to

perform certain nondiscretionary functions defined by the board and used in the dispensing of legend and nonlegend drugs (except controlled substances as defined in or under chapter 69.50 RCW) associated with the practice of veterinary medicine.

(5) "Veterinary technician" means a person who is licensed by the board upon meeting the requirements of RCW 18.92.128. [2013 c 19 § 43; 2007 c 235 § 1; 2000 c 93 § 9; 1993 c 78 § 1; 1991 c 332 § 40; 1991 c 3 § 238; 1983 c 102 § 1; 1979 c 158 § 71; 1974 ex.s. c 44 § 1; 1967 ex.s. c 50 § 1; 1959 c 92 § 2; 1941 c 71 § 21; Rem. Supp. 1941 § 10040-21. Formerly RCW 18.92.010, part.]

Additional notes found at www.leg.wa.gov

Chapter 18.106 RCW PLUMBERS

Sections

18.106.010	Definitions.
18.106.020	Certificate or permit required—Photo identification—Written warning, penalty—Trainee supervision required—Medical gas piping installer endorsement—Penalty—Notice of infraction.
18.106.030	Application for certificate of competency—Medical gas piping installer endorsement—Evidence required.
18.106.040	Examinations—Eligibility requirements—Determination.
18.106.050	Examinations—Scope—Results—Retaking.
18.106.070	Certificates of competency, installer endorsement—Issuance—Renewal—Rights of holder—Training certificates—Supervision—Training, certified plumber.
18.106.075	Medical gas piping installer endorsement.
18.106.080	Persons engaged in plumbing business or trade on effective date.
18.106.090	Temporary permits.
18.106.100	Revocation of certificate of competency—Grounds—Procedure.
18.106.110	Advisory board of plumbers.
18.106.150	Exemptions.
18.106.155	Reciprocity.

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

(1) "Advisory board" means the state advisory board of plumbers.

(2) "Contractor" means any person, corporate or otherwise, who engages in, or offers or advertises to engage in, any work covered by the provisions of this chapter by way of trade or business, or any person, corporate or otherwise, who employs anyone, or offers or advertises to employ anyone, to engage in any work covered by the provisions of this chapter.

(3) "Department" means the department of labor and industries.

(4) "Director" means the director of department of labor and industries.

(5) "Journey level plumber" means any person who has been issued a certificate of competency by the department of labor and industries as provided in this chapter.

(6) "Like-in-kind" means having similar characteristics such as plumbing size, type, and function, and being in the same location.

(7) "Medical gas piping" means oxygen, nitrous oxide, high pressure nitrogen, medical compressed air, and medical vacuum systems.

(8) "Medical gas piping installer" means a journey level plumber who has been issued a medical gas piping installer endorsement.

(9) "Plumbing" means that craft involved in installing, altering, repairing and renovating potable water systems, liquid waste systems, and medical gas piping systems within a building. Installation in a water system of water softening or water treatment equipment is not within the meaning of plumbing as used in this chapter.

(10) "Specialty plumber" means anyone who has been issued a specialty certificate of competency limited to:

(a) Installation, maintenance, and repair of the plumbing of single-family dwellings, duplexes, and apartment buildings that do not exceed three stories;

(b) Maintenance and repair of backflow prevention assemblies; or

(c) A domestic water pumping system consisting of the installation, maintenance, and repair of the pressurization, treatment, and filtration components of a domestic water system consisting of: One or more pumps; pressure, storage, and other tanks; filtration and treatment equipment; if appropriate, a pitless adapter; along with valves, transducers, and other plumbing components that:

(i) Are used to acquire, treat, store, or move water suitable for either drinking or other domestic purposes, including irrigation, to: (A) A single-family dwelling, duplex, or other similar place of residence; (B) a public water system, as defined in RCW 70.119.020 and as limited under RCW 70.119.040; or (C) a farm owned and operated by a person whose primary residence is located within thirty miles of any part of the farm;

(ii) Are located within the interior space, including but not limited to an attic, basement, crawl space, or garage, of a residential structure, which space is separated from the living area of the residence by a lockable entrance and fixed walls, ceiling, or floor;

(iii) If located within the interior space of a residential structure, are connected to a plumbing distribution system supplied and installed into the interior space by either: (A) A person who, pursuant to RCW 18.106.070 or 18.106.090, possesses a valid temporary permit or certificate of competency as a journey level plumber, specialty plumber, or trainee, as defined in this chapter; or (B) a person exempt from the requirement to obtain a certified plumber to do such plumbing work under RCW 18.106.150. [2013 c 23 § 14; 2006 c 185 § 1; 2003 c 399 § 102; 2002 c 82 § 1; 2001 c 281 § 1; 1997 c 326 § 2; 1995 c 282 § 2; 1983 c 124 § 1; 1977 ex.s. c 149 § 1; 1975 1st ex.s. c 71 § 1; 1973 1st ex.s. c 175 § 1.]

Part headings not law—2003 c 399: See note following RCW 19.28.006.

Additional notes found at www.leg.wa.gov

18.106.020 Certificate or permit required—Photo identification—Written warning, penalty—Trainee supervision required—Medical gas piping installer endorsement—Penalty—Notice of infraction. (1) No person may engage in or offer to engage in the trade of plumbing without having a journey level certificate, specialty certificate, temporary permit, or trainee certificate and photo identification in his or her possession. The department may

establish by rule a requirement that the person also wear and visibly display his or her certificate or permit. A trainee must be supervised by a person who has a journey level certificate, specialty certificate, or temporary permit, as specified in RCW 18.106.070. No contractor may employ a person to engage in or offer to engage in the trade of plumbing unless the person employed has a journey level certificate, specialty certificate, temporary permit, or trainee certificate. This section does not apply to a contractor who is contracting for work on his or her own residence. Until July 1, 2007, the department shall issue a written warning to any specialty plumber defined by RCW 18.106.010(10)(c) not having a valid plumber certification. The warning will state that the individual must apply for a plumber training certificate or be qualified for and apply for plumber certification under the requirements in RCW 18.106.040 within thirty calendar days of the warning. Only one warning will be issued to any individual. If the individual fails to comply with this section, the department shall issue a penalty or penalties as authorized by this chapter.

(2) No person may engage in or offer to engage in medical gas piping installation without having a certificate of competency as a journey level plumber and a medical gas piping installer endorsement and photo identification in his or her possession. The department may establish by rule a requirement that the person also wear and visibly display his or her endorsement. A trainee may engage in medical gas piping installation if he or she has a training certificate and is supervised by a person with a medical gas piping installer endorsement. No contractor may employ a person to engage in or offer to engage in medical gas piping installation unless the person employed has a certificate of competency as a journey level plumber and a medical gas piping installer endorsement.

(3) No contractor may advertise, offer to do work, submit a bid, or perform any work under this chapter without being registered as a contractor under chapter 18.27 RCW.

(4) Violation of this section is an infraction. Each day in which a person engages in the trade of plumbing in violation of this section or employs a person in violation of this section is a separate infraction. Each worksite at which a person engages in the trade of plumbing in violation of this section or at which a person is employed in violation of this section is a separate infraction.

(5) Notices of infractions for violations of this section may be issued to:

(a) The person engaging in or offering to engage in the trade of plumbing in violation of this section;

(b) The contractor in violation of this section; and

(c) The contractor's employee who authorized the work assignment of the person employed in violation of this section. [2013 c 23 § 15; 2009 c 36 § 2; 2006 c 185 § 11; 2002 c 82 § 2; 1997 c 326 § 3; 1994 c 174 § 2; 1983 c 124 § 4; 1977 ex.s. c 149 § 2; 1975 1st ex.s. c 71 § 2; 1973 1st ex.s. c 175 § 2.]

Finding—Intent—2009 c 36: "(1) The legislature finds that dishonest construction contractors sometimes hire workers without proper licenses, certificates, permits, and endorsements to do electrical, plumbing, and conveyance work. This practice gives these contractors an unfair competitive advantage and leaves workers and customers vulnerable.

(2) The legislature intends that electricians, plumbers, and conveyance workers be required to have their licenses, certificates, permits, and endorse-

ments and photo identification in their possession while working. The legislature further intends that the department of labor and industries be authorized to require electricians, plumbers, and conveyance workers to wear and visibly display their licenses, certificates, permits, and endorsements while working, and to include photo identification on these documents. These requirements will help address the problems of the underground economy in the construction industry, level the playing field for honest contractors, and protect workers and consumers." [2009 c 36 § 1.]

Additional notes found at www.leg.wa.gov

18.106.030 Application for certificate of competency—Medical gas piping installer endorsement—Evidence required. Any person desiring to be issued a certificate of competency as provided in this chapter shall deliver evidence in a form prescribed by the department affirming that said person has had sufficient experience in as well as demonstrated general competency in the trade of plumbing or specialty plumbing so as to qualify him or her to make an application for a certificate of competency as a journey level plumber or specialty plumber. Completion of a course of study in the plumbing trade in the armed services of the United States or at a school accredited by the workforce training and education coordinating board shall constitute sufficient evidence of experience and competency to enable such person to make application for a certificate of competency.

Any person desiring to be issued a medical gas piping installer endorsement shall deliver evidence in a form prescribed by the department affirming that the person has met the requirements established by the department for a medical gas piping installer endorsement.

In addition to supplying the evidence as prescribed in this section, each applicant for a certificate of competency shall submit an application for such certificate on such form and in such manner as shall be prescribed by the director of the department. [2013 c 23 § 16; 2011 c 336 § 504; 1997 c 326 § 4; 1977 ex.s. c 149 § 3; 1973 1st ex.s. c 175 § 3.]

Additional notes found at www.leg.wa.gov

18.106.040 Examinations—Eligibility requirements—Determination. (1) Upon receipt of the application and evidence set forth in RCW 18.106.030, the director shall review the same and make a determination as to whether the applicant is eligible to take an examination for the certificate of competency. To be eligible to take the examination:

(a) Each applicant for a journey level plumber's certificate of competency shall furnish written evidence that he or she has completed a course of study in the plumbing trade in the armed services of the United States or at a school licensed by the workforce training and education coordinating board, or has had four or more years of experience under the direct supervision of a licensed journey level plumber.

(b) Each applicant for a specialty plumber's certificate of competency under RCW 18.106.010(10)(a) shall furnish written evidence that he or she has completed a course of study in the plumbing trade in the armed services of the United States or at a school licensed by the workforce training and education coordinating board under chapter 28C.10 RCW, or that he or she has had at least three years practical experience in the specialty.

(c) Each applicant for a specialty plumber's certificate of competency under RCW 18.106.010(10) (b) or (c) shall furnish written evidence that he or she is eligible to take the

examination. These eligibility requirements for the specialty plumbers defined by RCW 18.106.010(10)(c) shall be one year of practical experience working on pumping systems not exceeding one hundred gallons per minute, and two years of practical experience working on pumping systems exceeding one hundred gallons per minute, or equivalent as determined by rule by the department in consultation with the advisory board, and that experience may be obtained at the same time the individual is meeting the experience required by RCW 19.28.191. The eligibility requirements for other specialty plumbers shall be established by rule by the director pursuant to subsection (2)(b) of this section.

(2)(a) The director shall establish reasonable rules for the examinations to be given applicants for certificates of competency. In establishing the rules, the director shall consult with the state advisory board of plumbers as established in RCW 18.106.110.

(b) The director shall establish reasonable criteria by rule for determining an applicant's eligibility to take an examination for the certificate of competency for specialty plumbers under subsection (1)(c) of this section. In establishing the criteria, the director shall consult with the state advisory board of plumbers as established in RCW 18.106.110. These rules must take effect by December 31, 2006.

(3) Upon determination that the applicant is eligible to take the examination, the director shall so notify the applicant, indicating the time and place for taking the same.

(4) No other requirement for eligibility may be imposed. [2013 c 23 § 17; 2006 c 185 § 2; 2001 c 281 § 2; 1977 ex.s. c 149 § 4; 1975 1st ex.s. c 71 § 3; 1973 1st ex.s. c 175 § 4.]

18.106.050 Examinations—Scope—Results—Retaking. (1) The department, with the advice of the advisory board, shall prepare a written examination to be administered to applicants for certificates of competency for journey level plumber and specialty plumber. The examination shall be constructed to determine:

(a) Whether the applicant possesses varied general knowledge of the technical information and practical procedures that are identified with the trade of journey level plumber or specialty plumber; and

(b) Whether the applicant is familiar with the applicable plumbing codes and the administrative rules of the department pertaining to plumbing and plumbers.

(2) The department, with the consent of the advisory board, may enter into a contract with a nationally recognized testing agency to develop, administer, and score any examinations required by this chapter. All applicants shall, before taking an examination, pay the required examination fee. The department shall set the examination fee by contract with a nationally recognized testing agency. The fee shall cover but not exceed the costs of preparing and administering the examination and the materials necessary to conduct the practical elements of the examination. The department shall approve training courses and set the fees for training courses for examinations provided by this chapter.

(3) An examination to determine the competency of an applicant for a domestic water pumping system specialty plumbing certificate as defined by RCW 18.106.010(10)(c) must be established by the department in consultation with the advisory board by December 31, 2006. The department

may include an examination for appropriate electrical safety and technical requirements as required by RCW 19.28.191 with the examination required by this section. The department, in consultation with the advisory board, may accept the certification by a professional or trade association or other acceptable entity as meeting the examination requirement of this section. Individuals who can provide evidence to the department prior to January 1, 2007, that they have been employed in the pump and irrigation business as defined by RCW 18.106.010(10)(c) for not less than four thousand hours in the most recent four calendar years shall be issued the appropriate certificate by the department upon receiving such documentation and applicable fees. The department shall establish a single document for those who have received both the plumbing specialty certification defined by this subsection and have also met the certification requirements for a pump and irrigation or domestic pump specialty electrician, showing that the individual has received both certifications.

(4) The department shall certify the results of the examinations provided by this chapter, and shall notify the applicant in writing whether he or she has passed or failed. Any applicant who has failed the examination may retake the examination, upon the terms and after a period of time that the director shall set by rule. The director may not limit the number of times that a person may take the examination. [2013 c 23 § 18; 2006 c 185 § 3; 1997 c 326 § 5; 1983 c 124 § 2; 1977 ex.s. c 149 § 5; 1973 1st ex.s. c 175 § 5.]

Additional notes found at www.leg.wa.gov

18.106.070 Certificates of competency, installer endorsement—Issuance—Renewal—Rights of holder—Training certificates—Supervision—Training, certified plumber.

(1) The department shall issue a certificate of competency to all applicants who have passed the examination and have paid the fee for the certificate. The certificate may include a photograph of the holder. The certificate shall bear the date of issuance, and shall expire on the birthdate of the holder immediately following the date of issuance. The certificate shall be renewable every other year, upon application, on or before the birthdate of the holder, except for specialty plumbers defined by RCW 18.106.010(10)(c) who also have an electrical certification issued jointly as provided by RCW 18.106.050(3) in which case their certificate shall be renewable every three years on or before the birthdate of the holder. The department shall renew a certificate of competency if the applicant: (a) Pays the renewal fee assessed by the department; and (b) during the past two years has completed sixteen hours of continuing education approved by the department with the advice of the advisory board, including four hours related to electrical safety. For holders of the specialty plumber certificate under RCW 18.106.010(10)(c), the continuing education may comprise both electrical and plumbing education with a minimum of twelve of the required twenty-four hours of continuing education in plumbing. If a person fails to renew the certificate by the renewal date, he or she must pay a doubled fee. If the person does not renew the certificate within ninety days of the renewal date, he or she must retake the examination and pay the examination fee.

The journey level plumber and specialty plumber certificates of competency, the medical gas piping installer

endorsement, and the temporary permit provided for in this chapter grant the holder the right to engage in the work of plumbing as a journey level plumber, specialty plumber, or medical gas piping installer, in accordance with their provisions throughout the state and within any of its political subdivisions on any job or any employment without additional proof of competency or any other license or permit or fee to engage in the work. This section does not preclude employees from adhering to a union security clause in any employment where such a requirement exists.

(2) A person who is indentured in an apprenticeship program approved under chapter 49.04 RCW for the plumbing construction trade or who is learning the plumbing construction trade may work in the plumbing construction trade if supervised by a certified journey level plumber or a certified specialty plumber in that plumber's specialty. All apprentices and individuals learning the plumbing construction trade shall obtain a plumbing training certificate from the department. The certificate shall authorize the holder to learn the plumbing construction trade while under the direct supervision of a journey level plumber or a specialty plumber working in his or her specialty. The certificate may include a photograph of the holder. The holder of the plumbing training certificate shall renew the certificate annually. At the time of renewal, the holder shall provide the department with an accurate list of the holder's employers in the plumbing construction industry for the previous year and the number of hours worked for each employer. An annual fee shall be charged for the issuance or renewal of the certificate. The department shall set the fee by rule. The fee shall cover but not exceed the cost of administering and enforcing the trainee certification and supervision requirements of this chapter.

(3) Any person who has been issued a plumbing training certificate under this chapter may work if that person is under supervision. Supervision shall consist of a person being on the same job site and under the control of either a journey level plumber or an appropriate specialty plumber who has an applicable certificate of competency issued under this chapter. Either a journey level plumber or an appropriate specialty plumber shall be on the same job site as the noncertified individual for a minimum of seventy-five percent of each working day unless otherwise provided in this chapter. The ratio of noncertified individuals to certified journey level or specialty plumbers working on a job site shall be: (a) Not more than two noncertified plumbers working on any one job site for every certified specialty plumber or journey level plumber working as a specialty plumber; and (b) not more than one noncertified plumber working on any one job site for every certified journey level plumber working as a journey level plumber.

An individual who has a current training certificate and who has successfully completed or is currently enrolled in an approved apprenticeship program or in a technical school program in the plumbing construction trade in a school approved by the workforce training and education coordinating board, may work without direct on-site supervision during the last six months of meeting the practical experience requirements of this chapter.

(4) An individual who has a current training certificate and who has successfully completed or is currently enrolled in a medical gas piping installer training course approved by

the department may work on medical gas piping systems if the individual is under the direct supervision of a certified medical gas piping installer who holds a medical gas piping installer endorsement one hundred percent of a working day on a one-to-one ratio.

(5) The training to become a certified plumber must include not less than sixteen hours of classroom training established by the director with the advice of the advisory board. The classroom training must include, but not be limited to, electrical wiring safety, grounding, bonding, and other related items plumbers need to know to work under RCW 19.28.091.

(6) All persons who are certified plumbers before January 1, 2003, are deemed to have received the classroom training required in subsection (5) of this section. [2013 c 23 § 19; 2009 c 36 § 3; 2006 c 185 § 10; 2003 c 399 § 801; 1997 c 326 § 6; 1985 c 465 § 1; 1983 c 124 § 3; 1977 ex.s. c 149 § 7; 1973 1st ex.s. c 175 § 7.]

Finding—Intent—2009 c 36: See note following RCW 18.106.020.

Part headings not law—2003 c 399: See note following RCW 19.28.006.

Additional notes found at www.leg.wa.gov

18.106.075 Medical gas piping installer endorsement.

The department shall adopt requirements that qualify a journey level plumber to be issued a medical gas piping installer endorsement. [2013 c 23 § 20; 1997 c 326 § 1.]

Additional notes found at www.leg.wa.gov

18.106.080 Persons engaged in plumbing business or trade on effective date.

No examination shall be required of any applicant for a certificate of competency who, on July 16, 1973, was engaged in a bona fide business or trade of plumbing, or on said date held a valid journey level plumber's license issued by a political subdivision of the state of Washington and whose license is valid at the time of making his or her application for said certificate. Applicants qualifying under this section shall be issued a certificate by the department upon making an application as provided in RCW 18.106.030 and paying the fee required under RCW 18.106.050: PROVIDED, That no applicant under this section shall be required to furnish such evidence as required by RCW 18.106.030. [2013 c 23 § 21; 2011 c 336 § 505; 1973 1st ex.s. c 175 § 8.]

18.106.090 Temporary permits. The department is authorized to grant and issue temporary permits in lieu of certificates of competency whenever a plumber coming into the state of Washington from another state requests the department for a temporary permit to engage in the trade of plumbing as a journey level plumber or as a specialty plumber during the period of time between filing of an application for a certificate as provided in RCW 18.106.030 as now or hereafter amended and taking the examination provided for in RCW 18.106.050. The temporary permit may include a photograph of the plumber. No temporary permit shall be issued to:

(1) Any person who has failed to pass the examination for a certificate of competency;

(2) Any applicant under this section who has not furnished the department with such evidence required under RCW 18.106.030;

(3) Any apprentice plumber. [2013 c 23 § 22; 2009 c 36 § 4; 1985 c 7 § 78; 1977 ex.s. c 149 § 8; 1973 1st ex.s. c 175 § 9.]

Finding—Intent—2009 c 36: See note following RCW 18.106.020.

18.106.100 Revocation of certificate of competency—Grounds—Procedure. (1) The department may revoke or suspend a certificate of competency for any of the following reasons:

(a) The certificate was obtained through error or fraud;

(b) The certificate holder is judged to be incompetent to carry on the trade of plumbing as a journey level plumber or specialty plumber;

(c) The certificate holder has violated any provision of this chapter or any rule adopted under this chapter.

(2) Before a certificate of competency is revoked or suspended, the department shall send written notice using a method by which the mailing can be tracked or the delivery can be confirmed to the certificate holder's last known address. The notice must list the allegations against the certificate holder and give him or her the opportunity to request a hearing before the advisory board. At the hearing, the department and the certificate holder have opportunity to produce witnesses and give testimony. The hearing must be conducted in accordance with chapter 34.05 RCW. The board shall render its decision based upon the testimony and evidence presented and shall notify the parties immediately upon reaching its decision. A majority of the board is necessary to render a decision.

(3) The department may deny renewal of a certificate of competency issued under this chapter if the applicant owes outstanding penalties for a final judgment under this chapter. The department shall notify the applicant of the denial using a method by which the mailing can be tracked or the delivery can be confirmed to the address on the application. The applicant may appeal the denial within twenty days by filing a notice of appeal with the department accompanied by a certified check for two hundred dollars which shall be returned to the applicant if the decision of the department is not upheld by the hearings officer. The office of administrative hearings shall conduct the hearing under chapter 34.05 RCW. If the hearings officer sustains the decision of the department, the two hundred dollars must be applied to the cost of the hearing. [2013 c 23 § 23; 2011 c 301 § 4; 1996 c 147 § 3; 1977 ex.s. c 149 § 9; 1973 1st ex.s. c 175 § 10.]

18.106.110 Advisory board of plumbers. (1) There is created a state advisory board of plumbers, to be composed of seven members appointed by the director. Two members shall be journey level plumbers, one member shall be a specialty plumber, three members shall be persons conducting a plumbing business, at least one of which shall be primarily engaged in a specialty plumbing business, and one member from the general public who is familiar with the business and trade of plumbing.

(2) The term of one journey level plumber expires July 1, 1995; the term of the second journey level plumber expires July 1, 2000; the term of the specialty plumber expires July 1,

2008; the term of one person conducting a plumbing business expires July 1, 1996; the term of the second person conducting a plumbing business expires July 1, 2000; the term of the third person conducting a plumbing business expires July 1, 2007; and the term of the public member expires July 1, 1997. Thereafter, upon the expiration of said terms, the director shall appoint a new member to serve for a period of three years. However, to ensure that the board can continue to act, a member whose term expires shall continue to serve until his or her replacement is appointed. In the case of any vacancy on the board for any reason, the director shall appoint a new member to serve out the term of the person whose position has become vacant.

(3) The advisory board shall carry out all the functions and duties enumerated in this chapter, as well as generally advise the department on all matters relative to this chapter.

(4) Each member of the advisory board shall receive travel expenses in accordance with the provisions of RCW 43.03.050 and 43.03.060 as now existing or hereafter amended for each day in which such member is actually engaged in attendance upon the meetings of the advisory board. [2013 c 23 § 24; 2011 1st sp.s. c 21 § 21; 2006 c 185 § 4; 1997 c 307 § 1; 1995 c 95 § 1; 1975-'76 2nd ex.s. c 34 § 56; 1973 1st ex.s. c 175 § 11.]

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

Additional notes found at www.leg.wa.gov

18.106.150 Exemptions. (1) Nothing in this chapter shall be construed to require that a person obtain a license or a certified plumber in order to do plumbing work at his or her residence or farm or place of business or on other property owned by him or her.

(2) A current certificate of competency or apprentice permit is not required for:

(a) Persons performing plumbing work on a farm; or

(b) Certified journey level electricians, certified residential specialty electricians, or electrical trainees working for an electrical contractor and performing exempt work under RCW 18.27.090(18).

(3) Nothing in this chapter shall be intended to derogate from or dispense with the requirements of any valid plumbing code enacted by a political subdivision of the state, except that no code shall require the holder of a certificate of competency to demonstrate any additional proof of competency or obtain any other license or pay any fee in order to engage in the trade of plumbing.

(4) This chapter shall not apply to common carriers subject to Part I of the Interstate Commerce Act, nor to their officers and employees.

(5) Nothing in this chapter shall be construed to apply to any farm, business, industrial plant, or corporation doing plumbing work on premises it owns or operates.

(6) Nothing in this chapter shall be construed to restrict the right of any householder to assist or receive assistance from a friend, neighbor, relative, or other person when none of the individuals doing such plumbing hold themselves out as engaged in the trade or business of plumbing. [2013 c 23 § 25; 2003 c 399 § 402; 1973 1st ex.s. c 175 § 15.]

Part headings not law—2003 c 399: See note following RCW 19.28.006.

18.106.155 Reciprocity. The director may, upon payment of the appropriate fees, grant a certificate of competency without examination to any applicant who is a registered journey level plumber or specialty plumber in any other state whose requirements for registration are at least substantially equivalent to the requirements of this state, and which extends the same privileges of reciprocity to journey level plumbers or specialty plumbers registered in this state. [2013 c 23 § 26; 1977 ex.s. c 149 § 11.]

Chapter 18.130 RCW

REGULATION OF HEALTH PROFESSIONS— UNIFORM DISCIPLINARY ACT

Sections

18.130.039	Licensee not required to participate in third-party reimbursement program.
18.130.040	Application to certain professions—Authority of secretary—Grant or denial of licenses—Procedural rules. (<i>Effective until July 1, 2016.</i>)
18.130.040	Application to certain professions—Authority of secretary—Grant or denial of licenses—Procedural rules. (<i>Effective July 1, 2016.</i>)
18.130.050	Authority of disciplining authority. (<i>Effective until January 1, 2014.</i>)
18.130.050	Authority of disciplining authority. (<i>Effective January 1, 2014.</i>)
18.130.095	Uniform procedural rules.
18.130.400	Abuse of vulnerable adult—Prohibition on practice. (<i>Effective January 1, 2014.</i>)

18.130.039 Licensee not required to participate in third-party reimbursement program. No licensee subject to this chapter may be required to participate in any public or private third-party reimbursement program or any plans or products offered by a payor as a condition of licensure. [2013 c 293 § 5.]

18.130.040 Application to certain professions—Authority of secretary—Grant or denial of licenses—Procedural rules. (*Effective until July 1, 2016.*) (1) This chapter applies only to the secretary and the boards and commissions having jurisdiction in relation to the professions licensed under the chapters specified in this section. This chapter does not apply to any business or profession not licensed under the chapters specified in this section.

(2)(a) The secretary has authority under this chapter in relation to the following professions:

- (i) Dispensing opticians licensed and designated apprentices under chapter 18.34 RCW;
- (ii) Midwives licensed under chapter 18.50 RCW;
- (iii) Ocularists licensed under chapter 18.55 RCW;
- (iv) Massage practitioners and businesses licensed under chapter 18.108 RCW;
- (v) Dental hygienists licensed under chapter 18.29 RCW;
- (vi) East Asian medicine practitioners licensed under chapter 18.06 RCW;
- (vii) Radiologic technologists certified and X-ray technicians registered under chapter 18.84 RCW;
- (viii) Respiratory care practitioners licensed under chapter 18.89 RCW;
- (ix) Hypnotherapists and agency affiliated counselors registered and advisors and counselors certified under chapter 18.19 RCW;

(x) Persons licensed as mental health counselors, mental health counselor associates, marriage and family therapists, marriage and family therapist associates, social workers, social work associates—advanced, and social work associates—*independent clinical* under chapter 18.225 RCW;

(xi) Persons registered as nursing pool operators under chapter 18.52C RCW;

(xii) Nursing assistants registered or certified or medication assistants endorsed under chapter 18.88A RCW;

(xiii) Health care assistants certified under chapter 18.135 RCW;

(xiv) Dietitians and nutritionists certified under chapter 18.138 RCW;

(xv) Chemical dependency professionals and chemical dependency professional trainees certified under chapter 18.205 RCW;

(xvi) Sex offender treatment providers and certified affiliate sex offender treatment providers certified under chapter 18.155 RCW;

(xvii) Persons licensed and certified under chapter 18.73 RCW or RCW 18.71.205;

(xviii) Orthotists and prosthetists licensed under chapter 18.200 RCW;

(xix) Surgical technologists registered under chapter 18.215 RCW;

(xx) Recreational therapists under chapter 18.230 RCW;

(xxi) Animal massage practitioners certified under chapter 18.240 RCW;

(xxii) Athletic trainers licensed under chapter 18.250 RCW;

(xxiii) Home care aides certified under chapter 18.88B RCW;

(xxiv) Genetic counselors licensed under chapter 18.290 RCW;

(xxv) Reflexologists certified under chapter 18.108 RCW; and

(xxvi) Medical assistants-certified, medical assistants-hemodialysis technician, medical assistants-phlebotomist, and medical assistants-registered certified and registered under chapter 18.360 RCW.

(b) The boards and commissions having authority under this chapter are as follows:

(i) The podiatric medical board as established in chapter 18.22 RCW;

(ii) The chiropractic quality assurance commission as established in chapter 18.25 RCW;

(iii) The dental quality assurance commission as established in chapter 18.32 RCW governing licenses issued under chapter 18.32 RCW, licenses and registrations issued under chapter 18.260 RCW, and certifications issued under chapter 18.350 RCW;

(iv) The board of hearing and speech as established in chapter 18.35 RCW;

(v) The board of examiners for nursing home administrators as established in chapter 18.52 RCW;

(vi) The optometry board as established in chapter 18.54 RCW governing licenses issued under chapter 18.53 RCW;

(vii) The board of osteopathic medicine and surgery as established in chapter 18.57 RCW governing licenses issued under chapters 18.57 and 18.57A RCW;

(viii) The pharmacy quality assurance commission as established in chapter 18.64 RCW governing licenses issued under chapters 18.64 and 18.64A RCW;

(ix) The medical quality assurance commission as established in chapter 18.71 RCW governing licenses and registrations issued under chapters 18.71 and 18.71A RCW;

(x) The board of physical therapy as established in chapter 18.74 RCW;

(xi) The board of occupational therapy practice as established in chapter 18.59 RCW;

(xii) The nursing care quality assurance commission as established in chapter 18.79 RCW governing licenses and registrations issued under that chapter;

(xiii) The examining board of psychology and its disciplinary committee as established in chapter 18.83 RCW;

(xiv) The veterinary board of governors as established in chapter 18.92 RCW;

(xv) The board of naturopathy established in chapter 18.36A RCW; and

(xvi) The board of denturists established in chapter 18.30 RCW.

(3) In addition to the authority to discipline license holders, the disciplining authority has the authority to grant or deny licenses. The disciplining authority may also grant a license subject to conditions.

(4) All disciplining authorities shall adopt procedures to ensure substantially consistent application of this chapter, the uniform disciplinary act, among the disciplining authorities listed in subsection (2) of this section. [2013 c 171 § 7; 2013 c 19 § 44. Prior: 2012 c 208 § 10; 2012 c 153 § 16; 2012 c 137 § 19; 2012 c 23 § 6; 2011 c 41 § 11; prior: 2010 c 286 § 18; (2010 c 286 § 17 expired August 1, 2010); (2010 c 286 § 16 expired July 1, 2010); 2010 c 65 § 3; (2010 c 65 § 2 expired August 1, 2010); (2010 c 65 § 1 expired July 1, 2010); prior: 2009 c 302 § 14; 2009 c 301 § 8; 2009 c 52 § 2; 2009 c 52 § 1; 2009 c 2 § 16 (Initiative Measure No. 1029, approved November 4, 2008); 2008 c 134 § 18; (2008 c 134 § 17 expired July 1, 2008); prior: 2007 c 269 § 17; 2007 c 253 § 13; 2007 c 70 § 11; 2004 c 38 § 2; prior: 2003 c 275 § 2; 2003 c 258 § 7; prior: 2002 c 223 § 6; 2002 c 216 § 11; 2001 c 251 § 27; 1999 c 335 § 10; 1998 c 243 § 16; prior: 1997 c 392 § 516; 1997 c 334 § 14; 1997 c 285 § 13; 1997 c 275 § 2; prior: 1996 c 200 § 32; 1996 c 81 § 5; prior: 1995 c 336 § 2; 1995 c 323 § 16; 1995 c 260 § 11; 1995 c 1 § 19 (Initiative Measure No. 607, approved November 8, 1994); prior: 1994 sp.s. c 9 § 603; 1994 c 17 § 19; 1993 c 367 § 4; 1992 c 128 § 6; 1990 c 3 § 810; prior: 1988 c 277 § 13; 1988 c 267 § 22; 1988 c 243 § 7; prior: 1987 c 512 § 22; 1987 c 447 § 18; 1987 c 415 § 17; 1987 c 412 § 15; 1987 c 150 § 1; prior: 1986 c 259 § 3; 1985 c 326 § 29; 1984 c 279 § 4.]

Reviser's note: This section was amended by 2013 c 19 § 44 and by 2013 c 171 § 7, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Expiration date—2013 c 171 § 7: "Section 7 of this act expires July 1, 2016." [2013 c 171 § 9.]

Expiration date—2013 c 19 § 44: "Section 44 of this act expires July 1, 2016." [2013 c 19 § 128.]

Effective date—2012 c 208 §§ 2-10: See note following RCW 18.88A.020.

Findings—Rules—2012 c 208: See notes following RCW 18.88A.082.

[2013 RCW Supp—page 178]

Effective date—2012 c 153 §§ 1-12, 14, 16, and 18: See note following RCW 18.360.005.

Rules—2012 c 153: See note following RCW 18.360.005.

Finding—Purpose—Rules—Effective date—2012 c 137: See notes following RCW 18.108.005.

Effective date—2010 c 286 § 18: "Section 18 of this act takes effect August 1, 2010." [2010 c 286 § 22.]

Expiration date—2010 c 286 § 17: "Section 17 of this act expires August 1, 2010." [2010 c 286 § 21.]

Effective date—2010 c 286 § 17: "Section 17 of this act takes effect July 1, 2010." [2010 c 286 § 20.]

Expiration date—2010 c 286 § 16: "Section 16 of this act expires July 1, 2010." [2010 c 286 § 19.]

Intent—2010 c 286: See RCW 18.06.005.

Effective date—2010 c 65 § 3: "Section 3 of this act takes effect August 1, 2010." [2010 c 65 § 9.]

Expiration date—2010 c 65 § 2: "Section 2 of this act expires August 1, 2010." [2010 c 65 § 8.]

Effective date—2010 c 65 § 2: "Section 2 of this act takes effect July 1, 2010." [2010 c 65 § 7.]

Expiration date—2010 c 65 § 1: "Section 1 of this act expires July 1, 2010." [2010 c 65 § 6.]

Effective date—Implementation—2009 c 302: See RCW 18.290.900 and 18.290.901.

Intent—Implementation—2009 c 301: See notes following RCW 18.35.010.

Speech-language pathology assistants—Certification requirements—2009 c 301: See note following RCW 18.35.040.

Effective date—2009 c 52 § 1: "Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2009." [2009 c 52 § 3.]

Effective date—2009 c 52 § 2: "Section 2 of this act takes effect July 1, 2010." [2009 c 52 § 4.]

Contingent effective date—2009 c 2 (Initiative Measure No. 1029) § 16: "Section 16 of this act takes effect if section 18, chapter 134, Laws of 2008 is signed into law by April 6, 2008." [2009 c 2 § 24 (Initiative Measure No. 1029, approved November 4, 2008).]

Intent—Findings—Construction—Short title—2009 c 2 (Initiative Measure No. 1029): See notes following RCW 18.88B.050.

Effective date—2008 c 134 § 18: "Section 18 of this act takes effect July 1, 2008." [2008 c 134 § 37.]

Expiration date—2008 c 134 § 17: "Section 17 of this act expires July 1, 2008." [2008 c 134 § 36.]

Finding—Intent—Severability—2008 c 134: See notes following RCW 18.130.020.

Application—Implementation—2007 c 269: See RCW 18.260.900 and 18.260.901.

Severability—Effective date—Implementation—2007 c 253: See RCW 18.250.900 through 18.250.902.

Effective date—2004 c 38: See note following RCW 18.155.075.

Effective date—2003 c 275 § 2: "Section 2 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003." [2003 c 275 § 4.]

Severability—Effective date—2003 c 258: See notes following RCW 18.79.330.

Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392: See notes following RCW 74.39A.009.

Intent—Purpose—1997 c 285: See RCW 18.200.005.

Additional notes found at www.leg.wa.gov

**18.130.040 Application to certain professions—
Authority of secretary—Grant or denial of licenses—Pro-**

cedural rules. (Effective July 1, 2016.) (1) This chapter applies only to the secretary and the boards and commissions having jurisdiction in relation to the professions licensed under the chapters specified in this section. This chapter does not apply to any business or profession not licensed under the chapters specified in this section.

(2)(a) The secretary has authority under this chapter in relation to the following professions:

(i) Dispensing opticians licensed and designated apprentices under chapter 18.34 RCW;

(ii) Midwives licensed under chapter 18.50 RCW;

(iii) Ocularists licensed under chapter 18.55 RCW;

(iv) Massage practitioners and businesses licensed under chapter 18.108 RCW;

(v) Dental hygienists licensed under chapter 18.29 RCW;

(vi) East Asian medicine practitioners licensed under chapter 18.06 RCW;

(vii) Radiologic technologists certified and X-ray technicians registered under chapter 18.84 RCW;

(viii) Respiratory care practitioners licensed under chapter 18.89 RCW;

(ix) Hypnotherapists and agency affiliated counselors registered and advisors and counselors certified under chapter 18.19 RCW;

(x) Persons licensed as mental health counselors, mental health counselor associates, marriage and family therapists, marriage and family therapist associates, social workers, social work associates—advanced, and social work associates—-independent clinical under chapter 18.225 RCW;

(xi) Persons registered as nursing pool operators under chapter 18.52C RCW;

(xii) Nursing assistants registered or certified or medication assistants endorsed under chapter 18.88A RCW;

(xiii) Dietitians and nutritionists certified under chapter 18.138 RCW;

(xiv) Chemical dependency professionals and chemical dependency professional trainees certified under chapter 18.205 RCW;

(xv) Sex offender treatment providers and certified affiliate sex offender treatment providers certified under chapter 18.155 RCW;

(xvi) Persons licensed and certified under chapter 18.73 RCW or RCW 18.71.205;

(xvii) Orthotists and prosthetists licensed under chapter 18.200 RCW;

(xviii) Surgical technologists registered under chapter 18.215 RCW;

(xix) Recreational therapists under chapter 18.230 RCW;

(xx) Animal massage practitioners certified under chapter 18.240 RCW;

(xxi) Athletic trainers licensed under chapter 18.250 RCW;

(xxii) Home care aides certified under chapter 18.88B RCW;

(xxiii) Genetic counselors licensed under chapter 18.290 RCW;

(xxiv) Reflexologists certified under chapter 18.108 RCW; and

(xxv) Medical assistants-certified, medical assistants-hemodialysis technician, medical assistants-phlebotomist, and medical assistants-registered certified and registered under chapter 18.360 RCW.

(b) The boards and commissions having authority under this chapter are as follows:

(i) The podiatric medical board as established in chapter 18.22 RCW;

(ii) The chiropractic quality assurance commission as established in chapter 18.25 RCW;

(iii) The dental quality assurance commission as established in chapter 18.32 RCW governing licenses issued under chapter 18.32 RCW, licenses and registrations issued under chapter 18.260 RCW, and certifications issued under chapter 18.350 RCW;

(iv) The board of hearing and speech as established in chapter 18.35 RCW;

(v) The board of examiners for nursing home administrators as established in chapter 18.52 RCW;

(vi) The optometry board as established in chapter 18.54 RCW governing licenses issued under chapter 18.53 RCW;

(vii) The board of osteopathic medicine and surgery as established in chapter 18.57 RCW governing licenses issued under chapters 18.57 and 18.57A RCW;

(viii) The pharmacy quality assurance commission as established in chapter 18.64 RCW governing licenses issued under chapters 18.64 and 18.64A RCW;

(ix) The medical quality assurance commission as established in chapter 18.71 RCW governing licenses and registrations issued under chapters 18.71 and 18.71A RCW;

(x) The board of physical therapy as established in chapter 18.74 RCW;

(xi) The board of occupational therapy practice as established in chapter 18.59 RCW;

(xii) The nursing care quality assurance commission as established in chapter 18.79 RCW governing licenses and registrations issued under that chapter;

(xiii) The examining board of psychology and its disciplinary committee as established in chapter 18.83 RCW;

(xiv) The veterinary board of governors as established in chapter 18.92 RCW;

(xv) The board of naturopathy established in chapter 18.36A RCW; and

(xvi) The board of denturists established in chapter 18.30 RCW.

(3) In addition to the authority to discipline license holders, the disciplining authority has the authority to grant or deny licenses. The disciplining authority may also grant a license subject to conditions.

(4) All disciplining authorities shall adopt procedures to ensure substantially consistent application of this chapter, the uniform disciplinary act, among the disciplining authorities listed in subsection (2) of this section. [2013 c 171 § 8; 2013 c 19 § 45. Prior: 2012 c 208 § 10; 2012 c 153 § 17; 2012 c 153 § 16; 2012 c 137 § 19; 2012 c 23 § 6; 2011 c 41 § 11; prior: 2010 c 286 § 18; (2010 c 286 § 17 expired August 1, 2010); (2010 c 286 § 16 expired July 1, 2010); 2010 c 65 § 3; (2010 c 65 § 2 expired August 1, 2010); (2010 c 65 § 1 expired July 1, 2010); prior: 2009 c 302 § 14; 2009 c 301 § 8; 2009 c 52 § 2; 2009 c 52 § 1; 2009 c 2 § 16 (Initiative Measure No. 1029, approved November 4, 2008); 2008 c 134 §

18; (2008 c 134 § 17 expired July 1, 2008); prior: 2007 c 269 § 17; 2007 c 253 § 13; 2007 c 70 § 11; 2004 c 38 § 2; prior: 2003 c 275 § 2; 2003 c 258 § 7; prior: 2002 c 223 § 6; 2002 c 216 § 11; 2001 c 251 § 27; 1999 c 335 § 10; 1998 c 243 § 16; prior: 1997 c 392 § 516; 1997 c 334 § 14; 1997 c 285 § 13; 1997 c 275 § 2; prior: 1996 c 200 § 32; 1996 c 81 § 5; prior: 1995 c 336 § 2; 1995 c 323 § 16; 1995 c 260 § 11; 1995 c 1 § 19 (Initiative Measure No. 607, approved November 8, 1994); prior: 1994 sp.s. c 9 § 603; 1994 c 17 § 19; 1993 c 367 § 4; 1992 c 128 § 6; 1990 c 3 § 810; prior: 1988 c 277 § 13; 1988 c 267 § 22; 1988 c 243 § 7; prior: 1987 c 512 § 22; 1987 c 447 § 18; 1987 c 415 § 17; 1987 c 412 § 15; 1987 c 150 § 1; prior: 1986 c 259 § 3; 1985 c 326 § 29; 1984 c 279 § 4.]

Reviser's note: This section was amended by 2013 c 19 § 45 and by 2013 c 171 § 8, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2013 c 171 § 8: "Section 8 of this act takes effect July 1, 2016." [2013 c 171 § 10.]

Effective date—2013 c 19 § 45: "Section 45 of this act takes effect July 1, 2016." [2013 c 19 § 129.]

Effective date—2012 c 208 §§ 2-10: See note following RCW 18.88A.020.

Findings—Rules—2012 c 208: See notes following RCW 18.88A.082.

Effective date—2012 c 153 §§ 15 and 17: See note following RCW 18.360.005.

Rules—2012 c 153: See note following RCW 18.360.005.

Finding—Purpose—Rules—Effective date—2012 c 137: See notes following RCW 18.108.005.

Effective date—2010 c 286 § 18: "Section 18 of this act takes effect August 1, 2010." [2010 c 286 § 22.]

Expiration date—2010 c 286 § 17: "Section 17 of this act expires August 1, 2010." [2010 c 286 § 21.]

Effective date—2010 c 286 § 17: "Section 17 of this act takes effect July 1, 2010." [2010 c 286 § 20.]

Expiration date—2010 c 286 § 16: "Section 16 of this act expires July 1, 2010." [2010 c 286 § 19.]

Intent—2010 c 286: See RCW 18.06.005.

Effective date—2010 c 65 § 3: "Section 3 of this act takes effect August 1, 2010." [2010 c 65 § 9.]

Expiration date—2010 c 65 § 2: "Section 2 of this act expires August 1, 2010." [2010 c 65 § 8.]

Effective date—2010 c 65 § 2: "Section 2 of this act takes effect July 1, 2010." [2010 c 65 § 7.]

Expiration date—2010 c 65 § 1: "Section 1 of this act expires July 1, 2010." [2010 c 65 § 6.]

Effective date—Implementation—2009 c 302: See RCW 18.290.900 and 18.290.901.

Intent—Implementation—2009 c 301: See notes following RCW 18.35.010.

Speech-language pathology assistants—Certification requirements—2009 c 301: See note following RCW 18.35.040.

Effective date—2009 c 52 § 1: "Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2009." [2009 c 52 § 3.]

Effective date—2009 c 52 § 2: "Section 2 of this act takes effect July 1, 2010." [2009 c 52 § 4.]

Contingent effective date—2009 c 2 (Initiative Measure No. 1029) § 16: "Section 16 of this act takes effect if section 18, chapter 134, Laws of 2008 is signed into law by April 6, 2008." [2009 c 2 § 24 (Initiative Measure No. 1029, approved November 4, 2008).]

Intent—Findings—Construction—Short title—2009 c 2 (Initiative Measure No. 1029): See notes following RCW 18.88B.050.

Effective date—2008 c 134 § 18: "Section 18 of this act takes effect July 1, 2008." [2008 c 134 § 37.]

Expiration date—2008 c 134 § 17: "Section 17 of this act expires July 1, 2008." [2008 c 134 § 36.]

Finding—Intent—Severability—2008 c 134: See notes following RCW 18.130.020.

Application—Implementation—2007 c 269: See RCW 18.260.900 and 18.260.901.

Severability—Effective date—Implementation—2007 c 253: See RCW 18.250.900 through 18.250.902.

Effective date—2004 c 38: See note following RCW 18.155.075.

Effective date—2003 c 275 § 2: "Section 2 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003." [2003 c 275 § 4.]

Severability—Effective date—2003 c 258: See notes following RCW 18.79.330.

Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392: See notes following RCW 74.39A.009.

Intent—Purpose—1997 c 285: See RCW 18.200.005.

Additional notes found at www.leg.wa.gov

18.130.050 Authority of disciplining authority. (Effective until January 1, 2014.) Except as provided in RCW 18.130.062, the disciplining authority has the following authority:

(1) To adopt, amend, and rescind such rules as are deemed necessary to carry out this chapter;

(2) To investigate all complaints or reports of unprofessional conduct as defined in this chapter;

(3) To hold hearings as provided in this chapter;

(4) To issue subpoenas and administer oaths in connection with any investigation, consideration of an application for license, hearing, or proceeding held under this chapter;

(5) To take or cause depositions to be taken and use other discovery procedures as needed in any investigation, hearing, or proceeding held under this chapter;

(6) To compel attendance of witnesses at hearings;

(7) In the course of investigating a complaint or report of unprofessional conduct, to conduct practice reviews and to issue citations and assess fines for failure to produce documents, records, or other items in accordance with RCW 18.130.230;

(8) To take emergency action ordering summary suspension of a license, or restriction or limitation of the license holder's practice pending proceedings by the disciplining authority. Within fourteen days of a request by the affected license holder, the disciplining authority must provide a show cause hearing in accordance with the requirements of RCW 18.130.135. Consistent with RCW 18.130.370, a disciplining authority shall issue a summary suspension of the license or temporary practice permit of a license holder prohibited from practicing a health care profession in another state, federal, or foreign jurisdiction because of an act of unprofessional conduct that is substantially equivalent to an act of unprofessional conduct prohibited by this chapter or any of the chapters specified in RCW 18.130.040. The summary suspension remains in effect until proceedings by the Washington disciplining authority have been completed;

(9) To conduct show cause hearings in accordance with RCW 18.130.062 or 18.130.135 to review an action taken by

the disciplining authority to suspend a license or restrict or limit a license holder's practice pending proceedings by the disciplining authority;

(10) To use a presiding officer as authorized in RCW 18.130.095(3) or the office of administrative hearings as authorized in chapter 34.12 RCW to conduct hearings. Disciplining authorities identified in RCW 18.130.040(2) shall make the final decision regarding disposition of the license unless the disciplining authority elects to delegate in writing the final decision to the presiding officer. Disciplining authorities identified in RCW 18.130.040(2)(b) may not delegate the final decision regarding disposition of the license or imposition of sanctions to a presiding officer in any case pertaining to standards of practice or where clinical expertise is necessary, including deciding any motion that results in dismissal of any allegation contained in the statement of charges. Presiding officers acting on behalf of the secretary shall enter initial orders. The secretary may, by rule, provide that initial orders in specified classes of cases may become final without further agency action unless, within a specified time period:

(a) The secretary upon his or her own motion determines that the initial order should be reviewed; or

(b) A party to the proceedings files a petition for administrative review of the initial order;

(11) To use individual members of the boards to direct investigations and to authorize the issuance of a citation under subsection (7) of this section. However, the member of the board shall not subsequently participate in the hearing of the case;

(12) To enter into contracts for professional services determined to be necessary for adequate enforcement of this chapter;

(13) To contract with license holders or other persons or organizations to provide services necessary for the monitoring and supervision of license holders who are placed on probation, whose professional activities are restricted, or who are for any authorized purpose subject to monitoring by the disciplining authority;

(14) To adopt standards of professional conduct or practice;

(15) To grant or deny license applications, and in the event of a finding of unprofessional conduct by an applicant or license holder, to impose any sanction against a license applicant or license holder provided by this chapter. After January 1, 2009, all sanctions must be issued in accordance with RCW 18.130.390;

(16) To restrict or place conditions on the practice of new licensees in order to protect the public and promote the safety of and confidence in the health care system;

(17) To designate individuals authorized to sign subpoenas and statements of charges;

(18) To establish panels consisting of three or more members of the board to perform any duty or authority within the board's jurisdiction under this chapter;

(19) To review and audit the records of licensed health facilities' or services' quality assurance committee decisions in which a license holder's practice privilege or employment is terminated or restricted. Each health facility or service shall produce and make accessible to the disciplining authority the appropriate records and otherwise facilitate the review

and audit. Information so gained shall not be subject to discovery or introduction into evidence in any civil action pursuant to RCW 70.41.200(3). [2013 c 109 § 1; 2008 c 134 § 3; 2006 c 99 § 4; 1995 c 336 § 4. Prior: 1993 c 367 § 21; 1993 c 367 § 5; 1987 c 150 § 2; 1984 c 279 § 5.]

Finding—Intent—Severability—2008 c 134: See notes following RCW 18.130.020.

Additional notes found at www.leg.wa.gov

18.130.050 Authority of disciplining authority. (Effective January 1, 2014.) Except as provided in RCW 18.130.062, the disciplining authority has the following authority:

(1) To adopt, amend, and rescind such rules as are deemed necessary to carry out this chapter;

(2) To investigate all complaints or reports of unprofessional conduct as defined in this chapter;

(3) To hold hearings as provided in this chapter;

(4) To issue subpoenas and administer oaths in connection with any investigation, consideration of an application for license, hearing, or proceeding held under this chapter;

(5) To take or cause depositions to be taken and use other discovery procedures as needed in any investigation, hearing, or proceeding held under this chapter;

(6) To compel attendance of witnesses at hearings;

(7) In the course of investigating a complaint or report of unprofessional conduct, to conduct practice reviews and to issue citations and assess fines for failure to produce documents, records, or other items in accordance with RCW 18.130.230;

(8) To take emergency action ordering summary suspension of a license, or restriction or limitation of the license holder's practice pending proceedings by the disciplining authority. Within fourteen days of a request by the affected license holder, the disciplining authority must provide a show cause hearing in accordance with the requirements of RCW 18.130.135. In addition to the authority in this subsection, a disciplining authority shall:

(a) Consistent with RCW 18.130.370, issue a summary suspension of the license or temporary practice permit of a license holder prohibited from practicing a health care profession in another state, federal, or foreign jurisdiction because of an act of unprofessional conduct that is substantially equivalent to an act of unprofessional conduct prohibited by this chapter or any of the chapters specified in RCW 18.130.040. The summary suspension remains in effect until proceedings by the Washington disciplining authority have been completed;

(b) Consistent with RCW 18.130.400, issue a summary suspension of the license or temporary practice permit if, under RCW 74.39A.051, the license holder is prohibited from employment in the care of vulnerable adults based upon a department of social and health services' final finding of abuse or neglect of a minor or abuse, abandonment, neglect, or financial exploitation of a vulnerable adult. The summary suspension remains in effect until proceedings by the disciplining authority have been completed;

(9) To conduct show cause hearings in accordance with RCW 18.130.062 or 18.130.135 to review an action taken by the disciplining authority to suspend a license or restrict or

limit a license holder's practice pending proceedings by the disciplining authority;

(10) To use a presiding officer as authorized in RCW 18.130.095(3) or the office of administrative hearings as authorized in chapter 34.12 RCW to conduct hearings. Disciplining authorities identified in RCW 18.130.040(2) shall make the final decision regarding disposition of the license unless the disciplining authority elects to delegate in writing the final decision to the presiding officer. Disciplining authorities identified in RCW 18.130.040(2)(b) may not delegate the final decision regarding disposition of the license or imposition of sanctions to a presiding officer in any case pertaining to standards of practice or where clinical expertise is necessary, including deciding any motion that results in dismissal of any allegation contained in the statement of charges. Presiding officers acting on behalf of the secretary shall enter initial orders. The secretary may, by rule, provide that initial orders in specified classes of cases may become final without further agency action unless, within a specified time period:

(a) The secretary upon his or her own motion determines that the initial order should be reviewed; or

(b) A party to the proceedings files a petition for administrative review of the initial order;

(11) To use individual members of the boards to direct investigations and to authorize the issuance of a citation under subsection (7) of this section. However, the member of the board shall not subsequently participate in the hearing of the case;

(12) To enter into contracts for professional services determined to be necessary for adequate enforcement of this chapter;

(13) To contract with license holders or other persons or organizations to provide services necessary for the monitoring and supervision of license holders who are placed on probation, whose professional activities are restricted, or who are for any authorized purpose subject to monitoring by the disciplining authority;

(14) To adopt standards of professional conduct or practice;

(15) To grant or deny license applications, and in the event of a finding of unprofessional conduct by an applicant or license holder, to impose any sanction against a license applicant or license holder provided by this chapter. After January 1, 2009, all sanctions must be issued in accordance with RCW 18.130.390;

(16) To restrict or place conditions on the practice of new licensees in order to protect the public and promote the safety of and confidence in the health care system;

(17) To designate individuals authorized to sign subpoenas and statements of charges;

(18) To establish panels consisting of three or more members of the board to perform any duty or authority within the board's jurisdiction under this chapter;

(19) To review and audit the records of licensed health facilities' or services' quality assurance committee decisions in which a license holder's practice privilege or employment is terminated or restricted. Each health facility or service shall produce and make accessible to the disciplining authority the appropriate records and otherwise facilitate the review and audit. Information so gained shall not be subject to dis-

covery or introduction into evidence in any civil action pursuant to RCW 70.41.200(3). [2013 c 109 § 1; 2013 c 86 § 2; 2008 c 134 § 3; 2006 c 99 § 4; 1995 c 336 § 4. Prior: 1993 c 367 § 21; 1993 c 367 § 5; 1987 c 150 § 2; 1984 c 279 § 5.]

Reviser's note: This section was amended by 2013 c 86 § 2 and by 2013 c 109 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2013 c 86: See note following RCW 18.130.400.

Finding—Intent—Severability—2008 c 134: See notes following RCW 18.130.020.

Additional notes found at www.leg.wa.gov

18.130.095 Uniform procedural rules. (1)(a) The secretary, in consultation with the disciplining authorities, shall develop uniform procedural rules to respond to public inquiries concerning complaints and their disposition, active investigations, statement of charges, findings of fact, and final orders involving a license holder, applicant, or unlicensed person. The uniform procedural rules adopted under this subsection apply to all adjudicative proceedings conducted under this chapter and shall include provisions for establishing time periods for initial assessment, investigation, charging, discovery, settlement, and adjudication of complaints, and shall include enforcement provisions for violations of the specific time periods by the department, the disciplining authority, and the respondent. A license holder must be notified upon receipt of a complaint, except when the notification would impede an effective investigation. At the earliest point of time the license holder must be allowed to submit a written statement about that complaint, which statement must be included in the file. Complaints filed after July 27, 1997, are exempt from public disclosure under chapter 42.56 RCW until the complaint has been initially assessed and determined to warrant an investigation by the disciplining authority. Complaints determined not to warrant an investigation by the disciplining authority are no longer considered complaints, but must remain in the records and tracking system of the department. Information about complaints that did not warrant an investigation, including the existence of the complaint, may be released only upon receipt of a written public disclosure request or pursuant to an interagency agreement as provided in (b) of this subsection. Complaints determined to warrant no cause for action after investigation are subject to public disclosure, must include an explanation of the determination to close the complaint, and must remain in the records and tracking system of the department.

(b) The secretary, on behalf of the disciplining authorities, shall enter into interagency agreements for the exchange of records, which may include complaints filed but not yet assessed, with other state agencies if access to the records will assist those agencies in meeting their federal or state statutory responsibilities. Records obtained by state agencies under the interagency agreements are subject to the limitations on disclosure contained in (a) of this subsection.

(2) The uniform procedures for conducting investigations shall provide that prior to taking a written statement:

(a) For violation of this chapter, the investigator shall inform such person, in writing of: (i) The nature of the complaint; (ii) that the person may consult with legal counsel at his or her expense prior to making a statement; and (iii) that

any statement that the person makes may be used in an adjudicative proceeding conducted under this chapter; and

(b) From a witness or potential witness in an investigation under this chapter, the investigator shall inform the person, in writing, that the statement may be released to the license holder, applicant, or unlicensed person under investigation if a statement of charges is issued.

(3) Only upon the authorization of a disciplining authority identified in RCW 18.130.040(2)(b), the secretary, or his or her designee, may serve as the presiding officer for any disciplinary proceedings of the disciplining authority authorized under this chapter. The presiding officer shall not vote on or make any final decision in cases pertaining to standards of practice or where clinical expertise is necessary. All functions performed by the presiding officer shall be subject to chapter 34.05 RCW. The secretary, in consultation with the disciplining authorities, shall adopt procedures for implementing this subsection.

(4) Upon delegation from the secretary, a presiding officer may conduct disciplinary proceedings for professions identified in RCW 18.130.040(2)(a). All functions performed by the presiding officer are subject to chapter 34.05 RCW. Decisions of the presiding officer are initial decisions subject to review by the secretary. The secretary shall adopt procedures for implementing this subsection.

(5) The uniform procedural rules shall be adopted by all disciplining authorities listed in RCW 18.130.040(2), and shall be used for all adjudicative proceedings conducted under this chapter, as defined by chapter 34.05 RCW. The uniform procedural rules shall address the use of a presiding officer authorized in subsections (3) and (4) of this section to determine and issue decisions on all legal issues and motions arising during adjudicative proceedings. [2013 c 109 § 2; 2008 c 134 § 9; 2005 c 274 § 231; 1997 c 270 § 1; 1995 c 336 § 6; 1993 c 367 § 2.]

Finding—Intent—Severability—2008 c 134: See notes following RCW 18.130.020.

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

18.130.400 Abuse of vulnerable adult—Prohibition on practice. (Effective January 1, 2014.) Any individual who applies for a license or temporary practice permit or holds a license or temporary practice permit and has a final finding issued by the department of social and health services of abuse or neglect of a minor or abuse, abandonment, neglect, or financial exploitation of a vulnerable adult is prohibited from practicing a health care profession in this state until proceedings of the appropriate disciplining authority have been completed under RCW 18.130.050. [2013 c 86 § 1.]

Effective date—2013 c 86: "This act takes effect January 1, 2014." [2013 c 86 § 3.]

Chapter 18.225 RCW

MENTAL HEALTH COUNSELORS, MARRIAGE AND FAMILY THERAPISTS, SOCIAL WORKERS

Sections

18.225.005 Findings.
18.225.010 Definitions.
18.225.090 Issuance of license—Requirements.

18.225.145 Associate licensing—Requirements.
18.225.800 Associate license renewals—Report.

18.225.005 Findings. The legislature finds that licensed advanced social workers and licensed independent clinical social workers represent different specializations within the social work profession, with each license signifying the highest degree of licensure as it pertains to each specialty. The legislature further finds that practitioners in each specialty exercise independent judgment and operate independently within their area of practice.

Therefore, for purposes of job classification, licensed advanced social workers and licensed independent clinical social workers licensed under this chapter shall both be considered the top tier of licensure for the profession. [2013 c 73 § 1.]

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

(1) "Advanced social work" means the application of social work theory and methods, including:

(a) Emotional and biopsychosocial assessment;

(b) Psychotherapy under the supervision of a licensed independent clinical social worker, psychiatrist, psychologist, psychiatric advanced registered nurse practitioner, psychiatric nurse, or other mental health professionals as may be defined by rules adopted by the secretary;

(c) Case management;

(d) Consultation;

(e) Advocacy;

(f) Counseling; or

(g) Community organization.

(2) "Applicant" means a person who completes the required application, pays the required fee, is at least eighteen years of age, and meets any background check requirements and uniform disciplinary act requirements.

(3) "Associate" means a prelicensure candidate who has a graduate degree in a mental health field under RCW 18.225.090 and is gaining the supervision and supervised experience necessary to become a licensed independent clinical social worker, a licensed advanced social worker, a licensed mental health counselor, or a licensed marriage and family therapist.

(4) "Committee" means the Washington state mental health counselors, marriage and family therapists, and social workers advisory committee.

(5) "Department" means the department of health.

(6) "Disciplining authority" means the department.

(7) "Independent clinical social work" means the diagnosis and treatment of emotional and mental disorders based on knowledge of human development, the causation and treatment of psychopathology, psychotherapeutic treatment practices, and social work practice as defined in advanced social work. Treatment modalities include but are not limited to diagnosis and treatment of individuals, couples, families, groups, or organizations.

(8) "Marriage and family therapy" means the diagnosis and treatment of mental and emotional disorders, whether cognitive, affective, or behavioral, within the context of relationships, including marriage and family systems. Marriage

and family therapy involves the professional application of psychotherapeutic and family systems theories and techniques in the delivery of services to individuals, couples, and families for the purpose of treating such diagnosed nervous and mental disorders. The practice of marriage and family therapy means the rendering of professional marriage and family therapy services to individuals, couples, and families, singly or in groups, whether such services are offered directly to the general public or through organizations, either public or private, for a fee, monetary or otherwise.

(9) "Mental health counseling" means the application of principles of human development, learning theory, psychotherapy, group dynamics, and etiology of mental illness and dysfunctional behavior to individuals, couples, families, groups, and organizations, for the purpose of treatment of mental disorders and promoting optimal mental health and functionality. Mental health counseling also includes, but is not limited to, the assessment, diagnosis, and treatment of mental and emotional disorders, as well as the application of a wellness model of mental health.

(10) "Secretary" means the secretary of health or the secretary's designee. [2013 c 73 § 2; 2008 c 135 § 11; 2001 c 251 § 1.]

Effective date—2008 c 135 §§ 1, 2, 7-9, and 11-19: See note following RCW 18.19.020.

18.225.090 Issuance of license—Requirements. (1)

The secretary shall issue a license to any applicant who demonstrates to the satisfaction of the secretary that the applicant meets the following education and experience requirements for the applicant's practice area.

(a) Licensed social work classifications:

(i) Licensed advanced social worker:

(A) Graduation from a master's or doctorate social work educational program accredited by the council on social work education and approved by the secretary based upon nationally recognized standards;

(B) Successful completion of an approved examination;

(C) Successful completion of a supervised experience requirement. The supervised experience requirement consists of a minimum of three thousand two hundred hours with supervision by an approved supervisor who has been licensed for at least two years. Of those supervised hours:

(I) At least ninety hours must include direct supervision as specified in this subsection by a licensed independent clinical social worker, a licensed advanced social worker, or an equally qualified licensed mental health professional. Of those hours of directly supervised experience:

(1) At least fifty hours must include supervision by a licensed advanced social worker or licensed independent clinical social worker; the other forty hours may be supervised by an equally qualified licensed mental health practitioner; and

(2) At least forty hours must be in one-to-one supervision and fifty hours may be in one-to-one supervision or group supervision;

(II) Distance supervision is limited to forty supervision hours; and

(III) Eight hundred hours must be in direct client contact; and

(D) Successful completion of continuing education requirements of thirty-six hours, with six in professional ethics.

(ii) Licensed independent clinical social worker:

(A) Graduation from a master's or doctorate level social work educational program accredited by the council on social work education and approved by the secretary based upon nationally recognized standards;

(B) Successful completion of an approved examination;

(C) Successful completion of a supervised experience requirement. The supervised experience requirement consists of a minimum of four thousand hours of experience, over a period of not less than three years, with supervision by an approved supervisor who has been licensed for at least two years and, as specified in this subsection, may be either a licensed independent clinical social worker who has had at least one year of experience in supervising the clinical social work of others or an equally qualified licensed mental health practitioner. Of those supervised hours:

(I) At least one thousand hours must be direct client contact;

(II) Hours of direct supervision must include:

(1) At least one hundred thirty hours by a licensed mental health practitioner;

(2) At least seventy hours of supervision with a licensed independent clinical social worker meeting the qualifications under this subsection (1)(a)(ii)(C); the other sixty hours may be supervised by an equally qualified licensed mental health practitioner; and

(3) At least sixty hours must be in one-to-one supervision and seventy hours may be in one-to-one supervision or group supervision; and

(III) Distance supervision is limited to sixty supervision hours; and

(D) Successful completion of continuing education requirements of thirty-six hours, with six in professional ethics.

(b) Licensed mental health counselor:

(i) Graduation from a master's or doctoral level educational program in mental health counseling or a related discipline from a college or university approved by the secretary based upon nationally recognized standards;

(ii) Successful completion of an approved examination;

(iii) Successful completion of a supervised experience requirement. The experience requirement consists of a minimum of thirty-six months full-time counseling or three thousand hours of postgraduate mental health counseling under the supervision of a qualified licensed mental health counselor or equally qualified licensed mental health practitioner, in an approved setting. The three thousand hours of required experience includes a minimum of one hundred hours spent in immediate supervision with the qualified licensed mental health counselor, and includes a minimum of one thousand two hundred hours of direct counseling with individuals, couples, families, or groups; and

(iv) Successful completion of continuing education requirements of thirty-six hours, with six in professional ethics.

(c) Licensed marriage and family therapist:

(i) Graduation from a master's degree or doctoral degree educational program in marriage and family therapy or grad-

uation from an educational program in an allied field equivalent to a master's degree or doctoral degree in marriage and family therapy approved by the secretary based upon nationally recognized standards;

(ii) Successful passage of an approved examination;

(iii) Successful completion of a supervised experience requirement. The experience requirement consists of a minimum of two calendar years of full-time marriage and family therapy. Of the total supervision, one hundred hours must be with a licensed marriage and family therapist with at least five years' clinical experience; the other one hundred hours may be with an equally qualified licensed mental health practitioner. Total experience requirements include:

(A) A minimum of three thousand hours of experience, one thousand hours of which must be direct client contact; at least five hundred hours must be gained in diagnosing and treating couples and families; plus

(B) At least two hundred hours of qualified supervision with a supervisor. At least one hundred of the two hundred hours must be one-on-one supervision, and the remaining hours may be in one-on-one or group supervision.

Applicants who have completed a master's program accredited by the commission on accreditation for marriage and family therapy education of the American association for marriage and family therapy may be credited with five hundred hours of direct client contact and one hundred hours of formal meetings with an approved supervisor; and

(iv) Successful completion of continuing education requirements of thirty-six hours, with six in professional ethics.

(2) The department shall establish by rule what constitutes adequate proof of meeting the criteria. Only rules in effect on the date of submission of a completed application of an associate for her or his license shall apply. If the rules change after a completed application is submitted but before a license is issued, the new rules shall not be reason to deny the application.

(3) In addition, applicants shall be subject to the grounds for denial of a license or issuance of a conditional license under chapter 18.130 RCW. [2013 c 73 § 3; 2008 c 141 § 1; 2006 c 69 § 1; 2003 c 108 § 1; 2001 c 251 § 9.]

Retroactive application—2008 c 141: "This act is remedial and curative in nature and applies retroactively to July 22, 2003." [2008 c 141 § 2.]

18.225.145 Associate licensing—Requirements. (1)

The secretary shall issue an associate license to any applicant who demonstrates to the satisfaction of the secretary that the applicant meets the following requirements for the applicant's practice area and submits a declaration that the applicant is working toward full licensure in that category:

(a) Licensed social worker associate—advanced or licensed social worker associate—*independent clinical*: Graduation from a master's degree or doctoral degree educational program in social work accredited by the council on social work education and approved by the secretary based upon nationally recognized standards.

(b) Licensed mental health counselor associate: Graduation from a master's degree or doctoral degree educational program in mental health counseling or a related discipline from a college or university approved by the secretary based upon nationally recognized standards.

(c) Licensed marriage and family therapist associate: Graduation from a master's degree or doctoral degree educational program in marriage and family therapy or graduation from an educational program in an allied field equivalent to a master's degree or doctoral degree in marriage and family therapy approved by the secretary based upon nationally recognized standards.

(2) Associates may not provide independent social work, mental health counseling, or marriage and family therapy for a fee, monetary or otherwise. Associates must work under the supervision of an approved supervisor.

(3) Associates shall provide each client or patient, during the first professional contact, with a disclosure form according to RCW 18.225.100, disclosing that he or she is an associate under the supervision of an approved supervisor.

(4) The department shall adopt by rule what constitutes adequate proof of compliance with the requirements of this section.

(5) Applicants are subject to the denial of a license or issuance of a conditional license for the reasons set forth in chapter 18.130 RCW.

(6) An associate license may be renewed no more than six times, provided that the applicant for renewal has successfully completed eighteen hours of continuing education in the preceding year. Beginning with the second renewal, at least six of the continuing education hours in the preceding two years must be in professional ethics. [2013 c 73 § 4; 2008 c 135 § 13.]

Effective date—2008 c 135 §§ 1, 2, 7-9, and 11-19: See note following RCW 18.19.020.

18.225.800 Associate license renewals—Report. To assess whether limitations on associate license renewals may be limiting the number of people able to complete the licensing process within statutory deadlines, the secretary shall report to the appropriate committees of the legislature on October 1st of each year, beginning in 2014 and ending in 2020, the number of associate licenses that have been renewed four, five, or six times. [2013 c 73 § 5.]

Chapter 18.235 RCW

UNIFORM REGULATION OF BUSINESS AND PROFESSIONS ACT

Sections

18.235.020 Application of chapter—Director's authority—Disciplinary authority.

18.235.020 Application of chapter—Director's authority—Disciplinary authority. (1) This chapter applies only to the director and the boards and commissions having jurisdiction in relation to the businesses and professions licensed under the chapters specified in this section. This chapter does not apply to any business or profession not licensed under the chapters specified in this section.

(2)(a) The director has authority under this chapter in relation to the following businesses and professions:

(i) Auctioneers under chapter 18.11 RCW;

(ii) Bail bond agents and bail bond recovery agents under chapter 18.185 RCW;

(iii) Camping resorts' operators and salespersons under chapter 19.105 RCW;

(iv) Commercial telephone solicitors under chapter 19.158 RCW;

(v) Cosmetologists, barbers, manicurists, and estheticians under chapter 18.16 RCW;

(vi) Court reporters under chapter 18.145 RCW;

(vii) Driver training schools and instructors under chapter 46.82 RCW;

(viii) Employment agencies under chapter 19.31 RCW;

(ix) For hire vehicle operators under chapter 46.72 RCW;

(x) Limousines under chapter 46.72A RCW;

(xi) Notaries public under chapter 42.44 RCW;

(xii) Private investigators under chapter 18.165 RCW;

(xiii) Professional boxing, martial arts, and wrestling under chapter 67.08 RCW;

(xiv) Real estate appraisers under chapter 18.140 RCW;

(xv) Real estate brokers and salespersons under chapters 18.85 and 18.86 RCW;

(xvi) Scrap metal processors, scrap metal recyclers, and scrap metal suppliers under chapter 19.290 RCW;

(xvii) Security guards under chapter 18.170 RCW;

(xviii) Sellers of travel under chapter 19.138 RCW;

(xix) Timeshares and timeshare salespersons under chapter 64.36 RCW;

(xx) Whitewater river outfitters under chapter 79A.60 RCW;

(xxi) Home inspectors under chapter 18.280 RCW;

(xxii) Body artists, body piercers, and tattoo artists, and body art, body piercing, and tattooing shops and businesses, under chapter 18.300 RCW; and

(xxiii) Appraisal management companies under chapter 18.310 RCW.

(b) The boards and commissions having authority under this chapter are as follows:

(i) The state board for architects established in chapter 18.08 RCW;

(ii) The Washington state collection agency board established in chapter 19.16 RCW;

(iii) The state board of registration for professional engineers and land surveyors established in chapter 18.43 RCW governing licenses issued under chapters 18.43 and 18.210 RCW;

(iv) The funeral and cemetery board established in chapter 18.39 RCW governing licenses issued under chapters 18.39 and 68.05 RCW;

(v) The state board of licensure for landscape architects established in chapter 18.96 RCW; and

(vi) The state geologist licensing board established in chapter 18.220 RCW.

(3) In addition to the authority to discipline license holders, the disciplinary authority may grant or deny licenses based on the conditions and criteria established in this chapter and the chapters specified in subsection (2) of this section. This chapter also governs any investigation, hearing, or proceeding relating to denial of licensure or issuance of a license conditioned on the applicant's compliance with an order entered under RCW 18.235.110 by the disciplinary authority. [2013 c 322 § 29; 2010 c 179 § 18. Prior: 2009 c 412 § 22;

2009 c 370 § 20; 2009 c 102 § 5; 2008 c 119 § 21; 2007 c 256 § 12; 2006 c 219 § 13; 2002 c 86 § 103.]

Severability—Effective date—2010 c 179: See RCW 18.310.900 and 18.310.901.

Short title—Implementation—2009 c 412: See RCW 18.300.900 and 18.300.902.

Effective date—2009 c 370 §§ 1-16, 18, 20, and 21: See note following RCW 18.96.010.

Finding—2009 c 370: See note following RCW 18.96.010.

Funeral directors and embalmers account and cemetery account abolished, moneys transferred to funeral and cemetery account—2009 c 102: See note following RCW 18.39.810.

Effective date—2006 c 219: See note following RCW 46.82.285.

Chapter 18.260 RCW DENTAL PROFESSIONALS

Sections

18.260.040 Dental assistants—Scope of practice.

18.260.040 Dental assistants—Scope of practice.

(1)(a) The commission shall adopt rules relating to the scope of dental assisting services related to patient care and laboratory duties that may be performed by dental assistants.

(b) In addition to the services and duties authorized by the rules adopted under (a) of this subsection, a dental assistant may apply topical anesthetic agents.

(c) All dental services performed by dental assistants under (a) or (b) of this subsection must be performed under the close supervision of a supervising dentist as the dentist may allow.

(2) In addition to any other limitations established by the commission, dental assistants may not perform the following procedures:

(a) Any scaling procedure;

(b) Any oral prophylaxis, except coronal polishing;

(c) Administration of any general or local anesthetic, including intravenous sedation;

(d) Any removal of or addition to the hard or soft tissue of the oral cavity;

(e) Any diagnosis of or prescription for treatment of disease, pain, deformity, deficiency, injury, or physical condition of the human teeth, jaw, or adjacent structures; and

(f) The taking of any impressions of the teeth or jaw or the relationships of the teeth or jaws, for the purpose of fabricating any intra-oral restoration, appliance, or prosthesis.

(3) A dentist may not assign a dental assistant to perform duties until the dental assistant has demonstrated skills necessary to perform competently all assigned duties and responsibilities. [2013 c 87 § 4; 2007 c 269 § 5.]

Chapter 18.310 RCW APPRAISAL MANAGEMENT COMPANIES

Sections

18.310.040 Applications—Original and renewals—Surety bonds.

18.310.040 Applications—Original and renewals—Surety bonds. (1) Applications for licensure must be made to the department on forms approved by the director. A license is valid for two years and must be renewed on or

before the expiration date. Applications for original and renewal licenses must include a statement confirming that the company must comply with applicable rules and that the company understands the penalties for misconduct.

(2) The appropriate fees must accompany all applications for original licensure and renewal.

(3)(a) Each applicant shall file and maintain a surety bond, approved by the director, executed by the applicant as obligor and by a surety company authorized to do a surety business in this state as surety, whose liability as the surety may not exceed in the aggregate the penal sum of the bond. The penal sum of the bond must be a minimum of one hundred thousand dollars. The bond must run to the state of Washington as obligee for the use and benefit of the state and of any person or persons who may have a cause of action against the obligor under this chapter. The bond must be conditioned that the obligor as licensee will faithfully conform to and abide by this chapter and all the rules adopted under this chapter. The bond will pay to the state and any person or persons having a cause of action against the obligor all moneys that may become due and owing to the state and those persons under and by virtue of this chapter.

(b) If the director determines that surety bonds are not readily available to appraisal management companies, the director may accept a cash bond or other security in lieu of the surety bond required by this section. The security accepted in lieu of a surety bond must be in an amount equal to the penal sum of the required bond. All obligations and remedies relating to surety bonds apply to deposits and other security filed in lieu of surety bonds. [2013 c 90 § 1; 2010 c 179 § 4.]

Chapter 18.360 RCW MEDICAL ASSISTANTS

Sections

18.360.005	Findings—Intent.
18.360.040	Certification and registration requirements.
18.360.050	Authorized duties.
18.360.060	Delegation—Health care practitioner duties.
18.360.080	Certifications existing before July 1, 2013.

18.360.005 Findings—Intent. The legislature finds that medical assistants are health professionals specifically trained to work in settings such as physicians' offices, clinics, group practices, and other health care facilities. These multi-skilled personnel are trained to perform administrative and clinical procedures under the supervision of health care providers. Physicians value this unique versatility more and more because of the skills of medical assistants and their ability to contain costs and manage human resources efficiently. The demand for medical assistants is expanding rapidly. The efficient and effective delivery of health care in Washington will be improved by recognizing the valuable contributions of medical assistants, and providing statutory support for medical assistants in Washington state. The legislature intends that individuals performing specialized functions be trained and supervised in a manner that will not pose an undue risk to patient safety. The legislature further finds that rural and small medical practices and clinics may have limited access to formally trained medical assistants. The legislature further intends that the secretary of health develop rec-

ommendations for a career ladder that includes medical assistants. [2013 c 128 § 1; 2012 c 153 § 1.]

Implementation—2013 c 128: "The department of health may delay the implementation of the medical assistant-registered credential to the extent necessary to comply with this act." [2013 c 128 § 6.]

Effective date—2013 c 128: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2013." [2013 c 128 § 7.]

Effective date—2012 c 153 §§ 1-12, 14, 16, and 18: "Sections 1 through 12, 14, 16, and 18 of this act take effect July 1, 2013." [2012 c 153 § 22.]

Rules—2012 c 153: "The secretary of health shall adopt any rules necessary to implement this act." [2012 c 153 § 21.]

18.360.040 Certification and registration requirements. (1)(a) The secretary shall issue a certification as a medical assistant-certified to any person who has satisfactorily completed a medical assistant training program approved by the secretary, passed an examination approved by the secretary, and met any additional qualifications established under RCW 18.360.030.

(b) The secretary shall issue an interim certification to any person who has met all of the qualifications in (a) of this subsection, except for the passage of the examination. A person holding an interim permit possesses the full scope of practice of a medical assistant-certified. The interim permit expires upon passage of the examination or after one year, whichever occurs first, and may not be renewed.

(2) The secretary shall issue a certification as a medical assistant-hemodialysis technician to any person who meets the qualifications for a medical assistant-hemodialysis technician established under RCW 18.360.030.

(3) The secretary shall issue a certification as a medical assistant-phlebotomist to any person who meets the qualifications for a medical assistant-phlebotomist established under RCW 18.360.030.

(4)(a) The secretary shall issue a registration as a medical assistant-registered to any person who has a current endorsement from a health care practitioner, clinic, or group practice.

(b) In order to be endorsed under this subsection (4), a person must:

(i) Be endorsed by a health care practitioner, clinic, or group practice that meets the qualifications established under RCW 18.360.030; and

(ii) Have a current attestation of his or her endorsement to perform specific medical tasks signed by a supervising health care practitioner filed with the department. A medical assistant-registered may only perform the medical tasks listed in his or her current attestation of endorsement.

(c) A registration based on an endorsement by a health care practitioner, clinic, or group practice is not transferrable to another health care practitioner, clinic, or group practice.

(d) An applicant for registration as a medical assistant-registered who applies to the department within seven days of employment by the endorsing health care practitioner, clinic, or group practice may work as a medical assistant-registered for up to sixty days while the application is processed. The applicant must stop working on the sixtieth day of employment if the registration has not been granted for any reason.

(5) A certification issued under subsections (1) through (3) of this section is transferrable between different practice settings. [2013 c 128 § 2; 2012 c 153 § 5.]

Implementation—Effective date—2013 c 128: See notes following RCW 18.360.005.

Effective date—2012 c 153 §§ 1-12, 14, 16, and 18: See note following RCW 18.360.005.

Rules—2012 c 153: See note following RCW 18.360.005.

18.360.050 Authorized duties. (1) A medical assistant-certified may perform the following duties delegated by, and under the supervision of, a health care practitioner:

- (a) Fundamental procedures:
 - (i) Wrapping items for autoclaving;
 - (ii) Procedures for sterilizing equipment and instruments;
 - (iii) Disposing of biohazardous materials; and
 - (iv) Practicing standard precautions.
- (b) Clinical procedures:
 - (i) Performing aseptic procedures in a setting other than a hospital licensed under chapter 70.41 RCW;
 - (ii) Preparing of and assisting in sterile procedures in a setting other than a hospital under chapter 70.41 RCW;
 - (iii) Taking vital signs;
 - (iv) Preparing patients for examination;
 - (v) Capillary blood withdrawal, venipuncture, and intradermal, subcutaneous, and intramuscular injections; and
 - (vi) Observing and reporting patients' signs or symptoms.
- (c) Specimen collection:
 - (i) Capillary puncture and venipuncture;
 - (ii) Obtaining specimens for microbiological testing; and
 - (iii) Instructing patients in proper technique to collect urine and fecal specimens.
- (d) Diagnostic testing:
 - (i) Electrocardiography;
 - (ii) Respiratory testing; and
 - (iii)(A) Tests waived under the federal clinical laboratory improvement amendments program on July 1, 2013. The department shall periodically update the tests authorized under this subsection (1)(d) based on changes made by the federal clinical laboratory improvement amendments program; and
- (B) Moderate complexity tests if the medical assistant-certified meets standards for personnel qualifications and responsibilities in compliance with federal regulation for nonwaived testing.
- (e) Patient care:
 - (i) Telephone and in-person screening limited to intake and gathering of information without requiring the exercise of judgment based on clinical knowledge;
 - (ii) Obtaining vital signs;
 - (iii) Obtaining and recording patient history;
 - (iv) Preparing and maintaining examination and treatment areas;
 - (v) Preparing patients for, and assisting with, routine and specialty examinations, procedures, treatments, and minor office surgeries;
 - (vi) Maintaining medication and immunization records; and

(vii) Screening and following up on test results as directed by a health care practitioner.

(f)(i) Administering medications. A medical assistant-certified may only administer medications if the drugs are:

(A) Administered only by unit or single dosage, or by a dosage calculated and verified by a health care practitioner. For purposes of this section, a combination or multidose vaccine shall be considered a unit dose;

(B) Limited to legend drugs, vaccines, and Schedule III-V controlled substances as authorized by a health care practitioner under the scope of his or her license and consistent with rules adopted by the secretary under (f)(ii) of this subsection; and

(C) Administered pursuant to a written order from a health care practitioner.

(ii) A medical assistant-certified may not administer experimental drugs or chemotherapy agents. The secretary may, by rule, further limit the drugs that may be administered under this subsection (1)(f). The rules adopted under this subsection must limit the drugs based on risk, class, or route.

(g) Intravenous injections. A medical assistant-certified may administer intravenous injections for diagnostic or therapeutic agents under the direct visual supervision of a health care practitioner if the medical assistant-certified meets minimum standards established by the secretary in rule. The minimum standards must be substantially similar to the qualifications for category D and F health care assistants as they exist on July 1, 2013.

(h) Urethral catheterization when appropriately trained.

(2) A medical assistant-hemodialysis technician may perform hemodialysis when delegated and supervised by a health care practitioner. A medical assistant-hemodialysis technician may also administer drugs and oxygen to a patient when delegated and supervised by a health care practitioner and pursuant to rules adopted by the secretary.

(3) A medical assistant-phlebotomist may perform capillary, venous, or arterial invasive procedures for blood withdrawal when delegated and supervised by a health care practitioner and pursuant to rules adopted by the secretary.

(4) A medical assistant-registered may perform the following duties delegated by, and under the supervision of, a health care practitioner:

- (a) Fundamental procedures:
 - (i) Wrapping items for autoclaving;
 - (ii) Procedures for sterilizing equipment and instruments;
 - (iii) Disposing of biohazardous materials; and
 - (iv) Practicing standard precautions.
- (b) Clinical procedures:
 - (i) Preparing for sterile procedures;
 - (ii) Taking vital signs;
 - (iii) Preparing patients for examination; and
 - (iv) Observing and reporting patients' signs or symptoms.
- (c) Specimen collection:
 - (i) Obtaining specimens for microbiological testing; and
 - (ii) Instructing patients in proper technique to collect urine and fecal specimens.
- (d) Patient care:

(i) Telephone and in-person screening limited to intake and gathering of information without requiring the exercise of judgment based on clinical knowledge;

(ii) Obtaining vital signs;

(iii) Obtaining and recording patient history;

(iv) Preparing and maintaining examination and treatment areas;

(v) Preparing patients for, and assisting with, routine and specialty examinations, procedures, treatments, and minor office surgeries utilizing no more than local anesthetic. The department may, by rule, prohibit duties authorized under this subsection (4)(d)(v) if performance of those duties by a medical assistant-registered would pose an unreasonable risk to patient safety;

(vi) Maintaining medication and immunization records; and

(vii) Screening and following up on test results as directed by a health care practitioner.

(e)(i) Tests waived under the federal clinical laboratory improvement amendments program on July 1, 2013. The department shall periodically update the tests authorized under subsection (1)(d) of this section based on changes made by the federal clinical laboratory improvement amendments program.

(ii) Moderate complexity tests if the medical assistant-registered meets standards for personnel qualifications and responsibilities in compliance with federal regulation for nonwaived testing.

(f) Administering eye drops, topical ointments, and vaccines, including combination or multidose vaccines.

(g) Urethral catheterization when appropriately trained. [2013 c 128 § 3; 2012 c 153 § 6.]

Implementation—Effective date—2013 c 128: See notes following RCW 18.360.005.

Effective date—2012 c 153 §§ 1-12, 14, 16, and 18: See note following RCW 18.360.005.

Rules—2012 c 153: See note following RCW 18.360.005.

18.360.060 Delegation—Health care practitioner duties. (1) Prior to delegation of any of the functions in RCW 18.360.050, a health care practitioner shall determine to the best of his or her ability each of the following:

(a) That the task is within that health care practitioner's scope of licensure or authority;

(b) That the task is indicated for the patient;

(c) The appropriate level of supervision;

(d) That no law prohibits the delegation;

(e) That the person to whom the task will be delegated is competent to perform that task; and

(f) That the task itself is one that should be appropriately delegated when considering the following factors:

(i) That the task can be performed without requiring the exercise of judgment based on clinical knowledge;

(ii) That results of the task are reasonably predictable;

(iii) That the task can be performed without a need for complex observations or critical decisions;

(iv) That the task can be performed without repeated clinical assessments; and

(v)(A) For a medical assistant other than a medical assistant-hemodialysis technician, that the task, if performed improperly, would not present life-threatening consequences

or the danger of immediate and serious harm to the patient; and

(B) For a medical assistant-hemodialysis technician, that the task, if performed improperly, is not likely to present life-threatening consequences or the danger of immediate and serious harm to the patient.

(2) Nothing in this section prohibits the use of protocols that do not involve clinical judgment and do not involve the administration of medications, other than vaccines. [2013 c 128 § 4; 2012 c 153 § 7.]

Implementation—Effective date—2013 c 128: See notes following RCW 18.360.005.

Effective date—2012 c 153 §§ 1-12, 14, 16, and 18: See note following RCW 18.360.005.

Rules—2012 c 153: See note following RCW 18.360.005.

18.360.080 Certifications existing before July 1, 2013. (1) The department may not issue new certifications for category C, D, E, or F health care assistants on or after July 1, 2013. The department shall certify a category C, D, E, or F health care assistant whose certification is in good standing and who was certified prior to July 1, 2013, as a medical assistant-certified when he or she renews his or her certification.

(2) The department may not issue new certifications for category G health care assistants on or after July 1, 2013. The department shall certify a category G health care assistant whose certification is in good standing and who was certified prior to July 1, 2013, as a medical assistant-hemodialysis technician when he or she renews his or her certification.

(3) The department may not issue new certifications for category A or B health care assistants on or after July 1, 2013. The department shall certify a category A or B health care assistant whose certification is in good standing and who was certified prior to July 1, 2013, as a medical assistant-phlebotomist when he or she renews his or her certification. [2013 c 128 § 5; 2012 c 153 § 9.]

Implementation—Effective date—2013 c 128: See notes following RCW 18.360.005.

Effective date—2012 c 153 §§ 1-12, 14, 16, and 18: See note following RCW 18.360.005.

Rules—2012 c 153: See note following RCW 18.360.005.

Title 19

BUSINESS REGULATIONS— MISCELLANEOUS

Chapters

19.02	Business license center act.
19.16	Collection agencies.
19.28	Electricians and electrical installations.
19.68	Rebating by practitioners of healing professions.
19.80	Trade names.
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19.112	Motor fuel quality act.
19.146	Mortgage broker practices act.
19.230	Uniform money services act.
19.280	Electric utility resource plans.
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19.290 Metal property.
19.310 Exchange facilitators.

Chapter 19.02 RCW
BUSINESS LICENSE CENTER ACT

Sections

19.02.010	Purpose—Intent.
19.02.020	Definitions.
19.02.030	Business licensing service—Duties—Rules.
19.02.035	Business licensing service to compile and distribute information—Scope.
19.02.050	Participation of state agencies.
19.02.055	Agency duties—Information—Certification.
19.02.070	Issuance of licenses—Scope—Business license application and fees—Action by regulatory agency, when—Agencies provided information.
19.02.075	Business license application handling and renewal fees.
19.02.080	Licensing fees—Disposition of.
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19.02.090	Business license—Expiration date—Prorated fees—Conditions of renewal.
19.02.100	Business license—Issuance or renewal—Denial.
19.02.110	Business license—System to include additional licenses.
19.02.115	Licensing information—Authorized disclosure—Penalty.
19.02.210	Business license account.
19.02.220	Repealed.
19.02.310	Performance-based grant program.
19.02.320	Employment of minors.
19.02.800	Business license system—Certain business or professional activity licenses exempt.
19.02.810	Repealed.
19.02.890	Short title.

19.02.010 Purpose—Intent. (1) Experience under the pilot program of the business coordination act suggests that the number of state licenses required for new businesses and the renewal of existing licenses places an undue burden on business. Studies under this act also show that the state can reduce its costs by coordinating and consolidating application forms, information, and licenses. Therefore, the legislature extends the business coordination act by establishing a business license program and license center to develop and implement the following goals and objectives:

(a) The first goal of this system is to provide a convenient, accessible, and timely one-stop system for the business community to acquire and maintain the necessary state licenses to conduct business. This system must be developed and operated in the most cost-efficient manner for the business community and state. The objectives of this goal are:

(i) To provide a service whereby information is available to the business community concerning all state licensing and regulatory requirements, and to the extent feasible, include local and federal information concerning the same regulated activities;

(ii) To provide a system which enables state agencies to efficiently store, retrieve, and exchange license information with due regard to privacy statutes; to issue and renew business licenses where such licenses are appropriate; and to provide appropriate support services for this objective;

(iii) To provide at designated locations one consolidated application form to be completed by any given applicant; and

(iv) To provide a statewide system of common business identification.

(b) The second goal of this system is to aid business and the growth of business in Washington state by instituting a business license system that reduces the paperwork burden

on business, and promote the elimination of obsolete and duplicative licensing requirements by consolidating existing licenses and applications.

(2) It is the intent of the legislature that the authority for determining if a requested license is issued remains with the agency authorized to issue the license.

(3) It is the further intent of the legislature that those licenses which no longer serve a useful purpose in regulating certain business activities should be eliminated. [2013 c 144 § 15; 1982 c 182 § 1; 1977 ex.s. c 319 § 1.]

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

(1) "Business license" means the single document designed for public display issued by the business licensing service, which certifies state agency or local government license approval and which incorporates the endorsements for individual licenses included in the business licensing system, which the state or local government requires for any person subject to this chapter.

(2) "Business license application" means a document incorporating pertinent data from existing applications for licenses covered under this chapter.

(3) "Business licensing service" means the business registration and licensing service established by this chapter and located in and under the administrative control of the department of revenue.

(4) "Department" means the department of revenue.

(5) "Director" means the director of the department.

(6) "License" means the whole or part of any agency or local government permit, license, certificate, approval, registration, charter, or any form or permission required by law, including agency rule, to engage in any activity.

(7) "License information packet" means a collection of information about licensing requirements and application procedures custom-assembled for each request.

(8) "Participating local government" means a municipal corporation or political subdivision that participates in the business licensing system established by this chapter.

(9) "Person" means any individual, sole proprietorship, partnership, association, cooperative, corporation, nonprofit organization, state or local government agency, and any other organization required to register with the state or a participating local government to do business in the state or the participating local government and to obtain one or more licenses from the state or any of its agencies or the participating local government.

(10) "Regulatory" means all licensing and other governmental or statutory requirements pertaining to business or professional activities.

(11) "Regulatory agency" means any state agency, board, commission, division, or local government that regulates one or more professions, occupations, industries, businesses, or activities.

(12) "Renewal application" means a document used to collect pertinent data for renewal of licenses covered under this chapter.

(13) "System" or "business licensing system" means the procedure by which business licenses are issued and renewed, license and regulatory information is collected and

disseminated with due regard to privacy statutes, and account data is exchanged by the agencies and participating local governments. [2013 c 144 § 16. Prior: 2011 c 298 § 4; 1993 c 142 § 3; 1992 c 107 § 1; 1982 c 182 § 2; 1979 c 158 § 75; 1977 ex.s. c 319 § 2.]

Purpose—Intent—2011 c 298: "The purpose of this act is to improve customer service by transferring the master license service program from the department of licensing to the department of revenue. It is the legislature's intent that all licenses obtained or renewed through the master license service as of March 1, 2011, will continue to be obtained or renewed through the master license service after the master license service program is transferred to the department of revenue effective July 1, 2011." [2011 c 298 § 1.]

Agency transfer—2011 c 298: "(1) All powers, duties, and functions of the department of licensing pertaining to the administration of chapters 19.02, 19.80, and 59.30 RCW are transferred to the department of revenue. All references to the department of licensing or the director of licensing in the Revised Code of Washington must be construed to mean the department of revenue or the director of revenue when referring to the powers, duties, and functions transferred under this section.

(2)(a) All reports, documents, surveys, books, records, files, papers, or written material, including electronic records and files, in the possession of the department of licensing pertaining to the powers, functions, and duties transferred to the department of revenue under this section must be delivered to the custody of the department of revenue. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the department of licensing in carrying out the powers, functions, and duties transferred must be made available to the department of revenue. All funds, credits, or other assets held in connection with the powers, functions, and duties transferred must be assigned to the department of revenue.

(b) Any appropriations made to the department of licensing for carrying out the powers, functions, and duties transferred must, on July 1, 2011, be transferred and credited to the department of revenue.

(c) Whenever any question arises as to the transfer of any personnel, funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the director of financial management must make a determination as to the proper allocation and certify the same to the state agencies concerned.

(3) All employees of the department of licensing primarily engaged in performing the powers, functions, and duties transferred are transferred to the jurisdiction of the department of revenue. All employees classified under chapter 41.06 RCW, the state civil service law, are assigned to the department of revenue to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing state civil service.

(4) All rules and all pending business before the department of licensing pertaining to the powers, functions, and duties transferred must be continued and acted upon by the department of revenue. All existing contracts and obligations must remain in full force and must be performed by the department of revenue.

(5) The transfer of the powers, duties, functions, and personnel of the department of licensing does not affect the validity of any act performed before July 1, 2011.

(6) If apportionments of budgeted funds are required because of the transfers directed by this section, the director of financial management must certify the apportionments to the agencies affected, the state auditor, and the state treasurer. Each of these must make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with the certification.

(7) All classified employees of the department of licensing assigned to the department of revenue under this section whose positions are within an existing bargaining unit description at the department of revenue must become a part of the existing bargaining unit at the department of revenue and must be considered an appropriate inclusion or modification of the existing bargaining unit, if any, under the provisions of chapter 41.80 RCW." [2011 c 298 § 2.]

Contracting—2011 c 298: "To ensure a seamless transfer of the master license service program from the department of licensing to the department of revenue and to prevent any disruption of service to persons seeking to use the master license system, the department of revenue is authorized to contract, under chapter 39.34 RCW, with the department of licensing for support in administering chapters 19.02, 19.80, and 59.30 RCW. Any contract entered into pursuant to this section must be for a duration no longer than

necessary to fully and effectively transfer the master license service program from the department of licensing to the department of revenue." [2011 c 298 § 3.]

Effective date—2011 c 298: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2011." [2011 c 298 § 43.]

Additional notes found at www.leg.wa.gov

19.02.030 Business licensing service—Duties—Rules.

(1) There is located within the department a business licensing service.

(2) The duties of the business licensing service include:

(a) Developing and administering a computerized one-stop business licensing system capable of storing, retrieving, and exchanging license information with due regard to privacy statutes, as well as issuing and renewing business licenses in an efficient manner;

(b) Providing a license information service detailing requirements to establish or engage in business in this state;

(c) Providing for staggered business license renewal dates;

(d) Identifying types of licenses appropriate for inclusion in the business licensing system;

(e) Recommending in reports to the governor and the legislature the elimination, consolidation, or other modification of duplicative, ineffective, or inefficient licensing or inspection requirements; and

(f) Incorporating licenses into the business licensing system. Both the regulatory agency legally authorized to issue the license and the department must agree that the license will be issued through the *master license system in order for the license to be incorporated.

(3) The department may adopt under chapter 34.05 RCW such rules as may be necessary to effectuate the purposes of this chapter. [2013 c 144 § 17; 2013 c 111 § 3; 2011 c 298 § 5; 1999 c 240 § 5; 1993 c 142 § 4; 1982 c 182 § 3; 1979 c 158 § 76; 1977 ex.s. c 319 § 3.]

Reviser's note: *(1) The term "master license system" changed to "business licensing system" by chapter 144, Laws of 2013.

(2) This section was amended by 2013 c 111 § 3 and by 2013 c 144 § 17, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

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

19.02.035 Business licensing service to compile and distribute information—Scope.

(1) The business licensing service must compile information regarding the regulatory programs associated with each of the licenses obtainable under the business licensing system. This information must include, at a minimum, a listing of the statutes and administrative rules requiring the licenses and pertaining to the regulatory programs that are directly related to the licensure. For example, for pesticide dealers' licenses, the information must include the statutes and rules requiring licensing as well as those pertaining to the subject of registering or distributing pesticides.

(2) The business licensing service must provide information governed by this section to any person requesting it. Materials used by the business licensing service to describe

its services must indicate that this information is available upon request. [2013 c 144 § 18; 1982 c 182 § 4.]

19.02.050 Participation of state agencies. Each of the following agencies must fully participate in the implementation of this chapter:

- (1) Department of agriculture;
 - (2) Secretary of state;
 - (3) Department of social and health services;
 - (4) Department of revenue;
 - (5) Department of fish and wildlife;
 - (6) Employment security department;
 - (7) Department of labor and industries;
 - (8) Liquor control board;
 - (9) Department of health;
 - (10) Department of licensing;
 - (11) Utilities and transportation commission;
 - (12) Board of accountancy;
 - (13) Department of archaeology and historic preservation;
 - (14) Department of early learning;
 - (15) Department of ecology;
 - (16) Department of financial institutions;
 - (17) Department of transportation;
 - (18) Gambling commission;
 - (19) Horse racing commission;
 - (20) Office of the insurance commissioner;
 - (21) State lottery;
 - (22) Student achievement council;
 - (23) Washington state patrol;
 - (24) Workforce training and education coordinating board; and
 - (25) Other agencies as determined by the governor.
- [2013 c 111 § 1; 2011 c 298 § 6; 1997 c 391 § 11; 1994 c 264 § 8; 1989 1st ex.s. c 9 § 317; 1985 c 466 § 38; 1979 c 158 § 78; 1977 ex.s. c 319 § 5.]

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

Additional notes found at www.leg.wa.gov

19.02.055 Agency duties—Information—Certification. (1)(a) Each agency required to fully participate in the implementation of this chapter under RCW 19.02.050 must provide the department with the name of the agency's coordinator for the purposes of implementing the requirements of this section. Using a format designated by the department, each agency must provide the department with the following information:

- (i) A listing of each business license issued by the agency;
- (ii) A description of the persons and specific activities for which the license is required;
- (iii) The time period for which the license is issued and any issuance, renewal, or reissuance requirements; and
- (iv) Other information the department determines necessary to implement this section, including links to the licensing information, application, and instructions on the agency's web site, if available.

(b) An agency that issues licenses in accordance with (i) national or federal mandates, requirements, or standards; or (ii) educational standards and an examination, may alterna-

tively comply with this chapter by providing the department with a link to its licensing web site, summary information about the licensing requirements or standards in a format or formats designated by the department, and a designated agency contact.

(2) In addition to the requirements in subsection (1) of this section, each agency, by November 1st of each year, beginning November 1, 2013, must provide the department with certification on a form designated by the department that all business licensing information submitted by the agency is complete and up-to-date. If an agency has not submitted all the business licensing information required under this section, the agency must instead submit a progress report and explanation to the department.

(3) The department must compile the information submitted by each agency, and submit an aggregate report to the governor and the economic development committees of the legislature by January 1st of each year, beginning January 1, 2014. [2013 c 111 § 2.]

19.02.070 Issuance of licenses—Scope—Business license application and fees—Action by regulatory agency, when—Agencies provided information. (1) Any person requiring licenses that have been incorporated into the system must submit a business license application to the department requesting the issuance of the licenses. The business license application form must contain in consolidated form information necessary for the issuance of the licenses.

(2) The applicant must include with the application the sum of all fees and deposits required for the requested individual license endorsements as well as the handling fee established by the department under the authority of RCW 19.02.075.

(3) Irrespective of any authority delegated to the department to implement the provisions of this chapter, the authority for approving issuance and renewal of any requested license that requires a preclicensing or renewal investigation, inspection, testing, or other judgmental review by the regulatory agency otherwise legally authorized to issue the license must remain with that agency. The business licensing service has the authority to issue those licenses for which proper fee payment and a completed application form have been received and for which no preclicensing or renewal approval action is required by the regulatory agency.

(4) Upon receipt of the application and proper fee payment for any license for which issuance is subject to regulatory agency action under subsection (3) of this section, the department must immediately notify the regulatory agency with authority to approve issuance or renewal of the license requested by the applicant. Each regulatory agency must advise the department within a reasonable time after receiving the notice: (a) That the agency approves the issuance of the requested license and will advise the applicant of any specific conditions required for issuing the license; (b) that the agency denies the issuance of the license and gives the applicant reasons for the denial; or (c) that the application is pending.

(5) The department must issue a business license endorsed for all the approved licenses to the applicant and advise the applicant of the status of other requested licenses. It is the responsibility of the applicant to contest the decision

regarding conditions imposed or licenses denied through the normal process established by statute or by the regulatory agency with the authority for approving issuance of the license.

(6) Regulatory agencies must be provided information from the business license application for their licensing and regulatory functions. [2013 c 144 § 19; 2011 c 298 § 7; 1990 c 264 § 1; 1982 c 182 § 6; 1979 c 158 § 79; 1977 ex.s. c 319 § 7.]

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

Additional notes found at www.leg.wa.gov

19.02.075 Business license application handling and renewal fees. The department must collect a handling fee on each business license application and each renewal application filing. The department must set the amount of the handling fees by rule, as authorized by RCW 19.02.030. The handling fees may not exceed nineteen dollars for each business license application, and eleven dollars for each business license renewal application filing, and must be deposited in the business license account. The department may increase handling and renewal fees for the purposes of making improvements in the business licensing service program, including improvements in technology and customer services, expanded access, and infrastructure. [2013 c 144 § 20; 2011 c 298 § 8; 1995 c 403 § 1007; 1992 c 107 § 2; 1990 c 264 § 2.]

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

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Additional notes found at www.leg.wa.gov

19.02.080 Licensing fees—Disposition of. All fees collected under the system must be deposited with the state treasurer. Upon issuance or renewal of the business license or supplemental licenses, the department must distribute the fees, except for fees covered under RCW 19.02.210 and for fees covered under RCW 19.80.075, to the appropriate accounts under the applicable statutes for those agencies' licenses. [2013 c 144 § 21; 1992 c 107 § 3; 1982 c 182 § 7.]

Additional notes found at www.leg.wa.gov

19.02.085 Licensing fees—Business license delinquency fee—Rate—Disposition. To encourage timely renewal by applicants, a business license delinquency fee is imposed on licensees who fail to renew by the business license expiration date. The business license delinquency fee must be the lesser of one hundred fifty dollars or fifty percent of a base comprised of the licensee's renewal fee minus corporate licensing taxes, corporation annual report fee, and any interest fees or penalties charged for late taxes or corporate renewals. The business license delinquency fee must be added to the renewal fee and paid by the licensee before a business license is renewed. The delinquency fee must be deposited in the business license account. [2013 c 144 § 22; 1992 c 107 § 5; 1989 c 170 § 1; 1982 c 182 § 9.]

Additional notes found at www.leg.wa.gov

19.02.090 Business license—Expiration date—Prorated fees—Conditions of renewal. (1) The department must assign an expiration date for each business license. All renewable licenses endorsed on that business license must expire on that date. License fees must be prorated to accommodate the staggering of expiration dates.

(2) All renewable licenses endorsed on a business license must be renewed by the department under conditions originally imposed unless a regulatory agency advises the department of conditions or denials to be imposed before the endorsement is renewed. [2013 c 144 § 23; 1982 c 182 § 8.]

19.02.100 Business license—Issuance or renewal—Denial. (1) The department may refuse to issue or renew a business license to any person if:

(a) The person does not have a valid tax registration, if required by a regulatory agency;

(b) The person is a corporation delinquent in fees or penalties owing to the secretary of state or is not validly registered under Title 23B RCW, chapter 18.100 RCW, Title 24 RCW, or any other statute now or hereafter adopted which gives corporate or business licensing responsibilities to the secretary of state if the person is required to be so registered and the regulatory agency having the authority to approve the issuance or renewal of the license requires, as a condition of such approval, that the person be so registered or not delinquent in fees or penalties owing to the secretary of state; or

(c) The person has not submitted the sum of all fees and deposits required for the requested individual license endorsements, any outstanding business license delinquency fee, or other fees and penalties to be collected through the system.

(2) Nothing in this section prevents registration by the state of a business for taxation purposes, or an employer for the purpose of paying an employee of that employer industrial insurance or unemployment insurance benefits. [2013 c 144 § 24; 2011 c 298 § 9; 1997 c 58 § 865; 1991 c 72 § 8; 1982 c 182 § 10.]

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

Effective dates—Intent—1997 c 58: See notes following RCW 74.20A.320.

Additional notes found at www.leg.wa.gov

19.02.110 Business license—System to include additional licenses. (1) In addition to the licenses processed under the business licensing system prior to April 1, 1982, on July 1, 1982, use of the business licensing system is expanded as provided by this section.

(2) Applications for the following must be filed with the business licensing service and must be processed, and renewals must be issued, under the business licensing system:

(a) Nursery dealer's licenses required by chapter 15.13 RCW;

(b) Seed dealer's licenses required by chapter 15.49 RCW;

(c) Pesticide dealer's licenses required by chapter 15.58 RCW;

(d) Shopkeeper's licenses required by chapter 18.64 RCW;

(e) Egg dealer's licenses required by chapter 69.25 RCW. [2013 c 144 § 25; 2007 c 52 § 1; 2000 c 171 § 43; 1988 c 5 § 3; 1982 c 182 § 11.]

19.02.115 Licensing information—Authorized disclosure—Penalty. (1) For purposes of this section:

(a) "Disclose" means to make known to any person in any manner licensing information;

(b) "Licensing information" means any information created or obtained by the department in the administration of this chapter and chapters 19.80 and 59.30 RCW, which information relates to any person who: (i) Has applied for or has been issued a license or trade name; or (ii) has been issued an assessment or delinquency fee. Licensing information includes initial and renewal business license applications, and business licenses;

(c) "Person" has the same meaning as in RCW 82.04.030 and also includes the state and the state's departments and institutions; and

(d) "State agency" means every Washington state office, department, division, bureau, board, commission, or other state agency.

(2) Licensing information is confidential and privileged, and except as authorized by this section, neither the department nor any other person may disclose any licensing information. Nothing in this chapter requires any person possessing licensing information made confidential and privileged by this section to delete information from such information so as to permit its disclosure.

(3) This section does not prohibit the department of revenue, or any other person receiving licensing information from the department under this subsection, from:

(a) Disclosing licensing information in a civil or criminal judicial proceeding or an administrative proceeding:

(i) In which the person about whom such licensing information is sought and the department, another state agency, or a local government are adverse parties in the proceeding; or

(ii) Involving a dispute arising out of the department's administration of chapter 19.80 or 59.30 RCW, or this chapter if the licensing information relates to a party in the proceeding;

(b) Disclosing, subject to such requirements and conditions as the director prescribes by rules adopted pursuant to chapter 34.05 RCW, such licensing information regarding a license applicant or license holder to such license applicant or license holder or to such person or persons as that license applicant or license holder may designate in a request for, or consent to, such disclosure, or to any other person, at the license applicant's or license holder's request, to the extent necessary to comply with a request for information or assistance made by the license applicant or license holder to such other person. However, licensing information not received from the license applicant or holder must not be so disclosed if the director determines that such disclosure would compromise any investigation or litigation by any federal, state, or local government agency in connection with the civil or criminal liability of the license applicant, license holder, or another person, or that such disclosure would identify a confidential informant, or that such disclosure is contrary to any agreement entered into by the department that provides for the reciprocal exchange of information with other govern-

ment agencies, which agreement requires confidentiality with respect to such information unless such information is required to be disclosed to the license applicant or license holder by the order of any court;

(c) Publishing statistics so classified as to prevent the identification of particular licensing information;

(d) Disclosing licensing information for official purposes only, to the governor or attorney general, or to any state agency, or to any committee or subcommittee of the legislature dealing with matters of taxation, revenue, trade, commerce, the control of industry or the professions, or licensing;

(e) Permitting the department's records to be audited and examined by the proper state officer, his or her agents and employees;

(f) Disclosing any licensing information to a peace officer as defined in RCW 9A.04.110 or county prosecuting attorney, for official purposes. The disclosure may be made only in response to a search warrant, subpoena, or other court order, unless the disclosure is for the purpose of criminal tax or license enforcement. A peace officer or county prosecuting attorney who receives the licensing information may disclose that licensing information only for use in the investigation and a related court proceeding, or in the court proceeding for which the licensing information originally was sought;

(g) Disclosing, in a manner that is not associated with other licensing information, the name of a license applicant or license holder, entity type, registered trade name, business address, mailing address, unified business identifier number, list of licenses issued to a person through the business licensing system established in this chapter and their issuance and expiration dates, and the dates of opening of a business;

(h) Disclosing licensing information that is also maintained by another Washington state or local governmental agency as a public record available for inspection and copying under the provisions of chapter 42.56 RCW or is a document maintained by a court of record and is not otherwise prohibited from disclosure;

(i) Disclosing any licensing information when the disclosure is specifically authorized under any other section of the Revised Code of Washington;

(j) Disclosing licensing information to the proper officer of the licensing or tax department of any city, town, or county of this state, for official purposes. If the licensing information does not relate to a license issued by the city, town, or county requesting the licensing information, disclosure may be made only if the laws of the requesting city, town, or county grants substantially similar privileges to the proper officers of this state; or

(k) Disclosing licensing information to the federal government for official purposes.

(4) Notwithstanding anything to the contrary in this section, a state agency or local government agency may disclose licensing information relating to a license issued on its behalf by the department pursuant to this chapter if the disclosure is authorized by another statute, local law, or administrative rule.

(5) The department, any other state agency, or local government may refuse to disclose licensing information that is otherwise disclosable under subsection (3) of this section if such disclosure would violate federal law or any information

sharing agreement between the state or local government and federal government.

(6) Any person acquiring knowledge of any licensing information in the course of his or her employment with the department and any person acquiring knowledge of any licensing information as provided under subsection (3)(d), (e), (f), (j), or (k) of this section, who discloses any such licensing information to another person not entitled to knowledge of such licensing information under the provisions of this section, is guilty of a misdemeanor. If the person guilty of such violation is an officer or employee of the state, such person must forfeit such office or employment and is incapable of holding any public office or employment in this state for a period of two years thereafter. [2013 c 144 § 26; 2011 c 298 § 12.]

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

19.02.210 Business license account. The business license account is created in the state treasury. Unless otherwise indicated in RCW 19.02.075, all receipts from handling and business license delinquency fees must be deposited into the account. Moneys in the account may be spent only after appropriation beginning in fiscal year 1993. Expenditures from the account may be used only to administer the business licensing service program. [2013 c 144 § 27; 1992 c 107 § 4.]

Additional notes found at www.leg.wa.gov

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

19.02.310 Performance-based grant program. (1) Subject to the availability of amounts appropriated for this specific purpose, the department may administer a performance-based grant program that provides funding assistance to public agencies that issue business licenses and that wish to join with the department's business licensing service.

(2) The department may determine among interested grant applicants the order and the amount of the grant. In making grant determinations, consideration must be given, but not limited to, the following criteria: Readiness of the public agency to participate; the number of renewable licenses; and the reduced regulatory impact to businesses subject to licensure relative to the overall investment required by the department.

(3) The department must invite and encourage participation by all Washington city and county governments having interests or responsibilities relating to business licensing.

(4) The total amount of grants provided under this section may not exceed seven hundred fifty thousand dollars in any one fiscal year.

(5) The source of funds for this grant program is the business license account. [2013 c 144 § 28; 2005 c 201 § 1.]

19.02.320 Employment of minors. A person seeking a work permit for the employment of minors under RCW 49.12.121 is not required to complete an entirely new master application if there are no changes to any other information submitted on the most recent master application. The person need only complete the parts of a new master application that identify the employer seeking the minor work permit, includ-

ing address and contact information, and that indicate the employer plans to employ one or more minors, the duties to be performed by minors, and the estimated number of hours to be worked by minors. [2013 c 156 § 1.]

19.02.800 Business license system—Certain business or professional activity licenses exempt. Except as provided in RCW 43.07.200, the provisions of this chapter regarding the processing of license applications and renewals under the business licensing system do not apply to those business or professional activities that are licensed or regulated under chapter 31.04, 31.12, or 31.13 RCW or under Title 30, 32, 33, or 48 RCW. [2013 c 144 § 29; 2011 c 298 § 10; 2000 c 171 § 44; 1982 c 182 § 17.]

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

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

19.02.890 Short title. This chapter may be known and cited as the business licensing service act. [2013 c 144 § 30; 1982 c 182 § 18.]

Chapter 19.16 RCW COLLECTION AGENCIES

Sections

19.16.100	Definitions.
19.16.250	Prohibited practices.
19.16.260	Licensing prerequisite to suit.

19.16.100 Definitions. Unless a different meaning is plainly required by the context, the following words and phrases as hereinafter used in this chapter shall have the following meanings:

(1) "Board" means the Washington state collection agency board.

(2) "Claim" means any obligation for the payment of money or thing of value arising out of any agreement or contract, express or implied.

(3) "Client" or "customer" means any person authorizing or employing a collection agency to collect a claim.

(4) "Collection agency" means and includes:

(a) Any person directly or indirectly engaged in soliciting claims for collection, or collecting or attempting to collect claims owed or due or asserted to be owed or due another person;

(b) Any person who directly or indirectly furnishes or attempts to furnish, sells, or offers to sell forms represented to be a collection system or scheme intended or calculated to be used to collect claims even though the forms direct the debtor to make payment to the creditor and even though the forms may be or are actually used by the creditor himself or herself in his or her own name;

(c) Any person who in attempting to collect or in collecting his or her own claim uses a fictitious name or any name other than his or her own which would indicate to the debtor that a third person is collecting or attempting to collect such claim;

(d) Any person or entity that is engaged in the business of purchasing delinquent or charged off claims for collection purposes, whether it collects the claims itself or hires a third party for collection or an attorney for litigation in order to collect such claims.

(5) "Collection agency" does not mean and does not include:

(a) Any individual engaged in soliciting claims for collection, or collecting or attempting to collect claims on behalf of a licensee under this chapter, if said individual is an employee of the licensee;

(b) Any individual collecting or attempting to collect claims for not more than one employer, if all the collection efforts are carried on in the name of the employer and if the individual is an employee of the employer;

(c) Any person whose collection activities are carried on in his, her, or its true name and are confined and are directly related to the operation of a business other than that of a collection agency, such as but not limited to: Trust companies; savings and loan associations; building and loan associations; abstract companies doing an escrow business; real estate brokers; property management companies collecting assessments, charges, or fines on behalf of condominium unit owners associations, associations of apartment owners, or homeowners' associations; public officers acting in their official capacities; persons acting under court order; lawyers; insurance companies; credit unions; loan or finance companies; mortgage banks; and banks;

(d) Any person who on behalf of another person prepares or mails monthly or periodic statements of accounts due if all payments are made to that other person and no other collection efforts are made by the person preparing the statements of account;

(e) An "out-of-state collection agency" as defined in this chapter; or

(f) Any person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector does so only for persons to whom it is so related or affiliated and if the principal business of the person is not the collection of debts.

(6) "Commercial claim" means any obligation for payment of money or thing of value arising out of any agreement or contract, express or implied, where the transaction which is the subject of the agreement or contract is not primarily for personal, family, or household purposes.

(7) "Debtor" means any person owing or alleged to owe a claim.

(8) "Director" means the director of licensing.

(9) "Licensee" means any person licensed under this chapter.

(10) "Out-of-state collection agency" means a person whose activities within this state are limited to collecting debts from debtors located in this state by means of interstate communications, including telephone, mail, or facsimile transmission, from the person's location in another state on behalf of clients located outside of this state, but does not include any person who is excluded from the definition of the term "debt collector" under the federal fair debt collection practices act (15 U.S.C. Sec. 1692a(6)).

(11) "Person" includes individual, firm, partnership, trust, joint venture, association, or corporation.

(12) "Statement of account" means a report setting forth only amounts billed, invoices, credits allowed, or aged balance due. [2013 c 148 § 1; 2003 c 203 § 1. Prior: 2001 c 47 § 1; 2001 c 43 § 1; 1994 c 195 § 1; 1990 c 190 § 1; 1979 c 158 § 81; 1971 ex.s. c 253 § 1.]

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

Effective date—2013 c 148 §§ 1 and 3: "Sections 1 and 3 of this act take effect October 1, 2013." [2013 c 148 § 4.]

19.16.250 Prohibited practices. No licensee or employee of a licensee shall:

(1) Directly or indirectly aid or abet any unlicensed person to engage in business as a collection agency in this state or receive compensation from such unlicensed person: PROVIDED, That nothing in this chapter shall prevent a licensee from accepting, as forwarder, claims for collection from a collection agency or attorney whose place of business is outside the state.

(2) Collect or attempt to collect a claim by the use of any means contrary to the postal laws and regulations of the United States postal department.

(3) Publish or post or cause to be published or posted, any list of debtors commonly known as "bad debt lists" or threaten to do so. For purposes of this chapter, a "bad debt list" means any list of natural persons alleged to fail to honor their lawful debts. However, nothing herein shall be construed to prohibit a licensee from communicating to its customers or clients by means of a coded list, the existence of a check dishonored because of insufficient funds, not sufficient funds or closed account by the financial institution servicing the debtor's checking account: PROVIDED, That the debtor's identity is not readily apparent: PROVIDED FURTHER, That the licensee complies with the requirements of subsection (10)(e) of this section.

(4) Have in his or her possession or make use of any badge, use a uniform of any law enforcement agency or any simulation thereof, or make any statements which might be construed as indicating an official connection with any federal, state, county, or city law enforcement agency, or any other governmental agency, while engaged in collection agency business.

(5) Perform any act or acts, either directly or indirectly, constituting the unauthorized practice of law.

(6) Advertise for sale or threaten to advertise for sale any claim as a means of endeavoring to enforce payment thereof or agreeing to do so for the purpose of soliciting claims, except where the licensee has acquired claims as an assignee for the benefit of creditors or where the licensee is acting under court order.

(7) Use any name while engaged in the making of a demand for any claim other than the name set forth on his or her or its current license issued hereunder.

(8) Give or send to any debtor or cause to be given or sent to any debtor, any notice, letter, message, or form, other than through proper legal action, process, or proceedings, which represents or implies that a claim exists unless it shall indicate in clear and legible type:

(a) The name of the licensee and the city, street, and number at which he or she is licensed to do business;

(b) The name of the original creditor to whom the debtor owed the claim if such name is known to the licensee or employee: PROVIDED, That upon written request of the debtor, the licensee shall provide this name to the debtor or cease efforts to collect on the debt until this information is provided;

(c) If the notice, letter, message, or form is the first notice to the debtor or if the licensee is attempting to collect a different amount than indicated in his or her or its first notice to the debtor, an itemization of the claim asserted must be made including:

(i) Amount owing on the original obligation at the time it was received by the licensee for collection or by assignment;

(ii) Interest or service charge, collection costs, or late payment charges, if any, added to the original obligation by the original creditor, customer or assignor before it was received by the licensee for collection, if such information is known by the licensee or employee: PROVIDED, That upon written request of the debtor, the licensee shall make a reasonable effort to obtain information on such items and provide this information to the debtor;

(iii) Interest or service charge, if any, added by the licensee or customer or assignor after the obligation was received by the licensee for collection;

(iv) Collection costs, if any, that the licensee is attempting to collect;

(v) Attorneys' fees, if any, that the licensee is attempting to collect on his or her or its behalf or on the behalf of a customer or assignor; and

(vi) Any other charge or fee that the licensee is attempting to collect on his or her or its own behalf or on the behalf of a customer or assignor;

(d) If the notice, letter, message, or form concerns a judgment obtained against the debtor, no itemization of the amounts contained in the judgment is required, except post-judgment interest, if claimed, and the current account balance;

(e) If the notice, letter, message, or form is the first notice to the debtor, an itemization of the claim asserted must be made including the following information:

(i) The original account number or redacted original account number assigned to the debt, if known to the licensee or employee: PROVIDED, That upon written request of the debtor, the licensee must make a reasonable effort to obtain this information or cease efforts to collect on the debt until this information is provided; and

(ii) The date of the last payment to the creditor on the subject debt by the debtor, if known to the licensee or employee: PROVIDED, That upon written request of the debtor, the licensee must make a reasonable effort to obtain this information or cease efforts to collect on the debt until this information is provided.

(9) Communicate in writing with a debtor concerning a claim through a proper legal action, process, or proceeding, where such communication is the first written communication with the debtor, without providing the information set forth in subsection (8)(c) of this section in the written communication.

(10) Communicate or threaten to communicate, the existence of a claim to a person other than one who might be reasonably expected to be liable on the claim in any manner other than through proper legal action, process, or proceedings except under the following conditions:

(a) A licensee or employee of a licensee may inform a credit reporting bureau of the existence of a claim. If the licensee or employee of a licensee reports a claim to a credit reporting bureau, the licensee shall, upon receipt of written notice from the debtor that any part of the claim is disputed, notify the credit reporting bureau of the dispute by written or electronic means and create a record of the fact of the notification and when the notification was provided;

(b) A licensee or employee in collecting or attempting to collect a claim may communicate the existence of a claim to a debtor's employer if the claim has been reduced to a judgment;

(c) A licensee or employee in collecting or attempting to collect a claim that has not been reduced to judgment, may communicate the existence of a claim to a debtor's employer if:

(i) The licensee or employee has notified or attempted to notify the debtor in writing at his or her last known address or place of employment concerning the claim and the debtor after a reasonable time has failed to pay the claim or has failed to agree to make payments on the claim in a manner acceptable to the licensee, and

(ii) The debtor has not in writing to the licensee disputed any part of the claim: PROVIDED, That the licensee or employee may only communicate the existence of a claim which has not been reduced to judgment to the debtor's employer once unless the debtor's employer has agreed to additional communications.

(d) A licensee may for the purpose of locating the debtor or locating assets of the debtor communicate the existence of a claim to any person who might reasonably be expected to have knowledge of the whereabouts of a debtor or the location of assets of the debtor if the claim is reduced to judgment, or if not reduced to judgment, when:

(i) The licensee or employee has notified or attempted to notify the debtor in writing at his or her last known address or last known place of employment concerning the claim and the debtor after a reasonable time has failed to pay the claim or has failed to agree to make payments on the claim in a manner acceptable to the licensee, and

(ii) The debtor has not in writing disputed any part of the claim.

(e) A licensee may communicate the existence of a claim to its customers or clients if the claim is reduced to judgment, or if not reduced to judgment, when:

(i) The licensee has notified or attempted to notify the debtor in writing at his or her last known address or last known place of employment concerning the claim and the debtor after a reasonable time has failed to pay the claim or has failed to agree to make payments on the claim in a manner acceptable to the licensee, and

(ii) The debtor has not in writing disputed any part of the claim.

(11) Threaten the debtor with impairment of his or her credit rating if a claim is not paid: PROVIDED, That advising a debtor that the licensee has reported or intends to report

a claim to a credit reporting agency is not considered a threat if the licensee actually has reported or intends to report the claim to a credit reporting agency.

(12) Communicate with the debtor after notification in writing from an attorney representing such debtor that all further communications relative to a claim should be addressed to the attorney: PROVIDED, That if a licensee requests in writing information from an attorney regarding such claim and the attorney does not respond within a reasonable time, the licensee may communicate directly with the debtor until he or she or it again receives notification in writing that an attorney is representing the debtor.

(13) Communicate with a debtor or anyone else in such a manner as to harass, intimidate, threaten, or embarrass a debtor, including but not limited to communication at an unreasonable hour, with unreasonable frequency, by threats of force or violence, by threats of criminal prosecution, and by use of offensive language. A communication shall be presumed to have been made for the purposes of harassment if:

(a) It is made with a debtor or spouse in any form, manner, or place, more than three times in a single week, unless the licensee is responding to a communication from the debtor or spouse;

(b) It is made with a debtor at his or her place of employment more than one time in a single week, unless the licensee is responding to a communication from the debtor;

(c) It is made with the debtor or spouse at his or her place of residence between the hours of 9:00 p.m. and 7:30 a.m. A call to a telephone is presumed to be received in the local time zone to which the area code of the number called is assigned for landline numbers, unless the licensee reasonably believes the telephone is located in a different time zone. If the area code is not assigned to landlines in any specific geographic area, such as with toll-free telephone numbers, a call to a telephone is presumed to be received in the local time zone of the debtor's last known place of residence, unless the licensee reasonably believes the telephone is located in a different time zone.

(14) Communicate with the debtor through use of forms or instruments that simulate the form or appearance of judicial process, the form or appearance of government documents, or the simulation of a form or appearance of a telegraphic or emergency message.

(15) Communicate with the debtor and represent or imply that the existing obligation of the debtor may be or has been increased by the addition of attorney fees, investigation fees, service fees, or any other fees or charges when in fact such fees or charges may not legally be added to the existing obligation of such debtor.

(16) Threaten to take any action against the debtor which the licensee cannot legally take at the time the threat is made.

(17) Send any telegram or make any telephone calls to a debtor or concerning a debt or for the purpose of demanding payment of a claim or seeking information about a debtor, for which the charges are payable by the addressee or by the person to whom the call is made: PROVIDED, That:

(a) This subsection does not prohibit a licensee from attempting to communicate by way of a cellular telephone or other wireless device: PROVIDED, That a licensee cannot cause charges to be incurred to the recipient of the attempted communication more than three times in any calendar week

when the licensee knows or reasonably should know that the number belongs to a cellular telephone or other wireless device, unless the licensee is responding to a communication from the debtor or the person to whom the call is made.

(b) The licensee is not in violation of (a) of this subsection if the licensee at least monthly updates its records with information provided by a commercial provider of cellular telephone lists that the licensee in good faith believes provides reasonably current and comprehensive data identifying cellular telephone numbers, calls a number not appearing in the most recent list provided by the commercial provider, and does not otherwise know or reasonably should know that the number belongs to a cellular telephone.

(c) This subsection may not be construed to increase the number of communications permitted pursuant to subsection (13)(a) of this section.

(18) Call, or send a text message or other electronic communication to, a cellular telephone or other wireless device more than twice in any day when the licensee knows or reasonably should know that the number belongs to a cellular telephone or other wireless device, unless the licensee is responding to a communication from the debtor or the person to whom the call, text message, or other electronic communication is made. The licensee is not in violation of this subsection if the licensee at least monthly updates its records with information provided by a commercial provider of cellular telephone lists that the licensee in good faith believes provides reasonably current and comprehensive data identifying cellular telephone numbers, calls a number not appearing in the most recent list provided by the commercial provider, and does not otherwise know or reasonably should know that the number belongs to a cellular telephone. Nothing in this subsection may be construed to increase the number of communications permitted pursuant to subsection (13)(a) of this section.

(19) Intentionally block its telephone number from displaying on a debtor's telephone.

(20) In any manner convey the impression that the licensee is vouched for, bonded to or by, or is an instrumentality of the state of Washington or any agency or department thereof.

(21) Collect or attempt to collect in addition to the principal amount of a claim any sum other than allowable interest, collection costs or handling fees expressly authorized by statute, and, in the case of suit, attorney's fees and taxable court costs. A licensee may collect or attempt to collect collection costs and fees, including contingent collection fees, as authorized by a written agreement or contract, between the licensee's client and the debtor, in the collection of a commercial claim. The amount charged to the debtor for collection services shall not exceed thirty-five percent of the commercial claim.

(22) Procure from a debtor or collect or attempt to collect on any written note, contract, stipulation, promise or acknowledgment under which a debtor may be required to pay any sum other than principal, allowable interest, except as noted in subsection (21) of this section, and, in the case of suit, attorney's fees and taxable court costs.

(23) Bring an action or initiate an arbitration proceeding on a claim when the licensee knows, or reasonably should

know, that such suit or arbitration is barred by the applicable statute of limitations.

(24) Upon notification by a debtor that the debtor disputes all debts arising from a series of dishonored checks, automated clearinghouse transactions on a demand deposit account, or other preprinted written instruments, initiate oral contact with a debtor more than one time in an attempt to collect from the debtor debts arising from the identified series of dishonored checks, automated clearinghouse transactions on a demand deposit account, or other preprinted written instruments when: (a) Within the previous one hundred eighty days, in response to the licensee's attempt to collect the initial debt assigned to the licensee and arising from the identified series of dishonored checks, automated clearinghouse transactions on a demand deposit account, or other preprinted written instruments, the debtor in writing notified the licensee that the debtor's checkbook or other series of preprinted written instruments was stolen or fraudulently created; (b) the licensee has received from the debtor a certified copy of a police report referencing the theft or fraudulent creation of the checkbook, automated clearinghouse transactions on a demand deposit account, or series of preprinted written instruments; (c) in the written notification to the licensee or in the police report, the debtor identified the financial institution where the account was maintained, the account number, the magnetic ink character recognition number, the full bank routing and transit number, and the check numbers of the stolen checks, automated clearinghouse transactions on a demand deposit account, or other preprinted written instruments, which check numbers included the number of the check that is the subject of the licensee's collection efforts; (d) the debtor provides, or within the previous one hundred eighty days provided, to the licensee a legible copy of a government-issued photo identification, which contains the debtor's signature and which was issued prior to the date of the theft or fraud identified in the police report; and (e) the debtor advised the licensee that the subject debt is disputed because the identified check, automated clearinghouse transaction on a demand deposit account, or other preprinted written instrument underlying the debt is a stolen or fraudulently created check or instrument.

The licensee is not in violation of this subsection if the licensee initiates oral contact with the debtor more than one time in an attempt to collect debts arising from the identified series of dishonored checks, automated clearinghouse transactions on a demand deposit account, or other preprinted written instruments when: (i) The licensee acted in good faith and relied on their established practices and procedures for batching, recording, or packeting debtor accounts, and the licensee inadvertently initiates oral contact with the debtor in an attempt to collect debts in the identified series subsequent to the initial debt assigned to the licensee; (ii) the licensee is following up on collection of a debt assigned to the licensee, and the debtor has previously requested more information from the licensee regarding the subject debt; (iii) the debtor has notified the licensee that the debtor disputes only some, but not all the debts arising from the identified series of dishonored checks, automated clearinghouse transactions on a demand deposit account, or other preprinted written instruments, in which case the licensee shall be allowed to initiate oral contact with the debtor one time for each debt arising

from the series of identified checks, automated clearinghouse transactions on a demand deposit account, or written instruments and initiate additional oral contact for those debts that the debtor acknowledges do not arise from stolen or fraudulently created checks or written instruments; (iv) the oral contact is in the context of a judicial, administrative, arbitration, mediation, or similar proceeding; or (v) the oral contact is made for the purpose of investigating, confirming, or authenticating the information received from the debtor, to provide additional information to the debtor, or to request additional information from the debtor needed by the licensee to accurately record the debtor's information in the licensee's records.

(25) Submit an affidavit or other request pursuant to chapter 6.32 RCW asking a superior or district court to transfer a bond posted by a debtor subject to a money judgment to the licensee, when the debtor has appeared as required. [2013 c 148 § 2; 2011 1st sp.s. c 29 § 2. Prior: 2011 c 162 § 1; 2011 c 57 § 1; prior: 2001 c 217 § 5; 2001 c 47 § 2; (2001 c 217 § 4 expired April 1, 2004); 1983 c 107 § 1; 1981 c 254 § 5; 1971 ex.s. c 253 § 16.]

Finding—Intent—2011 1st sp.s. c 29: "The legislature finds that a drafting error occurred in Substitute Senate Bill No. 5574 (2011 regular session) and section 1, chapter 57, Laws of 2011, resulting in the unintended deletion of a phrase in RCW 19.16.250. The intent of this legislation is to remedy that error, and retroactively apply this legislation to the effective date of section 1, chapter 57, Laws of 2011." [2011 1st sp.s. c 29 § 1.]

Effective date—2011 1st sp.s. c 29: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 22, 2011." [2011 1st sp.s. c 29 § 3.]

Additional notes found at www.leg.wa.gov

19.16.260 Licensing prerequisite to suit. No collection agency or out-of-state collection agency may bring or maintain an action in any court of this state involving the collection of its own claim or a claim of any third party without alleging and proving that he, she, or it is duly licensed under this chapter and has satisfied the bonding requirements hereof, if applicable: PROVIDED, That in any case where judgment is to be entered by default, it shall not be necessary for the collection agency or out-of-state collection agency to prove such matters.

A copy of the current collection agency license or out-of-state collection agency license, certified by the director to be a true and correct copy of the original, shall be prima facie evidence of the licensing and bonding of such collection agency or out-of-state collection agency as required by this chapter. [2013 c 148 § 3; 2011 c 336 § 521; 1994 c 195 § 8; 1971 ex.s. c 253 § 17.]

Effective date—2013 c 148 §§ 1 and 3: See note following RCW 19.16.100.

Chapter 19.28 RCW ELECTRICIANS AND ELECTRICAL INSTALLATIONS

Sections

19.28.006	Definitions.
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19.28.351	Electrical license fund.

19.28.006 Definitions. The definitions in this section apply throughout this subchapter.

(1) "Administrator" means a person designated by an electrical contractor to supervise electrical work and electricians in accordance with the rules adopted under this chapter.

(2) "Basic electrical work" means the work classified in (a) and (b) of this subsection as class A and class B basic electrical work:

(a) "Class A basic electrical work" means the like-in-kind replacement of a: Contactor, relay, timer, starter, circuit board, or similar control component; household appliance; circuit breaker; fuse; residential luminaire; lamp; snap switch; dimmer; receptacle outlet; thermostat; heating element; luminaire ballast with an exact same ballast; ten horsepower or smaller motor; or wiring, appliances, devices, or equipment as specified by rule.

(b) "Class B basic electrical work" means work other than class A basic electrical work that requires minimal electrical circuit modifications and has limited exposure hazards. Class B basic electrical work includes the following:

(i) Extension of not more than one branch electrical circuit limited to one hundred twenty volts and twenty amps each where:

- (A) No cover inspection is necessary; and
- (B) The extension does not supply more than two outlets;

(ii) Like-in-kind replacement of a single luminaire not exceeding two hundred seventy-seven volts and twenty amps;

(iii) Like-in-kind replacement of a motor larger than ten horsepower;

(iv) The following low voltage systems:

(A) Repair and replacement of devices not exceeding one hundred volt-amperes in Class 2, Class 3, or power limited low voltage systems in one and two-family dwellings;

(B) Repair and replacement of the following devices not exceeding one hundred volt-amperes in Class 2, Class 3, or power limited low voltage systems in other buildings, provided the equipment is not for fire alarm or nurse call systems and is not located in an area classified as hazardous by the national electrical code; or

(v) Wiring, appliances, devices, or equipment as specified by rule.

(3) "Board" means the electrical board under RCW 19.28.311.

(4) "Chapter" or "subchapter" means the subchapter, if no chapter number is referenced.

(5) "Department" means the department of labor and industries.

(6) "Director" means the director of the department or the director's designee.

(7) "Electrical construction trade" includes, but is not limited to, installing or maintaining electrical wires and equipment that are used for light, heat, or power and installing and maintaining remote control, signaling, power limited, or communication circuits or systems.

(8) "Electrical contractor" means a person, firm, partnership, corporation, or other entity that offers to undertake, undertakes, submits a bid for, or does the work of installing or maintaining wires or equipment that convey electrical current.

(9) "Equipment" means any equipment or apparatus that directly uses, conducts, insulates, or is operated by electricity but does not mean: Plug-in appliances; or plug-in equipment as determined by the department by rule.

(10) "Industrial control panel" means a factory-wired or user-wired assembly of industrial control equipment such as motor controllers, switches, relays, power supplies, computers, cathode ray tubes, transducers, and auxiliary devices. The panel may include disconnect means and motor branch circuit protective devices.

(11) "Journey level electrician" means a person who has been issued a journey level electrician certificate of competency by the department.

(12) "Like-in-kind" means having similar characteristics such as voltage requirements, current draw, and function, and being in the same location.

(13) "Master electrician" means either a master journey level electrician or master specialty electrician.

(14) "Master journey level electrician" means a person who has been issued a master journey level electrician certificate of competency by the department and who may be designated by an electrical contractor to supervise electrical work and electricians in accordance with rules adopted under this chapter.

(15) "Master specialty electrician" means a person who has been issued a specialty electrician certificate of competency by the department and who may be designated by an electrical contractor to supervise electrical work and electricians in accordance with rules adopted under this chapter.

(16) "Specialty electrician" means a person who has been issued a specialty electrician certificate of competency by the department. [2013 c 23 § 27; 2003 c 399 § 101; 2002 c 249 § 1; 2001 c 211 § 1; 2000 c 238 § 103; 1993 c 275 § 1; 1988 c 81 § 1; 1986 c 156 § 1; 1983 c 206 § 1. Formerly RCW 19.28.005.]

Part headings not law—2003 c 399: "Part headings used in this act are not any part of the law." [2003 c 399 § 901.]

Additional notes found at www.leg.wa.gov

19.28.041 License required—General or specialty licenses—Fees—Application—Bond or cash deposit. (1) It is unlawful for any person, firm, partnership, corporation, or other entity to advertise, offer to do work, submit a bid, engage in, conduct, or carry on the business of installing or maintaining wires or equipment to convey electric current, or installing or maintaining equipment to be operated by electric current as it pertains to the electrical industry, without having an unrevoked, unsuspended, and unexpired electrical contractor license, issued by the department in accordance with this chapter. All electrical contractor licenses expire twenty-four calendar months following the day of their issue. The

department may issue an electrical contractor license for a period of less than twenty-four months only for the purpose of equalizing the number of electrical contractor licenses that expire each month. Application for an electrical contractor license shall be made in writing to the department, accompanied by the required fee. The application shall state:

(a) The name and address of the applicant; in case of firms or partnerships, the names of the individuals composing the firm or partnership; in case of corporations, the names of the managing officials thereof;

(b) The location of the place of business of the applicant and the name under which the business is conducted;

(c) Employer social security number;

(d) Evidence of workers' compensation coverage for the applicant's employees working in Washington, as follows:

(i) The applicant's industrial insurance account number issued by the department;

(ii) The applicant's self-insurer number issued by the department; or

(iii) For applicants domiciled in a state or province of Canada subject to an agreement entered into under RCW 51.12.120(7), as permitted by the agreement, filing a certificate of coverage issued by the agency that administers the workers' compensation law in the applicant's state or province of domicile certifying that the applicant has secured the payment of compensation under the other state's or province's workers' compensation law;

(e) Employment security department number;

(f) State excise tax registration number;

(g) Unified business identifier (UBI) account number may be substituted for the information required by (d) of this subsection if the applicant will not employ employees in Washington, and by (e) and (f) of this subsection; and

(h) Whether a general or specialty electrical contractor license is sought and, if the latter, the type of specialty. Electrical contractor specialties include, but are not limited to: Residential, pump and irrigation, limited energy system, signs, nonresidential maintenance, restricted nonresidential maintenance, appliance repair, and a combination specialty. A general electrical contractor license shall grant to the holder the right to engage in, conduct, or carry on the business of installing or maintaining wires or equipment to carry electric current, and installing or maintaining equipment, or installing or maintaining material to fasten or insulate such wires or equipment to be operated by electric current, in the state of Washington. A specialty electrical contractor license shall grant to the holder a limited right to engage in, conduct, or carry on the business of installing or maintaining wires or equipment to carry electrical current, and installing or maintaining equipment; or installing or maintaining material to fasten or insulate such wires or equipment to be operated by electric current in the state of Washington as expressly allowed by the license.

(2) The department may verify the workers' compensation coverage information provided by the applicant under subsection (1)(d) of this section, including but not limited to information regarding the coverage of an individual employee of the applicant. If coverage is provided under the laws of another state, the department may notify the other state that the applicant is employing employees in Washington.

(3) The application for an electrical contractor license shall be accompanied by a bond in the sum of four thousand dollars with the state of Washington named as obligee in the bond, with good and sufficient surety, to be approved by the department. The bond shall at all times be kept in full force and effect, and any cancellation or revocation thereof, or withdrawal of the surety therefrom, suspends the license issued to the principal until a new bond has been filed and approved as provided in this section. Upon approval of a bond, the department shall on the next business day deposit the fee accompanying the application in the electrical license fund and shall file the bond in the office. The department shall upon request furnish to any person, firm, partnership, corporation, or other entity a certified copy of the bond upon the payment of a fee that the department shall set by rule. The fee shall cover but not exceed the cost of furnishing the certified copy. The bond shall be conditioned that in any installation or maintenance of wires or equipment to convey electrical current, and equipment to be operated by electrical current, the principal will comply with the provisions of this chapter and with any electrical ordinance, building code, or regulation of a city or town adopted pursuant to RCW 19.28.010(3) that is in effect at the time of entering into a contract. The bond shall be conditioned further that the principal will pay for all labor, including employee benefits, and material furnished or used upon the work, taxes and contributions to the state of Washington, and all damages that may be sustained by any person, firm, partnership, corporation, or other entity due to a failure of the principal to make the installation or maintenance in accordance with this chapter or any applicable ordinance, building code, or regulation of a city or town adopted pursuant to RCW 19.28.010(3). In lieu of the surety bond required by this section, the license applicant may file with the department a cash deposit or other negotiable security acceptable to the department. If the license applicant has filed a cash deposit, the department shall deposit the funds in a special trust savings account in a commercial bank, mutual savings bank, or savings and loan association and shall pay annually to the depositor the interest derived from the account.

(4) The department shall issue general or specialty electrical contractor licenses to applicants meeting all of the requirements of this chapter. The provisions of this chapter relating to the licensing of any person, firm, partnership, corporation, or other entity including the requirement of a bond with the state of Washington named as obligee therein and the collection of a fee therefor, are exclusive, and no political subdivision of the state of Washington may require or issue any licenses or bonds or charge any fee for the same or a similar purpose. No person, firm, partnership, corporation, or other entity holding more than one specialty contractor license under this chapter may be required to pay an annual fee for more than one such license or to post more than one four thousand dollar bond, equivalent cash deposit, or other negotiable security.

(5) To obtain a general or specialty electrical contractor license, the applicant must designate an individual who currently possesses a valid master journey level electrician's certificate of competency, master specialty electrician's certificate of competency in the specialty for which application has been made, or administrator's certificate as a general electrician.

cal contractor administrator or as a specialty electrical contractor administrator in the specialty for which application has been made.

(6) Administrator certificate specialties include, but are not limited to: Residential, pump and irrigation or domestic pump, limited energy system, signs, nonresidential maintenance, restricted nonresidential maintenance, appliance repair, and combination specialty. To obtain an administrator's certificate, an individual must pass an examination as set forth in RCW 19.28.051 unless the applicant was a licensed electrical contractor at any time during 1974. Applicants who were electrical contractors licensed by the state of Washington at any time during 1974 are entitled to receive a general electrical contractor administrator's certificate without examination if the applicants apply prior to January 1, 1984. The board of electrical examiners shall certify to the department the names of all persons who are entitled to either a general or specialty electrical contractor administrator's certificate.

(7) For a contractor doing domestic water pumping system work as defined by RCW 18.106.010(10)(c), the department shall consider the requirements of subsections (1)(a) through (h), (2), and (3) of this section to have been met to be a pump and irrigation or domestic pump licensed electrical contractor if the contractor has met the contractor registration requirements of chapter 18.27 RCW. The department shall establish a single registration/licensing document for those who qualify for both general contractor registration as defined in chapter 18.27 RCW and a pump and irrigation or domestic pump electrical contractor license as defined by this chapter. [2013 c 23 § 28. Prior: 2006 c 224 § 1; 2006 c 185 § 5; 2002 c 249 § 2; 2001 c 211 § 3; 1998 c 279 § 4; 1992 c 217 § 2; 1986 c 156 § 5; 1983 c 206 § 5; 1975 1st ex.s. c 195 § 1; 1975 1st ex.s. c 92 § 1; 1974 ex.s. c 188 § 1; 1971 ex.s. c 129 § 1; 1969 ex.s. c 71 § 2; 1969 c 30 § 1; prior: 1967 ex.s. c 15 § 1; 1967 c 88 § 2; 1965 ex.s. c 117 § 3; 1963 c 207 § 2; 1959 c 325 § 1; 1935 c 169 § 4; RRS § 8307-4; prior: 1919 c 204 §§ 1, 2. Formerly RCW 19.28.120, 19.28.130, 19.28.140, 19.28.150, 19.28.160, 19.28.170.]

Finding—Intent—1998 c 279: See note following RCW 51.12.120.

Additional notes found at www.leg.wa.gov

19.28.161 Certification—Apprentices and trainees—Supervision—Ratio of noncertified and certified workers—Trainee hours verification. (1) No person may engage in the electrical construction trade without having a valid master journey level electrician certificate of competency, journey level electrician certificate of competency, master specialty electrician certificate of competency, or specialty electrician certificate of competency issued by the department in accordance with this chapter. Electrician certificate of competency specialties include, but are not limited to: Residential, pump and irrigation, limited energy system, signs, nonresidential maintenance, restricted nonresidential maintenance, and appliance repair. Until July 1, 2007, the department of labor and industries shall issue a written warning to any specialty pump and irrigation or domestic pump electrician not having a valid electrician certification. The warning will state that the individual must apply for an electrical training certificate or be qualified for and apply for electrician certification under the requirements in RCW

19.28.191(1)(g) within thirty calendar days of the warning. Only one warning will be issued to any individual. If the individual fails to comply with this section, the department shall issue a penalty as defined in RCW 19.28.271 to the individual.

(2) A person who is indentured in an apprenticeship program approved under chapter 49.04 RCW for the electrical construction trade or who is learning the electrical construction trade may work in the electrical construction trade if supervised by a certified master journey level electrician, journey level electrician, master specialty electrician in that electrician's specialty, or specialty electrician in that electrician's specialty. All apprentices and individuals learning the electrical construction trade shall obtain an electrical training certificate from the department. The certificate shall authorize the holder to learn the electrical construction trade while under the direct supervision of a master journey level electrician, journey level electrician, master specialty electrician working in that electrician's specialty, or specialty electrician working in that electrician's specialty. The certificate may include a photograph of the holder. The holder of the electrical training certificate shall renew the certificate biennially. At the time of renewal, the holder shall provide the department with an accurate list of the holder's employers in the electrical construction industry for the previous biennial period and the number of hours worked for each employer. The holder shall also provide proof of sixteen hours of: Approved classroom training covering this chapter, the national electrical code, or electrical theory; or equivalent classroom training taken as part of an approved apprenticeship program under chapter 49.04 RCW or an approved electrical training program under RCW 19.28.191(1)(h). The number of hours of approved classroom training required for certificate renewal shall increase as follows: (a) Beginning on July 1, 2011, the holder of an electrical training certificate shall provide the department with proof of thirty-two hours of approved classroom training; and (b) beginning on July 1, 2013, the holder of an electrical training certificate shall provide the department with proof of forty-eight hours of approved classroom training. At the request of the chairs of the house of representatives commerce and labor committee and the senate labor, commerce and consumer protection committee, or their successor committees, the department of labor and industries shall provide information on the implementation of the new classroom training requirements for electrical trainees to both committees by December 1, 2012. A biennial fee shall be charged for the issuance or renewal of the certificate. The department shall set the fee by rule. The fee shall cover but not exceed the cost of administering and enforcing the trainee certification and supervision requirements of this chapter. Apprentices and individuals learning the electrical construction trade shall have their electrical training certificates in their possession at all times that they are performing electrical work. They shall show their certificates to an authorized representative of the department at the representative's request.

(3) Any person who has been issued an electrical training certificate under this chapter may work if that person is under supervision. Supervision shall consist of a person being on the same job site and under the control of either a certified master journey level electrician, journey level electrician,

master specialty electrician working in that electrician's specialty, or specialty electrician working in that electrician's specialty. Either a certified master journey level electrician, journey level electrician, master specialty electrician working in that electrician's specialty, or specialty electrician working in that electrician's specialty shall be on the same job site as the noncertified individual for a minimum of seventy-five percent of each working day unless otherwise provided in this chapter.

(4) The ratio of noncertified individuals to certified master journey level electricians, journey level electricians, master specialty electricians, or specialty electricians on any one job site is as follows:

(a) When working as a specialty electrician, not more than two noncertified individuals for every certified master specialty electrician working in that electrician's specialty, specialty electrician working in that electrician's specialty, master journey level electrician, or journey level electrician, except that the ratio requirements are one certified master specialty electrician working in that electrician's specialty, specialty electrician working in that electrician's specialty, master journey level electrician, or journey level electrician working as a specialty electrician to no more than four students enrolled in and working as part of an electrical construction program at public community or technical colleges, or not-for-profit nationally accredited trade or technical schools licensed by the workforce training and education coordinating board under chapter 28C.10 RCW. In meeting the ratio requirements for students enrolled in an electrical construction program at a trade school, a trade school may receive input and advice from the electrical board; and

(b) When working as a journey level electrician, not more than one noncertified individual for every certified master journey level electrician or journey level electrician, except that the ratio requirements shall be one certified master journey level electrician or journey level electrician to no more than four students enrolled in and working as part of an electrical construction program at public community or technical colleges, or not-for-profit nationally accredited trade or technical schools licensed by the workforce training and education coordinating board under chapter 28C.10 RCW. In meeting the ratio requirements for students enrolled in an electrical construction program at a trade school, a trade school may receive input and advice from the electrical board.

An individual who has a current training certificate and who has successfully completed or is currently enrolled in an approved apprenticeship program or in an electrical construction program at public community or technical colleges, or not-for-profit nationally accredited technical or trade schools licensed by the workforce training and education coordinating board under chapter 28C.10 RCW, may work without direct on-site supervision during the last six months of meeting the practical experience requirements of this chapter.

(5) For the residential (as specified in WAC 296-46B-920(2)(a)), pump and irrigation (as specified in WAC 296-46B-920(2)(b)), sign (as specified in WAC 296-46B-920(2)(d)), limited energy (as specified in WAC 296-46B-920(2)(e)), nonresidential maintenance (as specified in WAC 296-46B-920(2)(g)), restricted nonresidential maintenance as determined by the department in rule, or other new nonresi-

dential specialties, not including appliance repair, as determined by the department in rule, either a master journey level electrician, journey level electrician, master specialty electrician working in that electrician's specialty, or specialty electrician working in that electrician's specialty must be on the same job site as the noncertified individual for a minimum of seventy-five percent of each working day. Other specialties must meet the requirements specified in RCW 19.28.191(1)(g)(ii). When the ratio of certified electricians to noncertified individuals on a job site is one certified electrician to three or four noncertified individuals, the certified electrician must:

(a) Directly supervise and instruct the noncertified individuals and the certified electrician may not directly make or engage in an electrical installation; and

(b) Be on the same job site as the noncertified individual for a minimum of one hundred percent of each working day.

(6) The electrical contractor shall accurately verify and attest to the electrical trainee hours worked by electrical trainees on behalf of the electrical contractor. [2013 c 23 § 29; 2010 c 33 § 1; 2009 c 36 § 7. Prior: 2006 c 224 § 2; 2006 c 185 § 6; 2002 c 249 § 4; 1997 c 309 § 1; 1996 c 241 § 6; 1983 c 206 § 13; 1980 c 30 § 2. Formerly RCW 19.28.510.]

Effective date—2010 c 33: "This act takes effect July 1, 2011." [2010 c 33 § 2.]

Finding—Intent—2009 c 36: See note following RCW 18.106.020.

19.28.191 Certificate of competency—Eligibility for examination—Rules. (1) Upon receipt of the application, the department shall review the application and determine whether the applicant is eligible to take an examination for the master journey level electrician, journey level electrician, master specialty electrician, or specialty electrician certificate of competency.

(a) Before July 1, 2005, an applicant who possesses a valid journey level electrician certificate of competency in effect for the previous four years and a valid general administrator's certificate may apply for a master journey level electrician certificate of competency without examination.

(b) Before July 1, 2005, an applicant who possesses a valid specialty electrician certificate of competency, in the specialty applied for, for the previous two years and a valid specialty administrator's certificate, in the specialty applied for, may apply for a master specialty electrician certificate of competency without examination.

(c) Before December 1, 2003, the following persons may obtain an equipment repair specialty electrician certificate of competency without examination:

(i) A person who has successfully completed an apprenticeship program approved under chapter 49.04 RCW for the machinist trade; and

(ii) A person who provides evidence in a form prescribed by the department affirming that: (A) He or she was employed as of April 1, 2003, by a factory-authorized equipment dealer or service company; and (B) he or she has worked in equipment repair for a minimum of four thousand hours.

(d) To be eligible to take the examination for a master journey level electrician certificate of competency, the applicant must have possessed a valid journey level electrician certificate of competency for four years.

(e) To be eligible to take the examination for a master specialty electrician certificate of competency, the applicant must have possessed a valid specialty electrician certificate of competency, in the specialty applied for, for two years.

(f) To be eligible to take the examination for a journey level certificate of competency, the applicant must have:

(i) Worked in the electrical construction trade for a minimum of eight thousand hours, of which four thousand hours shall be in industrial or commercial electrical installation under the supervision of a master journey level electrician or journey level electrician and not more than a total of four thousand hours in all specialties under the supervision of a master journey level electrician, journey level electrician, master specialty electrician working in that electrician's specialty, or specialty electrician working in that electrician's specialty. Specialty electricians with less than a four thousand hour work experience requirement cannot credit the time required to obtain that specialty towards qualifying to become a journey level electrician; or

(ii) Successfully completed an apprenticeship program approved under chapter 49.04 RCW for the electrical construction trade.

(g) To be eligible to take the examination for a specialty electrician certificate of competency, the applicant must have:

(i) Worked in the residential (as specified in WAC 296-46B-920(2)(a)), pump and irrigation (as specified in WAC 296-46B-920(2)(b)), sign (as specified in WAC 296-46B-920(2)(d)), limited energy (as specified in WAC 296-46B-920(2)(e)), nonresidential maintenance (as specified in WAC 296-46B-920(2)(g)), or other new nonresidential specialties as determined by the department in rule under the supervision of a master journey level electrician, journey level electrician, master specialty electrician working in that electrician's specialty, or specialty electrician working in that electrician's specialty for a minimum of four thousand hours;

(ii) Worked in the appliance repair specialty as determined by the department in rule, restricted nonresidential maintenance as determined by the department in rule, the equipment repair specialty as determined by the department in rule, the pump and irrigation specialty other than as defined by (g)(i) of this subsection or domestic pump specialty as determined by the department in rule, or a specialty other than the designated specialties in (g)(i) of this subsection for a minimum of the initial ninety days, or longer if set by rule by the department. The restricted nonresidential maintenance specialty is limited to a maximum of 277 volts and 20 amperes for lighting branch circuits and/or a maximum of 250 volts and 60 amperes for other circuits, but excludes the replacement or repair of circuit breakers. The initial period must be spent under one hundred percent supervision of a master journey level electrician, journey level electrician, master specialty electrician working in that electrician's specialty, or specialty electrician working in that electrician's specialty. After this initial period, a person may take the specialty examination. If the person passes the examination, the person may work unsupervised for the balance of the minimum hours required for certification. A person may not be certified as a specialty electrician in the appliance repair specialty or in a specialty other than the designated specialties in (g)(i) of this subsection, however, until

the person has worked a minimum of two thousand hours in that specialty, or longer if set by rule by the department;

(iii) Successfully completed an approved apprenticeship program under chapter 49.04 RCW for the applicant's specialty in the electrical construction trade; or

(iv) In meeting the training requirements for the pump and irrigation or domestic pump specialties, the individual shall be allowed to obtain the experience required by this section at the same time the individual is meeting the experience required by RCW 18.106.040(1)(c). After meeting the training requirements provided in this section, the individual may take the examination and upon passing the examination, meeting additional training requirements as may still be required for those seeking a pump and irrigation, or a domestic pump specialty certificate as defined by rule, and paying the applicable fees, the individual must be issued the appropriate certificate. The department may include an examination for specialty plumbing certificate defined in RCW 18.106.010(10)(c) with the examination required by this section. The department, by rule and in consultation with the electrical board, may establish additional equivalent ways to gain the experience requirements required by this subsection. Individuals who are able to provide evidence to the department, prior to January 1, 2007, that they have been employed as a pump installer in the pump and irrigation or domestic pump business by an appropriately licensed electrical contractor, registered general contractor defined by chapter 18.27 RCW, or appropriate general specialty contractor defined by chapter 18.27 RCW for not less than eight thousand hours in the most recent six calendar years shall be issued the appropriate certificate by the department upon receiving such documentation and applicable fees. The department shall establish a single document for those who have received both an electrical specialty certification as defined by this subsection and have also met the certification requirements for the specialty plumber as defined by RCW 18.106.010(10)(c), showing that the individual has received both certifications. No other experience or training requirements may be imposed.

(h) Any applicant for a journey level electrician certificate of competency who has successfully completed a two-year program in the electrical construction trade at public community or technical colleges, or not-for-profit nationally accredited technical or trade schools licensed by the workforce training and education coordinating board under chapter 28C.10 RCW, may substitute up to two years of the technical or trade school program for two years of work experience under a master journey level electrician or journey level electrician. The applicant shall obtain the additional two years of work experience required in industrial or commercial electrical installation prior to the beginning, or after the completion, of the technical school program. Any applicant who has received training in the electrical construction trade in the armed service of the United States may be eligible to apply armed service work experience towards qualification to take the examination for the journey level electrician certificate of competency.

(i) An applicant for a specialty electrician certificate of competency who, after January 1, 2000, has successfully completed a two-year program in the electrical construction trade at a public community or technical college, or a not-for-

profit nationally accredited technical or trade school licensed by the workforce training and education coordinating board under chapter 28C.10 RCW, may substitute up to one year of the technical or trade school program for one year of work experience under a master journey level electrician, journey level electrician, master specialty electrician working in that electrician's specialty, or specialty electrician working in that electrician's specialty. Any applicant who has received training in the electrical construction trade in the armed services of the United States may be eligible to apply armed service work experience towards qualification to take the examination for an appropriate specialty electrician certificate of competency.

(j) The department must determine whether hours of training and experience in the armed services or school program are in the electrical construction trade and appropriate as a substitute for hours of work experience. The department must use the following criteria for evaluating the equivalence of classroom electrical training programs and work in the electrical construction trade:

(i) A two-year electrical training program must consist of three thousand or more hours.

(ii) In a two-year electrical training program, a minimum of two thousand four hundred hours of student/instructor contact time must be technical electrical instruction directly related to the scope of work of the electrical specialty. Student/instructor contact time includes lecture and in-school lab.

(iii) The department may not allow credit for a program that accepts more than one thousand hours transferred from another school's program.

(iv) Electrical specialty training school programs of less than two years will have all of the above student/instructor contact time hours proportionately reduced. Such programs may not apply to more than fifty percent of the work experience required to attain certification.

(v) Electrical training programs of less than two years may not be credited towards qualification for journey level electrician unless the training program is used to gain qualification for a four thousand hour electrical specialty.

(k) No other requirement for eligibility may be imposed.

(2) The department shall establish reasonable rules for the examinations to be given applicants for certificates of competency. In establishing the rules, the department shall consult with the board. Upon determination that the applicant is eligible to take the examination, the department shall so notify the applicant, indicating the time and place for taking the examination.

(3) No noncertified individual may work unsupervised more than one year beyond the date when the trainee would be eligible to test for a certificate of competency if working on a full-time basis after original application for the trainee certificate. For the purposes of this section, "full-time basis" means two thousand hours. [2013 c 23 § 30; 2006 c 185 § 7. Prior: 2003 c 399 § 601; 2003 c 211 § 1; 2002 c 249 § 5; 1997 c 309 § 3; 1988 c 81 § 13; 1983 c 206 § 14; 1980 c 30 § 4. Formerly RCW 19.28.530.]

Effective date—2003 c 399 §§ 501, 601, and 701: "Sections *501, 601, and 701 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its

existing public institutions, and take effect immediately [May 20, 2003]." [2003 c 399 § 902.]

***Reviser's note:** Section 501, chapter 399, Laws of 2003 was vetoed by the governor.

Part headings not law—2003 c 399: See note following RCW 19.28.006.

19.28.201 Examination—Times—Certification of results—Contents—Fees. The department, in coordination with the board, shall prepare an examination to be administered to applicants for master journey level electrician, journey level electrician, master specialty electrician, and specialty electrician certificates of competency.

The department, with the consent of the board, may enter into a contract with a professional testing agency to develop, administer, and score electrician certification examinations. The department may set the examination fee by contract with the professional testing agency.

The department must, at least four times annually, administer the examination to persons eligible to take it under RCW 19.28.191. The fee must cover, but not exceed, the costs of preparing and administering the examination.

The department must certify the results of the examination upon the terms and after such a period of time as the department, in cooperation with the board, deems necessary and proper.

(1)(a) The master electrician's certificates of competency examinations must include questions from the following categories to ensure proper safety and protection for the general public: (i) Safety; (ii) the state electrical code; and (iii) electrical theory.

(b) A person may take the master electrician examination as many times as necessary without limit. All applicants must, before taking the examination, pay the required examination fee to the agency administering the examination.

(2) The journey level electrician and specialty electrician examinations shall be constructed to determine:

(a) Whether the applicant possesses varied general knowledge of the technical information and practical procedures that are identified with the status of journey level electrician or specialty electrician; and

(b) Whether the applicant is sufficiently familiar with the applicable electrical codes and the rules of the department pertaining to electrical installations and electricians.

A person may take the examination as many times as necessary without limit. All applicants must, before taking the examination, pay the required examination fee to the agency administering the examination. [2013 c 23 § 31; 2002 c 249 § 6; 2001 c 211 § 13; 1996 c 147 § 8; 1988 c 81 § 14; 1986 c 156 § 13; 1983 c 206 § 15; 1980 c 30 § 5. Formerly RCW 19.28.540.]

19.28.205 In-class education requirements. (1) An applicant for a journey level certificate of competency under RCW 19.28.191(1)(f) or a specialty electrician certificate of competency under RCW 19.28.191(1)(g) must demonstrate to the satisfaction of the department completion of in-class education as follows:

(a) Twenty-four hours of in-class education if two thousand hours or more but less than four thousand hours of work are required for the certificate;

(b) Forty-eight hours of in-class education if four thousand or more but less than six thousand hours of work are required for the certificate;

(c) Seventy-two hours of in-class education if six thousand or more but less than eight thousand hours of work are required for the certificate;

(d) Ninety-six hours of in-class education if eight thousand or more hours of work are required for the certificate.

(2) For purposes of this section, "in-class education" means approved classroom training covering this chapter, the national electric code, or electrical theory; or equivalent classroom training taken as part of an approved apprenticeship program under chapter 49.04 RCW or an approved electrical training program under RCW 19.28.191(1)(h).

(3) Classroom training taken to qualify for trainee certificate renewal under RCW 19.28.161 qualifies as in-class education under this section. [2013 c 23 § 32; 2012 c 32 § 1.]

Effective date—2012 c 32: "This act takes effect July 1, 2013." [2012 c 32 § 4.]

19.28.211 Certificate of competency—Issuance—Renewal—Continuing education—Fees—Effect. (1) The department shall issue a certificate of competency to all applicants who have passed the examination provided in RCW 19.28.201, met the in-class education requirements of RCW 19.28.205 if applicable, and who have complied with RCW 19.28.161 through 19.28.271 and the rules adopted under this chapter. The certificate may include a photograph of the holder. The certificate shall bear the date of issuance, and shall expire on the holder's birthday. The certificate shall be renewed every three years, upon application, on or before the holder's birthdate. A fee shall be assessed for each certificate and for each annual renewal.

(2) If the certificate holder demonstrates to the department that he or she has satisfactorily completed an annual eight-hour continuing education course, the certificate may be renewed without examination by appropriate application unless the certificate has been revoked, suspended, or not renewed within ninety days after the expiration date. For pump and irrigation or domestic pump specialty electricians, the continuing education course may combine both electrical and plumbing education provided that there is a minimum of four hours of electrical training in the course.

(a) The contents and requirements for satisfactory completion of the continuing education course shall be determined by the director and approved by the board.

(b) The department shall accept proof of a certificate holder's satisfactory completion of a continuing education course offered in another state as meeting the requirements for maintaining a current Washington state certificate of competency if the department is satisfied the course is comparable in nature to that required in Washington state for maintaining a current certificate of competency.

(3) If the certificate is not renewed before the expiration date, the individual shall pay twice the usual fee. The department shall set the fees by rule for issuance and renewal of a certificate of competency. The fees shall cover but not exceed the costs of issuing the certificates and of administering and enforcing the electrician certification requirements of this chapter.

(4) The certificates of competency and temporary permits provided for in this chapter grant the holder the right to work in the electrical construction trade as a master electrician, journey level electrician, or specialty electrician in accordance with their provisions throughout the state and within any of its political subdivisions without additional proof of competency or any other license, permit, or fee to engage in such work. [2013 c 23 § 33; 2012 c 32 § 3; 2009 c 36 § 8; 2006 c 185 § 12; 2002 c 249 § 7; 2001 c 211 § 14; 1996 c 241 § 7; 1993 c 192 § 1; 1986 c 156 § 14; 1983 c 206 § 16; 1980 c 30 § 6. Formerly RCW 19.28.550.]

Effective date—2012 c 32: See note following RCW 19.28.205.

Finding—Intent—2009 c 36: See note following RCW 18.106.020.

19.28.221 Persons engaged in trade or business on July 16, 1973. No examination shall be required of any applicant for a certificate of competency who, on July 16, 1973, was engaged in a bona fide business or trade as a journey level electrician in the state of Washington. Applicants qualifying under this section shall be issued a certificate by the department upon making an application as provided in RCW 19.28.181 and paying the fee required under RCW 19.28.201: PROVIDED, That no applicant under this section shall be required to furnish such evidence as required by RCW 19.28.181. [2013 c 23 § 34; 2001 c 211 § 15; 1980 c 30 § 7. Formerly RCW 19.28.560.]

19.28.231 Temporary permits. The department is authorized to grant and issue temporary permits in lieu of certificates of competency whenever an electrician coming into the state of Washington from another state requests the department for a temporary permit to engage in the electrical construction trade as an electrician during the period of time between filing of an application for a certificate as provided in RCW 19.28.181 and the date the results of taking the examination provided for in RCW 19.28.201 are furnished to the applicant. The temporary permit may include a photograph of the holder. The department is authorized to enter into reciprocal agreements with other states providing for the acceptance of such states' journey level and specialty electrician certificate of competency or its equivalent when such states requirements are equal to the standards set by this chapter. No temporary permit shall be issued to:

(1) Any person who has failed to pass the examination for a certificate of competency, except that any person who has failed the examination for competency under this section shall be entitled to continue to work under a temporary permit for ninety days if the person is enrolled in a journey level electrician refresher course and shows evidence to the department that he or she has not missed any classes. The person, after completing the journey level electrician refresher course, shall be eligible to retake the examination for competency at the next scheduled time.

(2) Any applicant under this section who has not furnished the department with such evidence required under RCW 19.28.181.

(3) Any apprentice electrician. [2013 c 23 § 35; 2009 c 36 § 9; 2001 c 211 § 16; 1986 c 156 § 15; 1983 c 206 § 17; 1980 c 30 § 8. Formerly RCW 19.28.570.]

Finding—Intent—2009 c 36: See note following RCW 18.106.020.

19.28.241 Revocation of certificate of competency—Grounds—Procedure. (1) The department may revoke any certificate of competency upon the following grounds:

- (a) The certificate was obtained through error or fraud;
- (b) The holder thereof is judged to be incompetent to work in the electrical construction trade as a journey level electrician or specialty electrician;
- (c) The holder thereof has violated any of the provisions of RCW 19.28.161 through 19.28.271 or any rule adopted under this chapter; or
- (d) The holder thereof has committed a serious violation of this chapter or any rule adopted under this chapter. A serious violation is a violation that presents imminent danger to the public.

(2) The department may deny an application for a certificate of competency for up to two years if the applicant's previous certificate of competency has been revoked.

(3) Before any certificate of competency shall be revoked, the holder shall be given written notice of the department's intention to do so, mailed by registered mail, return receipt requested, to the holder's last known address. The notice shall enumerate the allegations against the holder, and shall give the holder the opportunity to request a hearing before the board. At the hearing, the department and the holder may produce witnesses and give testimony. The hearing shall be conducted in accordance with chapter 34.05 RCW. The board shall render its decision based upon the testimony and evidence presented, and shall notify the parties immediately upon reaching its decision. A majority of the board shall be necessary to render a decision.

(4) The department shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the department's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order. [2013 c 23 § 36; 2002 c 249 § 8; 2001 c 211 § 17; 1997 c 58 § 845; 1988 c 81 § 15; 1983 c 206 § 18; 1980 c 30 § 9. Formerly RCW 19.28.580.]

Effective dates—Intent—1997 c 58: See notes following RCW 74.20A.320.

Additional notes found at www.leg.wa.gov

19.28.261 Exemptions from RCW 19.28.161 through 19.28.271. (1) Nothing in RCW 19.28.161 through 19.28.271 shall be construed to require that a person obtain a license or a certified electrician in order to do electrical work at his or her residence or farm or place of business or on other property owned by him or her unless the electrical work is on the construction of a new building intended for rent, sale, or lease. However, if the construction is of a new residential building with up to four units intended for rent, sale, or lease, the owner may receive an exemption from the requirement to obtain a license or use a certified electrician if he or she provides a signed affidavit to the department stating that he or she will be performing the work and will occupy one of the units as his or her principal residence. The owner shall apply to the department for this exemption and may only receive an

exemption once every twenty-four months. It is intended that the owner receiving this exemption shall occupy the unit as his or her principal residence for twenty-four months after completion of the units.

(2) Nothing in RCW 19.28.161 through 19.28.271 shall be intended to derogate from or dispense with the requirements of any valid electrical code enacted by a city or town pursuant to RCW 19.28.010(3), except that no code shall require the holder of a certificate of competency to demonstrate any additional proof of competency or obtain any other license or pay any fee in order to engage in the electrical construction trade.

(3) RCW 19.28.161 through 19.28.271 shall not apply to common carriers subject to Part I of the Interstate Commerce Act, nor to their officers and employees.

(4) Nothing in RCW 19.28.161 through 19.28.271 shall be deemed to apply to the installation or maintenance of telephone, telegraph, radio, or television wires and equipment; nor to any electrical utility or its employees in the installation, repair, and maintenance of electrical wiring, circuits, and equipment by or for the utility, or comprising a part of its plants, lines, or systems.

(5) The licensing provisions of RCW 19.28.161 through 19.28.271 shall not apply to:

(a) Persons making electrical installations on their own property or to regularly employed employees working on the premises of their employer, unless the electrical work is on the construction of a new building intended for rent, sale, or lease;

(b) Employees of an employer while the employer is performing utility type work of the nature described in RCW 19.28.091 so long as such employees have registered in the state of Washington with or graduated from a state-approved outside lineworker apprenticeship course that is recognized by the department and that qualifies a person to perform such work;

(c) Any work exempted under RCW 19.28.091(6); and

(d) Certified plumbers, certified residential plumbers, or plumber trainees meeting the requirements of chapter 18.106 RCW and performing exempt work under RCW 19.28.091(8).

(6) Nothing in RCW 19.28.161 through 19.28.271 shall be construed to restrict the right of any householder to assist or receive assistance from a friend, neighbor, relative, or other person when none of the individuals doing the electrical installation hold themselves out as engaged in the trade or business of electrical installations.

(7) Nothing precludes any person who is exempt from the licensing requirements of this chapter under this section from obtaining a journey level or specialty certificate of competency if they otherwise meet the requirements of this chapter. [2013 c 23 § 37; 2007 c 218 § 83; 2003 c 399 § 302; 2001 c 211 § 19; 1998 c 98 § 2; 1994 c 157 § 1; 1992 c 240 § 3; 1986 c 156 § 16; 1983 c 206 § 21; 1980 c 30 § 12. Formerly RCW 19.28.610.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

Part headings not law—2003 c 399: See note following RCW 19.28.006.

19.28.351 Electrical license fund. All sums received from licenses, permit fees, or other sources, herein shall be

paid to the state treasurer and placed in a special fund designated as the "electrical license fund," and paid out upon vouchers duly and regularly issued therefor and approved by the director of labor and industries or the director's designee following determination by the board that the sums are necessary to accomplish the intent of chapter 19.28 RCW. The treasurer shall keep an accurate record of payments into, or receipts of, the fund, and of all disbursements therefrom.

During the 2013-2015 biennium, the legislature may transfer moneys from the electrical license fund to the state general fund such amounts as reflect the excess fund balance of the fund. [2013 2nd sp.s. c 4 § 956; 2003 1st sp.s. c 25 § 910; 1988 c 81 § 11; 1979 ex.s. c 67 § 1; 1935 c 169 § 18; RRS § 8307-18. Formerly RCW 19.28.330.]

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

Severability—2003 1st sp.s. c 25: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2003 1st sp.s. c 25 § 945.]

Effective date—2003 1st sp.s. c 25: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 26, 2003]." [2003 1st sp.s. c 25 § 946.]

Additional notes found at www.leg.wa.gov

Chapter 19.68 RCW REBATING BY PRACTITIONERS OF HEALING PROFESSIONS

Sections

19.68.005	Definition.
19.68.900	Construction—Application.

19.68.005 Definition. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

"Electronic health record technology" means items and services, in the form of software or information technology and training services, necessary and used predominantly to create, maintain, transmit, or receive electronic health records. [2013 c 297 § 3.]

Findings—Intent—Retroactive application—2013 c 297: See notes following RCW 19.68.900.

19.68.900 Construction—Application. (1) Nothing in this chapter may be construed to limit or prohibit the donation of electronic health record technology or other activity by any entity, including a hospital licensed under chapter 70.41 RCW that operates a clinical laboratory, when the donation or other activity is allowed by or otherwise does not violate, 42 U.S.C. Sec. 1320a-7b(b) or the federal rules adopted to implement 42 U.S.C. Sec. 1320a-7b(b).

(2) This section does not apply to any entity which principally operates as a clinical laboratory licensed or certified under section 353 of the public health service act, 42 U.S.C. Sec. 263a, or other applicable Washington state law. [2013 c 297 § 2.]

Findings—Intent—2013 c 297: "(1) The legislature recognizes the complexity of the health care delivery system and the need to provide a clear and consistent regulatory framework to enable health care providers to manage their operations in an efficient and effective manner. The legislature also recognizes that the donation of electronic health records systems reduces

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health care costs, promotes patient safety, and improves the quality of health care.

(2) To further the important national policy of promoting the widespread adoption of electronic health records systems, the federal antikickback statute and the rules adopted to implement the statute contain a safe harbor that allows the donation of electronic health records systems. The federal statute and rules also contain additional safe harbors to preserve a variety of other activities which, in many cases, improve access to health care. For health care entities other than clinical laboratories, the legality of all of these arrangements is currently in question.

(3) The legislature is adding language to chapter 19.68 RCW to clarifying existing law and ensure that, except with respect to arrangements involving an entity which principally operates as a clinical laboratory, it is interpreted in a manner consistent with the federal antikickback statute." [2013 c 297 § 1.]

Retroactive application—2013 c 297: "This act applies retroactively to June 1, 2006, as well as prospectively." [2013 c 297 § 4.]

Chapter 19.80 RCW TRADE NAMES

Sections

19.80.010	Registration required.
19.80.065	Repealed.
19.80.075	Collection and deposit of fees.
19.80.080	Renewal and cancellation.

19.80.010 Registration required. Each person or persons who carries on, conducts, or transacts business in this state under any trade name must register that trade name with the department as provided in this section.

(1) Sole proprietorship or general partnership: The registration must set forth the true and real name or names of each person conducting the same, together with the post office address or addresses of each such person and the name of the general partnership, if applicable.

(2) Foreign or domestic limited partnership: The registration must set forth the limited partnership name as filed with the office of the secretary of state.

(3) Foreign or domestic limited liability company: The registration must set forth the limited liability company name as filed with the office of the secretary of state.

(4) Foreign or domestic corporation: The registration must set forth the corporate name as filed with the office of the secretary of state.

(5) Other business entities: The registration must set forth the entity's name as required by the department. [2013 c 144 § 32; 2011 c 298 § 14; 2000 c 174 § 2; 1996 c 231 § 3; 1984 c 130 § 3; 1979 ex.s. c 22 § 1; 1907 c 145 § 1; RRS § 9976.]

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

Additional notes found at www.leg.wa.gov

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

19.80.075 Collection and deposit of fees. All fees collected by the department under this chapter must be deposited with the state treasurer and credited to the business license account. [2013 c 144 § 33; 2011 c 298 § 17; 1992 c 107 § 6; 1984 c 130 § 9.]

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

Additional notes found at www.leg.wa.gov

19.80.080 Renewal and cancellation. (1) The department may require the renewal of trade names and establish a process for renewing trade names. Any such renewal process may not require renewals of trade names more often than annually and must allow persons to renew their trade name at the same time they are required to renew their business license.

(2) The department may cancel a person's trade name upon request of the person the trade name is registered to or when the person's business license account with the department's business licensing service is inactive. The department may also provide for the cancellation of trade names under circumstances as defined by the department by rule, which may include failure to renew a trade name under a renewal process as may be established by the department under the authority of subsection (1) of this section.

(3)(a) The department must make a reasonable effort to notify a person that the department intends to cancel the person's trade name. This notice is not required when a request for cancellation of a trade name is received by the department from the person the trade name was registered to or the person's authorized representative. The department may comply with this subsection either by mailing the notice to the person's last known address on record with the department or by providing the notice electronically instead of by mail. Such electronic notice is not subject to the confidentiality provisions of RCW 19.02.115 and may be sent by e-mail to the person's last known e-mail address on record with the department. However, if the department sends a notice by e-mail and is notified that the e-mail is undeliverable, the department must resend the notice by mail to the person's last known address on record with the department.

(b) The department may cancel a trade name unless, within twenty days of sending the notice required under this subsection, the person notifies the department in writing not to cancel the person's trade name and pays any applicable renewal fee.

(4) The department may remove any canceled trade names from its database of trade names.

(5) "Business license" and "business licensing service" have the same meaning as in RCW 19.02.020. [2013 c 144 § 31.]

Chapter 19.94 RCW

WEIGHTS AND MEASURES

Sections

19.94.015 Commercial use of instrument or device—Registration—Fees.
19.94.2582 Service agent—Registration certificate—Fee—Decision—Denial—Notice—Refund.

19.94.015 Commercial use of instrument or device—Registration—Fees. (1) Except as provided in subsection (4) of this section for the initial registration of an instrument or device, no weighing or measuring instrument or device may be used for commercial purposes in the state unless its commercial use is registered annually. If its commercial use is within a city that has a city sealer and a weights and measures program as provided by RCW 19.94.280, the commercial use of the instrument or device must be registered with the city if the city has adopted fees pursuant to subsection (2)

of this section. If its commercial use is outside of such a city, the commercial use of the instrument or device must be registered with the department.

(2) A city with such a sealer and program may establish an annual fee for registering the commercial use of such a weighing or measuring instrument or device with the city. The annual fee may not exceed the fee established in RCW 19.94.175 for registering the use of a similar instrument or device with the department. Fees upon weighing or measuring instruments or devices within the jurisdiction of the city that are collected under this subsection by city sealers must be deposited into the general fund, or other account, of the city as directed by the governing body of the city.

(3) Registrations with the department are accomplished as part of the business licensing system under chapter 19.02 RCW. Payment of the registration fee for a weighing or measuring instrument or device under the business licensing system constitutes the registration required by this section.

(4) The fees established by or under RCW 19.94.175 for registering a weighing or measuring instrument or device must be paid to the department of revenue concurrently with an application for a business license under chapter 19.02 RCW or with the annual renewal of a business license under chapter 19.02 RCW. A weighing or measuring instrument or device must be initially registered with the state at the time the owner applies for a business license for a new business or at the first renewal of the license that occurs after the instrument or device is first placed into commercial use. The department of revenue must remit to the department of agriculture all fees collected under this provision less reasonable collection expenses.

(5) Each city charging registration fees under this section must notify the department of agriculture at the time such fees are adopted and whenever changes in the fees are adopted. [2013 c 144 § 34. Prior: 2011 c 298 § 19; 2011 c 103 § 38; 1995 c 355 § 1.]

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

Purpose—2011 c 103: See note following RCW 15.26.120.

Additional notes found at www.leg.wa.gov

19.94.2582 Service agent—Registration certificate—Fee—Decision—Denial—Notice—Refund. (1) Each request for an official registration certificate must be in writing, under oath, and on a form prescribed by the department and must contain any relevant information as the director may require, including but not limited to the following:

(a) The name and address of the person, corporation, partnership, or sole proprietorship requesting registration;

(b) The names and addresses of all individuals requesting an official registration certificate from the department; and

(c) The tax registration number as required under RCW 82.32.030 or unified business identifier provided on a business license issued under RCW 19.02.070.

(2) Each individual when submitting a request for an official registration certificate or a renewal of such a certificate must pay a fee to the department in the amount of one hundred sixty dollars per individual.

(3) The department must issue a decision on a request for an official registration certificate within twenty days of

receipt of the request. If an individual is denied their request for an official registration certificate, the department must notify that individual in writing stating the reasons for the denial and must refund any payments made by that individual in connection with the request. [2013 c 144 § 35; 2006 c 358 § 5; 1995 c 355 § 16. Formerly RCW 19.94.025.]

Effective dates—2006 c 358: See note following RCW 19.94.175.

Additional notes found at www.leg.wa.gov

Chapter 19.112 RCW MOTOR FUEL QUALITY ACT

Sections

- 19.112.110 Special fuel licensees—Required sales of biodiesel or renewable diesel fuel—Rules. (*Effective July 1, 2015.*)
19.112.120 Motor vehicle fuel licensees—Required sales of denatured ethanol—Rules—Limitation of section. (*Effective July 1, 2015.*)

19.112.110 Special fuel licensees—Required sales of biodiesel or renewable diesel fuel—Rules. (*Effective July 1, 2015.*) (1) Special fuel licensees under chapter 82.38 RCW, as determined by the department of licensing, must provide evidence to the department of licensing that at least two percent of the total annual diesel fuel sold in Washington is biodiesel or renewable diesel fuel, following the earlier of: (a) November 30, 2008; or (b) when a determination is made by the director, published in the Washington State Register, that feedstock grown in Washington state can satisfy a two-percent requirement.

(2) Special fuel licensees under chapter 82.38 RCW, as determined by the department of licensing, must provide evidence to the department of licensing that at least five percent of total annual diesel fuel sold in Washington is biodiesel or renewable diesel fuel, when the director determines, and publishes this determination in the Washington State Register, that both in-state oil seed crushing capacity and feedstock grown in Washington state can satisfy a three-percent requirement.

(3) The requirements of subsections (1) and (2) of this section may take effect no sooner than one hundred eighty days after the determination has been published in the Washington State Register.

(4) The director and the director of licensing must each adopt rules, in coordination with each other, for enforcing and carrying out the purposes of this section. [2013 c 225 § 601; 2009 c 132 § 2; 2006 c 338 § 2.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Findings—Intent—2006 c 338: "The legislature finds that it is in the public interest to establish a market for alternative fuels in Washington. By requiring a growing percentage of our fuel supply to be renewable biofuel that meets appropriate fuel quality standards, we will reduce our dependence on imports of foreign oil, improve the health and quality of life for Washingtonians, and stimulate the creation of a new industry in Washington that benefits our farmers and rural communities. The legislature finds that it is in the public interest for the state to play a central role in spurring the market by purchasing an increasing amount of alternative fuels produced in Washington. The legislature finds that we must act now and that the time available before the requirements of this act take effect is sufficient for feedstock and fuel providers to prepare for successful implementation.

The legislature intends for consumers to have a choice of fuels and to encourage and promote the development, availability, and use of a diversity of renewable fuels and fuel blends ranging from fuels composed of no renewable content to completely renewable fuels." [2006 c 338 § 1.]

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19.112.120 Motor vehicle fuel licensees—Required sales of denatured ethanol—Rules—Limitation of section. (*Effective July 1, 2015.*) (1) By December 1, 2008, motor vehicle fuel licensees under chapter 82.38 RCW, as determined by the department of licensing, must provide evidence to the department of licensing that at least two percent of total gasoline sold in Washington, measured on a quarterly basis, is denatured ethanol.

(2) If the director of ecology determines that ethanol content greater than two percent of the total gasoline sold in Washington will not jeopardize continued attainment of the federal clean air act's national ambient air quality standard for ozone pollution in Washington and the director of agriculture determines and publishes this determination in the Washington State Register that sufficient raw materials are available within Washington to support economical production of ethanol at higher levels, the director of agriculture may require by rule that licensees provide evidence to the department of licensing that denatured ethanol comprises between two percent and at least ten percent of total gasoline sold in Washington, measured on a quarterly basis.

(3) The requirements of subsections (1) and (2) of this section may take effect no sooner than one hundred eighty days after the determination has been published in the Washington State Register.

(4) The director and the director of licensing must each adopt rules, in coordination with each other, for enforcing and carrying out the purposes of this section.

(5) Nothing in this section is intended to prohibit the production, sale, or use of motor fuel for use in federally designated flexibly fueled vehicles capable of using E85 motor fuel. Nothing in this section is intended to limit the use of high octane gasoline not blended with ethanol for use in aircraft. [2013 c 225 § 602; 2007 c 309 § 2; 2006 c 338 § 3.]

Effective date—2013 c 225: See note following RCW 82.38.010.

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

Chapter 19.146 RCW MORTGAGE BROKER PRACTICES ACT

Sections

- 19.146.010 Definitions.
19.146.020 Exemptions from chapter.
19.146.0201 Loan originator, mortgage broker—Prohibitions—Requirements.
19.146.060 Accounting requirements.
19.146.220 Director—Powers and duties—Violations as separate violations—Rules.
19.146.240 Violations—Claims against bond or alternative.

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

(1) "Affiliate" means any person who directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with another person.

(2) "Application" means the same as in Regulation X, Real Estate Settlement Procedures, 24 C.F.R. Sec. 3500.

(3) "Borrower" means any person who consults with or retains a mortgage broker or loan originator in an effort to obtain or seek advice or information on obtaining or applying to obtain a residential mortgage loan, or a residential mortgage loan modification, for himself, herself, or persons

including himself or herself, regardless of whether the person actually obtains such a loan.

(4) "Computer loan information systems" or "CLI system" means a real estate mortgage financing information system that facilitates the provision of information to consumers by a mortgage broker, loan originator, lender, real estate agent, or other person regarding interest rates and other loan terms available from different lenders.

(5) "Department" means the department of financial institutions.

(6) "Designated broker" means a natural person designated as the person responsible for activities of the licensed mortgage broker in conducting the business of a mortgage broker under this chapter and who meets the experience and examination requirements set forth in RCW 19.146.210(1)(e).

(7) "Director" means the director of financial institutions.

(8) "Employee" means an individual who has an employment relationship with a mortgage broker, and the individual is treated as an employee by the mortgage broker for purposes of compliance with federal income tax laws.

(9) "Federal banking agencies" means the board of governors of the federal reserve system, comptroller of the currency, director of the office of thrift supervision, national credit union administration, and federal deposit insurance corporation.

(10) "Independent contractor" or "person who independently contracts" means any person that expressly or impliedly contracts to perform mortgage brokering services for another and that with respect to its manner or means of performing the services is not subject to the other's right of control, and that is not treated as an employee by the other for purposes of compliance with federal income tax laws.

(11)(a) "Loan originator" means a natural person who for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain (i) takes a residential mortgage loan application for a mortgage broker, or (ii) offers or negotiates terms of a mortgage loan. "Loan originator" also includes a person who holds themselves out to the public as able to perform any of these activities. "Loan originator" does not mean persons performing purely administrative or clerical tasks for a mortgage broker. For the purposes of this subsection, "administrative or clerical tasks" means the receipt, collection, and distribution of information common for the processing of a loan in the mortgage industry and communication with a borrower to obtain information necessary for the processing of a loan. A person who holds himself or herself out to the public as able to obtain a loan is not performing administrative or clerical tasks.

(b) "Loan originator" also includes a natural person who for direct or indirect compensation or gain or in the expectation of direct or indirect compensation or gain performs residential mortgage loan modification services or holds himself or herself out as being able to perform residential mortgage loan modification services.

(c) "Loan originator" does not include a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable state law, unless the person or entity is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any

agent of such a lender, mortgage broker, or other mortgage loan originator. For purposes of this chapter, the term "real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including:

(i) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;

(ii) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(iii) Negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property, other than in connection with providing financing with respect to such a transaction;

(iv) Engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and

(v) Offering to engage in any activity, or act in any capacity, described in (c)(i) through (iv) of this subsection.

(d) "Loan originator" does not include a person or entity solely involved in extensions of credit relating to timeshare plans, as that term is defined in section 101(53D) of Title 11, United States Code.

(e) This subsection does not apply to employees of a housing counseling agency approved by the United States department of housing and urban development unless the employees of a housing counseling agency are required under federal law to be licensed individually as loan originators.

(12) "Loan processor" means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed, or exempt from licensing, under this chapter.

(13) "Lock-in agreement" means an agreement with a borrower made by a mortgage broker or loan originator, in which the mortgage broker or loan originator agrees that, for a period of time, a specific interest rate or other financing terms will be the rate or terms at which it will make a loan available to that borrower.

(14) "Mortgage broker" means any person who for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain (a) assists a person in obtaining or applying to obtain a residential mortgage loan or performs residential mortgage loan modification services or (b) holds himself or herself out as being able to assist a person in obtaining or applying to obtain a residential mortgage loan or provide residential mortgage loan modification services.

(15) "Mortgage loan originator" has the same meaning as "loan originator."

(16) "Nationwide mortgage licensing system and registry" means a mortgage licensing system developed and maintained by the conference of state bank supervisors and the American association of residential mortgage regulators for the licensing and registration of mortgage loan originators.

(17) "Person" means a natural person, corporation, company, limited liability corporation, partnership, or association.

(18) "Principal" means any person who controls, directly or indirectly through one or more intermediaries, or alone or in concert with others, a ten percent or greater interest in a partnership, company, association, or corporation, and the owner of a sole proprietorship.

(19) "Residential mortgage loan" means any loan primarily for personal, family, or household use secured by a mortgage or deed of trust on residential real estate upon which is constructed or intended to be constructed a single-family dwelling or multiple-family dwelling of four or less units.

(20) "Residential mortgage loan modification" means a change in one or more of a residential mortgage loan's terms or conditions. Changes to a residential mortgage loan's terms or conditions include but are not limited to forbearances; repayment plans; changes in interest rates, loan terms, or loan types; capitalizations of arrearages; or principal reductions.

(21) "Residential mortgage loan modification services" includes negotiating, attempting to negotiate, arranging, attempting to arrange, or otherwise offering to perform a residential mortgage loan modification. "Residential mortgage loan modification services" also includes the collection of data for submission to any entity performing mortgage loan modification services.

(22) "S.A.F.E. act" means the secure and fair enforcement for mortgage licensing act of 2008, or Title V of the housing and economic recovery act of 2008 ("HERA"), P.L. 110-289, effective July 30, 2008.

(23) "Third-party provider" means any person other than a mortgage broker or lender who provides goods or services to the mortgage broker in connection with the preparation of the borrower's loan and includes, but is not limited to, credit reporting agencies, title companies, appraisers, structural and pest inspectors, or escrow companies.

(24) "Third-party residential mortgage loan modification services" means residential mortgage loan modification services offered or performed by any person other than the owner or servicer of the loan.

(25) "Unique identifier" means a number or other identifier assigned by protocols established by the nationwide mortgage licensing system and registry. [2013 c 30 § 1; 2010 c 35 § 13; 2009 c 528 § 1; 2008 c 78 § 3; 2006 c 19 § 2; 1997 c 106 § 1; 1994 c 33 § 3; 1993 c 468 § 2; 1987 c 391 § 3.]

Effective date—2010 c 35: See RCW 31.04.904.

Effective date—License requirement—2009 c 528: "(1) In order to facilitate an orderly transition to licensing and minimize disruption in the mortgage marketplace, sections 4, 6 through 9, 11, 12, 14, and 17 [of this act] are effective January 1, 2010.

(2) In order to facilitate an orderly transition to licensing and minimize disruption in the mortgage marketplace, mortgage loan originators who were previously exempt as exclusive agents under RCW 19.146.020(1)(a)(ii) must obtain a mortgage loan originator license under this chapter before July 1, 2010." [2009 c 528 § 19.]

Implementation—2009 c 528: "The director of financial institutions or the director's designee may take the actions necessary to ensure this act is implemented on July 1, 2010." [2009 c 528 § 20.]

Severability—2008 c 78: See note following RCW 31.04.025.

Additional notes found at www.leg.wa.gov

19.146.020 Exemptions from chapter. (1) The following are exempt from all provisions of this chapter:

(a) Any person doing business under the laws of the state of Washington or the United States, and any federally insured depository institution doing business under the laws of any other state, relating to commercial banks, bank holding companies, savings banks, trust companies, savings and loan associations, credit unions, insurance companies, or real

estate investment trusts as defined in 26 U.S.C. Sec. 856 and the affiliates, subsidiaries, and service corporations thereof;

(b) Any person doing business under the consumer loan act is exempt from this chapter only for that business conducted under the authority and coverage of the consumer loan act;

(c) An attorney licensed to practice law in this state. However, (i) all mortgage broker or loan originator services must be performed by the attorney while engaged in the practice of law; (ii) all mortgage broker or loan originator services must be performed under a business that is publicly identified and operated as a law practice; and (iii) all funds associated with the transaction and received by the attorney must be deposited in, maintained in, and disbursed from a trust account to the extent required by rules enacted by the Washington supreme court regulating the conduct of attorneys;

(d) Any person doing any act under order of any court, except for a person subject to an injunction to comply with any provision of this chapter or any order of the director issued under this chapter;

(e) A real estate broker or salesperson licensed by the state who obtains financing for a real estate transaction involving a bona fide sale of real estate in the performance of his or her duties as a real estate broker and who receives only the customary real estate broker's or salesperson's commission in connection with the transaction;

(f) The United States of America, the state of Washington, any other state, and any Washington city, county, or other political subdivision, and any agency, division, or corporate instrumentality of any of the entities in this subsection (1)(f);

(g) A real estate broker who provides only information regarding rates, terms, and lenders in connection with a CLI system, who receives a fee for providing such information, who conforms to all rules of the director with respect to the providing of such service, and who discloses on a form approved by the director that to obtain a loan the borrower must deal directly with a mortgage broker or lender. However, a real estate broker shall not be exempt if he or she does any of the following:

(i) Holds himself or herself out as able to obtain a loan from a lender;

(ii) Accepts a loan application, or submits a loan application to a lender;

(iii) Accepts any deposit for third-party services or any loan fees from a borrower, whether such fees are paid before, upon, or after the closing of the loan;

(iv) Negotiates rates or terms with a lender on behalf of a borrower; or

(v) Provides the disclosure required by RCW 19.146.030(1);

(h) Registered mortgage loan originators, or any individual required to be registered; and

(i) A manufactured or modular home retailer employee who performs purely administrative or clerical tasks and who receives only the customary salary or commission from the employer in connection with the transaction.

(2) Any person otherwise exempted from the licensing provisions of this chapter may voluntarily submit an application to the director for a mortgage broker's license. The director shall review such application and may grant or deny

licenses to such applicants upon the same grounds and with the same fees as may be applicable to persons required to be licensed under this chapter.

(a) Upon receipt of a license under this subsection, the licensee is required to continue to maintain a valid license, is subject to all provisions of this chapter, and has no further right to claim exemption from the provisions of this chapter except as provided in (b) of this subsection.

(b) Any licensee under this subsection who would otherwise be exempted from the requirements of licensing by this section may apply to the director for exemption from licensing. The director shall adopt rules for reviewing such applications and shall grant exemptions from licensing to applications which are consistent with those rules and consistent with the other provisions of this chapter. [2013 c 30 § 2; 2009 c 528 § 2; 2006 c 19 § 3; 1997 c 106 § 2; 1994 c 33 § 5; 1994 c 33 § 4; 1993 c 468 § 3; 1987 c 391 § 4.]

Effective date—License requirement—Implementation—2009 c 528: See notes following RCW 19.146.010.

Additional notes found at www.leg.wa.gov

19.146.0201 Loan originator, mortgage broker—Prohibitions—Requirements. It is a violation of this chapter for a loan originator or mortgage broker required to be licensed under this chapter to:

(1) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person;

(2) Engage in any unfair or deceptive practice toward any person;

(3) Obtain property by fraud or misrepresentation;

(4) Solicit or enter into a contract with a borrower that provides in substance that the mortgage broker may earn a fee or commission through the mortgage broker's "best efforts" to obtain a loan even though no loan is actually obtained for the borrower;

(5) Solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting from a person exempt from licensing under RCW 19.146.020(1)(f) or a lender with whom the mortgage broker maintains a written correspondent or loan broker agreement under RCW 19.146.040;

(6) Fail to make disclosures to loan applicants and non-institutional investors as required by RCW 19.146.030 and any other applicable state or federal law;

(7) Make, in any manner, any false or deceptive statement or representation with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan or engage in bait and switch advertising;

(8) Negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any reports filed by a mortgage broker or in connection with any investigation conducted by the department;

(9) Make any payment, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property;

(10) Advertise any rate of interest without conspicuously disclosing the annual percentage rate implied by such rate of interest;

(11) Fail to comply with state and federal laws applicable to the activities governed by this chapter;

(12) Fail to pay third-party providers no later than thirty days after the recording of the loan closing documents or ninety days after completion of the third-party service, whichever comes first, unless otherwise agreed or unless the third-party service provider has been notified in writing that a bona fide dispute exists regarding the performance or quality of the third-party service;

(13) Collect, charge, attempt to collect or charge or use or propose any agreement purporting to collect or charge any fee prohibited by RCW 19.146.030 or 19.146.070;

(14)(a) Except when complying with (b) and (c) of this subsection, act as a loan originator in any transaction (i) in which the loan originator acts or has acted as a real estate broker or salesperson or (ii) in which another person doing business under the same licensed real estate broker acts or has acted as a real estate broker or salesperson;

(b) Prior to providing mortgage services to the borrower, a loan originator, in addition to other disclosures required by this chapter and other laws, shall provide to the borrower the following written disclosure:

THIS IS TO GIVE YOU NOTICE THAT I OR ONE OF MY ASSOCIATES HAVE/HAS ACTED AS A REAL ESTATE BROKER OR SALESPERSON REPRESENTING THE BUYER/SELLER IN THE SALE OF THIS PROPERTY TO YOU. I AM ALSO A LOAN ORIGINATOR, AND WOULD LIKE TO PROVIDE MORTGAGE SERVICES TO YOU IN CONNECTION WITH YOUR LOAN TO PURCHASE THE PROPERTY.

YOU ARE NOT REQUIRED TO USE ME AS A LOAN ORIGINATOR IN CONNECTION WITH THIS TRANSACTION. YOU ARE FREE TO COMPARISON SHOP WITH OTHER MORTGAGE BROKERS AND LENDERS, AND TO SELECT ANY MORTGAGE BROKER OR LENDER OF YOUR CHOOSING; and

(c) A real estate broker or salesperson licensed under chapter 18.85 RCW who also acts as a mortgage broker shall carry on such mortgage broker business activities and shall maintain such person's mortgage broker business records separate and apart from the real estate broker activities conducted pursuant to chapter 18.85 RCW. Such activities shall be deemed separate and apart even if they are conducted at an office location with a common entrance and mailing address, so long as each business is clearly identified by a sign visible to the public, each business is physically separated within the office facility, and no deception of the public as to the separate identities of the broker business firms results. This subsection (14)(c) shall not require a real estate broker or salesperson licensed under chapter 18.85 RCW who also acts as a mortgage broker to maintain a physical separation within the office facility for the conduct of its real estate and mortgage broker activities where the director determines that maintaining such physical separation would constitute an undue financial hardship upon the mortgage broker and is unnecessary for the protection of the public; or

(15) Fail to comply with any provision of RCW 19.146.030 through 19.146.080 or any rule adopted under

those sections. [2013 c 30 § 3; 2009 c 528 § 3; 2006 c 19 § 4; 1997 c 106 § 3; 1994 c 33 § 6; 1993 c 468 § 4.]

Effective date—License requirement—Implementation—2009 c 528: See notes following RCW 19.146.010.

Additional notes found at www.leg.wa.gov

19.146.060 Accounting requirements. (1) A mortgage broker shall use generally accepted accounting principles.

(2) Except as otherwise provided in subsection (3) of this section, a mortgage broker shall maintain accurate and current books and records which shall be readily available at a location available to the director until at least three years have elapsed following the effective period to which the books and records relate.

(3) Where a mortgage broker's usual business location is outside of the state of Washington, the mortgage broker shall, as determined by the director by rule, either maintain its books and records at a location in this state, or reimburse the director for his or her expenses, including but not limited to transportation, food, and lodging expenses, relating to any examination or investigation resulting under this chapter.

(4) "Books and records" includes but is not limited to:

(a) Copies of all advertisements placed by or at the request of the mortgage broker which mention rates or fees. In the case of radio or television advertisements, or advertisements placed on a telephonic information line or other electronic source of information including but not limited to a computer database or electronic bulletin board, a mortgage broker shall keep copies of the precise script for the advertisement. All advertisement records shall include for each advertisement the date or dates of publication and name of each periodical, broadcast station, or telephone information line which published the advertisement or, in the case of a flyer or other material distributed by the mortgage broker, the dates, methods, and areas of distribution; and

(b) Copies of all documents, notes, computer records if not stored in printed form, correspondence or memoranda relating to a borrower from whom the mortgage broker has accepted a deposit or other funds, or accepted a residential mortgage loan application or with whom the mortgage broker has entered into an agreement to assist in obtaining a residential mortgage loan. [2013 c 30 § 4; 2006 c 19 § 7; 1997 c 106 § 6; 1994 c 33 § 20; 1987 c 391 § 8.]

Additional notes found at www.leg.wa.gov

19.146.220 Director—Powers and duties—Violations as separate violations—Rules. (1) The director may enforce all laws and rules relating to the licensing of mortgage brokers and loan originators, grant or deny licenses to mortgage brokers and loan originators, and hold hearings.

(2) The director may impose fines or order restitution against licensees or other persons subject to this chapter, or deny, suspend, decline to renew, or revoke licenses for:

(a) Violations of orders, including cease and desist orders;

(b) False statements or omission of material information on the application that, if known, would have allowed the director to deny the application for the original license;

(c) Failure to pay a fee required by the director or maintain the required bond;

(d) Failure to comply with any directive, order, or subpoena of the director; or

(e) Any violation of this chapter.

(3) The director may impose fines on an employee, loan originator, independent contractor, or agent of the licensee, or other person subject to this chapter for:

(a) Any violations of this chapter; or

(b) Failure to comply with any directive or order of the director.

(4) The director may issue orders directing a licensee, its employee, loan originator, independent contractor, agent, or other person subject to this chapter to cease and desist from conducting business.

(5) The director may issue orders removing from office or prohibiting from participation in the conduct of the affairs of a licensed mortgage broker, or both, any officer, principal, employee, or loan originator of any licensed mortgage broker or any person subject to licensing under this chapter for:

(a) Any violation of this chapter;

(b) False statements or omission of material information on the application that, if known, would have allowed the director to deny the application for the original license;

(c) Conviction of a gross misdemeanor involving dishonesty or financial misconduct or a felony after obtaining a license; or

(d) Failure to comply with any directive or order of the director.

(6) Each day's continuance of a violation or failure to comply with any directive or order of the director is a separate and distinct violation or failure.

(7) The director shall establish by rule standards for licensure of applicants licensed in other jurisdictions.

(8) The director shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the director's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order. [2013 c 30 § 5; 2006 c 19 § 13. Prior: 1997 c 106 § 12; 1997 c 58 § 879; 1996 c 103 § 1; 1994 c 33 § 12; 1993 c 468 § 8.]

Effective dates—Intent—1997 c 58: See notes following RCW 74.20A.320.

Additional notes found at www.leg.wa.gov

19.146.240 Violations—Claims against bond or alternative. (1) The director or any person injured by a violation of this chapter may bring an action against the surety bond or approved alternative of the licensed mortgage broker who committed the violation or who employed or engaged the loan originator who committed the violation.

(2)(a) The director or any person who is damaged by the licensee's or its loan originator's violation of this chapter, or rules adopted under this chapter, may bring suit upon the surety bond or approved alternative in the superior court of any county in which jurisdiction over the licensee may be obtained. Jurisdiction shall be exclusively in the superior court. Except as provided in subsection (2)(b) of this section,

in the event valid claims of borrowers against a bond or deposit exceed the amount of the bond or deposit, each borrower claimant shall only be entitled to a pro rata amount, based on the amount of the claim as it is valid against the bond or deposit, without regard to the date of filing of any claim or action. If, after all valid borrower claims are paid, valid claims by nonborrower claimants exceed the remaining amount of the bond or deposit, each nonborrower claimant shall only be entitled to a pro rata amount, based on the amount of the claim as it is valid against the bond or deposit, without regard to the date of the filing or any claim or action. A judgment arising from a violation of this chapter or rule adopted under this chapter shall be entered for actual damages and in no case be less than the amount paid by the borrower to the licensed mortgage broker plus reasonable attorneys' fees and costs. In no event shall the surety bond or approved alternative provide payment for any trebled or punitive damages.

(b) Borrowers shall be given priority over the director and other persons in distributions in actions against the surety bond. The director and other third parties shall then be entitled to distribution to the extent of their claims as found valid against the remainder of the bond. In the case of claims made by any person or entity who is not a borrower, no final judgment may be entered prior to one hundred eighty days following the date the claim is filed. This provision regarding priority shall not restrict the right of any claimant to file a claim.

(3) The remedies provided under this section are cumulative and nonexclusive and do not affect any other remedy available at law. [2013 c 30 § 6; 1997 c 106 § 15; 1994 c 33 § 21; 1993 c 468 § 14.]

Additional notes found at www.leg.wa.gov

Chapter 19.230 RCW

UNIFORM MONEY SERVICES ACT

Sections

19.230.010	Definitions.
19.230.020	Application of chapter—Exclusions.
19.230.040	Application for a money transmitter license.
19.230.110	Annual assessment and annual report.
19.230.120	Relationship between licensee and authorized delegate.
19.230.150	Reports.
19.230.200	Maintenance of permissible investments.
19.230.310	Administration and rule-making powers.

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

(1) "Affiliate" means any person who directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, another person.

(2) "Annual assessment due date" means the date specified in rule by the director upon which the annual assessment is due.

(3) "Applicant" means a person that files an application for a license under this chapter, including the applicant's proposed responsible individual and executive officers, and persons in control of the applicant.

(4) "Authorized delegate" means a person a licensee designates to provide money services on behalf of the licensee.

A person that is exempt from licensing under this chapter cannot have an authorized delegate.

(5) "Board director" means a member of the applicant's or licensee's board of directors if the applicant is a corporation or limited liability company, or a partner if the applicant or licensee is a partnership.

(6) "Closed loop stored value" means stored value, when that value or credit is primarily intended to be redeemed for a limited universe of goods, intangibles, services, or other items provided by the issuer of the stored value, its affiliates, or others involved in transactions functionally related to the issuer or its affiliates.

(7) "Control" means:

(a) Ownership of, or the power to vote, directly or indirectly, at least twenty-five percent of a class of voting securities or voting interests of a licensee or applicant, or person in control of a licensee or applicant;

(b) Power to elect a majority of executive officers, managers, directors, trustees, or other persons exercising managerial authority of a licensee or applicant, or person in control of a licensee or applicant; or

(c) Power to exercise directly or indirectly, a controlling influence over the management or policies of a licensee or applicant, or person in control of a licensee or applicant.

(8) "Currency exchange" means exchanging the money of one government for money of another government, or holding oneself out as able to exchange the money of one government for money of another government. The following persons are not considered currency exchangers:

(a) Affiliated businesses that engage in currency exchange for a business purpose other than currency exchange;

(b) A person who provides currency exchange services for a person acting primarily for a business, commercial, agricultural, or investment purpose when the currency exchange is incidental to the transaction;

(c) A person who deals in coins or a person who deals in money whose value is primarily determined because it is rare, old, or collectible; and

(d) A person who in the regular course of business chooses to accept from a customer the currency of a country other than the United States in order to complete the sale of a good or service other than currency exchange, that may include cash back to the customer, and does not otherwise trade in currencies or transmit money for compensation or gain.

(9) "Currency exchanger" means a person that is engaged in currency exchange.

(10) "Director" means the director of financial institutions.

(11) "Executive officer" means a president, chairperson of the executive committee, chief financial officer, responsible individual, or other individual who performs similar functions.

(12) "Financial institution" means any person doing business under the laws of any state or the United States relating to commercial banks, bank holding companies, savings banks, savings and loan associations, trust companies, or credit unions.

(13) "Licensee" means a person licensed under this chapter.

(14) "Material litigation" means litigation that according to generally accepted accounting principles is significant to an applicant's or a licensee's financial health and would be required to be disclosed in the applicant's or licensee's annual audited financial statements, report to shareholders, or similar records.

(15) "Mobile location" means a vehicle or movable facility where money services are provided.

(16) "Money" means a medium of exchange that is authorized or adopted by the United States or a foreign government or other recognized medium of exchange. "Money" includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more governments.

(17) "Money services" means money transmission or currency exchange.

(18) "Money transmission" means receiving money or its equivalent value to transmit, deliver, or instruct to be delivered the money or its equivalent value to another location, inside or outside the United States, by any means including but not limited to by wire, facsimile, or electronic transfer. "Money transmission" does not include the provision solely of connection services to the internet, telecommunications services, or network access. "Money transmission" includes selling, issuing, or acting as an intermediary for open loop stored value and payment instruments, but not closed loop stored value.

(19) "Money transmitter" means a person that is engaged in money transmission.

(20) "Open loop stored value" means stored value redeemable at multiple, unaffiliated merchants or service providers, or automated teller machines.

(21) "Outstanding money transmission" means the value of all money transmissions reported to the licensee for which the money transmitter has received money or its equivalent value from the customer for transmission, but has not yet completed the money transmission by delivering the money or monetary value to the person designated by the customer.

(22) "Payment instrument" means a check, draft, money order, or traveler's check for the transmission or payment of money or its equivalent value, whether or not negotiable. "Payment instrument" does not include a credit card voucher, letter of credit, or instrument that is redeemable by the issuer in goods or services.

(23) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture; government, governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

(24) "Record" means information that is inscribed on a tangible medium, or that is stored in an electronic or other medium, and is retrievable in perceivable form.

(25) "Responsible individual" means an individual who is employed by a licensee and has principal managerial authority over the provision of money services by the licensee in this state.

(26) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(27) "Stored value" means a card or other device that electronically stores or provides access to funds and is available for making payments to others.

(28) "Tangible net worth" means the physical worth of a licensee, calculated by taking a licensee's assets and subtracting its liabilities and its intangible assets, such as copyrights, patents, intellectual property, and goodwill.

(29) "Unsafe or unsound practice" means a practice or conduct by a person licensed to provide money services, or an authorized delegate of such a person, which creates the likelihood of material loss, insolvency, or dissipation of the licensee's assets, or otherwise materially prejudices the financial condition of the licensee or the interests of its customers. [2013 c 106 § 1. Prior: 2010 c 73 § 1; 2003 c 287 § 3.]

19.230.020 Application of chapter—Exclusions. This chapter does not apply to:

(1) The United States or a department, agency, or instrumentality thereof;

(2) Money transmission by the United States postal service or by a contractor on behalf of the United States postal service;

(3) A state, county, city, or a department, agency, or instrumentality thereof;

(4) A financial institution or its subsidiaries, affiliates, and service corporations, or any office of an international banking corporation, branch of a foreign bank, or corporation organized pursuant to the Bank Service Corporation Act (12 U.S.C. Sec. 1861-1867) or a corporation organized under the Edge Act (12 U.S.C. Sec. 611-633);

(5) Electronic funds transfer of governmental benefits for a federal, state, county, or governmental agency by a contractor on behalf of the United States or a department, agency, or instrumentality thereof, or a state or governmental subdivision, agency, or instrumentality thereof;

(6) A board of trade designated as a contract market under the federal Commodity Exchange Act (7 U.S.C. Sec. 1-25) or a person that, in the ordinary course of business, provides clearance and settlement services for a board of trade to the extent of its operation as, or for, a board of trade;

(7) A registered futures commission merchant under the federal commodities laws to the extent of its operation as such a merchant;

(8) A person that provides clearance or settlement services under a registration as a clearing agency, or an exemption from that registration granted under the federal securities laws, to the extent of its operation as such a provider;

(9) An operator of a payment system only to the extent that it provides processing, clearing, or settlement services, between or among persons who are all excluded by this section, in connection with wire transfers, credit card transactions, debit card transactions, stored-value transactions, automated clearinghouse transfers, or similar funds transfers;

(10) A person registered as a securities broker-dealer or investment advisor under federal or state securities laws to the extent of its operation as such a broker-dealer or investment advisor;

(11) An insurance company, title insurance company, or escrow agent to the extent that such an entity is lawfully authorized to conduct business in this state as an insurance

company, title insurance company, or escrow agent and to the extent that they engage in money transmission or currency exchange as an ancillary service when conducting insurance, title insurance, or escrow activity;

(12) The issuance, sale, use, redemption, or exchange of closed loop stored value or of payment instruments by a person licensed under chapter 31.45 RCW;

(13) An attorney, to the extent that the attorney is lawfully authorized to practice law in this state and to the extent that the attorney engages in money transmission or currency exchange as an ancillary service to the practice of law; or

(14) A stored value seller or issuer when the funds are covered by federal deposit insurance immediately upon sale or issue.

The director may, at his or her discretion, waive applicability of the licensing provisions of this chapter when the director determines it necessary to facilitate commerce and protect consumers. The director may adopt rules to implement this section. [2013 c 106 § 2; 2010 c 73 § 2; 2003 c 287 § 4.]

19.230.040 Application for a money transmitter license. (1) A person applying for a money transmitter license under this chapter shall do so in a form and in a medium prescribed in rule by the director. The application must state or contain:

(a) The legal name, business addresses, and residential address, if applicable, of the applicant and any fictitious or trade name used by the applicant in conducting its business;

(b) The legal name, residential and business addresses, date of birth, social security number, employment history for the five-year period preceding the submission of the application of the applicant's proposed responsible individual, and documentation that the proposed responsible individual is a citizen of the United States or has obtained legal immigration status to work in the United States. In addition, the applicant shall provide the fingerprints of the proposed responsible individual upon the request of the director;

(c) For the ten-year period preceding submission of the application, a list of any criminal convictions of the proposed responsible individual of the applicant, any material litigation in which the applicant has been involved, and any litigation involving the proposed responsible individual relating to the provision of money services;

(d) A description of any money services previously provided by the applicant and the money services that the applicant seeks to provide to persons in Washington state;

(e) A list of the applicant's proposed authorized delegates and the locations where the applicant and its authorized delegates will engage in the provision of money services to persons in Washington state on behalf of the licensee;

(f) A list of other states in which the applicant is licensed to engage in money transmission, or provide other money services, and any license revocations, suspensions, restrictions, or other disciplinary action taken against the applicant in another state;

(g) A list of any license revocations, suspensions, restrictions, or other disciplinary action taken against any money services business involving the proposed responsible individual;

(h) Information concerning any bankruptcy or receivership proceedings involving or affecting the applicant or the proposed responsible individual;

(i) A sample form of contract for authorized delegates, if applicable;

(j) A description of the source of money and credit to be used by the applicant to provide money services; and

(k) Any other information regarding the background, experience, character, financial responsibility, and general fitness of the applicant, the applicant's responsible individual, or authorized delegates that the director may require in rule.

(2) If an applicant is a corporation, limited liability company, partnership, or other entity, the applicant shall also provide:

(a) The date of the applicant's incorporation or formation and state or country of incorporation or formation;

(b) If applicable, a certificate of good standing from the state or country in which the applicant is incorporated or formed;

(c) A brief description of the structure or organization of the applicant, including any parent or subsidiary of the applicant, and whether any parent or subsidiary is publicly traded;

(d) The legal name, any fictitious or trade name, all business and residential addresses, date of birth, social security number, and employment history in the ten-year period preceding the submission of the application for each executive officer, board director, or person that has control of the applicant;

(e) If the applicant or its corporate parent is not a publicly traded entity, the director may request the fingerprints of each executive officer, board director, or person that has control of the applicant;

(f) A list of any criminal convictions, material litigation, and any litigation related to the provision of money services, in the ten-year period preceding the submission of the application in which any executive officer, board director, or person in control of the applicant has been involved;

(g) A copy of the applicant's audited financial statements for the most recent fiscal year or, if the applicant is a wholly owned subsidiary of another corporation, the most recent audited consolidated annual financial statement of the parent corporation or the applicant's most recent audited consolidated annual financial statement, and in each case, if available, for the two-year period preceding the submission of the application;

(h) A copy of the applicant's unconsolidated financial statements for the current fiscal year, whether audited or not, and, if available, for the two-year period preceding the submission of the application;

(i) If the applicant is publicly traded, a copy of the most recent report filed with the United States securities and exchange commission under section 13 of the federal Securities Exchange Act of 1934 (15 U.S.C. Sec. 78m);

(j) If the applicant is a wholly owned subsidiary of:

(i) A corporation publicly traded in the United States, a copy of audited financial statements for the parent corporation for the most recent fiscal year or a copy of the parent corporation's most recent report filed under section 13 of the federal Securities Exchange Act of 1934 (15 U.S.C. Sec. 78m); or

(ii) A corporation publicly traded outside the United States, a copy of similar documentation filed with the regulator of the parent corporation's domicile outside the United States;

(k) If the applicant has a registered agent in this state, the name and address of the applicant's registered agent in this state; and

(l) Any other information that the director may require in rule regarding the applicant, each executive officer, or each board director to determine the applicant's background, experience, character, financial responsibility, and general fitness.

(3) A nonrefundable application fee and an initial license fee, as determined in rule by the director, must accompany an application for a license under this chapter. The initial license fee must be refunded if the application is denied.

(4) As part of or in connection with an application for any license under this section, or periodically upon license renewal, each officer, director, and owner applicant shall furnish information concerning his or her identity, including fingerprints for submission to the Washington state patrol or the federal bureau of investigation for a state and national criminal history background check, personal history, experience, business record, purposes, and other pertinent facts, as the director may reasonably require. As part of or in connection with an application for a license under this chapter, or periodically upon license renewal, the director is authorized to receive criminal history record information that includes non-conviction data as defined in RCW 10.97.030. The department may only disseminate nonconviction data obtained under this section to criminal justice agencies. This section does not apply to financial institutions regulated under chapters 31.12 and 31.13 RCW and Titles 30, 32, and 33 RCW. The requirements of this subsection do not apply when the applicant or its corporate parents are publicly traded entities.

(5) The director may waive one or more requirements of this section or permit an applicant to submit other information in lieu of the required information. [2013 c 106 § 3; 2003 c 287 § 6.]

19.230.110 Annual assessment and annual report.

(1) A licensee shall pay an annual assessment as established in rule by the director no later than the annual assessment due date or, if the annual assessment due date is not a business day, on the next business day. A licensee shall pay an annual assessment based on the previous year's Washington dollar volume of: (a) Money transmissions; (b) payment instruments; (c) currency exchanges; and (d) stored value sales. The total minimum assessment must be one thousand dollars per year, and the maximum assessment may not exceed one hundred thousand dollars per year.

(2) A licensee shall submit an accurate annual report with the annual assessment, in a form and in a medium prescribed by the director in rule. The annual report must state or contain:

(a) If the licensee is a money transmitter, a copy of the licensee's most recent audited annual financial statement or, if the licensee is a wholly owned subsidiary of another corporation, the most recent audited consolidated annual financial statement of the parent corporation or the licensee's most recent audited consolidated annual financial statement;

(b) A description of each material change, as defined in rule by the director, to information submitted by the licensee in its original license application which has not been previously reported to the director on any required report;

(c) If the licensee is a money transmitter, a list of the licensee's permissible investments and a certification that the licensee continues to maintain permissible investments according to the requirements set forth in RCW 19.230.200 and 19.230.210;

(d) If the licensee is a money transmitter, proof that the licensee continues to maintain adequate security as required by RCW 19.230.050; and

(e) A list of the locations where the licensee or an authorized delegate of the licensee engages in or provides money services to persons in Washington state.

(3) If a licensee does not file an annual report or pay its annual assessment by the annual assessment due date, the director or the director's designee shall send the licensee a notice of suspension and assess the licensee a late fee not to exceed twenty-five percent of the annual assessment as established in rule by the director. The licensee's annual report and payment of both the annual assessment and the late fee must arrive in the department's offices by 5:00 p.m. on the thirtieth day after the assessment due date or any extension of time granted by the director, unless that date is not a business day, in which case the licensee's annual report and payment of both the annual assessment and the late fee must arrive in the department's offices by 5:00 p.m. on the next occurring business day. If the licensee's annual report and payment of both the annual assessment and late fee do not arrive by such date, the expiration of the licensee's license is effective at 5:00 p.m. on the thirtieth day after the assessment due date, unless that date is not a business day, in which case the expiration of the licensee's license is effective at 5:00 p.m. on the next occurring business day. The director, or the director's designee, may reinstate the license if, within twenty days after its effective date, the licensee:

(a) Files the annual report and pays both the annual assessment and the late fee; and

(b) Did not engage in or provide money services during the period its license was expired. [2013 c 106 § 4; 2010 c 73 § 6; 2003 c 287 § 13.]

19.230.120 Relationship between licensee and authorized delegate.

(1) In this section, "remit" means to make direct payments of money to a licensee or its representative authorized to receive money or to deposit money in a bank in an account specified by the licensee.

(2) A contract between a licensee and an authorized delegate must require the authorized delegate to operate in full compliance with this chapter and the rules adopted under this chapter.

(3) Neither the licensee nor an authorized delegate may authorize subdelegates.

(4) An authorized delegate shall remit all money owing to the licensee in accordance with the terms of the contract between the licensee and the authorized delegate.

(5) If a license is suspended or revoked or a licensee surrenders its license, the director shall notify all of the licensee's authorized delegates whose names are filed with the director, at the address of record with the director, of the sus-

pension, revocation, or surrender and shall publish the name of the licensee. An authorized delegate shall immediately cease to provide money services as a delegate of the licensee upon receipt of notice, or after publication is made, that the licensee's license has been suspended, revoked, or surrendered.

(6) An authorized delegate may not provide money services other than those allowed the licensee under its license. In addition, an authorized delegate may not provide money services outside the scope of activity permissible under the contract between the authorized delegate and the licensee, except activity in which the authorized delegate is authorized to engage under RCW 19.230.030 or 19.230.080. [2013 c 106 § 5; 2003 c 287 § 14.]

19.230.150 Reports. (1) A licensee shall file with the director within thirty business days any material changes in information provided in a licensee's application as prescribed in rule by the director. If this information indicates that the licensee is no longer in compliance with this chapter, the director may take any action authorized under this chapter to ensure that the licensee operates in compliance with this chapter.

(2) A licensee shall file with the director within forty-five days after the end of each fiscal quarter a current list of all authorized delegates including the name, address, and e-mail address, if available, of each authorized delegate providing money services to persons in Washington. The licensee shall also file with the director within forty-five days after the end of each fiscal quarter a current list of all licensee locations providing money services to persons in Washington, including mobile locations, which includes the address, and e-mail address if available, of the licensee.

(3) A licensee shall file a report with the director within one business day after the licensee has reason to know of the occurrence of any of the following events:

(a) The filing of a petition by or against the licensee, or any authorized delegate of the licensee, under the United States Bankruptcy Code (11 U.S.C. Sec. 101-110) for bankruptcy or reorganization;

(b) The filing of a petition by or against the licensee, or any authorized delegate of the licensee, for receivership, the commencement of any other judicial or administrative proceeding for its dissolution or reorganization, or the making of a general assignment for the benefit of its creditors;

(c) The commencement of a proceeding to revoke, suspend, restrict, or condition its license, or otherwise discipline or sanction the licensee, in a state or country in which the licensee engages in business or is licensed;

(d) The cancellation or other impairment of the licensee's bond or other security;

(e) A charge or conviction of the licensee or of an executive officer, responsible individual, board director of the licensee, or person in control of the licensee, for a felony; or

(f) A charge or conviction of an authorized delegate for a felony. [2013 c 106 § 6; 2003 c 287 § 17.]

19.230.200 Maintenance of permissible investments.

(1)(a) A money transmitter licensee shall maintain, at all times, permissible investments that have a market value computed in accordance with generally accepted accounting prin-

ciples of not less than the amount of the licensee's average outstanding money transmission liability.

(b) For the purposes of this section, average outstanding money transmission liability means the sum of the daily amounts of a licensee's outstanding money transmissions, as computed each day of the month divided by the number of days in the month.

(2) The director, with respect to any money transmitter licensee, may limit the extent to which a type of investment within a class of permissible investments may be considered a permissible investment, except for money, time deposits, savings deposits, demand deposits, and certificates of deposit issued by a federally insured financial institution. The director may prescribe in rule, or by order allow, other types of investments that the director determines to have a safety substantially equivalent to other permissible investments. [2013 c 106 § 7; 2010 c 73 § 9; 2003 c 287 § 22.]

19.230.310 Administration and rule-making powers.

The director has the authority and administrative discretion to administer and interpret this chapter to fulfill the intent of the legislature as expressed in RCW 19.230.005. In accordance with chapter 34.05 RCW, the director may issue rules under this chapter that are clearly required to govern the activities of licensees and other persons subject to this chapter. [2013 c 106 § 8; 2003 c 287 § 33.]

**Chapter 19.280 RCW
ELECTRIC UTILITY RESOURCE PLANS**

Sections

19.280.010	Intent—Finding.
19.280.020	Definitions.
19.280.030	Development of a resource plan—Requirements of a resource plan.
19.280.060	Department's duties—Report to the legislature.

19.280.010 Intent—Finding. It is the intent of the legislature to encourage the development of new safe, clean, and reliable energy resources to meet demand in Washington for affordable and reliable electricity. To achieve this end, the legislature finds it essential that electric utilities in Washington develop comprehensive resource plans that explain the mix of generation and demand-side resources they plan to use to meet their customers' electricity needs in both the short term and the long term. The legislature intends that information obtained from integrated resource planning under this chapter will be used to assist in identifying and developing: (1) New energy generation; (2) conservation and efficiency resources; (3) methods, commercially available technologies, and facilities for integrating renewable resources, including addressing any overgeneration event; and (4) related infrastructure to meet the state's electricity needs. [2013 c 149 § 1; 2006 c 195 § 1.]

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

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

(2) "Conservation and efficiency resources" means any reduction in electric power consumption that results from

increases in the efficiency of energy use, production, transmission, or distribution.

(3) "Consumer-owned utility" includes a municipal electric utility formed under Title 35 RCW, a public utility district formed under Title 54 RCW, an irrigation district formed under chapter 87.03 RCW, a cooperative formed under chapter 23.86 RCW, a mutual corporation or association formed under chapter 24.06 RCW, a port district formed under Title 53 RCW, or a water-sewer district formed under Title 57 RCW, that is engaged in the business of distributing electricity to one or more retail electric customers in the state.

(4) "Department" means the department of commerce.

(5) "Electric utility" means a consumer-owned or investor-owned utility.

(6) "Full requirements customer" means an electric utility that relies on the Bonneville power administration for all power needed to supply its total load requirement other than that served by nondispatchable generating resources totaling no more than six megawatts or renewable resources.

(7) "Governing body" means the elected board of directors, city council, commissioners, or board of any consumer-owned utility.

(8) "High efficiency cogeneration" means the sequential production of electricity and useful thermal energy from a common fuel source, where, under normal operating conditions, the facility has a useful thermal energy output of no less than thirty-three percent of the total energy output.

(9) "Integrated resource plan" means an analysis describing the mix of generating resources, conservation, methods, technologies, and resources to integrate renewable resources and, where applicable, address overgeneration events, and efficiency resources that will meet current and projected needs at the lowest reasonable cost to the utility and its ratepayers and that complies with the requirements specified in RCW 19.280.030(1).

(10) "Investor-owned utility" means a corporation owned by investors that meets the definition in RCW 80.04.010 and is engaged in distributing electricity to more than one retail electric customer in the state.

(11) "Lowest reasonable cost" means the lowest cost mix of generating resources and conservation and efficiency resources determined through a detailed and consistent analysis of a wide range of commercially available resources. At a minimum, this analysis must consider resource cost, market-volatility risks, demand-side resource uncertainties, resource dispatchability, resource effect on system operation, the risks imposed on the utility and its ratepayers, public policies regarding resource preference adopted by Washington state or the federal government, and the cost of risks associated with environmental effects including emissions of carbon dioxide.

(12) "Overgeneration event" means an event within an operating period of a balancing authority when the electricity supply, including generation from intermittent renewable resources, exceeds the demand for electricity for that utility's energy delivery obligations and when there is a negatively priced regional market.

(13) "Plan" means either an "integrated resource plan" or a "resource plan."

(14) "Renewable resources" means electricity generation facilities fueled by: (a) Water; (b) wind; (c) solar energy; (d)

geothermal energy; (e) landfill gas; (f) biomass energy utilizing animal waste, solid organic fuels from wood, forest, or field residues or dedicated energy crops that do not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenic; (g) by-products of pulping or wood manufacturing processes, including but not limited to bark, wood chips, sawdust, and lignin in spent pulping liquors; (h) ocean thermal, wave, or tidal power; or (i) gas from sewage treatment facilities.

(15) "Resource plan" means an assessment that estimates electricity loads and resources over a defined period of time and complies with the requirements in RCW 19.280.030(2). [2013 c 149 § 2; 2009 c 565 § 19; 2006 c 195 § 2.]

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

19.280.030 Development of a resource plan—Requirements of a resource plan. Each electric utility must develop a plan consistent with this section.

(1) Utilities with more than twenty-five thousand customers that are not full requirements customers shall develop or update an integrated resource plan by September 1, 2008. At a minimum, progress reports reflecting changing conditions and the progress of the integrated resource plan must be produced every two years thereafter. An updated integrated resource plan must be developed at least every four years subsequent to the 2008 integrated resource plan. The integrated resource plan, at a minimum, must include:

(a) A range of forecasts, for at least the next ten years or longer, of projected customer demand which takes into account econometric data and customer usage;

(b) An assessment of commercially available conservation and efficiency resources. Such assessment may include, as appropriate, high efficiency cogeneration, demand response and load management programs, and currently employed and new policies and programs needed to obtain the conservation and efficiency resources;

(c) An assessment of commercially available, utility scale renewable and nonrenewable generating technologies including a comparison of the benefits and risks of purchasing power or building new resources;

(d) A comparative evaluation of renewable and nonrenewable generating resources, including transmission and distribution delivery costs, and conservation and efficiency resources using "lowest reasonable cost" as a criterion;

(e) An assessment of methods, commercially available technologies, or facilities for integrating renewable resources, and addressing overgeneration events, if applicable to the utility's resource portfolio;

(f) The integration of the demand forecasts and resource evaluations into a long-range assessment describing the mix of supply side generating resources and conservation and efficiency resources that will meet current and projected needs, including mitigating overgeneration events, at the lowest reasonable cost and risk to the utility and its ratepayers; and

(g) A short-term plan identifying the specific actions to be taken by the utility consistent with the long-range integrated resource plan.

(2) All other utilities may elect to develop a full integrated resource plan as set forth in subsection (1) of this section or, at a minimum, shall develop a resource plan that:

(a) Estimates loads for the next five and ten years;

(b) Enumerates the resources that will be maintained and/or acquired to serve those loads; and

(c) Explains why the resources in (b) of this subsection were chosen and, if the resources chosen are not: (i) Renewable resources; (ii) methods, commercially available technologies, or facilities for integrating renewable resources, including addressing any overgeneration event; or (iii) conservation and efficiency resources, why such a decision was made.

(3) An electric utility that is required to develop a resource plan under this section must complete its initial plan by September 1, 2008.

(4) Resource plans developed under this section must be updated on a regular basis, at a minimum on intervals of two years.

(5) Plans shall not be a basis to bring legal action against electric utilities.

(6) Each electric utility shall publish its final plan either as part of an annual report or as a separate document available to the public. The report may be in an electronic form. [2013 c 149 § 3; 2011 c 180 § 305; 2006 c 195 § 3.]

Findings—Purpose—2011 c 180: See note following RCW 80.80.010.

19.280.060 Department's duties—Report to the legislature. The department shall review the plans of consumer-owned utilities and investor-owned utilities, and data available from other state, regional, and national sources, and prepare an electronic report to the legislature aggregating the data and assessing the overall adequacy of Washington's electricity supply. The report shall include a statewide summary of utility load forecasts, load/resource balance, and utility plans for the development of thermal generation, renewable resources, conservation and efficiency resources, and an examination of assessment methods used by utilities to address overgeneration events. The commission shall provide the department with data summarizing the plans of investor-owned utilities for use in the department's statewide summary. The department may submit its report within the biennial report required under RCW 43.21F.045. [2013 c 149 § 4; 2006 c 195 § 6.]

Chapter 19.285 RCW ENERGY INDEPENDENCE ACT

Sections

19.285.030 Definitions.

19.285.040 Energy conservation and renewable energy targets.

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

(1) "Attorney general" means the Washington state office of the attorney general.

(2) "Auditor" means: (a) The Washington state auditor's office or its designee for qualifying utilities under its jurisdiction that are not investor-owned utilities; or (b) an independent

auditor selected by a qualifying utility that is not under the jurisdiction of the state auditor and is not an investor-owned utility.

(3)(a) "Biomass energy" includes: (i) Organic by-products of pulping and the wood manufacturing process; (ii) animal manure; (iii) solid organic fuels from wood; (iv) forest or field residues; (v) untreated wooden demolition or construction debris; (vi) food waste and food processing residuals; (vii) liquors derived from algae; (viii) dedicated energy crops; and (ix) yard waste.

(b) "Biomass energy" does not include: (i) Wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenic; (ii) wood from old growth forests; or (iii) municipal solid waste.

(4) "Coal transition power" has the same meaning as defined in RCW 80.80.010.

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

(6) "Conservation" means any reduction in electric power consumption resulting from increases in the efficiency of energy use, production, or distribution.

(7) "Cost-effective" has the same meaning as defined in RCW 80.52.030.

(8) "Council" means the Washington state apprenticeship and training council within the department of labor and industries.

(9) "Customer" means a person or entity that purchases electricity for ultimate consumption and not for resale.

(10) "Department" means the department of commerce or its successor.

(11) "Distributed generation" means an eligible renewable resource where the generation facility or any integrated cluster of such facilities has a generating capacity of not more than five megawatts.

(12) "Eligible renewable resource" means:

(a) Electricity from a generation facility powered by a renewable resource other than freshwater that commences operation after March 31, 1999, where: (i) The facility is located in the Pacific Northwest; or (ii) the electricity from the facility is delivered into Washington state on a real-time basis without shaping, storage, or integration services;

(b) Incremental electricity produced as a result of efficiency improvements completed after March 31, 1999, to hydroelectric generation projects owned by a qualifying utility and located in the Pacific Northwest or to hydroelectric generation in irrigation pipes and canals located in the Pacific Northwest, where the additional generation in either case does not result in new water diversions or impoundments;

(c) Qualified biomass energy; or

(d) For a qualifying utility that serves customers in other states, electricity from a generation facility powered by a renewable resource other than freshwater that commences operation after March 31, 1999, where: (i) The facility is located within a state in which the qualifying utility serves retail electrical customers; and (ii) the qualifying utility owns the facility in whole or in part or has a long-term contract with the facility of at least twelve months or more.

(13) "Investor-owned utility" has the same meaning as defined in RCW 19.29A.010.

(14) "Load" means the amount of kilowatt-hours of electricity delivered in the most recently completed year by a qualifying utility to its Washington retail customers.

(15)(a) "Nonpower attributes" means all environmentally related characteristics, exclusive of energy, capacity reliability, and other electrical power service attributes, that are associated with the generation of electricity from a renewable resource, including but not limited to the facility's fuel type, geographic location, vintage, qualification as an eligible renewable resource, and avoided emissions of pollutants to the air, soil, or water, and avoided emissions of carbon dioxide and other greenhouse gases.

(b) "Nonpower attributes" does not include any aspects, claims, characteristics, and benefits associated with the on-site capture and destruction of methane or other greenhouse gases at a facility through a digester system, landfill gas collection system, or other mechanism, which may be separately marketable as greenhouse gas emission reduction credits, offsets, or similar tradable commodities. However, these separate avoided emissions may not result in or otherwise have the effect of attributing greenhouse gas emissions to the electricity.

(16) "Pacific Northwest" has the same meaning as defined for the Bonneville power administration in section 3 of the Pacific Northwest electric power planning and conservation act (94 Stat. 2698; 16 U.S.C. Sec. 839a).

(17) "Public facility" has the same meaning as defined in RCW 39.35C.010.

(18) "Qualified biomass energy" means electricity produced from a biomass energy facility that: (a) Commenced operation before March 31, 1999; (b) contributes to the qualifying utility's load; and (c) is owned either by: (i) A qualifying utility; or (ii) an industrial facility that is directly interconnected with electricity facilities that are owned by a qualifying utility and capable of carrying electricity at transmission voltage.

(19) "Qualifying utility" means an electric utility, as the term "electric utility" is defined in RCW 19.29A.010, that serves more than twenty-five thousand customers in the state of Washington. The number of customers served may be based on data reported by a utility in form 861, "annual electric utility report," filed with the energy information administration, United States department of energy.

(20) "Renewable energy credit" means a tradable certificate of proof of at least one megawatt-hour of an eligible renewable resource where the generation facility is not powered by freshwater. The certificate includes all of the non-power attributes associated with that one megawatt-hour of electricity, and the certificate is verified by a renewable energy credit tracking system selected by the department.

(21) "Renewable resource" means: (a) Water; (b) wind; (c) solar energy; (d) geothermal energy; (e) landfill gas; (f) wave, ocean, or tidal power; (g) gas from sewage treatment facilities; (h) biodiesel fuel as defined in RCW 82.29A.135 that is not derived from crops raised on land cleared from old growth or first-growth forests where the clearing occurred after December 7, 2006; or (i) biomass energy.

(22) "Rule" means rules adopted by an agency or other entity of Washington state government to carry out the intent and purposes of this chapter.

(23) "Year" means the twelve-month period commencing January 1st and ending December 31st. [2013 c 158 § 1; 2013 c 99 § 1; 2013 c 61 § 1. Prior: 2012 c 22 § 2; 2009 c 565 § 20; 2007 c 1 § 3 (Initiative Measure No. 937, approved November 7, 2006).]

Reviser's note: (1) The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

(2) This section was amended by 2013 c 61 § 1, 2013 c 99 § 1, and by 2013 c 158 § 1, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—Intent—2012 c 22: "(1) The legislature finds that: (a) Pulping liquors can be used to reduce harmful pollution and produce electricity and thermal energy that enables pulp and paper facilities to be highly energy efficient; (b) biomass facilities and pulp and paper mills are typically located in communities that are disproportionately affected by economic downturns; (c) mill closures have occurred throughout the state for more than a decade and the remaining ones have become all the more dependent on selling wood residuals, which are used for electricity generation, in order to sustain their economic viability; (d) employment at pulp and paper mills in the state has also declined significantly, most recently in Grays Harbor and Snohomish counties; (e) wood derived biomass is a renewable fuel for generating electricity and considered carbon-neutral under the laws of the state of Washington; and (f) using food processing residues, food waste, and yard waste to generate renewable electricity can benefit rural economies, decrease the amount of solid waste that requires disposal, and reduce greenhouse gas emissions that result from organic decay.

(2) The legislature declares that, by promoting the generation of renewable energy from biomass, particularly in economically distressed communities, it intends to ensure greater economic stability for the communities that have suffered heavy job losses and chronic unemployment.

(3) The legislature further declares that: (a) The owners of qualified biomass energy facilities that must comply with the renewable energy standards under the energy independence act of 2006, either as a matter of law or contractual obligation, should be permitted to use qualified biomass energy credits to meet their obligations; and (b) electricity that is generated by a biomass energy facility that entered commercial operation after March 31, 1999, from the combustion of organic by-products of pulping and the wood manufacturing process should be treated as an eligible renewable resource." [2012 c 22 § 1.]

19.285.040 Energy conservation and renewable energy targets. (1) Each qualifying utility shall pursue all available conservation that is cost-effective, reliable, and feasible.

(a) By January 1, 2010, using methodologies consistent with those used by the Pacific Northwest electric power and conservation planning council in its most recently published regional power plan, each qualifying utility shall identify its achievable cost-effective conservation potential through 2019. At least every two years thereafter, the qualifying utility shall review and update this assessment for the subsequent ten-year period.

(b) Beginning January 2010, each qualifying utility shall establish and make publicly available a biennial acquisition target for cost-effective conservation consistent with its identification of achievable opportunities in (a) of this subsection, and meet that target during the subsequent two-year period. At a minimum, each biennial target must be no lower than the qualifying utility's pro rata share for that two-year period of its cost-effective conservation potential for the subsequent ten-year period.

(c) In meeting its conservation targets, a qualifying utility may count high-efficiency cogeneration owned and used by a retail electric customer to meet its own needs. High-efficiency cogeneration is the sequential production of electricity and useful thermal energy from a common fuel source,

where, under normal operating conditions, the facility has a useful thermal energy output of no less than thirty-three percent of the total energy output. The reduction in load due to high-efficiency cogeneration shall be: (i) Calculated as the ratio of the fuel chargeable to power heat rate of the cogeneration facility compared to the heat rate on a new and clean basis of a best-commercially available technology combined-cycle natural gas-fired combustion turbine; and (ii) counted towards meeting the biennial conservation target in the same manner as other conservation savings.

(d) The commission may determine if a conservation program implemented by an investor-owned utility is cost-effective based on the commission's policies and practice.

(e) The commission may rely on its standard practice for review and approval of investor-owned utility conservation targets.

(2)(a) Except as provided in (j) of this subsection, each qualifying utility shall use eligible renewable resources or acquire equivalent renewable energy credits, or any combination of them, to meet the following annual targets:

(i) At least three percent of its load by January 1, 2012, and each year thereafter through December 31, 2015;

(ii) At least nine percent of its load by January 1, 2016, and each year thereafter through December 31, 2019; and

(iii) At least fifteen percent of its load by January 1, 2020, and each year thereafter.

(b) A qualifying utility may count distributed generation at double the facility's electrical output if the utility: (i) Owns or has contracted for the distributed generation and the associated renewable energy credits; or (ii) has contracted to purchase the associated renewable energy credits.

(c) In meeting the annual targets in (a) of this subsection, a qualifying utility shall calculate its annual load based on the average of the utility's load for the previous two years.

(d) A qualifying utility shall be considered in compliance with an annual target in (a) of this subsection if: (i) The utility's weather-adjusted load for the previous three years on average did not increase over that time period; (ii) after December 7, 2006, the utility did not commence or renew ownership or incremental purchases of electricity from resources other than coal transition power or renewable resources other than on a daily spot price basis and the electricity is not offset by equivalent renewable energy credits; and (iii) the utility invested at least one percent of its total annual retail revenue requirement that year on eligible renewable resources, renewable energy credits, or a combination of both.

(e) The requirements of this section may be met for any given year with renewable energy credits produced during that year, the preceding year, or the subsequent year. Each renewable energy credit may be used only once to meet the requirements of this section.

(f) In complying with the targets established in (a) of this subsection, a qualifying utility may not count:

(i) Eligible renewable resources or distributed generation where the associated renewable energy credits are owned by a separate entity; or

(ii) Eligible renewable resources or renewable energy credits obtained for and used in an optional pricing program such as the program established in RCW 19.29A.090.

(g) Where fossil and combustible renewable resources are cofired in one generating unit located in the Pacific Northwest where the cofiring commenced after March 31, 1999, the unit shall be considered to produce eligible renewable resources in direct proportion to the percentage of the total heat value represented by the heat value of the renewable resources.

(h)(i) A qualifying utility that acquires an eligible renewable resource or renewable energy credit may count that acquisition at one and two-tenths times its base value:

(A) Where the eligible renewable resource comes from a facility that commenced operation after December 31, 2005; and

(B) Where the developer of the facility used apprenticeship programs approved by the council during facility construction.

(ii) The council shall establish minimum levels of labor hours to be met through apprenticeship programs to qualify for this extra credit.

(i) A qualifying utility shall be considered in compliance with an annual target in (a) of this subsection if events beyond the reasonable control of the utility that could not have been reasonably anticipated or ameliorated prevented it from meeting the renewable energy target. Such events include weather-related damage, mechanical failure, strikes, lockouts, and actions of a governmental authority that adversely affect the generation, transmission, or distribution of an eligible renewable resource under contract to a qualifying utility.

(j)(i) Beginning January 1, 2016, only a qualifying utility that owns or is directly interconnected to a qualified biomass energy facility may use qualified biomass energy to meet its compliance obligation under RCW 19.285.040(2).

(ii) A qualifying utility may no longer use electricity and associated renewable energy credits from a qualified biomass energy facility if the associated industrial pulping or wood manufacturing facility ceases operation other than for purposes of maintenance or upgrade.

(k) An industrial facility that hosts a qualified biomass energy facility may only transfer or sell renewable energy credits associated with its facility to the qualifying utility with which it is directly interconnected with facilities owned by such a qualifying utility and that are capable of carrying electricity at transmission voltage. The qualifying utility may only use an amount of renewable energy credits associated with qualified biomass energy that are equivalent to the proportionate amount of its annual targets under (a)(ii) and (iii) of this subsection that was created by the load of the industrial facility. A qualifying utility that owns a qualified biomass energy facility may not transfer or sell renewable energy credits associated with qualified biomass energy to another person, entity, or qualifying utility.

(3) Utilities that become qualifying utilities after December 31, 2006, shall meet the requirements in this section on a time frame comparable in length to that provided for qualifying utilities as of December 7, 2006. [2013 c 158 § 2; 2012 c 22 § 3; 2007 c 1 § 4 (Initiative Measure No. 937, approved November 7, 2006).]

Findings—Intent—2012 c 22: See note following RCW 19.285.030.

Chapter 19.290 RCW
METAL PROPERTY

Sections

19.290.010	Definitions.
19.290.020	Private metal property or nonferrous metal property—Records required.
19.290.030	Metal property and metallic wire—Requirements for transactions.
19.290.040	Scrap metal businesses—Record of commercial accounts.
19.290.050	Reports to law enforcement—Records exempt from public disclosure—Private civil liability.
19.290.060	Stolen metal property—Preserving evidence.
19.290.070	Violations—Penalty.
19.290.090	Exemptions from chapter.
19.290.100	Scrap metal license—Penalties. <i>(Effective January 1, 2014.)</i>
19.290.110	Scrap metal license—Application, renewal—Required information. <i>(Effective January 1, 2014.)</i>
19.290.120	Scrap metal license application—Department of licensing to issue license—Display of certificate. <i>(Effective January 1, 2014.)</i>
19.290.130	Scrap metal license—Surety bond—Action for recovery. <i>(Effective January 1, 2014.)</i>
19.290.140	Scrap metal license—Renewal—Surrender of license. <i>(Effective January 1, 2014.)</i>
19.290.150	License plates—Fee. <i>(Effective January 1, 2014.)</i>
19.290.160	Uniform regulation of business and professions act. <i>(Effective January 1, 2014.)</i>
19.290.170	Cancellation of scrap metal license—Refusal of issuance. <i>(Effective January 1, 2014.)</i>
19.290.180	Director of licensing authorized to adopt rules and regulations, set license and renewal fees. <i>(Effective January 1, 2014.)</i>
19.290.190	Inspection of licensed premises and records—Certificate of inspection. <i>(Effective January 1, 2014.)</i>
19.290.200	State preemption. <i>(Effective January 1, 2014.)</i>
19.290.210	Subpoenas. <i>(Effective January 1, 2014.)</i>
19.290.220	Scrap theft alert system.
19.290.230	Seizure and forfeiture.
19.290.240	Chapter to be liberally construed.
19.290.250	No-buy list database program—Scrap metal business to determine if customer is listed.

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

(1) "Commercial account" means a relationship between a scrap metal business and a commercial enterprise that is ongoing and properly documented under RCW 19.290.030.

(2) "Commercial enterprise" means a corporation, partnership, limited liability company, association, state agency, political subdivision of the state, public corporation, or any other legal or commercial entity.

(3) "Commercial metal property" means: Utility access covers; street light poles and fixtures; road and bridge guardrails; highway or street signs; water meter covers; traffic directional and control signs; traffic light signals; any metal property marked with the name of a commercial enterprise, including but not limited to a telephone, commercial mobile radio services, cable, electric, water, natural gas, or other utility, or railroad; unused or undamaged building construction materials consisting of copper pipe, tubing, or wiring, or aluminum wire, siding, downspouts, or gutters; aluminum or stainless steel fence panels made from one inch tubing, forty-two inches high with four-inch gaps; aluminum decking, bleachers, or risers; historical markers; statue plaques; grave markers and funeral vases; or agricultural irrigation wheels, sprinkler heads, and pipes.

(4) "Engage in business" means conducting more than twelve transactions in a twelve-month period.

(5) "Nonferrous metal property" means metal property for which the value of the metal property is derived from the

property's content of copper, brass, aluminum, bronze, lead, zinc, nickel, and their alloys. "Nonferrous metal property" does not include precious metals.

(6) "Person" means an individual, domestic or foreign corporation, limited liability corporation, partnership, trust, unincorporated association, or other entity; an affiliate or associate of any such person; or any two or more persons acting as a partnership, syndicate, or other group for the purpose of acquiring, holding, or dispersing of securities of a domestic or foreign corporation.

(7) "Precious metals" means gold, silver, and platinum.

(8) "Private metal property" means catalytic converters, either singly or in bundles, bales, or bulk, that have been removed from vehicles for sale as a specific commodity.

(9) "Record" means a paper, electronic, or other method of storing information.

(10) "Scrap metal business" means a scrap metal supplier, scrap metal recycler, and scrap metal processor.

(11) "Scrap metal processor" means a person with a current business license that conducts business from a permanent location, that is engaged in the business of purchasing or receiving private metal property, nonferrous metal property, and commercial metal property for the purpose of altering the metal in preparation for its use as feedstock in the manufacture of new products, and that maintains a hydraulic bailer, shearing device, or shredding device for recycling.

(12) "Scrap metal recycler" means a person with a current business license that is engaged in the business of purchasing or receiving private metal property, nonferrous metal property, and commercial metal property for the purpose of aggregation and sale to another scrap metal business and that maintains a fixed place of business within the state.

(13) "Scrap metal supplier" means a person with a current business license that is engaged in the business of purchasing or receiving private metal property or nonferrous metal property for the purpose of aggregation and sale to a scrap metal recycler or scrap metal processor and that does not maintain a fixed business location in the state.

(14) "Transaction" means a pledge, or the purchase of, or the trade of any item of private metal property or nonferrous metal property by a scrap metal business from a member of the general public. "Transaction" does not include donations or the purchase or receipt of private metal property or nonferrous metal property by a scrap metal business from a commercial enterprise, from another scrap metal business, or from a duly authorized employee or agent of the commercial enterprise or scrap metal business. [2013 c 322 § 4; 2008 c 233 § 1; 2007 c 377 § 1.]

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

19.290.020 Private metal property or nonferrous metal property—Records required. (1) At the time of a transaction, every scrap metal business doing business in this state shall produce wherever that business is conducted an accurate and legible record of each transaction involving private metal property or nonferrous metal property. This record must be written in the English language, documented on a standardized form or in electronic form, and contain the following information:

(a) The signature of the person with whom the transaction is made;

(b) The time, date, location, and value of the transaction;

(c) The name of the employee representing the scrap metal business in the transaction;

(d) The name, street address, and telephone number of the person with whom the transaction is made;

(e) The license plate number and state of issuance of the license plate on the motor vehicle used to deliver the private metal property or nonferrous metal property subject to the transaction;

(f) A description of the motor vehicle used to deliver the private metal property or nonferrous metal property subject to the transaction;

(g) The current driver's license number or other government-issued picture identification card number of the seller or a copy of the seller's government-issued picture identification card; and

(h) A description of the predominant types of private metal property or nonferrous metal property subject to the transaction, utilizing the institute of scrap recycling industries' generally accepted terminology, and including weight, quantity, or volume.

(2) For every transaction that involves private metal property or nonferrous metal property, every scrap metal business doing business in the state shall require the person with whom a transaction is being made to sign a declaration. The declaration may be included as part of the transactional record required under subsection (1) of this section, or on a receipt for the transaction. The declaration must state substantially the following:

"I, the undersigned, affirm under penalty of law that the property that is subject to this transaction is not to the best of my knowledge stolen property."

The declaration must be signed and dated by the person with whom the transaction is being made. An employee of the scrap metal business must witness the signing and dating of the declaration and sign the declaration accordingly before any transaction may be consummated.

(3) The record and declaration required under this section must be open to the inspection of any commissioned law enforcement officer of the state or any of its political subdivisions at all times during the ordinary hours of business, or at reasonable times if ordinary hours of business are not kept, and must be maintained wherever that business is conducted for five years following the date of the transaction. [2013 c 322 § 5; 2008 c 233 § 2; 2007 c 377 § 2.]

19.290.030 Metal property and metallic wire—Requirements for transactions.

(1) No scrap metal business may enter into a transaction to purchase or receive private metal property or nonferrous metal property from any person who cannot produce at least one piece of current government-issued picture identification, including a valid driver's license or identification card issued by any state.

(2) No scrap metal business may purchase or receive private metal property or commercial metal property unless the seller: (a) Has a commercial account with the scrap metal business; (b) can prove ownership of the property by producing written documentation that the seller is the owner of the property; or (c) can produce written documentation that the

seller is an employee or agent authorized to sell the property on behalf of a commercial enterprise.

(3) No scrap metal business may enter into a transaction to purchase or receive metallic wire that was burned in whole or in part to remove insulation unless the seller can produce written proof to the scrap metal business that the wire was lawfully burned.

(4)(a) No transaction involving private metal property or nonferrous metal property may be made in cash or with any person who does not provide a street address under the requirements of RCW 19.290.020 except as described in (b) of this subsection. The person with whom the transaction is being made may only be paid by a nontransferable check, mailed by the scrap metal business to a street address provided under RCW 19.290.020, no earlier than three days after the transaction was made. A transaction occurs on the date provided in the record required under RCW 19.290.020.

(b) A scrap metal business that is in compliance with this chapter that digitally captures: (i) A copy of one piece of current government-issued picture identification, including a current driver's license or identification card issued by any state and (ii) either a picture or video of either the material subject to the transaction in the form received or the material subject to the transaction within the vehicle which the material was transported to the scrap metal business, may pay up to a maximum of thirty dollars in cash, stored value device, or electronic funds transfer. The balance of the value of the transaction may be made by nontransferable check, stored value device, or electronic funds transfer at the time the transaction is made. A scrap metal business's usage of video surveillance shall be sufficient to comply with this subsection (4)(b)(ii) as long as the video captures the material subject to the transaction. A digital image or picture taken under this subsection must be available for two years from the date of transaction, while a video recording must be available for thirty days.

(5) No scrap metal business may purchase or receive beer kegs from anyone except a manufacturer of beer kegs or licensed brewery. [2013 c 322 § 6; 2008 c 233 § 3; 2007 c 377 § 3.]

19.290.040 Scrap metal businesses—Record of commercial accounts.

(1) Every scrap metal business must create and maintain a permanent record with a commercial enterprise, including another scrap metal business, in order to establish a commercial account. That record, at a minimum, must include the following information:

(a) The full name of the commercial enterprise or commercial account;

(b) The business address and telephone number of the commercial enterprise or commercial account; and

(c) The full name of the person employed by the commercial enterprise who is authorized to deliver private metal property, nonferrous metal property, and commercial metal property to the scrap metal business.

(2) The record maintained by a scrap metal business for a commercial account must document every purchase or receipt of private metal property, nonferrous metal property, and commercial metal property from the commercial enterprise. The record must be maintained for three years follow-

ing the date of the transfer or receipt. The documentation must include, at a minimum, the following information:

(a) The time, date, and value of the property being purchased or received;

(b) A description of the predominant types of property being purchased or received; and

(c) The signature of the person delivering the property to the scrap metal business. [2013 c 322 § 7; 2008 c 233 § 4; 2007 c 377 § 4.]

19.290.050 Reports to law enforcement—Records exempt from public disclosure—Private civil liability. (1)

Upon request by any commissioned law enforcement officer of the state or any of its political subdivisions, every scrap metal business shall furnish a full, true, and correct transcript of the records from the purchase or receipt of private metal property, nonferrous metal property, and commercial metal property involving only a specified individual, vehicle, or item of private metal property, nonferrous metal property, or commercial metal property. This information may be transmitted within a specified time of not less than two business days to the applicable law enforcement agency electronically, by facsimile transmission, or by modem or similar device, or by delivery of computer disk subject to the requirements of, and approval by, the chief of police or the county's chief law enforcement officer.

(2) Any records created or produced under this section are exempt from disclosure under chapter 42.56 RCW.

(3) If the scrap metal business has good cause to believe that any private metal property, nonferrous metal property, or commercial metal property in his or her possession has been previously lost or stolen, the scrap metal business shall promptly report that fact to the applicable commissioned law enforcement officer of the state, the chief of police, or the county's chief law enforcement officer, together with the name of the owner, if known, and the date when and the name of the person from whom it was received.

(4) Compliance with this section shall not give rise to or form the basis of private civil liability on the part of a scrap metal business or scrap metal recycler. [2013 c 322 § 8; 2008 c 233 § 5; 2007 c 377 § 5.]

19.290.060 Stolen metal property—Preserving evidence. (1)

Following notification in writing from a commissioned law enforcement officer of the state or any of its political subdivisions that an item of private metal property, nonferrous metal property, or commercial metal property has been reported as stolen, a scrap metal business shall hold that property intact and safe from alteration, damage, or commingling, and shall place an identifying tag or other suitable identification upon the property. The scrap metal business shall hold the property for a period of time as directed by the applicable law enforcement agency up to a maximum of ten business days.

(2) A commissioned law enforcement officer of the state or any of its political subdivisions shall not place on hold any item of private metal property, nonferrous metal property, or commercial metal property unless that law enforcement agency reasonably suspects that the property is a lost or stolen item. Any hold that is placed on the property must be removed within ten business days after the property on hold

is determined not to be stolen or lost and the property must be returned to the owner or released. [2013 c 322 § 9; 2008 c 233 § 6; 2007 c 377 § 6.]

19.290.070 Violations—Penalty. It is a gross misdemeanor under chapter 9A.20 RCW for:

(1) Any person to deliberately remove, alter, or obliterate any manufacturer's make, model, or serial number, personal identification number, or identifying marks engraved or etched upon an item of private metal property, nonferrous metal property, or commercial metal property in order to deceive a scrap metal business;

(2) Any scrap metal business to enter into a transaction to purchase or receive any private metal property, nonferrous metal property, or commercial metal property where the manufacturer's make, model, or serial number, personal identification number, or identifying marks engraved or etched upon the property have been deliberately and conspicuously removed, altered, or obliterated;

(3) Any person to knowingly make, cause, or allow to be made any false entry or misstatement of any material matter in any book, record, or writing required to be kept under this chapter;

(4) Any scrap metal business to enter into a transaction to purchase or receive private metal property, nonferrous metal property, or commercial metal property from any person under the age of eighteen years or any person who is discernibly under the influence of intoxicating liquor or drugs;

(5) Any scrap metal business to enter into a transaction to purchase or receive private metal property, nonferrous metal property, or commercial metal property with anyone whom the scrap metal business has been informed by a law enforcement agency to have been convicted of a crime involving drugs, burglary, robbery, theft, or possession of or receiving stolen property, manufacturing, delivering, or possessing with intent to deliver methamphetamine, or possession of ephedrine or any of its salts or isomers or salts of isomers, pseudoephedrine or any of its salts or isomers or salts of isomers, or anhydrous ammonia with intent to manufacture methamphetamine within the past four years whether the person is acting in his or her own behalf or as the agent of another;

(6) Any person to sign the declaration required under RCW 19.290.020 knowing that the private metal property or nonferrous metal property subject to the transaction is stolen. The signature of a person on the declaration required under RCW 19.290.020 constitutes evidence of intent to defraud a scrap metal business if that person is found to have known that the private metal property or nonferrous metal property subject to the transaction was stolen;

(7) Any scrap metal business to possess private metal property or commercial metal property that was not lawfully purchased or received under the requirements of this chapter;

(8) Any scrap metal business to engage in a series of transactions valued at less than thirty dollars with the same seller for the purposes of avoiding the requirements of RCW 19.290.030(4); or

(9) Any person to knowingly make a false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, with the intent to deceive a scrap metal business as to the actual seller of the

scrap metal. [2013 c 322 § 10; 2008 c 233 § 7; 2007 c 377 § 7.]

19.290.090 Exemptions from chapter. The provisions of this chapter do not apply to transactions involving metal from the components of vehicles acquired by vehicle wreckers, hulk haulers, or scrap processors licensed under chapter 46.79 or 46.80 RCW, and acquired in accordance with those laws or transactions conducted by the following:

(1) Motor vehicle dealers licensed under chapter 46.70 RCW;

(2) Persons in the business of operating an automotive repair facility as defined under RCW 46.71.011; and

(3) Persons in the business of buying or selling empty food and beverage containers, including metal food and beverage containers. [2013 c 322 § 11; 2008 c 233 § 8; 2007 c 377 § 9.]

19.290.100 Scrap metal license—Penalties. (Effective January 1, 2014.) (1) It is unlawful for a person to engage in the business of a scrap metal processor, scrap metal recycler, or scrap metal supplier without having first applied for and received a scrap metal license.

(2)(a) Except as provided in (b) of this subsection, a person or firm engaged in the unlawful activity described in this section is guilty of a gross misdemeanor.

(b) A second or subsequent offense is a class C felony. [2013 c 322 § 12.]

Effective date—2013 c 322 §§ 12-23: "Sections 12 through 23 of this act take effect January 1, 2014." [2013 c 322 § 35.]

Implementation—2013 c 322 §§ 12-23: "The director of the department of licensing may take the necessary steps to ensure that sections 12 through 23 of this act are implemented on January 1, 2014." [2013 c 322 § 36.]

19.290.110 Scrap metal license—Application, renewal—Required information. (Effective January 1, 2014.) Application for a scrap metal license or renewal of a scrap metal license shall be made on a form for this purpose, furnished by the department of licensing, and shall be signed by the license holder or his or her authorized agent and shall include the following information:

(1) Name and address of the person, firm, partnership, association, limited liability company, or corporation under which name the business is to be conducted;

(2) Names and residence address of all persons having an interest in the business or, if the owner is a corporation, the names and addresses of the officers thereof;

(3) Certificate of approval of the chief executive officer or chief of police, or a designee, if the application is for a license within an incorporated city or town or, in any unincorporated area, the county legislative authority, the sheriff, or a designee, certifying that:

(a) The applicant has an established place of business at the address shown on the application;

(b) There are no known environmental, building code, zoning, or other land use regulation violations associated with the business being located at the address; and

(c) In the case of a renewal of a scrap metal license, the applicant is in compliance with this chapter: PROVIDED, That an authorized representative of the department of licens-

ing may make the certification described in this section in any instance;

(4) Any other information that the department of licensing may require. [2013 c 322 § 13.]

Effective date—Implementation—2013 c 322 §§ 12-23: See notes following RCW 19.290.100.

19.290.120 Scrap metal license application—Department of licensing to issue license—Display of certificate. (Effective January 1, 2014.) The application, together with the required fee, shall be forwarded to the department of licensing. Upon receipt of the application the department shall, if the application is in order, issue a scrap metal license authorizing the processor, recycler, or supplier to do business as such and forward the fee to the state treasurer. Upon receiving the certificate, the owner shall cause it to be prominently displayed in the place of business, where it may be inspected by an investigating officer at any time. Every license must be issued in the name of the applicant and the holder thereof may not allow any other person to use the license. [2013 c 322 § 14.]

Effective date—Implementation—2013 c 322 §§ 12-23: See notes following RCW 19.290.100.

19.290.130 Scrap metal license—Surety bond—Action for recovery. (Effective January 1, 2014.) Before issuing a scrap metal license to a scrap metal processor or scrap metal recycler, the department of licensing shall require the applicant to file with the department a surety bond in the amount of ten thousand dollars, running to the state of Washington, and executed by a surety company authorized to do business in the state of Washington. The bond shall be approved as to form by the attorney general and conditioned upon the licensee conducting the business in conformity with the provisions of this chapter. Except as prohibited elsewhere in this chapter, any person who has suffered loss or damage by reason of fraud or gross negligence, or an intentional or reckless violation of the terms of this chapter, or misrepresentation on the part of the scrap metal processor or recycler, may institute an action for recovery against the licensee and surety upon the bond. However, the aggregate liability of the surety to all persons shall in no event exceed the amount of the bond. [2013 c 322 § 15.]

Effective date—Implementation—2013 c 322 §§ 12-23: See notes following RCW 19.290.100.

19.290.140 Scrap metal license—Renewal—Surrender of license. (Effective January 1, 2014.) A license issued on the scrap metal license application remains in force until suspended or revoked and may be renewed annually upon reapplication and upon payment of the required fee. A licensee who fails or neglects to renew the license before the assigned expiration date shall pay the fee for an original scrap metal license as provided in this chapter.

Whenever a scrap metal processor, recycler, or supplier ceases to do business as such or the license has been suspended or revoked, the licensee shall immediately surrender the license to the department of licensing. [2013 c 322 § 16.]

Effective date—Implementation—2013 c 322 §§ 12-23: See notes following RCW 19.290.100.

19.290.150 License plates—Fee. (*Effective January 1, 2014.*) The licensee shall obtain a special set of license plates in addition to the regular licenses and plates required for the operation of such vehicles. The special plates must be displayed on vehicles owned and/or operated by the licensee and used in the conduct of the business. The fee for these plates shall be five dollars for the original plates and two dollars for each additional set of plates bearing the same license number. A licensee with more than one licensed location in the state may use special plates bearing the same license number for vehicles operated out of any of the licensed locations. [2013 c 322 § 17.]

Effective date—Implementation—2013 c 322 §§ 12-23: See notes following RCW 19.290.100.

19.290.160 Uniform regulation of business and professions act. (*Effective January 1, 2014.*) The uniform regulation of business and professions act, chapter 18.235 RCW, governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter. [2013 c 322 § 18.]

Effective date—Implementation—2013 c 322 §§ 12-23: See notes following RCW 19.290.100.

19.290.170 Cancellation of scrap metal license—Refusal of issuance. (*Effective January 1, 2014.*) If a person whose scrap metal license has previously been canceled for cause by the department of licensing files an application for a license to conduct business as a scrap metal processor, recycler, or supplier, or if the department is of the opinion that the application is not filed in good faith or that the application is filed by some person as a subterfuge for the real person in interest whose license has previously been canceled for cause, the department may refuse to issue the person a license to conduct business as a scrap metal processor, recycler, or supplier. [2013 c 322 § 19.]

Effective date—Implementation—2013 c 322 §§ 12-23: See notes following RCW 19.290.100.

19.290.180 Director of licensing authorized to adopt rules and regulations, set license and renewal fees. (*Effective January 1, 2014.*) (1) The director of licensing is hereby authorized to adopt reasonable rules and regulations not in conflict with provisions hereof for the proper operation and enforcement of this chapter.

(2) The director shall set all license and renewal fees in accordance with RCW 43.24.086. [2013 c 322 § 20.]

Effective date—Implementation—2013 c 322 §§ 12-23: See notes following RCW 19.290.100.

19.290.190 Inspection of licensed premises and records—Certificate of inspection. (*Effective January 1, 2014.*) The chiefs of police, the county sheriffs, and the Washington state patrol may make periodic inspection of the licensee's licensed premises and records provided for in this chapter during normal business hours, and furnish a certificate of inspection to the department of licensing in such manner as may be determined by the department. In any instance, an authorized representative of the department may make the inspection. Licensees are subject to unannounced periodic inspections, as described in this section. [2013 c 322 § 21.]

[2013 RCW Supp—page 228]

Effective date—Implementation—2013 c 322 §§ 12-23: See notes following RCW 19.290.100.

19.290.200 State preemption. (*Effective January 1, 2014.*) The state of Washington hereby fully occupies and preempts the entire field of regulation of scrap metal processors, recyclers, or suppliers within the boundaries of the state. Any political subdivision in this state may enact or enforce only those laws and ordinances relating to the regulation of scrap metal processors, recyclers, or suppliers that are specifically authorized by state law and are consistent with this chapter. Nothing in this chapter is intended to limit the authority of any political subdivision to impose generally applicable zoning, land use, permitting, general business licensing, environmental, and health and safety requirements or authorized business taxes upon scrap metal processors, recyclers, or suppliers within their jurisdictions. Local ordinances pertaining specifically to scrap metal processors, recyclers, or suppliers shall have the same or lesser penalty as provided for by state law. Local scrap metal laws and ordinances that are inconsistent with, more restrictive than, or exceed the requirements of state law shall not be enacted and are hereby preempted and repealed, regardless of the code, charter, or home rule status of such political subdivision. [2013 c 322 § 22.]

Effective date—Implementation—2013 c 322 §§ 12-23: See notes following RCW 19.290.100.

19.290.210 Subpoenas. (*Effective January 1, 2014.*) (1) In addition to the powers granted in chapter 18.235 RCW, the department of licensing or its authorized agent may examine or subpoena any persons, books, papers, records, data, vehicles, or metal property bearing upon the investigation or proceeding under this chapter.

(2) The persons subpoenaed may be required to testify and produce any books, papers, records, data, vehicles, or metal property that the director of licensing deems relevant or material to the inquiry.

(3) The director of the department of licensing or an authorized agent may administer an oath to the person required to testify, and a person giving false testimony after the administration of the oath is guilty of perjury in the first degree under RCW 9A.72.020.

(4)(a) Any authorized representative of the director of the department of licensing may apply for and obtain a superior court order approving and authorizing a subpoena in advance of its issuance. The application may be made in the county where the subpoenaed person resides or is found, or the county where the subpoenaed records or documents are located, or in Thurston county. The application must:

(i) State that an order is sought pursuant to this subsection;

(ii) Adequately specify the records, documents, or testimony; and

(iii) Declare under oath that an investigation is being conducted for a lawfully authorized purpose related to an investigation within the department's authority and that the subpoenaed documents or testimony are reasonably related to an investigation within the department's authority.

(b) Where the application under this subsection is made to the satisfaction of the court, the court must issue an order

approving the subpoena. An order under this subsection constitutes authority of law for the agency to subpoena the records or testimony.

(c) Any authorized representative of the director of the department of licensing may seek approval and a court may issue an order under this subsection without prior notice to any person, including the person to whom the subpoena is directed and the person who is the subject of an investigation.

(5) Any records created or produced under this section are exempt from disclosure under chapter 42.56 RCW. [2013 c 322 § 23.]

Effective date—Implementation—2013 c 322 §§ 12-23: See notes following RCW 19.290.100.

19.290.220 Scrap theft alert system. (1) Law enforcement agencies may register with the scrap theft alert system that is maintained and provided at no charge to users by the institute of scrap recycling industries, incorporated, or its successor organization, to receive alerts regarding thefts of private, nonferrous, or commercial metal property in the relevant geographic area.

(2) Any business licensed under this chapter shall:

(a) Sign up with the scrap theft alert system that is maintained and provided at no charge to users by the institute of scrap recycling industries, incorporated, or its successor organization, to receive alerts regarding thefts of private, nonferrous, or commercial metal property in the relevant geographic area;

(b) Download the scrap metal theft alerts generated by the scrap theft alert system on a daily basis;

(c) Use the alerts to identify potentially stolen commercial metal property, nonferrous metal property, and private metal property; and

(d) Maintain for ninety days copies of any theft alerts received and downloaded pursuant to this section. [2013 c 322 § 25.]

19.290.230 Seizure and forfeiture. (1) The following personal property is subject to seizure and forfeiture and no property right exists in them: All personal property including, but not limited to, any item, object, tool, substance, device, weapon, machine, vehicle of any kind, money, security, or negotiable instrument, which the seizing agency proves by a preponderance of the evidence was used or intended to be used by its owner or the person in charge to knowingly or intentionally facilitate the commission of, or to knowingly or intentionally abet the commission of, a crime involving theft, trafficking, or unlawful possession of commercial metal property, or which the seizing agency proves by a preponderance of the evidence was knowingly or intentionally furnished or was intended to be furnished by any person in the commission of, as a result of, or as compensation for the commission of, a crime involving theft, trafficking, or the unlawful possession of commercial metal property, or which the property owner acquired in whole or in part with proceeds traceable to a knowing or intentional commission of a crime involving the theft, trafficking, or unlawful possession of commercial metal property provided that such activity is not less than a class C felony; except that:

(a) No vehicle used by any person as a common carrier in the transaction of business as a common carrier is subject

to forfeiture under this section unless the seizing agency proves by a preponderance of the evidence that the owner or other person in charge of the vehicle is a consenting party or is privy to any crime involving theft, trafficking, or the unlawful possession of commercial metal property;

(b) A forfeiture of property encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had actual or constructive knowledge of nor consented to the commission of any crime involving the theft, trafficking, or unlawful possession of commercial metal property; and

(c) A property owner's property is not subject to seizure if an employee or agent of that property owner uses the property owner's property to knowingly or intentionally facilitate the commission of, or to knowingly or intentionally aid and abet the commission of, a crime involving theft, trafficking, or unlawful possession of commercial metal property, in violation of that property owner's instructions or policies against such activity, and without the property owner's knowledge or consent.

(2) The following real property is subject to seizure and forfeiture and no property right exists in them: All real property, including any right, title, and interest in the whole of any lot or tract of land, and any appurtenances or improvements, that the seizing agency proves by a preponderance of the evidence are being used with the knowledge of the owner for the intentional commission of any crime involving the theft, trafficking, or unlawful possession of commercial metal property, or which have been acquired in whole or in part with proceeds traceable to the commission of any crime involving the trafficking, theft, or unlawful possession of commercial metal, if such activity is not less than a class C felony and a substantial nexus exists between the commission of the violation or crime and the real property. However:

(a) No property may be forfeited pursuant to this subsection (2), to the extent of the interest of an owner, by reason of any act or omission committed or omitted without the owner's actual or constructive knowledge; and further, a property owner's real property is not subject to seizure if an employee or agent of that property owner uses the property owner's real property to knowingly or intentionally facilitate the commission of, or to knowingly or intentionally aid and abet the commission of, a crime involving theft, trafficking, or unlawful possession of commercial metal property, in violation of that property owner's instructions or policies against such activity, and without the property owner's knowledge or consent; and

(b) A forfeiture of real property encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party, neither had actual or constructive knowledge, nor consented to the act or omission.

(3) Property subject to forfeiture under this chapter may be seized by any law enforcement officer of this state upon process issued by any superior court having jurisdiction over the property. Seizure of real property shall include the filing of a lis pendens by the seizing agency. Real property seized under this section shall not be transferred or otherwise conveyed until ninety days after seizure or until a judgment of forfeiture is entered, whichever is later: PROVIDED, That real property seized under this section may be transferred or conveyed to any person or entity who acquires title by fore-

closure or deed in lieu of foreclosure of a security interest. Seizure of personal property without process may be made if:

(a) The seizure is incident to an arrest or a search under a search warrant; or

(b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding.

(4) In the event of seizure pursuant to this section, proceedings for forfeiture shall be deemed commenced by the seizure. The law enforcement agency under whose authority the seizure was made shall cause notice to be served within fifteen days following the seizure on the owner of the property seized and the person in charge thereof and any person having any known right or interest therein, including any community property interest, of the seizure and intended forfeiture of the seized property. Service of notice of seizure of real property shall be made according to the rules of civil procedure. However, the state may not obtain a default judgment with respect to real property against a party who is served by substituted service absent an affidavit stating that a good faith effort has been made to ascertain if the defaulted party is incarcerated within the state, and that there is no present basis to believe that the party is incarcerated within the state. The notice of seizure of personal property may be served by any method authorized by law or court rule including but not limited to service by certified mail with return receipt requested. Service by mail shall be deemed complete upon mailing within the fifteen-day period following the seizure. Notice of seizure in the case of property subject to a security interest that has been perfected by filing a financing statement in accordance with chapter 62A.9A RCW, or a certificate of title shall be made by service upon the secured party or the secured party's assignee at the address shown on the financing statement or the certificate of title.

(5) If no person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items specified in subsection (1) of this section within forty-five days of the seizure in the case of personal property and ninety days in the case of real property, the item seized shall be deemed forfeited. The community property interest in real property of a person whose spouse or domestic partner committed a violation giving rise to seizure of the real property may not be forfeited if the person did not participate in the violation.

(6) If a person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of the seized property within forty-five days of the seizure in the case of personal property and ninety days in the case of real property, the law enforcement agency shall give the person or persons a reasonable opportunity to be heard as to the claim or right. The hearing shall be before the chief law enforcement officer of the seizing agency or the chief law enforcement officer's designee, except where the seizing agency is a state agency as defined in RCW 34.12.020(4), the hearing shall be before the chief law enforcement officer of the seizing agency or an administrative law judge appointed under chapter 34.12 RCW, except that any person asserting a claim or right may remove the matter to a court of competent jurisdiction. Removal may only be accomplished according to the rules of civil procedure. The person seeking removal of the matter must serve

process against the state, county, political subdivision, or municipality that operates the seizing agency, and any other party of interest, in accordance with RCW 4.28.080 or 4.92.020, within forty-five days after the person seeking removal has notified the seizing law enforcement agency of the person's claim of ownership or right to possession. The court to which the matter is to be removed shall be the district court when the aggregate value of the property is within the jurisdictional limit set forth in RCW 3.66.020. A hearing before the seizing agency and any appeal therefrom shall be under Title 34 RCW. In a court hearing between two or more claimants to the property involved, the prevailing party shall be entitled to a judgment for costs and reasonable attorneys' fees. The burden of producing evidence shall be upon the person claiming to be the lawful owner or the person claiming to have the lawful right to possession of the property.

(7) At the hearing, the seizing agency has the burden of proof to establish by a preponderance of the evidence that seized property is subject to forfeiture, and that the use or intended use of the seized property in connection with a crime pursuant to this section occurred with the owner's actual or constructive knowledge or consent. The person claiming to be the lawful owner or the person claiming to have the lawful right to possession of the property has the burden of proof to establish by a preponderance of the evidence that the person owns or has a right to possess the seized property. The possession of bare legal title is not sufficient to establish ownership of seized property if the seizing agency proves by a preponderance of the evidence that the person claiming ownership or right to possession is a nominal owner and did not actually own or exert a controlling interest in the property.

The seizing law enforcement agency shall promptly return the property to the claimant upon a determination by the administrative law judge or court that the claimant is the present lawful owner or is lawfully entitled to possession of the property.

(8) When property is forfeited under this chapter, after satisfying any court-ordered victim restitution, the seizing law enforcement agency may:

(a) Retain it for official use or, upon application by any law enforcement agency of this state, release such property to such agency; or

(b) Sell that which is not required to be destroyed by law and which is not harmful to the public.

(9)(a) Within one hundred twenty days after the entry of an order of forfeiture, each seizing agency shall remit to, if known, the victim of the crime involving the seized property, an amount equal to fifty percent of the net proceeds of any property forfeited.

(b) Retained property and net proceeds not required to be paid to victims shall be retained by the seizing law enforcement agency exclusively for the expansion and improvement of law enforcement activity. Money retained under this section may not be used to supplant preexisting funding sources.

(c) The net proceeds of forfeited property is the value of the forfeitable interest in the property after deducting the cost of satisfying any bona fide security interest to which the property is subject at the time of seizure; and in the case of sold property, after deducting the cost of sale, including reasonable fees or commissions paid to independent selling

agents, and the cost of any valid landlord's claim for damages.

(d) The value of sold forfeited property is the sale price. The value of retained forfeited property is the fair market value of the property at the time of seizure, determined when possible by reference to an applicable commonly used index, such as the index used by the department of licensing for valuation of motor vehicles. A seizing agency may use, but need not use, an independent qualified appraiser to determine the value of retained property. If an appraiser is used, the value of the property appraised is net of the cost of the appraisal. The value of destroyed property and retained firearms or illegal property is zero.

(10) Upon the entry of an order of forfeiture of real property, the court shall forward a copy of the order to the assessor of the county in which the property is located. Orders for the forfeiture of real property shall be entered by the superior court, subject to court rules. Such an order shall be filed by the seizing agency in the county auditor's records in the county in which the real property is located. [2013 c 322 § 27.]

19.290.240 Chapter to be liberally construed. The provisions of this chapter shall be liberally construed to the end that traffic in stolen private metal property or nonferrous metal property may be prevented, and irresponsible, unreliable, or dishonest persons may be prevented from engaging in the business of processing, recycling, or supplying scrap metal in this state and reliable persons may be encouraged to engage in businesses of processing, recycling, or supplying scrap metal in this state. [2013 c 322 § 28.]

19.290.250 No-buy list database program—Scrap metal business to determine if customer is listed. A scrap metal business shall, before completing any transaction under this chapter, determine whether such customer is listed in the Washington association of sheriffs and police chiefs no-buy list database program established and made available under RCW 43.43.885. [2013 c 322 § 32.]

Chapter 19.310 RCW EXCHANGE FACILITATORS

Sections

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

(1) A person or entity "affiliated" with a specific person or entity, means a person or entity who directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person or entity specified.

(2) "Client" means the taxpayer with whom the exchange facilitator enters into an agreement as described in subsection (4)(a)(i) of this section.

(3) "Covered dishonest act" means a crime involving fraud, embezzlement, misappropriation of funds, robbery, or other theft of property.

(4)(a) "Exchange facilitator" means a person who:

(i)(A) Facilitates, for a fee, an exchange of like-kind property by entering into an agreement with a taxpayer by which the exchange facilitator acquires from the taxpayer the contractual rights to sell the taxpayer's relinquished property located in this state and transfer a replacement property to the taxpayer as a qualified intermediary, as defined under treasury regulation section 1.1031(k)-1(g)(4); (B) enters into an agreement with a taxpayer to take title to a property in this state as an exchange accommodation titleholder, as defined in internal revenue service revenue procedure 2000-37; or (C) enters into an agreement with a taxpayer to act as a qualified trustee or qualified escrow holder, as both terms are defined under treasury regulation section 1.1031(k)-1(g)(3); or

(ii) Maintains an office in this state for the purpose of soliciting business as an exchange facilitator.

(b) "Exchange facilitator" does not include:

(i) A taxpayer or a disqualified person, as defined under treasury regulation section 1.1031(k)-1(k), seeking to qualify for the nonrecognition provisions of section 1031 of the internal revenue code of 1986, as amended;

(ii) A financial institution that is (A) acting as a depository for exchange funds and is not facilitating an exchange or (B) acting solely as a qualified escrow holder or qualified trustee, as both terms are defined under treasury regulation section 1.1031(k)-1(g)(3), and is not facilitating an exchange;

(iii) A title insurance company, underwritten title company, or escrow company that is acting solely as a qualified escrow holder or qualified trustee, as both terms are defined under treasury regulation section 1.1031(k)-1(g)(3), and is not facilitating an exchange;

(iv) A person that advertises for and teaches seminars or classes, or otherwise makes a presentation, to attorneys, accountants, real estate professionals, tax professionals, or other professionals, when the primary purpose is to teach the professionals about tax-deferred exchanges or to train them to act as exchange facilitators;

(v) A qualified intermediary, as defined under treasury regulation section 1.1031(k)-1(g)(4), who holds exchange funds from the disposition of relinquished property located outside of this state; or

(vi) An affiliated entity that is used by the exchange facilitator to facilitate exchanges or to take title to property in this state as an exchange accommodation titleholder.

(c) For the purposes of this subsection, "fee" means compensation of any nature, direct or indirect, monetary or in kind, that is received by a person or related person, as defined in section 267(b) or 707(b) of the internal revenue code, for any services relating to or incidental to the exchange of like-kind property.

(5) "Financial institution" means a state chartered or federally chartered bank, credit union, savings and loan association, savings bank, or trust company whose accounts are insured by the full faith and credit of the United States, the federal deposit insurance corporation, the national credit

union share insurance fund, or other similar or successor programs.

(6) "Person" means an individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust, or any other form of a legal entity, and includes the agents and employees of that person.

(7) "Prudent investor standard" means the standard for investment as described under RCW 11.100.020. [2013 c 228 § 1; 2009 c 70 § 2.]

19.310.040 Duties of exchange facilitator—Fidelity bonds. (1) A person who engages in business as an exchange facilitator must:

(a)(i) Maintain a fidelity bond or bonds in an amount of not less than one million dollars executed by an insurer authorized to do business in this state for the benefit of a client of the exchange facilitator that suffers a direct financial loss as a result of the exchange facilitator's covered dishonest act. Such fidelity bond must cover the acts of employees of an exchange facilitator and owners of a nonpublicly traded exchange facilitator; or

(ii) Deposit all exchange funds in a qualified escrow account or qualified trust, as both terms are defined under treasury regulation section 1.1031(k)-1(g)(3), with a financial institution. If an exchange facilitator deposits exchange funds in a qualified escrow account or qualified trust:

(A) A withdrawal of exchange funds requires the exchange facilitator and the client to independently authenticate a record, as defined under RCW 62A.9A-102, of the transaction; and

(B) The client of the exchange facilitator must receive independently from the depository financial institution, by any commercially reasonable means, a current statement for verification of the deposited exchange funds; and

(b) Disclose on the company web site and contractual agreement the following statement in large, bold, or otherwise conspicuous typeface calculated to draw the eye: "Washington state law, RCW 19.310.040, requires an exchange facilitator to either maintain a fidelity bond in an amount of not less than one million dollars that protects clients against losses caused by criminal acts of the exchange facilitator, or to hold all client funds in a qualified escrow account or qualified trust that requires your consent for withdrawals. All exchange funds must be deposited in a separately identified account using your taxpayer identification number. You must receive written notification of how your exchange funds have been deposited. Your exchange facilitator is required to provide you with written directions of how to independently verify the deposit of the exchange funds. Exchange facilitation services are not regulated by any agency of the state of Washington or of the United States government. It is your responsibility to determine that your exchange funds will be held in a safe manner." If recommending other products or services, the exchange facilitator must disclose to the client that the exchange facilitator may receive a financial benefit, such as a commission or referral fee, as a result of such recommendation. The exchange facilitator must not recommend or suggest to a client the use of services of another organization or business entity in which the exchange facilitator has a direct or indirect interest with-

out full disclosure of such interest at the time of recommendation or suggestion.

(2) An exchange facilitator must provide evidence to each client that the requirements of this section are satisfied before entering into an exchange agreement.

(3) Upon request of a current or prospective client, or the attorney general under chapter 19.86 RCW, the exchange facilitator must offer evidence proving that the requirements of this section are satisfied at the time of the request. [2013 c 228 § 2; 2012 c 34 § 2; 2009 c 70 § 5.]

Findings—2012 c 34: "The legislature finds that exchange facilitators are a specialized business in Washington state that involves the transfer of certain assets of citizens for investment purposes. In 2009 legislation was passed that provided enhanced reporting requirements, as well as civil and criminal penalties, to serve as additional protections for citizens involved in these types of transactions. The legislature finds that current law is still inadequate to protect those who trust these companies with assets they may have spent a lifetime accumulating. Additional protections are required to properly regulate the companies engaged in these transactions." [2012 c 34 § 1.]

19.310.050 Claims on fidelity bonds—Remedies. (1) A person who claims to have sustained damages by reason of the fraudulent act or covered dishonest act of an exchange facilitator or an exchange facilitator's employee may file a claim on the fidelity bond.

(2) The remedies provided under this section are cumulative and nonexclusive and do not affect any other remedy available at law. [2013 c 228 § 3; 2009 c 70 § 6.]

19.310.080 Exchange funds—Prudent investor standard—Violations—Not subject to execution or attachment. (1) A person who engages in business as an exchange facilitator shall act as a custodian for all exchange funds, including money, property, other consideration, or instruments received by the exchange facilitator from, or on behalf of, the client, except funds received as the exchange facilitator's compensation. The exchange facilitator shall hold the exchange funds in a manner that provides liquidity and preserves both principal and any earned interest, and if invested, shall invest those exchange funds in investments that meet a prudent investor standard and satisfy investment goals of liquidity and preservation of principal and any earned interest. For purposes of this section, a violation of the prudent investor standard includes, but is not limited to, a transaction in which:

(a) Exchange funds are knowingly commingled by the exchange facilitator with the operating accounts of the exchange facilitator, except that the exchange facilitator's fee may be deposited as part of the exchange transaction into the same account as that containing exchange funds, in which event the exchange facilitator must promptly withdraw the fee;

(b) Exchange funds are loaned or otherwise transferred to any person or entity, other than a financial institution, that is affiliated with or related to the exchange facilitator, except that this subsection (1)(b) does not apply to the transfer of funds from an exchange facilitator to an exchange accommodation titleholder in accordance with an exchange contract;

(c) Exchange funds are invested in a manner that does not provide sufficient liquidity to meet the exchange facilitator's contractual obligations to its clients, unless insufficient liquidity occurs as the result of: (i) Events beyond the predic-

tion or control of the exchange facilitator including, but not limited to, failure of a financial institution; or (ii) an investment specifically requested by the client; or

(d) Exchange funds are invested in a manner that does not preserve the principal of the exchange funds, unless loss of principal occurs as the result of: (i) Events beyond the prediction or control of the exchange facilitator; or (ii) an investment specifically requested by the client.

(2) Exchange funds are not subject to execution or attachment on any claim against the exchange facilitator. [2013 c 228 § 4; 2009 c 70 § 9.]

19.310.100 Prohibited practices. A person who engages in business as an exchange facilitator shall not, with respect to a like-kind exchange transaction:

(1) Make a false, deceptive, or misleading material representation, directly or indirectly, concerning a like-kind transaction;

(2) Make a false, deceptive, or misleading material representation, directly or indirectly, in advertising or by any other means, concerning a like-kind transaction;

(3) Engage in any unfair or deceptive practice toward any person;

(4) Obtain property by fraud or misrepresentation;

(5) Fail to account for any moneys or property belonging to others that may be in the possession or under the control of the exchange facilitator;

(6) Commingle funds held for a client in any account that holds the exchange facilitator's own funds, except as provided in RCW 19.310.080(1)(a);

(7) Loan or otherwise transfer exchange funds to any person or entity, other than a financial institution, that is affiliated with or related to the exchange facilitator, except for the transfer of funds from an exchange facilitator to an exchange accommodation title holder in accordance with an exchange contract;

(8) Keep, or cause to be kept, any money in any bank, credit union, or other financial institution under a name designating the money as belonging to the client of any exchange facilitator, unless that money belongs to that client and was entrusted to the exchange facilitator by that client;

(9) Fail to fulfill its contractual duties to the client to deliver property or funds to the taxpayer in a material way unless such a failure is due to: (a) Events beyond the prediction or control of the exchange facilitator; or (b) an investment specifically requested by the client;

(10) Commit, including commission by its owners, officers, directors, employees, agents, or independent contractors, any crime involving fraud, misrepresentation, deceit, embezzlement, misappropriation of funds, robbery, or other theft of property;

(11) Fail to make disclosures required by any applicable state law; or

(12) Make any false statement or omission of material fact in connection with any reports filed by an exchange facilitator or in connection with any investigation conducted by the department of financial institutions. [2013 c 228 § 5; 2009 c 70 § 11.]

19.310.110 Deposit of client funds—Written notice.

(1) An exchange facilitator must deposit all client funds in a

separately identified account, as defined in treasury regulation section 1.468B-6(c)(ii), for the particular client or client's matter, and the client must receive all the earnings credited to the separately identified account.

(2) An exchange facilitator must provide the client with written notification of how the exchange proceeds have been invested or deposited. [2013 c 228 § 6; 2009 c 70 § 12.]

19.310.120 Prima facie evidence of fraud—Violations—Penalty—Cure for violations. (1) Failure to fulfill the requirements under RCW 19.310.040 constitutes prima facie evidence that the exchange facilitator intended to defraud a client who suffered a subsequent loss of the asset entrusted to the exchange facilitator.

(2) A person who engages in business as an exchange facilitator and who knowingly violates RCW 19.310.100 (1) through (9) or fails to comply with the requirements under RCW 19.310.040 is guilty of a class B felony under chapter 9A.20 RCW. However, an exchange facilitator is not guilty of a class B felony for failure to comply with the requirements under RCW 19.310.040 if: (a) Failure to comply is due to the cancellation or amendment of the fidelity bond by the bond issuer; and (b) the exchange facilitator:

(i) Within thirty days, takes all reasonable steps to comply with the requirements under RCW 19.310.040; and

(ii) Deposits any new exchange funds into a qualified escrow account or qualified trust until a fidelity bond is obtained that meets the requirements under RCW 19.310.040(1)(a)(i). [2013 c 228 § 7; 2012 c 34 § 4; 2009 c 70 § 13.]

Findings—2012 c 34: See note following RCW 19.310.040.

Title 20

COMMISSION MERCHANTS— AGRICULTURAL PRODUCTS

Chapters

20.01 Agricultural products—Commission merchants, dealers, brokers, buyers, agents.

Chapter 20.01 RCW

AGRICULTURAL PRODUCTS— COMMISSION MERCHANTS, DEALERS, BROKERS, BUYERS, AGENTS

Sections

20.01.030 Exemptions.

20.01.030 Exemptions. This chapter does not apply to:

(1) Any cooperative marketing associations or federations incorporated under, or whose articles of incorporation and bylaws are equivalent to, the requirements of chapter 23.86 RCW, except as to that portion of the activities of the association or federation that involve the handling or dealing in the agricultural products of nonmembers of the organization: PROVIDED, That the associations or federations may purchase up to fifteen percent of their gross from nonmembers for the purpose of filling orders: PROVIDED FURTHER, That if the cooperative or association acts as a processor as defined in RCW 20.01.500(2) and markets the pro-

cessed agricultural crops on behalf of the grower or its own behalf, the association or federation is subject to the provisions of RCW 20.01.500 through 20.01.560 and the license provision of this chapter excluding bonding provisions: PROVIDED FURTHER, That none of the foregoing exemptions in this subsection apply to any such cooperative or federation dealing in or handling grain in any manner, and not licensed under the provisions of chapter 22.09 RCW;

(2) Any person who sells exclusively his or her own agricultural products as the producer thereof;

(3) Any public livestock market operating under a bond required by law or a bond required by the United States to secure the performance of the public livestock market's obligation. However, any such market operating as a livestock dealer or order buyer, or both, is subject to all provisions of this chapter except for the payment of the license fee required in RCW 20.01.040;

(4) Any retail merchant having a bona fide fixed or permanent place of business in this state, but only for the retail merchant's retail business conducted at such fixed or established place of business;

(5) Any person buying farm products for his or her own use or consumption;

(6) Any warehouse operator or grain dealer licensed under the state grain warehouse act, chapter 22.09 RCW, with respect to his or her handling of any agricultural product as defined under that chapter;

(7) Any nursery dealer who is required to be licensed under the horticultural laws of the state with respect to his or her operations as such licensee;

(8) Any person licensed under the now existing dairy laws of the state with respect to his or her operations as such licensee;

(9) Any producer who purchases less than fifteen percent of his or her volume to complete orders;

(10) Any person, association, or corporation regulated under chapter 67.16 RCW and the rules adopted thereunder while performing acts regulated by that chapter and the rules adopted thereunder;

(11) Any domestic winery, as defined in RCW 66.04.010, licensed under Title 66 RCW, with respect to its transactions involving agricultural products used by the domestic winery in making wine. [2013 c 23 § 38; 2011 c 336 § 570; 1993 c 104 § 1. Prior: 1989 c 354 § 38; 1989 c 307 § 37; 1988 c 254 § 10; 1983 c 305 § 2; 1982 c 194 § 2; 1981 c 296 § 31; 1979 ex.s. c 115 § 2; 1977 ex.s. c 304 § 2; 1975 1st ex.s. c 7 § 18; 1971 ex.s. c 182 § 2; 1969 ex.s. c 132 § 1; 1967 c 240 § 41; 1959 c 139 § 3.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

Additional notes found at www.leg.wa.gov

Title 22

WAREHOUSING AND DEPOSITS

Chapters

22.09 Agricultural commodities.

[2013 RCW Supp—page 234]

Chapter 22.09 RCW AGRICULTURAL COMMODITIES

Sections

22.09.860 Police protection of terminal yards and tracks.

22.09.860 Police protection of terminal yards and tracks. All railroad companies and warehouse operators operating in the cities provided for inspection by this chapter shall furnish ample and sufficient police protection to all their several terminal yards and terminal tracks to securely protect all cars containing commodities while the same are in their possession. They shall prohibit and restrain all unauthorized persons, whether under the guise of sweepers, or under any other pretext whatever, from entering or loitering in or about their railroad yards or tracks and from entering any car of commodities under their control, or removing commodities therefrom, and shall employ and detail such number of security guards as may be necessary for the purpose of carrying out the provisions of this section. [2013 c 23 § 39; 2011 c 336 § 649; 1963 c 124 § 27. Formerly RCW 22.09.270.]

Title 23B

WASHINGTON BUSINESS CORPORATION ACT

Chapters

23B.13 Dissenters' rights.

Chapter 23B.13 RCW DISSENTERS' RIGHTS

Sections

23B.13.020 Right to dissent.
23B.13.220 Dissenters' rights—Notice.
23B.13.230 Duty to demand payment.

23B.13.020 Right to dissent. (1) A shareholder is entitled to dissent from, and obtain payment of the fair value of the shareholder's shares in the event of, any of the following corporate actions:

(a) A plan of merger, which has become effective, to which the corporation is a party (i) if shareholder approval was required for the merger by RCW 23B.11.030, 23B.11.080, or the articles of incorporation, and the shareholder was entitled to vote on the merger, or (ii) if the corporation was a subsidiary and the plan of merger provided for the merger of the subsidiary with its parent under RCW 23B.11.040;

(b) A plan of share exchange, which has become effective, to which the corporation is a party as the corporation whose shares have been acquired, if the shareholder was entitled to vote on the plan;

(c) A sale or exchange, which has become effective, of all, or substantially all, of the property of the corporation other than in the usual and regular course of business, if the shareholder was entitled to vote on the sale or exchange, including a sale in dissolution, but not including a sale pursuant to court order or a sale for cash pursuant to a plan by which all or substantially all of the net proceeds of the sale

will be distributed to the shareholders within one year after the date of sale;

(d) An amendment of the articles of incorporation, whether or not the shareholder was entitled to vote on the amendment, if the amendment effects a redemption or cancellation of all of the shareholder's shares in exchange for cash or other consideration other than shares of the corporation;

(e) Any action described in RCW 23B.25.120; or

(f) Any corporate action approved pursuant to a shareholder vote to the extent the articles of incorporation, bylaws, or a resolution of the board of directors provides that voting or nonvoting shareholders are entitled to dissent and obtain payment for their shares.

(2) A shareholder entitled to dissent and obtain payment for the shareholder's shares under this chapter may not challenge the corporate action creating the shareholder's entitlement unless the action fails to comply with the procedural requirements imposed by this title, RCW 25.10.831 through 25.10.886, the articles of incorporation, or the bylaws, or is fraudulent with respect to the shareholder or the corporation.

(3) The right of a dissenting shareholder to obtain payment of the fair value of the shareholder's shares shall terminate upon the occurrence of any one of the following events:

(a) The proposed corporate action is abandoned or rescinded;

(b) A court having jurisdiction permanently enjoins or sets aside the corporate action; or

(c) The shareholder's demand for payment is withdrawn with the written consent of the corporation. [2013 c 97 § 1. Prior: 2009 c 189 § 41; 2009 c 188 § 1404; 2003 c 35 § 9; 1991 c 269 § 37; 1989 c 165 § 141.]

Effective date—2009 c 188: See note following RCW 23B.11.080.

23B.13.220 Dissenters' rights—Notice. (1) If proposed corporate action creating dissenters' rights under RCW 23B.13.020 is approved at a shareholders' meeting, the corporation shall within ten days after the effective date of the corporate action deliver to all shareholders who satisfied the requirements of RCW 23B.13.210(1) a notice in compliance with subsection (5) of this section.

(2) If proposed corporate action creating dissenters' rights under RCW 23B.13.020 is approved without a vote of shareholders in accordance with RCW 23B.07.040, the notice delivered pursuant to RCW 23B.07.040(3)(b) to shareholders who satisfied the requirements of RCW 23B.13.210(2) shall comply with subsection (5) of this section.

(3) In the case of proposed corporate action creating dissenters' rights under RCW 23B.13.020(1)(a)(ii), the corporation shall within ten days after the effective date of the corporate action deliver to all shareholders of the subsidiary other than the parent a notice in compliance with subsection (5) of this section.

(4) In the case of proposed corporate action creating dissenters' rights under RCW 23B.13.020(1)(d) that, pursuant to RCW 23B.10.020(4)(b), is not required to be approved by the shareholders of the corporation, the corporation shall within ten days after the effective date of the corporate action deliver to all shareholders entitled to dissent under RCW

23B.13.020(1)(d) a notice in compliance with subsection (5) of this section.

(5) Any notice under subsection (1), (2), (3), or (4) of this section must:

(a) State where the payment demand must be sent and where and when certificates for certificated shares must be deposited;

(b) Inform holders of uncertificated shares to what extent transfer of the shares will be restricted after the payment demand is received;

(c) Supply a form for demanding payment that includes the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action and requires that the person asserting dissenters' rights certify whether or not the person acquired beneficial ownership of the shares before that date;

(d) Set a date by which the corporation must receive the payment demand, which date may not be fewer than thirty nor more than sixty days after the date the notice in subsection (1), (2), (3), or (4) of this section is delivered; and

(e) Be accompanied by a copy of this chapter. [2013 c 97 § 2; 2009 c 189 § 44; 2002 c 297 § 38; 1989 c 165 § 145.]

23B.13.230 Duty to demand payment. (1) A shareholder sent a notice described in RCW 23B.13.220 must demand payment, certify whether the shareholder acquired beneficial ownership of the shares before the date required to be set forth in the notice pursuant to RCW 23B.13.220(5)(c), and deposit the shareholder's certificates, all in accordance with the terms of the notice.

(2) The shareholder who demands payment and deposits the shareholder's share certificates under subsection (1) of this section retains all other rights of a shareholder until the proposed corporate action is effected.

(3) A shareholder who does not demand payment or deposit the shareholder's share certificates where required, each by the date set in the notice, is not entitled to payment for the shareholder's shares under this chapter. [2013 c 97 § 3; 2002 c 297 § 39; 1989 c 165 § 146.]

Title 24

CORPORATIONS AND ASSOCIATIONS (NONPROFIT)

Chapters

24.34 Agricultural processing and marketing associations.

Chapter 24.34 RCW

AGRICULTURAL PROCESSING AND MARKETING ASSOCIATIONS

Sections

24.34.010 Who may organize—Purposes—Limitations.

24.34.010 Who may organize—Purposes—Limitations. Persons engaged in the production of agricultural products as farmers, planters, ranchers, dairy farmers, nut growers, or fruit growers may act together in associations, cooperate or otherwise, with or without capital stock, in col-

lectively processing, preparing for market, handling, and marketing in intrastate commerce, such products of persons so engaged. Such associations may have marketing agencies in common; and such associations and their members may make the necessary contracts and agreements to effect such purposes: PROVIDED, That such associations are operated for the mutual benefit of the members thereof, as such producers, and conform to one or both of the following requirements:

First. That no member of the association is allowed more than one vote because of the amount of stock or membership capital he or she may own therein, or,

Second. That the association does not pay dividends on stock or membership capital in excess of eight percent per annum.

And in any case to the following:

Third. That the association shall not deal in the products of nonmembers to an amount greater in value than such as are handled by it for members. [2013 c 23 § 40; 2011 c 336 § 674; 1967 c 187 § 1.]

Title 26

DOMESTIC RELATIONS

Chapters

- 26.09** Dissolution proceedings—Legal separation.
- 26.12** Family court.
- 26.26** Uniform parentage act.
- 26.28** Age of majority.
- 26.33** Adoption.
- 26.44** Abuse of children.
- 26.50** Domestic violence prevention.

Chapter 26.09 RCW

DISSOLUTION PROCEEDINGS— LEGAL SEPARATION

Sections

26.09.315 Child custody issues—Abduction by parent—Information.

26.09.315 Child custody issues—Abduction by parent—Information. In any proceeding under this chapter where the custody or care of a minor child is at issue or in dispute, information on the harmful effects of parental abduction shall be included in any packet of information or materials provided to the parties, or in any parenting class or seminar that is offered to or required of the parties. The information shall include the following:

PAMPHLET REGARDING THE HARMFUL EFFECTS OF PARENTAL ABDUCTION IN CHILD CUSTODY CASES

Child custody disputes can sometimes lead one parent or the other to abduct one or more of their children. Each year approximately two hundred fifty thousand children in the United States are abducted by a noncustodial or custodial parent in violation of the law.

Child abduction, including abduction by a parent, commonly leads to growing fear, confusion, and general mistrust on the part of the child. Parental abduction means a loss of

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the parent left behind, extended family, friends, pets, community, and familiar surroundings that provide children with a sense of security and well-being. Such losses may be very traumatic for a child leading to long-term, adverse effects as the child grows.

Given the need to maintain secrecy by the abducting parent, children who are parentally abducted often:

- (1) Fail to receive an adequate education;
- (2) Fail to receive adequate medical care;
- (3) Live in substandard housing;
- (4) Are told the parent left behind is a bad person, does not want the child, or is deceased;
- (5) Are instructed to lie to remain anonymous and hidden;
- (6) Are fearful of leaving their residence;
- (7) Are fearful of encountering law enforcement and other security personnel.

If and when returned, abducted children often live in apprehension of being abducted again. Just as abused children may identify with and seek the approval of their abuser, abducted children may do the same with their abductor. Once returned the child may feel anger and resentment at the parent who was left behind because the child now does not have visitation or communication with the abducting parent.

The returned child may suffer loyalty conflicts, emotional detachment, and feelings of betrayal by providing information about the abducting parent who broke the law. An inability to trust adults in general can hinder the child's ability to form lasting relationships even long into adulthood.

If the child is very young when abducted and is returned as an older child, the child may suffer serious negative emotional effects because the child feels as if he or she is returned to a stranger and therefore the return to the parent who was originally left behind seems like an abduction itself.

Parents need to understand that even though their relationship with each other may be strained or even toxic, their children often have a strong, loving, trusting relationship with both parents.

A parent who is considering abducting his or her child should know and understand the potential short-term and long-term traumatic impacts that parental abduction has on a child and consider only those actions that will be lawful and will contribute to the child's best interests. [2013 c 91 § 1.]

Chapter 26.12 RCW

FAMILY COURT

Sections

26.12.185 Guardian ad litem, special advocate, or investigator—Release of information.

26.12.185 Guardian ad litem, special advocate, or investigator—Release of information. A guardian ad litem, court-appointed special advocate, or investigator under this title appointed under this chapter may release confidential information, records, and reports to the office of the family and children's ombuds for the purposes of carrying out its duties under chapter 43.06A RCW. [2013 c 23 § 41; 2000 c 124 § 9; 1999 c 390 § 4.]

Chapter 26.26 RCW
UNIFORM PARENTAGE ACT

Sections

26.26.610 Proceeding to determine parentage—Hearings—Inspection of records.

26.26.610 Proceeding to determine parentage—Hearings—Inspection of records. (1) On request of a party and for good cause shown, the court may close a proceeding under this section and RCW 26.26.500 through 26.26.605 and 26.26.615 through 26.26.630.

(2) A final order determining parentage in a proceeding under this section and RCW 26.26.500 through 26.26.605 and 26.26.615 through 26.26.630 is publicly accessible. Records entered prior to the entry of a final order determining parentage in a proceeding under this section and RCW 26.26.500 through 26.26.605 and 26.26.615 through 26.26.630 are accessible only to the parties or on order of the court for good cause.

(3) Except as provided by applicable court rules, records entered after the entry of a final order determining parentage in a proceeding under this section and RCW 26.26.500 through 26.26.605 and 26.26.615 through 26.26.630 are publicly accessible. [2013 c 246 § 3; 2002 c 302 § 533.]

Chapter 26.28 RCW
AGE OF MAJORITY
(Formerly: Infants)

Sections

26.28.080 Selling or giving tobacco to minor—Belief of representative capacity, no defense—Penalty.

26.28.080 Selling or giving tobacco to minor—Belief of representative capacity, no defense—Penalty. (1) Every person who sells or gives, or permits to be sold or given, to any person under the age of eighteen years any cigar, cigarette, cigarette paper or wrapper, tobacco in any form, or a vapor product is guilty of a gross misdemeanor.

(2) It shall be no defense to a prosecution for a violation of this section that the person acted, or was believed by the defendant to act, as agent or representative of another.

(3) For the purposes of this section, "vapor product" means a noncombustible tobacco-derived product containing nicotine that employs a mechanical heating element, battery, or circuit, regardless of shape or size, that can be used to heat a liquid nicotine solution contained in cartridges. Vapor product does not include any product that is regulated by the United States food and drug administration under chapter V of the federal food, drug, and cosmetic act. [2013 c 47 § 1; 1994 sp.s. c 7 § 437. Prior: 1987 c 250 § 2; 1987 c 204 § 1; 1971 ex.s. c 292 § 37; 1919 c 17 § 1; 1911 c 133 § 1; 1909 ex.s. c 27 § 1; 1909 c 249 § 193; 1901 c 122 § 1; 1895 c 126 §§ 1, 3 and 4; RRS § 2445. Formerly RCW 26.08.080, 26.08.090, and 26.08.100.]

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

Juvenile courts and juvenile offenders: Title 13 RCW.

Minors, access to tobacco, role of liquor control board: Chapter 70.155 RCW.

Additional notes found at www.leg.wa.gov

Chapter 26.33 RCW
ADOPTION

Sections

26.33.345 Search for birth parent or adopted child—Limited release of information—Noncertified copies of original birth certificate—Contact preference form.

26.33.345 Search for birth parent or adopted child—Limited release of information—Noncertified copies of original birth certificate—Contact preference form. (1) The department of social and health services, adoption agencies, and independent adoption facilitators shall release the name and location of the court where a relinquishment of parental rights or finalization of an adoption took place to an adult adoptee, a birth parent of an adult adoptee, an adoptive parent, a birth or adoptive grandparent of an adult adoptee, or an adult sibling of an adult adoptee, or the legal guardian of any of these.

(2) The department of health shall make available a noncertified copy of the original birth certificate of a child to the child's birth parents upon request.

(3)(a) For adoptions finalized after October 1, 1993, the department of health shall provide a noncertified copy of the original birth certificate to an adoptee eighteen years of age or older upon request, unless the birth parent has filed an affidavit of nondisclosure before July 28, 2013, or a contact preference form that indicates he or she does not want the original birth certificate released: PROVIDED, That the affidavit of nondisclosure, the contact preference form, or both have not expired.

(b) For adoptions finalized on or before October 1, 1993, the department of health may not provide a noncertified copy of the original birth certificate to the adoptee until after June 30, 2014. After June 30, 2014, the department of health shall provide a noncertified copy of the original birth certificate to an adoptee eighteen years of age or older upon request, unless the birth parent has filed a contact preference form that indicates he or she does not want the original birth certificate released: PROVIDED, That the contact preference form has not expired.

(c) An affidavit of nondisclosure expires upon the death of the birth parent.

(4)(a) Regardless of whether a birth parent has filed an affidavit of nondisclosure or when the adoption was finalized, a birth parent may at any time complete a contact preference form stating his or her preference about personal contact with the adoptee, which, if available, must accompany an original birth certificate provided to an adoptee under subsection (3) of this section.

(b) The contact preference form must include the following options:

(i) I would like to be contacted. I give the department of health consent to provide the adoptee with a noncertified copy of his or her original birth certificate;

(ii) I would like to be contacted only through a confidential intermediary as described in RCW 26.33.343. I give the department of health consent to provide the adoptee with a noncertified copy of his or her original birth certificate;

(iii) I prefer not to be contacted and have completed the birth parent updated medical history form. I give the depart-

ment of health consent to provide the adoptee with a noncertified copy of his or her original birth certificate; and

(iv) I prefer not to be contacted and have completed the birth parent updated medical history form. I do not want a noncertified copy of the original birth certificate released to the adoptee.

(c) If the birth parent indicates he or she prefers not to be contacted, personally identifying information on the contact preference form must be kept confidential and may not be released.

(d) Nothing in this section precludes a birth parent from subsequently filing another contact preference form to rescind the previous contact preference form and state a different preference.

(e) A contact preference form expires upon the death of the birth parent.

(5) If a birth parent files a contact preference form, the birth parent must also file an updated medical history form with the department of health. Upon request of the adoptee, the department of health must provide the adoptee with the updated medical history form filed by the adoptee's birth parent.

(6) Both a completed contact preference form and birth parent updated medical history form are confidential and must be placed in the adoptee's sealed file.

(7) If a birth parent files a contact preference form within six months after the first time an adoptee requests a copy of his or her original birth certificate as provided in subsection (3) of this section, the department of health must forward the contact preference form and the birth parent updated medical history form to the address of the adoptee.

(8) The department of health may charge a fee not to exceed twenty dollars for providing a noncertified copy of a birth certificate to an adoptee.

(9) The department of health must create the contact preference form and an updated medical history form. The contact preference form must provide a method to ensure personally identifying information can be kept confidential. The updated medical history form may not require the birth parent to disclose any identifying information about the birth parent.

(10) If the department of health does not provide an adoptee with a noncertified copy of the original birth certificate because a valid affidavit of nondisclosure or contact preference form has been filed, the adoptee may request, no more than once per year, that the department of health attempt to determine if the birth parent is deceased. Upon request of the adoptee, the department of health must make a reasonable effort to search public records that are accessible and already available to the department of health to determine if the birth parent is deceased. The department of health may charge the adoptee a reasonable fee to cover the cost of conducting a search. [2013 c 321 § 1; 1993 c 81 § 3; 1990 c 145 § 2.]

Chapter 26.44 RCW

ABUSE OF CHILDREN

(Formerly: Abuse of children and adult dependent persons)

Sections

26.44.030 Reports—Duty and authority to make—Duty of receiving agency—Duty to notify—Case planning and consultation—

Penalty for unauthorized exchange of information—Filing dependency petitions—Investigations—Interviews of children—Records—Risk assessment process. (*Effective until December 1, 2013.*)

26.44.030 Reports—Duty and authority to make—Duty of receiving agency—Duty to notify—Case planning and consultation—Penalty for unauthorized exchange of information—Filing dependency petitions—Investigations—Interviews of children—Records—Risk assessment process. (*Effective December 1, 2013.*)

26.44.220 Abuse of adolescents—Staff training curriculum.

26.44.030 Reports—Duty and authority to make—Duty of receiving agency—Duty to notify—Case planning and consultation—Penalty for unauthorized exchange of information—Filing dependency petitions—Investigations—Interviews of children—Records—Risk assessment process. (*Effective until December 1, 2013.*) (1)(a) When any practitioner, county coroner or medical examiner, law enforcement officer, professional school personnel, registered or licensed nurse, social service counselor, psychologist, pharmacist, employee of the department of early learning, licensed or certified child care providers or their employees, employee of the department, juvenile probation officer, placement and liaison specialist, responsible living skills program staff, HOPE center staff, or state family and children's ombuds or any volunteer in the ombuds's office has reasonable cause to believe that a child has suffered abuse or neglect, he or she shall report such incident, or cause a report to be made, to the proper law enforcement agency or to the department as provided in RCW 26.44.040.

(b) When any person, in his or her official supervisory capacity with a nonprofit or for-profit organization, has reasonable cause to believe that a child has suffered abuse or neglect caused by a person over whom he or she regularly exercises supervisory authority, he or she shall report such incident, or cause a report to be made, to the proper law enforcement agency, provided that the person alleged to have caused the abuse or neglect is employed by, contracted by, or volunteers with the organization and coaches, trains, educates, or counsels a child or children or regularly has unsupervised access to a child or children as part of the employment, contract, or voluntary service. No one shall be required to report under this section when he or she obtains the information solely as a result of a privileged communication as provided in RCW 5.60.060.

Nothing in this subsection (1)(b) shall limit a person's duty to report under (a) of this subsection.

For the purposes of this subsection, the following definitions apply:

(i) "Official supervisory capacity" means a position, status, or role created, recognized, or designated by any nonprofit or for-profit organization, either for financial gain or without financial gain, whose scope includes, but is not limited to, overseeing, directing, or managing another person who is employed by, contracted by, or volunteers with the nonprofit or for-profit organization.

(ii) "Organization" includes a sole proprietor, partnership, corporation, limited liability company, trust, association, financial institution, governmental entity, other than the federal government, and any other individual or group engaged in a trade, occupation, enterprise, governmental function, charitable function, or similar activity in this state

whether or not the entity is operated as a nonprofit or for-profit entity.

(iii) "Reasonable cause" means a person witnesses or receives a credible written or oral report alleging abuse, including sexual contact, or neglect of a child.

(iv) "Regularly exercises supervisory authority" means to act in his or her official supervisory capacity on an ongoing or continuing basis with regards to a particular person.

(v) "Sexual contact" has the same meaning as in RCW 9A.44.010.

(c) The reporting requirement also applies to department of corrections personnel who, in the course of their employment, observe offenders or the children with whom the offenders are in contact. If, as a result of observations or information received in the course of his or her employment, any department of corrections personnel has reasonable cause to believe that a child has suffered abuse or neglect, he or she shall report the incident, or cause a report to be made, to the proper law enforcement agency or to the department as provided in RCW 26.44.040.

(d) The reporting requirement shall also apply to any adult who has reasonable cause to believe that a child who resides with them, has suffered severe abuse, and is able or capable of making a report. For the purposes of this subsection, "severe abuse" means any of the following: Any single act of abuse that causes physical trauma of sufficient severity that, if left untreated, could cause death; any single act of sexual abuse that causes significant bleeding, deep bruising, or significant external or internal swelling; or more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness.

(e) The reporting requirement also applies to guardians ad litem, including court-appointed special advocates, appointed under Titles 11, 13, and 26 RCW, who in the course of their representation of children in these actions have reasonable cause to believe a child has been abused or neglected.

(f) The reporting requirement in (a) of this subsection also applies to administrative and academic or athletic department employees, including student employees, of institutions of higher education, as defined in RCW 28B.10.016, and of private institutions of higher education.

(g) The report must be made at the first opportunity, but in no case longer than forty-eight hours after there is reasonable cause to believe that the child has suffered abuse or neglect. The report must include the identity of the accused if known.

(2) The reporting requirement of subsection (1) of this section does not apply to the discovery of abuse or neglect that occurred during childhood if it is discovered after the child has become an adult. However, if there is reasonable cause to believe other children are or may be at risk of abuse or neglect by the accused, the reporting requirement of subsection (1) of this section does apply.

(3) Any other person who has reasonable cause to believe that a child has suffered abuse or neglect may report such incident to the proper law enforcement agency or to the department of social and health services as provided in RCW 26.44.040.

(4) The department, upon receiving a report of an incident of alleged abuse or neglect pursuant to this chapter, involving a child who has died or has had physical injury or injuries inflicted upon him or her other than by accidental means or who has been subjected to alleged sexual abuse, shall report such incident to the proper law enforcement agency. In emergency cases, where the child's welfare is endangered, the department shall notify the proper law enforcement agency within twenty-four hours after a report is received by the department. In all other cases, the department shall notify the law enforcement agency within seventy-two hours after a report is received by the department. If the department makes an oral report, a written report must also be made to the proper law enforcement agency within five days thereafter.

(5) Any law enforcement agency receiving a report of an incident of alleged abuse or neglect pursuant to this chapter, involving a child who has died or has had physical injury or injuries inflicted upon him or her other than by accidental means, or who has been subjected to alleged sexual abuse, shall report such incident in writing as provided in RCW 26.44.040 to the proper county prosecutor or city attorney for appropriate action whenever the law enforcement agency's investigation reveals that a crime may have been committed. The law enforcement agency shall also notify the department of all reports received and the law enforcement agency's disposition of them. In emergency cases, where the child's welfare is endangered, the law enforcement agency shall notify the department within twenty-four hours. In all other cases, the law enforcement agency shall notify the department within seventy-two hours after a report is received by the law enforcement agency.

(6) Any county prosecutor or city attorney receiving a report under subsection (5) of this section shall notify the victim, any persons the victim requests, and the local office of the department, of the decision to charge or decline to charge a crime, within five days of making the decision.

(7) The department may conduct ongoing case planning and consultation with those persons or agencies required to report under this section, with consultants designated by the department, and with designated representatives of Washington Indian tribes if the client information exchanged is pertinent to cases currently receiving child protective services. Upon request, the department shall conduct such planning and consultation with those persons required to report under this section if the department determines it is in the best interests of the child. Information considered privileged by statute and not directly related to reports required by this section must not be divulged without a valid written waiver of the privilege.

(8) Any case referred to the department by a physician licensed under chapter 18.57 or 18.71 RCW on the basis of an expert medical opinion that child abuse, neglect, or sexual assault has occurred and that the child's safety will be seriously endangered if returned home, the department shall file a dependency petition unless a second licensed physician of the parents' choice believes that such expert medical opinion is incorrect. If the parents fail to designate a second physician, the department may make the selection. If a physician finds that a child has suffered abuse or neglect but that such abuse or neglect does not constitute imminent danger to the

child's health or safety, and the department agrees with the physician's assessment, the child may be left in the parents' home while the department proceeds with reasonable efforts to remedy parenting deficiencies.

(9) Persons or agencies exchanging information under subsection (7) of this section shall not further disseminate or release the information except as authorized by state or federal statute. Violation of this subsection is a misdemeanor.

(10) Upon receiving a report of alleged abuse or neglect, the department shall make reasonable efforts to learn the name, address, and telephone number of each person making a report of abuse or neglect under this section. The department shall provide assurances of appropriate confidentiality of the identification of persons reporting under this section. If the department is unable to learn the information required under this subsection, the department shall only investigate cases in which:

(a) The department believes there is a serious threat of substantial harm to the child;

(b) The report indicates conduct involving a criminal offense that has, or is about to occur, in which the child is the victim; or

(c) The department has a prior founded report of abuse or neglect with regard to a member of the household that is within three years of receipt of the referral.

(11)(a) For reports of alleged abuse or neglect that are accepted for investigation by the department, the investigation shall be conducted within time frames established by the department in rule. In no case shall the investigation extend longer than ninety days from the date the report is received, unless the investigation is being conducted under a written protocol pursuant to RCW 26.44.180 and a law enforcement agency or prosecuting attorney has determined that a longer investigation period is necessary. At the completion of the investigation, the department shall make a finding that the report of child abuse or neglect is founded or unfounded.

(b) If a court in a civil or criminal proceeding, considering the same facts or circumstances as are contained in the report being investigated by the department, makes a judicial finding by a preponderance of the evidence or higher that the subject of the pending investigation has abused or neglected the child, the department shall adopt the finding in its investigation.

(12)(a) In conducting an investigation of alleged abuse or neglect, the department or law enforcement agency:

(i) May interview children. The interviews may be conducted on school premises, at day-care facilities, at the child's home, or at other suitable locations outside of the presence of parents. Parental notification of the interview must occur at the earliest possible point in the investigation that will not jeopardize the safety or protection of the child or the course of the investigation. Prior to commencing the interview the department or law enforcement agency shall determine whether the child wishes a third party to be present for the interview and, if so, shall make reasonable efforts to accommodate the child's wishes. Unless the child objects, the department or law enforcement agency shall make reasonable efforts to include a third party in any interview so long as the presence of the third party will not jeopardize the course of the investigation; and

(ii) Shall have access to all relevant records of the child in the possession of mandated reporters and their employees.

(b) The Washington state school directors' association shall adopt a model policy addressing protocols when an interview, as authorized by this subsection, is conducted on school premises. In formulating its policy, the association shall consult with the department and the Washington association of sheriffs and police chiefs.

(13) If a report of alleged abuse or neglect is founded and constitutes the third founded report received by the department within the last twelve months involving the same child or family, the department shall promptly notify the office of the family and children's ombuds of the contents of the report. The department shall also notify the ombuds of the disposition of the report.

(14) In investigating and responding to allegations of child abuse and neglect, the department may conduct background checks as authorized by state and federal law.

(15) The department shall maintain investigation records and conduct timely and periodic reviews of all founded cases of abuse and neglect. The department shall maintain a log of screened-out nonabusive cases.

(16) The department shall use a risk assessment process when investigating alleged child abuse and neglect referrals. The department shall present the risk factors at all hearings in which the placement of a dependent child is an issue. Substance abuse must be a risk factor. The department shall, within funds appropriated for this purpose, offer enhanced community-based services to persons who are determined not to require further state intervention.

(17) Upon receipt of a report of alleged abuse or neglect the law enforcement agency may arrange to interview the person making the report and any collateral sources to determine if any malice is involved in the reporting.

(18) Upon receiving a report of alleged abuse or neglect involving a child under the court's jurisdiction under chapter 13.34 RCW, the department shall promptly notify the child's guardian ad litem of the report's contents. The department shall also notify the guardian ad litem of the disposition of the report. For purposes of this subsection, "guardian ad litem" has the meaning provided in RCW 13.34.030. [2013 c 273 § 1; 2013 c 48 § 1; 2013 c 23 § 42; 2012 c 55 § 1; 2009 c 480 § 1; 2008 c 211 § 5; (2008 c 211 § 4 expired October 1, 2008). Prior: 2007 c 387 § 3; 2007 c 220 § 2; 2005 c 417 § 1; 2003 c 207 § 4; prior: 1999 c 267 § 20; 1999 c 176 § 30; 1998 c 328 § 5; 1997 c 386 § 25; 1996 c 278 § 2; 1995 c 311 § 17; prior: 1993 c 412 § 13; 1993 c 237 § 1; 1991 c 111 § 1; 1989 c 22 § 1; prior: 1988 c 142 § 2; 1988 c 39 § 1; prior: 1987 c 524 § 10; 1987 c 512 § 23; 1987 c 206 § 3; 1986 c 145 § 1; 1985 c 259 § 2; 1984 c 97 § 3; 1982 c 129 § 7; 1981 c 164 § 2; 1977 ex.s. c 80 § 26; 1975 1st ex.s. c 217 § 3; 1971 ex.s. c 167 § 1; 1969 ex.s. c 35 § 3; 1965 c 13 § 3.]

Reviser's note: This section was amended by 2013 c 23 § 42, 2013 c 48 § 1, and by 2013 c 273 § 1, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Expiration date—2013 c 273 § 1: "Section 1 of this act expires December 1, 2013." [2013 c 273 § 3.]

Expiration date—2013 c 48 § 1: "Section 1 of this act expires December 1, 2013." [2013 c 48 § 3.]

Expiration date—2013 c 23 § 42: "Section 42 of this act expires December 1, 2013." [2013 c 23 § 638.]

Effective date—2008 c 211 § 5: "Section 5 of this act takes effect October 1, 2008." [2008 c 211 § 8.]

Expiration date—2008 c 211 § 4: "Section 4 of this act expires October 1, 2008." [2008 c 211 § 7.]

Effective date—Implementation—2007 c 220 §§ 1-3: See notes following RCW 26.44.020.

Severability—2005 c 417: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2005 c 417 § 2.]

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

Short title—Purpose—Entitlement not granted—Federal waivers—1999 c 267 §§ 10-26: See RCW 74.15.900 and 74.15.901.

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

Finding—Intent—1996 c 278: "The legislature finds that including certain department of corrections personnel among the professionals who are mandated to report suspected abuse or neglect of children, dependent adults, or people with developmental disabilities is an important step toward improving the protection of these vulnerable populations. The legislature intends, however, to limit the circumstances under which department of corrections personnel are mandated reporters of suspected abuse or neglect to only those circumstances when the information is obtained during the course of their employment. This act is not to be construed to alter the circumstances under which other professionals are mandated to report suspected abuse or neglect, nor is it the legislature's intent to alter current practices and procedures utilized by other professional organizations who are mandated reporters under RCW 26.44.030(1)(a)." [1996 c 278 § 1.]

Legislative findings—1985 c 259: "The Washington state legislature finds and declares:

The children of the state of Washington are the state's greatest resource and the greatest source of wealth to the state of Washington. Children of all ages must be protected from child abuse. Governmental authorities must give the prevention, treatment, and punishment of child abuse the highest priority, and all instances of child abuse must be reported to the proper authorities who should diligently and expeditiously take appropriate action, and child abusers must be held accountable to the people of the state for their actions.

The legislature recognizes the current heavy caseload of governmental authorities responsible for the prevention, treatment, and punishment of child abuse. The information obtained by child abuse reporting requirements, in addition to its use as a law enforcement tool, will be used to determine the need for additional funding to ensure that resources for appropriate governmental response to child abuse are available." [1985 c 259 § 1.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

Additional notes found at www.leg.wa.gov

26.44.030 Reports—Duty and authority to make—Duty of receiving agency—Duty to notify—Case planning and consultation—Penalty for unauthorized exchange of information—Filing dependency petitions—Investigations—Interviews of children—Records—Risk assessment process. (Effective December 1, 2013.) (1)(a) When any practitioner, county coroner or medical examiner, law enforcement officer, professional school personnel, registered or licensed nurse, social service counselor, psychologist, pharmacist, employee of the department of early learning, licensed or certified child care providers or their employees, employee of the department, juvenile probation officer, placement and liaison specialist, responsible living skills program staff, HOPE center staff, or state family and children's ombuds or any volunteer in the ombuds's office has reasonable cause to believe that a child has suffered abuse or neglect, he or she shall report such incident, or cause a report to be made, to the proper law enforcement agency or to the department as provided in RCW 26.44.040.

(b) When any person, in his or her official supervisory capacity with a nonprofit or for-profit organization, has reasonable cause to believe that a child has suffered abuse or neglect caused by a person over whom he or she regularly exercises supervisory authority, he or she shall report such incident, or cause a report to be made, to the proper law enforcement agency, provided that the person alleged to have caused the abuse or neglect is employed by, contracted by, or volunteers with the organization and coaches, trains, educates, or counsels a child or children or regularly has unsupervised access to a child or children as part of the employment, contract, or voluntary service. No one shall be required to report under this section when he or she obtains the information solely as a result of a privileged communication as provided in RCW 5.60.060.

Nothing in this subsection (1)(b) shall limit a person's duty to report under (a) of this subsection.

For the purposes of this subsection, the following definitions apply:

(i) "Official supervisory capacity" means a position, status, or role created, recognized, or designated by any nonprofit or for-profit organization, either for financial gain or without financial gain, whose scope includes, but is not limited to, overseeing, directing, or managing another person who is employed by, contracted by, or volunteers with the nonprofit or for-profit organization.

(ii) "Organization" includes a sole proprietor, partnership, corporation, limited liability company, trust, association, financial institution, governmental entity, other than the federal government, and any other individual or group engaged in a trade, occupation, enterprise, governmental function, charitable function, or similar activity in this state whether or not the entity is operated as a nonprofit or for-profit entity.

(iii) "Reasonable cause" means a person witnesses or receives a credible written or oral report alleging abuse, including sexual contact, or neglect of a child.

(iv) "Regularly exercises supervisory authority" means to act in his or her official supervisory capacity on an ongoing or continuing basis with regards to a particular person.

(v) "Sexual contact" has the same meaning as in RCW 9A.44.010.

(c) The reporting requirement also applies to department of corrections personnel who, in the course of their employment, observe offenders or the children with whom the offenders are in contact. If, as a result of observations or information received in the course of his or her employment, any department of corrections personnel has reasonable cause to believe that a child has suffered abuse or neglect, he or she shall report the incident, or cause a report to be made, to the proper law enforcement agency or to the department as provided in RCW 26.44.040.

(d) The reporting requirement shall also apply to any adult who has reasonable cause to believe that a child who resides with them, has suffered severe abuse, and is able or capable of making a report. For the purposes of this subsection, "severe abuse" means any of the following: Any single act of abuse that causes physical trauma of sufficient severity that, if left untreated, could cause death; any single act of sexual abuse that causes significant bleeding, deep bruising, or significant external or internal swelling; or more than one act

of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness.

(e) The reporting requirement also applies to guardians ad litem, including court-appointed special advocates, appointed under Titles 11, 13, and 26 RCW, who in the course of their representation of children in these actions have reasonable cause to believe a child has been abused or neglected.

(f) The reporting requirement in (a) of this subsection also applies to administrative and academic or athletic department employees, including student employees, of institutions of higher education, as defined in RCW 28B.10.016, and of private institutions of higher education.

(g) The report must be made at the first opportunity, but in no case longer than forty-eight hours after there is reasonable cause to believe that the child has suffered abuse or neglect. The report must include the identity of the accused if known.

(2) The reporting requirement of subsection (1) of this section does not apply to the discovery of abuse or neglect that occurred during childhood if it is discovered after the child has become an adult. However, if there is reasonable cause to believe other children are or may be at risk of abuse or neglect by the accused, the reporting requirement of subsection (1) of this section does apply.

(3) Any other person who has reasonable cause to believe that a child has suffered abuse or neglect may report such incident to the proper law enforcement agency or to the department of social and health services as provided in RCW 26.44.040.

(4) The department, upon receiving a report of an incident of alleged abuse or neglect pursuant to this chapter, involving a child who has died or has had physical injury or injuries inflicted upon him or her other than by accidental means or who has been subjected to alleged sexual abuse, shall report such incident to the proper law enforcement agency. In emergency cases, where the child's welfare is endangered, the department shall notify the proper law enforcement agency within twenty-four hours after a report is received by the department. In all other cases, the department shall notify the law enforcement agency within seventy-two hours after a report is received by the department. If the department makes an oral report, a written report must also be made to the proper law enforcement agency within five days thereafter.

(5) Any law enforcement agency receiving a report of an incident of alleged abuse or neglect pursuant to this chapter, involving a child who has died or has had physical injury or injuries inflicted upon him or her other than by accidental means, or who has been subjected to alleged sexual abuse, shall report such incident in writing as provided in RCW 26.44.040 to the proper county prosecutor or city attorney for appropriate action whenever the law enforcement agency's investigation reveals that a crime may have been committed. The law enforcement agency shall also notify the department of all reports received and the law enforcement agency's disposition of them. In emergency cases, where the child's welfare is endangered, the law enforcement agency shall notify the department within twenty-four hours. In all other cases, the law enforcement agency shall notify the department

within seventy-two hours after a report is received by the law enforcement agency.

(6) Any county prosecutor or city attorney receiving a report under subsection (5) of this section shall notify the victim, any persons the victim requests, and the local office of the department, of the decision to charge or decline to charge a crime, within five days of making the decision.

(7) The department may conduct ongoing case planning and consultation with those persons or agencies required to report under this section, with consultants designated by the department, and with designated representatives of Washington Indian tribes if the client information exchanged is pertinent to cases currently receiving child protective services. Upon request, the department shall conduct such planning and consultation with those persons required to report under this section if the department determines it is in the best interests of the child. Information considered privileged by statute and not directly related to reports required by this section must not be divulged without a valid written waiver of the privilege.

(8) Any case referred to the department by a physician licensed under chapter 18.57 or 18.71 RCW on the basis of an expert medical opinion that child abuse, neglect, or sexual assault has occurred and that the child's safety will be seriously endangered if returned home, the department shall file a dependency petition unless a second licensed physician of the parents' choice believes that such expert medical opinion is incorrect. If the parents fail to designate a second physician, the department may make the selection. If a physician finds that a child has suffered abuse or neglect but that such abuse or neglect does not constitute imminent danger to the child's health or safety, and the department agrees with the physician's assessment, the child may be left in the parents' home while the department proceeds with reasonable efforts to remedy parenting deficiencies.

(9) Persons or agencies exchanging information under subsection (7) of this section shall not further disseminate or release the information except as authorized by state or federal statute. Violation of this subsection is a misdemeanor.

(10) Upon receiving a report of alleged abuse or neglect, the department shall make reasonable efforts to learn the name, address, and telephone number of each person making a report of abuse or neglect under this section. The department shall provide assurances of appropriate confidentiality of the identification of persons reporting under this section. If the department is unable to learn the information required under this subsection, the department shall only investigate cases in which:

(a) The department believes there is a serious threat of substantial harm to the child;

(b) The report indicates conduct involving a criminal offense that has, or is about to occur, in which the child is the victim; or

(c) The department has a prior founded report of abuse or neglect with regard to a member of the household that is within three years of receipt of the referral.

(11)(a) Upon receiving a report of alleged abuse or neglect, the department shall use one of the following discrete responses to reports of child abuse or neglect that are screened in and accepted for departmental response:

(i) Investigation; or

(ii) Family assessment.

(b) In making the response in (a) of this subsection the department shall:

(i) Use a method by which to assign cases to investigation or family assessment which are based on an array of factors that may include the presence of: Imminent danger, level of risk, number of previous child abuse or neglect reports, or other presenting case characteristics, such as the type of alleged maltreatment and the age of the alleged victim. Age of the alleged victim shall not be used as the sole criterion for determining case assignment;

(ii) Allow for a change in response assignment based on new information that alters risk or safety level;

(iii) Allow families assigned to family assessment to choose to receive an investigation rather than a family assessment;

(iv) Provide a full investigation if a family refuses the initial family assessment;

(v) Provide voluntary services to families based on the results of the initial family assessment. If a family refuses voluntary services, and the department cannot identify specific facts related to risk or safety that warrant assignment to investigation under this chapter, and there is not a history of reports of child abuse or neglect related to the family, then the department must close the family assessment response case. However, if at any time the department identifies risk or safety factors that warrant an investigation under this chapter, then the family assessment response case must be reassigned to investigation;

(vi) Conduct an investigation, and not a family assessment, in response to an allegation that, the department determines based on the intake assessment:

(A) Poses a risk of "imminent harm" consistent with the definition provided in RCW 13.34.050, which includes, but is not limited to, sexual abuse and sexual exploitation as defined in this chapter;

(B) Poses a serious threat of substantial harm to a child;

(C) Constitutes conduct involving a criminal offense that has, or is about to occur, in which the child is the victim;

(D) The child is an abandoned child as defined in RCW 13.34.030;

(E) The child is an adjudicated dependent child as defined in RCW 13.34.030, or the child is in a facility that is licensed, operated, or certified for care of children by the department under chapter 74.15 RCW, or by the department of early learning.

(c) The department may not be held civilly liable for the decision to respond to an allegation of child abuse or neglect by using the family assessment response under this section unless the state or its officers, agents, or employees acted with reckless disregard.

(12)(a) For reports of alleged abuse or neglect that are accepted for investigation by the department, the investigation shall be conducted within time frames established by the department in rule. In no case shall the investigation extend longer than ninety days from the date the report is received, unless the investigation is being conducted under a written protocol pursuant to RCW 26.44.180 and a law enforcement agency or prosecuting attorney has determined that a longer investigation period is necessary. At the completion of the

investigation, the department shall make a finding that the report of child abuse or neglect is founded or unfounded.

(b) If a court in a civil or criminal proceeding, considering the same facts or circumstances as are contained in the report being investigated by the department, makes a judicial finding by a preponderance of the evidence or higher that the subject of the pending investigation has abused or neglected the child, the department shall adopt the finding in its investigation.

(13) For reports of alleged abuse or neglect that are responded to through family assessment response, the department shall:

(a) Provide the family with a written explanation of the procedure for assessment of the child and the family and its purposes;

(b) Collaborate with the family to identify family strengths, resources, and service needs, and develop a service plan with the goal of reducing risk of harm to the child and improving or restoring family well-being;

(c) Complete the family assessment response within forty-five days of receiving the report; however, upon parental agreement, the family assessment response period may be extended up to ninety days;

(d) Offer services to the family in a manner that makes it clear that acceptance of the services is voluntary;

(e) Implement the family assessment response in a consistent and cooperative manner;

(f) Have the parent or guardian sign an agreement to participate in services before services are initiated that informs the parents of their rights under family assessment response, all of their options, and the options the department has if the parents do not sign the consent form.

(14)(a) In conducting an investigation or family assessment of alleged abuse or neglect, the department or law enforcement agency:

(i) May interview children. If the department determines that the response to the allegation will be family assessment response, the preferred practice is to request a parent's, guardian's, or custodian's permission to interview the child before conducting the child interview unless doing so would compromise the safety of the child or the integrity of the assessment. The interviews may be conducted on school premises, at day-care facilities, at the child's home, or at other suitable locations outside of the presence of parents. If the allegation is investigated, parental notification of the interview must occur at the earliest possible point in the investigation that will not jeopardize the safety or protection of the child or the course of the investigation. Prior to commencing the interview the department or law enforcement agency shall determine whether the child wishes a third party to be present for the interview and, if so, shall make reasonable efforts to accommodate the child's wishes. Unless the child objects, the department or law enforcement agency shall make reasonable efforts to include a third party in any interview so long as the presence of the third party will not jeopardize the course of the investigation; and

(ii) Shall have access to all relevant records of the child in the possession of mandated reporters and their employees.

(b) The Washington state school directors' association shall adopt a model policy addressing protocols when an interview, as authorized by this subsection, is conducted on

school premises. In formulating its policy, the association shall consult with the department and the Washington association of sheriffs and police chiefs.

(15) If a report of alleged abuse or neglect is founded and constitutes the third founded report received by the department within the last twelve months involving the same child or family, the department shall promptly notify the office of the family and children's ombuds of the contents of the report. The department shall also notify the ombuds of the disposition of the report.

(16) In investigating and responding to allegations of child abuse and neglect, the department may conduct background checks as authorized by state and federal law.

(17)(a) The department shall maintain investigation records and conduct timely and periodic reviews of all founded cases of abuse and neglect. The department shall maintain a log of screened-out nonabusive cases.

(b) In the family assessment response, the department shall not make a finding as to whether child abuse or neglect occurred. No one shall be named as a perpetrator and no investigative finding shall be entered in the department's child abuse or neglect database.

(18) The department shall use a risk assessment process when investigating alleged child abuse and neglect referrals. The department shall present the risk factors at all hearings in which the placement of a dependent child is an issue. Substance abuse must be a risk factor.

(19) Upon receipt of a report of alleged abuse or neglect the law enforcement agency may arrange to interview the person making the report and any collateral sources to determine if any malice is involved in the reporting.

(20) Upon receiving a report of alleged abuse or neglect involving a child under the court's jurisdiction under chapter 13.34 RCW, the department shall promptly notify the child's guardian ad litem of the report's contents. The department shall also notify the guardian ad litem of the disposition of the report. For purposes of this subsection, "guardian ad litem" has the meaning provided in RCW 13.34.030. [2013 c 273 § 2; 2013 c 48 § 2; 2013 c 23 § 43. Prior: 2012 c 259 § 3; 2012 c 55 § 1; 2009 c 480 § 1; 2008 c 211 § 5; (2008 c 211 § 4 expired October 1, 2008); prior: 2007 c 387 § 3; 2007 c 220 § 2; 2005 c 417 § 1; 2003 c 207 § 4; prior: 1999 c 267 § 20; 1999 c 176 § 30; 1998 c 328 § 5; 1997 c 386 § 25; 1996 c 278 § 2; 1995 c 311 § 17; prior: 1993 c 412 § 13; 1993 c 237 § 1; 1991 c 111 § 1; 1989 c 22 § 1; prior: 1988 c 142 § 2; 1988 c 39 § 1; prior: 1987 c 524 § 10; 1987 c 512 § 23; 1987 c 206 § 3; 1986 c 145 § 1; 1985 c 259 § 2; 1984 c 97 § 3; 1982 c 129 § 7; 1981 c 164 § 2; 1977 ex.s. c 80 § 26; 1975 1st ex.s. c 217 § 3; 1971 ex.s. c 167 § 1; 1969 ex.s. c 35 § 3; 1965 c 13 § 3.]

Reviser's note: This section was amended by 2013 c 23 § 43, 2013 c 48 § 2, and by 2013 c 273 § 2, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2013 c 273 § 2: "Section 2 of this act takes effect December 1, 2013." [2013 c 273 § 4.]

Effective date—2013 c 48 § 2: "Section 2 of this act takes effect December 1, 2013." [2013 c 48 § 4.]

Effective date—2013 c 23 § 43: "Section 43 of this act takes effect December 1, 2013." [2013 c 23 § 639.]

Effective date—2012 c 259 §§ 1 and 3-10: See note following RCW 26.44.020.

[2013 RCW Supp—page 244]

Family assessment response evaluation—Family assessment response survey—2012 c 259: See notes following RCW 26.44.260.

Effective date—2008 c 211 § 5: "Section 5 of this act takes effect October 1, 2008." [2008 c 211 § 8.]

Expiration date—2008 c 211 § 4: "Section 4 of this act expires October 1, 2008." [2008 c 211 § 7.]

Effective date—Implementation—2007 c 220 §§ 1-3: See notes following RCW 26.44.020.

Severability—2005 c 417: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2005 c 417 § 2.]

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

Short title—Purpose—Entitlement not granted—Federal waivers—1999 c 267 §§ 10-26: See RCW 74.15.900 and 74.15.901.

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

Finding—Intent—1996 c 278: "The legislature finds that including certain department of corrections personnel among the professionals who are mandated to report suspected abuse or neglect of children, dependent adults, or people with developmental disabilities is an important step toward improving the protection of these vulnerable populations. The legislature intends, however, to limit the circumstances under which department of corrections personnel are mandated reporters of suspected abuse or neglect to only those circumstances when the information is obtained during the course of their employment. This act is not to be construed to alter the circumstances under which other professionals are mandated to report suspected abuse or neglect, nor is it the legislature's intent to alter current practices and procedures utilized by other professional organizations who are mandated reporters under RCW 26.44.030(1)(a)." [1996 c 278 § 1.]

Legislative findings—1985 c 259: "The Washington state legislature finds and declares:

The children of the state of Washington are the state's greatest resource and the greatest source of wealth to the state of Washington. Children of all ages must be protected from child abuse. Governmental authorities must give the prevention, treatment, and punishment of child abuse the highest priority, and all instances of child abuse must be reported to the proper authorities who should diligently and expeditiously take appropriate action, and child abusers must be held accountable to the people of the state for their actions.

The legislature recognizes the current heavy caseload of governmental authorities responsible for the prevention, treatment, and punishment of child abuse. The information obtained by child abuse reporting requirements, in addition to its use as a law enforcement tool, will be used to determine the need for additional funding to ensure that resources for appropriate governmental response to child abuse are available." [1985 c 259 § 1.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

Additional notes found at www.leg.wa.gov

26.44.220 Abuse of adolescents—Staff training curriculum. (1) Within existing resources, the department shall develop a curriculum designed to train staff of the department's children's administration who assess or provide services to adolescents on how to screen and respond to referrals to child protective services when those referrals may involve victims of abuse or neglect between the ages of eleven and eighteen. At a minimum, the curriculum developed pursuant to this section shall include:

(a) Review of relevant laws and regulations, including the requirement that the department investigate complaints if a parent's or caretaker's actions result in serious physical or emotional harm or present an imminent risk of serious harm to any person under eighteen;

(b) Review of policies of the department's children's administration that require assessment and screening of abuse and neglect referrals on the basis of risk and not age;

(c) Explanation of safety assessment and risk assessment models;

(d) Case studies of situations in which the department has received reports of alleged abuse or neglect of older children and adolescents;

(e) Discussion of best practices in screening and responding to referrals involving older children and adolescents; and

(f) Discussion of how abuse and neglect referrals related to adolescents are investigated and when law enforcement must be notified.

(2) As it develops its curriculum pursuant to this section, the department shall request that the office of the family and children's ombuds review and comment on its proposed training materials. The department shall consider the comments and recommendations of the office of the family and children's ombuds as it develops the curriculum required by this section.

(3) The department shall complete the curriculum materials required by this section no later than December 31, 2005.

(4) Within existing resources, the department shall incorporate training on the curriculum developed pursuant to this section into existing training for child protective services workers who screen intake calls, children's administration staff responsible for assessing or providing services to older children and adolescents, and all new employees of the children's administration responsible for assessing or providing services to older children and adolescents. [2013 c 23 § 44; 2005 c 345 § 1.]

Chapter 26.50 RCW

DOMESTIC VIOLENCE PREVENTION

Sections

26.50.110 Violation of order—Penalties.

26.50.110 Violation of order—Penalties. (1)(a) Whenever an order is granted under this chapter, chapter 7.92, 7.90, 9A.46, 9.94A, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or there is a valid foreign protection order as defined in RCW 26.52.020, and the respondent or person to be restrained knows of the order, a violation of any of the following provisions of the order is a gross misdemeanor, except as provided in subsections (4) and (5) of this section:

(i) The restraint provisions prohibiting acts or threats of violence against, or stalking of, a protected party, or restraint provisions prohibiting contact with a protected party;

(ii) A provision excluding the person from a residence, workplace, school, or day care;

(iii) A provision prohibiting a person from knowingly coming within, or knowingly remaining within, a specified distance of a location;

(iv) A provision prohibiting interfering with the protected party's efforts to remove a pet owned, possessed, leased, kept, or held by the petitioner, respondent, or a minor child residing with either the petitioner or the respondent; or

(v) A provision of a foreign protection order specifically indicating that a violation will be a crime.

(b) Upon conviction, and in addition to any other penalties provided by law, the court may require that the respon-

dent submit to electronic monitoring. The court shall specify who shall provide the electronic monitoring services, and the terms under which the monitoring shall be performed. The order also may include a requirement that the respondent pay the costs of the monitoring. The court shall consider the ability of the convicted person to pay for electronic monitoring.

(2) A peace officer shall arrest without a warrant and take into custody a person whom the peace officer has probable cause to believe has violated an order issued under this chapter, chapter 7.92, 7.90, 9A.46, 9.94A, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or a valid foreign protection order as defined in RCW 26.52.020, that restrains the person or excludes the person from a residence, workplace, school, or day care, or prohibits the person from knowingly coming within, or knowingly remaining within, a specified distance of a location, if the person restrained knows of the order. Presence of the order in the law enforcement computer-based criminal intelligence information system is not the only means of establishing knowledge of the order.

(3) A violation of an order issued under this chapter, chapter 7.92, 7.90, 9A.46, 9.94A, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or of a valid foreign protection order as defined in RCW 26.52.020, shall also constitute contempt of court, and is subject to the penalties prescribed by law.

(4) Any assault that is a violation of an order issued under this chapter, chapter 7.92, 7.90, 9A.46, 9.94A, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or of a valid foreign protection order as defined in RCW 26.52.020, and that does not amount to assault in the first or second degree under RCW 9A.36.011 or 9A.36.021 is a class C felony, and any conduct in violation of such an order that is reckless and creates a substantial risk of death or serious physical injury to another person is a class C felony.

(5) A violation of a court order issued under this chapter, chapter 7.92, 7.90, 9A.46, 9.94A, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or of a valid foreign protection order as defined in RCW 26.52.020, is a class C felony if the offender has at least two previous convictions for violating the provisions of an order issued under this chapter, chapter 7.90, 9A.46, 9.94A, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or a valid foreign protection order as defined in RCW 26.52.020. The previous convictions may involve the same victim or other victims specifically protected by the orders the offender violated.

(6) Upon the filing of an affidavit by the petitioner or any peace officer alleging that the respondent has violated an order granted under this chapter, chapter 7.92, 7.90, 9A.46, 9.94A, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or a valid foreign protection order as defined in RCW 26.52.020, the court may issue an order to the respondent, requiring the respondent to appear and show cause within fourteen days why the respondent should not be found in contempt of court and punished accordingly. The hearing may be held in the court of any county or municipality in which the petitioner or respondent temporarily or permanently resides at the time of the alleged violation. [2013 c 84 § 31. Prior: 2009 c 439 § 3; 2009 c 288 § 3; 2007 c 173 § 2; 2006 c 138 § 25; 2000 c 119 § 24; 1996 c 248 § 16; 1995 c 246 § 14; 1992 c 86 § 5; 1991 c 301 § 6; 1984 c 263 § 12.]

Finding—Intent—2009 c 439: See note following RCW 26.50.060.

Findings—2009 c 288: See note following RCW 9.94A.637.

Finding—Intent—2007 c 173: "The legislature finds this act necessary to restore and make clear its intent that a willful violation of a no-contact provision of a court order is a criminal offense and shall be enforced accordingly to preserve the integrity and intent of the domestic violence act. This act is not intended to broaden the scope of law enforcement power or effectuate any substantive change to any criminal provision in the Revised Code of Washington." [2007 c 173 § 1.]

Short title—2006 c 138: See RCW 7.90.900.

Finding—1991 c 301: See note following RCW 10.99.020.

Violation of order protecting vulnerable adult: RCW 74.34.145.

Additional notes found at www.leg.wa.gov

Title 27

LIBRARIES, MUSEUMS, AND HISTORICAL ACTIVITIES

Chapters

27.53 Archaeological sites and resources.

Chapter 27.53 RCW

ARCHAEOLOGICAL SITES AND RESOURCES

Sections

27.53.030 Definitions.

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

(1) "Amateur society" means any organization composed primarily of persons who are not professional archaeologists, whose primary interest is in the archaeological resources of the state, and which has been certified in writing by two professional archaeologists.

(2) "Archaeological object" means an object that comprises the physical evidence of an indigenous and subsequent culture, including material remains of past human life, including monuments, symbols, tools, facilities, and technological by-products.

(3) "Archaeological site" means a geographic locality in Washington, including but not limited to, submerged and submersible lands and the bed of the sea within the state's jurisdiction, that contains archaeological objects.

(4) "Archaeology" means systematic, scientific study of humankind's past through material remains.

(5) "Department" means the department of archaeology and historic preservation, created in chapter 43.334 RCW.

(6) "Director" means the director of the department of archaeology and historic preservation, created in chapter 43.334 RCW.

(7) "Field investigation" means an on-site inspection by a professional archaeologist or by an individual under the direct supervision of a professional archaeologist employing archaeological inspection techniques for both the surface and subsurface identification of archaeological resources and artifacts resulting in a professional archaeological report detailing the results of such inspection.

(8) "Historic" means peoples and cultures who are known through written documents in their own or other languages. As applied to underwater archaeological resources, the term "historic" shall include only those properties which are listed in or eligible for listing in the Washington state reg-

ister of historic places (RCW 27.34.220) or the national register of historic places as defined in the national historic preservation act of 1966 (Title 1, Sec. 101, Public Law 89-665; 80 Stat. 915; 16 U.S.C. Sec. 470) as now or hereafter amended.

(9) "Historic archaeological resources" means those properties which are listed in or eligible for listing in the Washington state register of historic places (RCW 27.34.220) or the national register of historic places as defined in the national historic preservation act of 1966 (Title 1, Sec. 101, Public Law 89-665; 80 Stat. 915; 16 U.S.C. Sec. 470) as now or hereafter amended.

(10) "Prehistoric" means peoples and cultures who are unknown through contemporaneous written documents in any language.

(11) "Professional archaeologist" means a person with qualifications meeting the federal secretary of the interior's standards for a professional archaeologist. Archaeologists not meeting this standard may be conditionally employed by working under the supervision of a professional archaeologist for a period of four years provided the employee is pursuing qualifications necessary to meet the federal secretary of the interior's standards for a professional archaeologist. During this four-year period, the professional archaeologist is responsible for all findings. The four-year period is not subject to renewal. [2013 c 23 § 45. Prior: 2011 c 219 § 1; 2008 c 275 § 5; 2005 c 333 § 20; 1995 c 399 § 16; 1989 c 44 § 6; 1988 c 124 § 2; 1986 c 266 § 17; 1983 c 91 § 20; 1977 ex.s. c 195 § 13; 1975 1st ex.s. c 134 § 3.]

Reporting requirements—2008 c 275: See note following RCW 68.50.645.

Intent—1989 c 44: See RCW 27.44.030.

Intent—1988 c 124: "It is the intent of the legislature that those historic archaeological resources located on state-owned aquatic lands that are of importance to the history of our state, or its communities, be protected for the people of the state. At the same time, the legislature also recognizes that divers have long enjoyed the recreation of diving near shipwrecks and picking up artifacts from the state-owned aquatic lands, and it is not the intent of the legislature to regulate these occasional, recreational activities except in areas where necessary to protect underwater historic archaeological sites. The legislature also recognizes that salvors who invest in a project to salvage underwater archaeological resources on state-owned aquatic lands should be required to obtain a state permit for their operation in order to protect the interest of the people of the state, as well as to protect the interest of the salvors who have invested considerable time and money in the salvage expedition." [1988 c 124 § 1.]

Additional notes found at www.leg.wa.gov

Title 28A

COMMON SCHOOL PROVISIONS

Chapters

28A.150 General provisions.

28A.155 Special education.

28A.165 Learning assistance program.

28A.175 Dropout prevention, intervention, and retrieval system.

28A.180 Transitional bilingual instruction program.

28A.188 Science, technology, engineering, and mathematics (STEM) education.

28A.195 Private schools.

28A.205 Education centers.

28A.210 Health—Screening and requirements.

28A.225 Compulsory school attendance and admission.

- 28A.230 Compulsory coursework and activities.
- 28A.232 Alternative learning experience courses.
- 28A.250 Online learning.
- 28A.290 Quality education council.
- 28A.300 Superintendent of public instruction.
- 28A.305 State board of education.
- 28A.310 Educational service districts.
- 28A.320 Provisions applicable to all districts.
- 28A.335 School districts' property.
- 28A.340 Small high school cooperative projects.
- 28A.400 Employees.
- 28A.405 Certificated employees.
- 28A.410 Certification.
- 28A.415 Institutes, workshops, and training.
- 28A.500 Local effort assistance.
- 28A.525 Bond issues.
- 28A.600 Students.
- 28A.625 Awards.
- 28A.630 Temporary provisions—Special projects.
- 28A.642 Discrimination prohibition.
- 28A.655 Academic achievement and accountability.
- 28A.657 Accountability system.
- 28A.700 Secondary career and technical education.
- 28A.715 State-tribal education compacts authority.

**Chapter 28A.150 RCW
GENERAL PROVISIONS**

Sections

- 28A.150.100 Basic education certificated instructional staff—Definition—Ratio to students.
- 28A.150.220 Basic education—Minimum instructional requirements—Program accessibility—Rules.
- 28A.150.262 Repealed.
- 28A.150.305 Alternative educational service providers—Student eligibility.
- 28A.150.325 Recodified as RCW 28A.232.010.
- 28A.150.550 Statewide indicators of educational system health—Disaggregation—Use of indicators—Status reports.

28A.150.100 Basic education certificated instructional staff—Definition—Ratio to students. (1) For the purposes of this section and RCW 28A.150.410 and 28A.400.200, "basic education certificated instructional staff" means all full-time equivalent classroom teachers, teacher librarians, guidance counselors, certificated student health services staff, and other certificated instructional staff in the following programs as defined for statewide school district accounting purposes: Basic education, secondary vocational education, general instructional support, and general supportive services.

(2) Each school district shall maintain a ratio of at least forty-six basic education certificated instructional staff to one thousand annual average full-time equivalent students. This requirement does not apply to that portion of a district's annual average full-time equivalent enrollment that is enrolled in alternative learning experience courses as defined in RCW 28A.232.010. [2013 2nd sp.s. c 18 § 512; 2011 1st sp.s. c 34 § 10; 2010 c 236 § 13; 1990 c 33 § 103; 1987 1st ex.s. c 2 § 203. Formerly RCW 28A.41.110.]

Application—Enforcement of laws protecting health and safety—2013 2nd sp.s. c 18: See note following RCW 28A.600.022.

Effective date—2011 1st sp.s. c 34 §§ 9 and 10: See note following RCW 28A.150.260.

Finding—Intent—2011 1st sp.s. c 34: See note following RCW 28A.150.325.

Effective date—2010 c 236 §§ 2, 3, 4, 8, 10, 13, and 14: See note following RCW 28A.150.260.

Intent—Severability—Effective date—1987 1st ex.s. c 2: See notes following RCW 84.52.0531.

28A.150.220 Basic education—Minimum instructional requirements—Program accessibility—Rules. (1) In order for students to have the opportunity to develop the basic education knowledge and skills under RCW 28A.150.210, school districts must provide instruction of sufficient quantity and quality and give students the opportunity to complete graduation requirements that are intended to prepare them for postsecondary education, gainful employment, and citizenship. The program established under this section shall be the minimum instructional program of basic education offered by school districts.

(2) Each school district shall make available to students the following minimum instructional offering each school year:

(a) For students enrolled in grades one through twelve, at least a district-wide annual average of one thousand hours, which shall be increased to at least one thousand eighty instructional hours for students enrolled in each of grades seven through twelve and at least one thousand instructional hours for students in each of grades one through six according to an implementation schedule adopted by the legislature, but not before the 2014-15 school year; and

(b) For students enrolled in kindergarten, at least four hundred fifty instructional hours, which shall be increased to at least one thousand instructional hours according to the implementation schedule under RCW 28A.150.315.

(3) The instructional program of basic education provided by each school district shall include:

(a) Instruction in the essential academic learning requirements under RCW 28A.655.070;

(b) Instruction that provides students the opportunity to complete twenty-four credits for high school graduation, subject to a phased-in implementation of the twenty-four credits as established by the legislature. Course distribution requirements may be established by the state board of education under RCW 28A.230.090;

(c) If the essential academic learning requirements include a requirement of languages other than English, the requirement may be met by students receiving instruction in one or more American Indian languages;

(d) Supplemental instruction and services for underachieving students through the learning assistance program under RCW 28A.165.005 through 28A.165.065;

(e) Supplemental instruction and services for eligible and enrolled students and exited students whose primary language is other than English through the transitional bilingual instruction program under RCW 28A.180.010 through 28A.180.080;

(f) The opportunity for an appropriate education at public expense as defined by RCW 28A.155.020 for all eligible students with disabilities as defined in RCW 28A.155.020; and

(g) Programs for highly capable students under RCW 28A.185.010 through 28A.185.030.

(4) Nothing contained in this section shall be construed to require individual students to attend school for any partic-

ular number of hours per day or to take any particular courses.

(5) Each school district's kindergarten through twelfth grade basic educational program shall be accessible to all students who are five years of age, as provided by RCW 28A.225.160, and less than twenty-one years of age and shall consist of a minimum of one hundred eighty school days per school year in such grades as are conducted by a school district, and one hundred eighty half-days of instruction, or equivalent, in kindergarten, to be increased to a minimum of one hundred eighty school days per school year according to the implementation schedule under RCW 28A.150.315. However, schools administering the Washington kindergarten inventory of developing skills may use up to three school days at the beginning of the school year to meet with parents and families as required in the parent involvement component of the inventory. In addition, effective May 1, 1979, a school district may schedule the last five school days of the one hundred and eighty day school year for noninstructional purposes in the case of students who are graduating from high school, including, but not limited to, the observance of graduation and early release from school upon the request of a student, and all such students may be claimed as a full-time equivalent student to the extent they could otherwise have been so claimed for the purposes of RCW 28A.150.250 and 28A.150.260.

(6) Nothing in this section precludes a school district from enriching the instructional program of basic education, such as offering additional instruction or providing additional services, programs, or activities that the school district determines to be appropriate for the education of the school district's students.

(7) The state board of education shall adopt rules to implement and ensure compliance with the program requirements imposed by this section, RCW 28A.150.250 and 28A.150.260, and such related supplemental program approval requirements as the state board may establish. [2013 2nd sp.s. c 9 § 2; 2013 c 323 § 2; 2011 1st sp.s. c 27 § 1; 2009 c 548 § 104; 1993 c 371 § 2; (1995 c 77 § 1 and 1993 c 371 § 1 expired September 1, 2000); 1992 c 141 § 503; 1990 c 33 § 105; 1982 c 158 § 1; 1979 ex.s. c 250 § 1; 1977 ex.s. c 359 § 3. Formerly RCW 28A.58.754.]

Intent—2013 2nd sp.s. c 9: "The legislature intends to fund a plan to carry out the reforms enacted in chapter 548, Laws of 2009, and chapter 236, Laws of 2010, and to make the statutory changes necessary to support this plan." [2013 2nd sp.s. c 9 § 1.]

Effective dates—2013 2nd sp.s. c 9: "(1) Sections 2 through 4 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect September 1, 2013.

(2) Section 7 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect June 30, 2013.

(3) Sections 5, 6, and 8 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [June 30, 2013]." [2013 2nd sp.s. c 9 § 9.]

Effective date—2011 1st sp.s. c 27 §§ 1-3: "Sections 1 through 3 of this act take effect September 1, 2011." [2011 1st sp.s. c 27 § 8.]

Effective date—2009 c 548 §§ 101-110 and 701-710: See note following RCW 28A.150.200.

Intent—2009 c 548: See RCW 28A.150.1981.

Finding—2009 c 548: See note following RCW 28A.410.270.

[2013 RCW Supp—page 248]

Intent—Finding—2009 c 548: See note following RCW 28A.305.130.

Findings—Part headings—Severability—1992 c 141: See notes following RCW 28A.410.040.

Additional notes found at www.leg.wa.gov

28A.150.262 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

28A.150.305 Alternative educational service providers—Student eligibility. (1) The board of directors of school districts may contract with alternative educational service providers for eligible students. Alternative educational service providers that the school district may contract with include, but are not limited to:

- (a) Other schools;
- (b) Alternative education programs not operated by the school district;
- (c) Education centers;
- (d) Skills centers;
- (e) The Washington national guard youth challenge program;
- (f) Dropout prevention programs; or
- (g) Other public or private organizations, excluding sectarian or religious organizations.

(2) Eligible students include students who are likely to be expelled or who are enrolled in the school district but have been suspended, are academically at risk, or who have been subject to repeated disciplinary actions due to behavioral problems.

(3) If a school district board of directors chooses to initiate specialized programs for students at risk of expulsion or who are failing academically by contracting out with alternative educational service providers identified in subsection (1) of this section, the school district board of directors and the organization must specify the specific learning standards that students are expected to achieve. Placement of the student shall be jointly determined by the school district, the student's parent or legal guardian, and the alternative educational service provider.

(4) For the purpose of this section, the superintendent of public instruction shall adopt rules for reporting and documenting enrollment. Students may reenter at the grade level appropriate to the student's ability. Students who are sixteen years of age or older may take a test to earn a high school equivalency certificate as provided in RCW 28B.50.536 in accordance with rules adopted under RCW 28A.305.190.

(5) The board of directors of school districts may require that students who would otherwise be suspended or expelled attend schools or programs listed in subsection (1) of this section as a condition of continued enrollment in the school district. [2013 c 39 § 3; 2002 c 291 § 1; 1997 c 265 § 6.]

Additional notes found at www.leg.wa.gov

28A.150.325 Recodified as RCW 28A.232.010. See Supplementary Table of Disposition of Former RCW Sections, this volume.

28A.150.550 Statewide indicators of educational system health—Disaggregation—Use of indicators—Status reports. (1) The following statewide indicators of educational system health are established:

(a) The percentage of students demonstrating the characteristics of entering kindergartners in all six areas identified by the Washington kindergarten inventory of developing skills administered in accordance with RCW 28A.655.080;

(b) The percentage of students meeting the standard on the fourth grade statewide reading assessment administered in accordance with RCW 28A.655.070;

(c) The percentage of students meeting the standard on the eighth grade statewide mathematics assessment administered in accordance with RCW 28A.655.070;

(d) The four-year cohort high school graduation rate;

(e) The percentage of high school graduates who during the second quarter after graduation are either enrolled in post-secondary education or training or are employed, and the percentage during the fourth quarter after graduation who are either enrolled in postsecondary education or training or are employed; and

(f) The percentage of students enrolled in precollege or remedial courses in college.

(2) The statewide indicators established in subsection (1) of this section shall be disaggregated as provided under RCW 28A.300.042.

(3) The state board of education, with assistance from the office of the superintendent of public instruction, the workforce training and education coordinating board, the educational opportunity gap oversight and accountability committee, and the student achievement council, shall establish a process for identifying realistic but challenging system-wide performance goals and measurements, if necessary, for each of the indicators established in subsection (1) of this section, including for subcategories of students as provided under subsection (2) of this section. The performance goal for each indicator must be set on a biennial basis, and may only be adjusted upward.

(4) The state board of education, the office of the superintendent of public instruction, and the student achievement council shall each align their strategic planning and education reform efforts with the statewide indicators and performance goals established under this section.

(5)(a) The state board of education, with assistance from the office of the superintendent of public instruction, the workforce training and education coordinating board, the educational opportunity gap oversight and accountability committee, and the student achievement council, shall submit a report on the status of each indicator in subsection (1) of this section and recommend revised performance goals and measurements, if necessary, by December 1st of each even-numbered year, except that the initial report establishing baseline values and initial goals shall be delivered to the education committees of the legislature by December 1, 2013.

(b) If the educational system is not on target to meet the performance goals on any individual indicator, the report must recommend evidence-based reforms intended to improve student achievement in that area.

(c) To the extent data is available, the performance goals for each indicator must be compared with national data in order to identify whether Washington student achievement results are within the top ten percent nationally or are comparable to results in peer states with similar characteristics as Washington. If comparison data show that Washington stu-

dents are falling behind national peers on any indicator, the report must recommend evidence-based reforms targeted at addressing the indicator in question. [2013 c 282 § 2.]

Intent—2013 c 282: "(1) The legislature acknowledges that multiple entities, including the state board of education, the office of the superintendent of public instruction, the workforce training and education coordinating board, the quality education council, and the student achievement council, are actively working on efforts to identify measurable goals and priorities, road maps, and strategic plans for the entire educational system. It is not the legislature's intent to undermine or curtail the ongoing work of these groups. However, the legislature believes that a coordinated single set of statewide goals would help focus these efforts.

(2) It is, therefore, the intent of the legislature to establish a discrete set of statewide data points that will serve as snapshots of the overall health of the educational system and as a means for evaluating progress in achieving the outcomes set for the system and the students it serves. By monitoring these statewide indicators over time, it is the intent of the legislature to understand whether reform efforts and investments are making positive progress in the overall education of students and whether adjustments are necessary. Finally, it is the intent of the legislature to align the education reform efforts of each state education agency in order to hold each part of the system – statewide leaders, school personnel, and students – accountable to the same definitions of success." [2013 c 282 § 1.]

Chapter 28A.155 RCW SPECIAL EDUCATION

Sections

28A.155.210 Use of restraint or isolation—Requirement for procedures to notify parent or guardian.

28A.155.210 Use of restraint or isolation—Requirement for procedures to notify parent or guardian. A school that is required to develop an individualized education program as required by federal law must include within the plan procedures for notification of a parent or guardian regarding the use of restraint or isolation. [2013 c 202 § 3.]

Findings—2013 c 202: See note following RCW 28A.600.485.

Chapter 28A.165 RCW LEARNING ASSISTANCE PROGRAM

Sections

28A.165.005 Purpose—Focus on reading literacy.
 28A.165.015 Definitions.
 28A.165.025 Repealed.
 28A.165.035 Program activities—Partnerships with local entities—Development and use of state menus of best practices and strategies.
 28A.165.045 Repealed.
 28A.165.055 Funds—Appropriation and distribution.
 28A.165.065 Monitoring.
 28A.165.100 Entrance and exit performance data—Report by school districts—Report by the office of the superintendent of public instruction.

28A.165.005 Purpose—Focus on reading literacy.

(1) This chapter is designed to: (a) Promote the use of data when developing programs to assist underachieving students and reduce disruptive behaviors in the classroom; and (b) guide school districts in providing the most effective and efficient practices when implementing supplemental instruction and services to assist underachieving students and reduce disruptive behaviors in the classroom.

(2) School districts implementing a learning assistance program shall focus first on addressing the needs of students in grades kindergarten through four who are deficient in read-

ing or reading readiness skills to improve reading literacy. [2013 2nd sp.s. c 18 § 201; 2009 c 548 § 701; 2004 c 20 § 1.]

Application—Enforcement of laws protecting health and safety—2013 2nd sp.s. c 18: See note following RCW 28A.600.022.

Effective date—2009 c 548 §§ 101-110 and 701-710: See note following RCW 28A.150.200.

Intent—2009 c 548: See RCW 28A.150.1981.

Finding—2009 c 548: See note following RCW 28A.410.270.

Intent—Finding—2009 c 548: See note following RCW 28A.305.130.

28A.165.015 Definitions. Unless the context clearly indicates otherwise the definitions in this section apply throughout this chapter.

(1) "Basic skills areas" means reading, writing, and mathematics as well as readiness associated with these skills.

(2) "Participating student" means a student in kindergarten through grade twelve who scores below standard for his or her grade level using multiple measures of performance, including on the statewide student assessments or other assessments and performance measurement tools administered by the school or district and who is identified by the district to receive services.

(3) "Statewide student assessments" means one or more of the assessments administered by school districts as required under RCW 28A.655.070.

(4) "Underachieving students" means students with the greatest academic deficits in basic skills as identified by statewide, school, or district assessments or other performance measurement tools. [2013 2nd sp.s. c 18 § 202; 2009 c 548 § 702; 2004 c 20 § 2.]

Application—Enforcement of laws protecting health and safety—2013 2nd sp.s. c 18: See note following RCW 28A.600.022.

Effective date—2009 c 548 §§ 101-110 and 701-710: See note following RCW 28A.150.200.

Intent—2009 c 548: See RCW 28A.150.1981.

Finding—2009 c 548: See note following RCW 28A.410.270.

Intent—Finding—2009 c 548: See note following RCW 28A.305.130.

28A.165.025 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

28A.165.035 Program activities—Partnerships with local entities—Development and use of state menus of best practices and strategies. (1) Beginning in the 2015-16 school year, expenditure of funds from the learning assistance program must be consistent with the provisions of RCW 28A.655.235.

(2) Use of best practices that have been demonstrated through research to be associated with increased student achievement magnifies the opportunities for student success. To the extent they are included as a best practice or strategy in one of the state menus or an approved alternative under this section or RCW 28A.655.235, the following are services and activities that may be supported by the learning assistance program:

- (a) Extended learning time opportunities occurring:
 - (i) Before or after the regular school day;
 - (ii) On Saturday; and
 - (iii) Beyond the regular school year;
- (b) Services under RCW 28A.320.190;

(c) Professional development for certificated and classified staff that focuses on:

- (i) The needs of a diverse student population;
- (ii) Specific literacy and mathematics content and instructional strategies; and
- (iii) The use of student work to guide effective instruction and appropriate assistance;
- (d) Consultant teachers to assist in implementing effective instructional practices by teachers serving participating students;

(e) Tutoring support for participating students;

(f) Outreach activities and support for parents of participating students, including employing parent and family engagement coordinators; and

(g) Up to five percent of a district's learning assistance program allocation may be used for development of partnerships with community-based organizations, educational service districts, and other local agencies to deliver academic and nonacademic supports to participating students who are significantly at risk of not being successful in school to reduce barriers to learning, increase student engagement, and enhance students' readiness to learn. The office of the superintendent of public instruction must approve any community-based organization or local agency before learning assistance funds may be expended.

(3) In addition to the state menu developed under RCW 28A.655.235, the office of the superintendent of public instruction shall convene a panel of experts, including the Washington state institute for public policy, to develop additional state menus of best practices and strategies for use in the learning assistance program to assist struggling students at all grade levels in English language arts and mathematics and reduce disruptive behaviors in the classroom. The office of the superintendent of public instruction shall publish the state menus by July 1, 2015, and update the state menus by each July 1st thereafter.

(4)(a) Beginning in the 2016-17 school year, except as provided in (b) of this subsection, school districts must use a practice or strategy that is on a state menu developed under subsection (3) of this section or RCW 28A.655.235.

(b) Beginning in the 2016-17 school year, school districts may use a practice or strategy that is not on a state menu developed under subsection (3) of this section for two school years initially. If the district is able to demonstrate improved outcomes for participating students over the previous two school years at a level commensurate with the best practices and strategies on the state menu, the office of the superintendent of public instruction shall approve use of the alternative practice or strategy by the district for one additional school year. Subsequent annual approval by the superintendent of public instruction to use the alternative practice or strategy is dependent on the district continuing to demonstrate increased improved outcomes for participating students.

(c) Beginning in the 2016-17 school year, school districts may enter cooperative agreements with state agencies, local governments, or school districts for administrative or operational costs needed to provide services in accordance with the state menus developed under this section and RCW 28A.655.235.

(5) School districts are encouraged to implement best practices and strategies from the state menus developed

under this section and RCW 28A.655.235 before the use is required. [2013 2nd sp.s. c 18 § 203; 2008 c 321 § 4; 2004 c 20 § 4.]

Application—Enforcement of laws protecting health and safety—2013 2nd sp.s. c 18: See note following RCW 28A.600.022.

Findings—2008 c 321: See note following RCW 28A.655.061.

28A.165.045 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

28A.165.055 Funds—Appropriation and distribution. The funds for the learning assistance program shall be appropriated in accordance with RCW 28A.150.260 and the omnibus appropriations act. The distribution formula is for school district allocation purposes only, but funds appropriated for the learning assistance program must be expended for the purposes of RCW 28A.165.005 through 28A.165.065 and 28A.655.235. [2013 2nd sp.s. c 18 § 205; 2009 c 548 § 703; 2008 c 321 § 10; 2005 c 489 § 1; 2004 c 20 § 6.]

Application—Enforcement of laws protecting health and safety—2013 2nd sp.s. c 18: See note following RCW 28A.600.022.

Effective date—2009 c 548 §§ 101-110 and 701-710: See note following RCW 28A.150.200.

Intent—2009 c 548: See RCW 28A.150.1981.

Finding—2009 c 548: See note following RCW 28A.410.270.

Intent—Finding—2009 c 548: See note following RCW 28A.305.130.

Findings—2008 c 321: See note following RCW 28A.655.061.

28A.165.065 Monitoring. To ensure that school districts are meeting the requirements of this chapter, the superintendent of public instruction shall monitor learning assistance programs no less than once every four years. The primary purpose of program monitoring is to evaluate the effectiveness of a district's allocation and expenditure of resources and monitor school district fidelity in implementing best practices. The office of the superintendent of public instruction may provide technical assistance to school districts to improve the effectiveness of a learning assistance program. [2013 2nd sp.s. c 18 § 206; 2004 c 20 § 7.]

Application—Enforcement of laws protecting health and safety—2013 2nd sp.s. c 18: See note following RCW 28A.600.022.

28A.165.100 Entrance and exit performance data—Report by school districts—Report by the office of the superintendent of public instruction. (1) Beginning with the 2014-15 school year, school districts shall record in the statewide individual student data system annual entrance and exit performance data for each student participating in the learning assistance program according to specifications established by the office of the superintendent of public instruction.

(2) By August 1, 2014, and each August 1st thereafter, school districts shall report to the office of the superintendent of public instruction, using a common format prepared by the office:

(a) The amount of academic growth gained by students participating in the learning assistance program;

(b) The number of students who gain at least one year of academic growth; and

(c) The specific practices, activities, and programs used by each school building that received learning assistance program funding.

(3) The office of the superintendent of public instruction shall compile the school district data and report annual and longitudinal gains for the specific practices, activities, and programs used by the school districts to show which are the most effective. The data must be disaggregated by student subgroups. [2013 2nd sp.s. c 18 § 204.]

Application—Enforcement of laws protecting health and safety—2013 2nd sp.s. c 18: See note following RCW 28A.600.022.

Chapter 28A.175 RCW

DROPOUT PREVENTION, INTERVENTION, AND RETRIEVAL SYSTEM

Sections

28A.175.075 Building bridges work group—Composition—Duties—Reports.

28A.175.100 Statewide dropout reengagement program.

28A.175.105 Statewide dropout reengagement program—Definitions.

28A.175.140 PASS program—Duties of superintendent of public instruction.

28A.175.075 Building bridges work group—Composition—Duties—Reports. (1) The office of the superintendent of public instruction shall establish a state-level building bridges work group that includes K-12 and state agencies that work with youth who have dropped out or are at risk of dropping out of school. The following agencies shall appoint representatives to the work group: The office of the superintendent of public instruction, the workforce training and education coordinating board, the department of early learning, the employment security department, the state board for community and technical colleges, the department of health, the community mobilization office, and the children's services and behavioral health and recovery divisions of the department of social and health services. The work group should also consist of one representative from each of the following agencies and organizations: A statewide organization representing career and technical education programs including skill centers; the juvenile courts or the office of juvenile justice, or both; the Washington association of prosecuting attorneys; the Washington state office of public defense; accredited institutions of higher education; the educational service districts; the area workforce development councils; parent and educator associations; educational opportunity gap oversight and accountability committee; office of the education ombuds; local school districts; agencies or organizations that provide services to special education students; community organizations serving youth; federally recognized tribes and urban tribal centers; each of the major political caucuses of the senate and house of representatives; and the minority commissions.

(2) To assist and enhance the work of the building bridges programs established in RCW 28A.175.025, the state-level work group shall:

(a) Identify and make recommendations to the legislature for the reduction of fiscal, legal, and regulatory barriers that prevent coordination of program resources across agencies at the state and local level;

(b) Develop and track performance measures and benchmarks for each partner agency or organization across the state including performance measures and benchmarks based on student characteristics and outcomes specified in RCW 28A.175.035(1)(e); and

(c) Identify research-based and emerging best practices regarding prevention, intervention, and retrieval programs.

(3)(a) The work group shall report to the quality education council, appropriate committees of the legislature, and the governor on an annual basis beginning December 1, 2007, with proposed strategies for building K-12 dropout prevention, intervention, and reengagement systems in local communities throughout the state including, but not limited to, recommendations for implementing emerging best practices, needed additional resources, and eliminating barriers.

(b) By September 15, 2010, the work group shall report on:

(i) A recommended state goal and annual state targets for the percentage of students graduating from high school;

(ii) A recommended state goal and annual state targets for the percentage of youth who have dropped out of school who should be reengaged in education and be college and work ready;

(iii) Recommended funding for supporting career guidance and the planning and implementation of K-12 dropout prevention, intervention, and reengagement systems in school districts and a plan for phasing the funding into the program of basic education, beginning in the 2011-2013 biennium; and

(iv) A plan for phasing in the expansion of the current school improvement planning program to include state-funded, dropout-focused school improvement technical assistance for school districts in significant need of improvement regarding high school graduation rates.

(4) State agencies in the building bridges work group shall work together, wherever feasible, on the following activities to support school/family/community partnerships engaged in building K-12 dropout prevention, intervention, and reengagement systems:

(a) Providing opportunities for coordination and flexibility of program eligibility and funding criteria;

(b) Providing joint funding;

(c) Developing protocols and templates for model agreements on sharing records and data;

(d) Providing joint professional development opportunities that provide knowledge and training on:

(i) Research-based and promising practices;

(ii) The availability of programs and services for vulnerable youth; and

(iii) Cultural competence.

(5) The building bridges work group shall make recommendations to the governor and the legislature by December 1, 2010, on a state-level and regional infrastructure for coordinating services for vulnerable youth. Recommendations must address the following issues:

(a) Whether to adopt an official conceptual approach or framework for all entities working with vulnerable youth that can support coordinated planning and evaluation;

(b) The creation of a performance-based management system, including outcomes, indicators, and performance

measures relating to vulnerable youth and programs serving them, including accountability for the dropout issue;

(c) The development of regional and/or county-level multipartner youth consortia with a specific charge to assist school districts and local communities in building K-12 comprehensive dropout prevention, intervention, and reengagement systems;

(d) The development of integrated or school-based one-stop shopping for services that would:

(i) Provide individualized attention to the neediest youth and prioritized access to services for students identified by a dropout early warning and intervention data system;

(ii) Establish protocols for coordinating data and services, including getting data release at time of intake and common assessment and referral processes; and

(iii) Build a system of single case managers across agencies;

(e) Launching a statewide media campaign on increasing the high school graduation rate; and

(f) Developing a statewide database of available services for vulnerable youth. [2013 c 23 § 46; 2010 c 243 § 4; 2007 c 408 § 7.]

Intent—Findings—2007 c 408: See note following RCW 28A.175.025.

28A.175.100 Statewide dropout reengagement program. (1) This section and RCW 28A.175.105 through 28A.175.115 provide a statutory framework for a statewide dropout reengagement system to provide appropriate educational opportunities and access to services for students age sixteen to twenty-one who have dropped out of high school or are not accumulating sufficient credits to reasonably complete a high school diploma in a public school before the age of twenty-one.

(2) Under the system, school districts may:

(a) Enter into the model interlocal agreement developed under RCW 28A.175.110 with an educational service district, community or technical college, or other public entity to provide a dropout reengagement program for eligible students of the district; or

(b) Enter into the model contract developed under RCW 28A.175.110 with a community-based organization to provide a dropout reengagement program for eligible students of the district.

(3) If a school district does not enter an interlocal agreement or contract with an educational service district, community or technical college, other public entity, or community-based organization to provide a dropout reengagement program for eligible students residing in the district, the educational service district, community or technical college, other public entity, or community-based organization may petition a school district other than the resident school district to enroll the eligible students under RCW 28A.225.220 through 28A.225.230 and enter the interlocal agreement or contract with the petitioning entity to provide a dropout reengagement program for the eligible students.

(4) This section does not affect the authority of school districts to contract for educational services under RCW 28A.150.305 and 28A.320.035. This section also does not affect the authority of school districts to offer dropout reen-

agement programs or other educational services for eligible students directly. [2010 c 20 § 2.]

Intent—2013 c 39; 2010 c 20: "(1) In every school district there are older youth who have become disengaged with the traditional education program of public high schools. They may have failed multiple classes and are far behind in accumulating credits to graduate. They do not see a high school diploma as an achievable goal. They may have dropped out of school entirely. They are not likely to become reengaged in their education by the prospect of reenrollment in a traditional or even an alternative high school.

(2) For many years, school districts, community and technical colleges, and community-based organizations have created partnerships to provide appropriate educational programs for these students. Programs such as career education options and career link have successfully offered individualized academic instruction, case management support, and career-oriented skills in an age-appropriate learning environment to hundreds of disengaged older youth. Preparation for a test to earn a high school equivalency certificate as provided in RCW 28B.50.536 in accordance with rules adopted under RCW 28A.305.190 is provided but is not the end goal for students.

(3) However, in recent years, many of these partnerships have ceased to operate. The laws and rules authorizing school districts to contract using basic education allocations do not provide sufficient guidance and instead present barriers. Program providers are forced to adapt to rules that were not written to address the needs of the students being served. Questions and concerns about liability, responsibility, and administrative burden have caused districts reluctantly to abandon their partnerships, and consequently leave hundreds of students without a viable alternative for continuing their public education.

(4) Therefore the legislature intends to provide a statutory framework to support a statewide dropout reengagement system for older youth. The framework clarifies and standardizes funding, programs, and administration by directing the office of the superintendent of public instruction to develop model contracts and interlocal agreements. It is the legislature's intent to encourage school districts, community and technical colleges, and community-based organizations to participate in this system and provide appropriate instruction and services to reengage older students and help them make progress toward a meaningful credential and career skills." [2013 c 39 § 4; 2010 c 20 § 1.]

28A.175.105 Statewide dropout reengagement program—Definitions. The definitions in this section apply throughout RCW 28A.175.100 through 28A.175.110 unless the context clearly requires otherwise:

(1) "Dropout reengagement program" means an educational program that offers at least the following instruction and services:

(a) Academic instruction, including but not limited to preparation to earn a high school equivalency certificate as provided in RCW 28B.50.536 in accordance with rules adopted under RCW 28A.305.190, academic skills instruction, and college and work readiness preparation, that generates credits that can be applied to a high school diploma from the student's school district or from a community or technical college under RCW 28B.50.535 and has the goal of enabling the student to obtain the academic and work readiness skills necessary for employment or postsecondary study. A dropout reengagement program is not required to offer instruction in only those subject areas where a student is deficient in accumulated credits. Academic instruction must be provided by teachers certified by the Washington professional educator standards board or by instructors employed by a community or technical college whose required credentials are established by the college;

(b) Case management, academic and career counseling, and assistance with accessing services and resources that support at-risk youth and reduce barriers to educational success; and

(c) If the program provider is a community or technical college, the opportunity for qualified students to enroll in college courses that lead to a postsecondary degree or certificate. The college may not charge an eligible student tuition for such enrollment.

(2) "Eligible student" means a student who:

(a) Is at least sixteen but less than twenty-one years of age at the beginning of the school year;

(b) Is not accumulating sufficient credits toward a high school diploma to reasonably complete a high school diploma from a public school before the age of twenty-one or is recommended for the program by case managers from the department of social and health services or the juvenile justice system; and

(c) Is enrolled or enrolls in the school district in which the student resides, or is enrolled or enrolls in a nonresident school district under RCW 28A.225.220 through 28A.225.230.

(3) "Full-time equivalent eligible student" means an eligible student whose enrollment and attendance meet criteria adopted by the office of the superintendent of public instruction specifically for dropout reengagement programs. The criteria shall be:

(a) Based on the community or technical college credits generated by the student if the program provider is a community or technical college; and

(b) Based on a minimum amount of planned programming or instruction and minimum attendance by the student rather than hours of seat time if the program provider is a community-based organization. [2013 c 39 § 5; 2010 c 20 § 3.]

Intent—2010 c 20: See note following RCW 28A.175.100.

28A.175.140 PASS program—Duties of superintendent of public instruction. (1) The office of the superintendent of public instruction, in consultation with the state board of education, must:

(a) Calculate the annual extended graduation rate for each high school, which is the rate at which a class of students enters high school as first-year students and graduates with a high school diploma, including students who receive a high school diploma after the year they were expected to graduate. The office may statistically adjust the rate for student demographics in the high school, including the number of students eligible for free and reduced-price meals, special education and English language learner students, students of various racial and ethnic backgrounds, and student mobility;

(b) Annually calculate the proportion of students at grade level for each high school, which shall be measured by the number of credits a student has accumulated at the end of each school year compared to the total number required for graduation. For the purposes of this subsection (1)(b), the office shall adopt a standard definition of "at grade level" for each high school grade;

(c) Annually calculate the proportion of students in each high school who are suspended or expelled from school, as reported by the high school. In-school suspensions shall not be included in the calculation. Improvement on the indicator under this subsection (1)(c) shall be measured by a reduction in the number of students suspended or expelled from school; and

(d) Beginning with the 2012-13 school year, annually measure student attendance in each high school as provided under RCW 28A.300.046.

(2) The office of the superintendent of public instruction may add dropout prevention indicators to the list of indicators under subsection (1) of this section, such as student grades, state assessment mastery, or student retention.

(3) To the maximum extent possible, the office of the superintendent of public instruction shall rely on data collected through the comprehensive education data and research system to calculate the dropout prevention indicators under this section and shall minimize additional data collection from schools and school districts unless necessary to meet the requirements of this section.

(4) The office of the superintendent of public instruction shall develop a metric for measuring the performance of each high school on the indicators under subsection (1) of this section that assigns points for each indicator and results in a single numeric dropout prevention score for each high school. The office shall weight the extended graduation rate indicator within the metric so that a high school does not qualify for an award under RCW 28A.175.145 without an increase in its extended graduation rate. The metric used through the 2012-13 school year shall include the indicators in subsection (1)(a) through (c) of this section and shall measure improvement against the 2010-11 school year as the baseline year. Beginning in the 2013-14 school year, the metric shall also include the indicator in subsection (1)(d) of this section, with improvement in this indicator measured against the 2012-13 school year as the baseline year. The office may establish a minimum level of improvement in a high school's dropout prevention score for the high school to qualify for a PASS program award under RCW 28A.175.145. [2013 c 23 § 47; 2011 c 288 § 4.]

Chapter 28A.180 RCW TRANSITIONAL BILINGUAL INSTRUCTION PROGRAM

Sections

28A.180.030 Definitions.
28A.180.040 School board duties.

28A.180.030 Definitions. As used throughout this chapter, unless the context clearly indicates otherwise:

(1) "Eligible pupil" means any enrollee of the school district whose primary language is other than English and whose English language skills are sufficiently deficient or absent to impair learning.

(2) "Exited pupil" means a student previously enrolled in the transitional bilingual instruction program who is no longer eligible for the program based on his or her performance on an English proficiency assessment approved by the superintendent of public instruction.

(3) "Primary language" means the language most often used by the student for communication in his/her home.

(4) "Transitional bilingual instruction" means:

(a) A system of instruction which uses two languages, one of which is English, as a means of instruction to build upon and expand language skills to enable the pupil to achieve competency in English. Concepts and information

are introduced in the primary language and reinforced in the second language: PROVIDED, That the program shall include testing in the subject matter in English; or

(b) In those cases in which the use of two languages is not practicable as established by the superintendent of public instruction and unless otherwise prohibited by law, an alternative system of instruction which may include English as a second language and is designed to enable the pupil to achieve competency in English. [2013 2nd sp.s. c 9 § 3; 2001 1st sp.s. c 6 § 3; 1990 c 33 § 164; 1984 c 124 § 2; 1979 c 95 § 2. Formerly RCW 28A.58.802.]

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

Intent—Effective dates—2013 2nd sp.s. c 9: See notes following RCW 28A.150.220.

Additional notes found at www.leg.wa.gov

28A.180.040 School board duties. (1) Every school district board of directors shall:

(a) Make available to each eligible pupil transitional bilingual instruction to achieve competency in English, in accord with rules of the superintendent of public instruction;

(b) Wherever feasible, ensure that communications to parents emanating from the schools shall be appropriately bilingual for those parents of pupils in the bilingual instruction program;

(c) Determine, by administration of an English test approved by the superintendent of public instruction the number of eligible pupils enrolled in the school district at the beginning of a school year and thereafter during the year as necessary in individual cases;

(d) Ensure that a student who is a child of a military family in transition and who has been assessed as in need of, or enrolled in, a bilingual instruction program, the receiving school shall initially honor placement of the student into a like program.

(i) The receiving school shall determine whether the district's program is a like program when compared to the sending school's program; and

(ii) The receiving school may conduct subsequent assessments pursuant to RCW 28A.180.090 to determine appropriate placement and continued enrollment in the program;

(e) Before the conclusion of each school year, measure each eligible pupil's improvement in learning the English language by means of a test approved by the superintendent of public instruction;

(f) Provide in-service training for teachers, counselors, and other staff, who are involved in the district's transitional bilingual program. Such training shall include appropriate instructional strategies for children of culturally different backgrounds, use of curriculum materials, and program models; and

(g) Make available a program of instructional support for up to two years immediately after pupils exit from the program, for exited pupils who need assistance in reaching grade-level performance in academic subjects even though they have achieved English proficiency for purposes of the transitional bilingual instructional program.

(2) The definitions in Article II of RCW 28A.705.010 apply to subsection (1)(d) of this section. [2013 2nd sp.s. c 9

§ 4; 2009 c 380 § 5; 2001 1st sp.s. c 6 § 4; 1984 c 124 § 3; 1979 c 95 § 3. Formerly RCW 28A.58.804.]

Intent—Effective dates—2013 2nd sp.s. c 9: See notes following RCW 28A.150.220.

Additional notes found at www.leg.wa.gov

Chapter 28A.188 RCW SCIENCE, TECHNOLOGY, ENGINEERING, AND MATHEMATICS (STEM) EDUCATION

Sections

28A.188.010	STEM literacy.
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28A.188.050	Statewide STEM organization.
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28A.188.070	Specialized courses in science, technology, engineering, and mathematics (STEM)—Grants to high schools—Selection criteria—Data collection by education data center—Reports.
28A.188.080	Mathematics, engineering, and science achievement program—Findings and intent.
28A.188.082	Mathematics, engineering, and science achievement program—Establishment and administration—Goals.
28A.188.084	Mathematics, engineering, and science achievement program—Coordinator—Staff.
28A.188.086	Mathematics, engineering, and science achievement program—Selection standards.
28A.188.088	Local program centers.
28A.188.090	Lighthouse programs—Science, technology, engineering, and mathematics focus.
28A.188.092	Lighthouse programs—Science, technology, engineering, and mathematics education lighthouse account.

28A.188.010 STEM literacy. (1) As used throughout this chapter, "STEM" means science, technology, engineering, and mathematics.

(2) To provide focus and clarity to efforts to increase learning opportunities and improve educational outcomes in STEM, the following definition of STEM literacy is adopted: STEM literacy means the ability to identify, apply, and integrate concepts from science, technology, engineering, and mathematics to understand complex problems and to innovate to solve them. STEM literacy is achieved when a student is able to apply his or her understanding of how the world works within and across the four interrelated STEM disciplines to improve the social, economic, and environmental conditions of the local and global community.

(3) The component parts of STEM literacy are:

(a) Scientific literacy, which is the ability to use scientific knowledge and processes in physics, chemistry, biology, and earth and space science to understand the natural world and to participate in decisions that affect it;

(b) Technological literacy, which is the ability to use new technologies, understand how technologies are developed, and have skills to analyze how new technologies affect individuals, the nation, and the world. Technology is the innovation, change, or modification of the natural environment to satisfy perceived human needs and wants;

(c) Engineering literacy, which is the understanding of how technologies are developed through the engineering design process. Engineering design is the systematic and cre-

ative application of scientific and mathematical principles to practical ends, such as the design, manufacture, and operation of efficient and economic structures, machines, processes, and systems; and

(d) Mathematical literacy, which is the ability to analyze, reason, and communicate ideas effectively through posing, formulating, solving, and interpreting solutions to mathematical problems in a variety of situations. [2013 2nd sp.s. c 25 § 1.]

28A.188.020 Statewide director for math, science, and technology—Duties—Reporting. The superintendent of public instruction shall provide support for statewide coordination for math, science, and technology, including employing a statewide director for math, science, and technology. The duties of the director shall include, but not be limited to:

(1) Within funds specifically appropriated therefor, obtain a statewide license, or otherwise obtain and disseminate, an interactive, project-based high school and middle school technology curriculum that includes a comprehensive professional development component for teachers and, if possible, counselors, and also includes a systematic program evaluation. The curriculum must be distributed to all school districts, or as many as feasible, by the 2007-08 school year;

(2) Within funds specifically appropriated therefor, supporting a public-private partnership to assist school districts with implementing an ongoing, inquiry-based science program that is based on a research-based model of systemic reform and aligned with the Washington state science grade level expectations;

(3) Within funds specifically appropriated therefor, supporting a public-private partnership to provide enriching opportunities in mathematics, engineering, and science for underrepresented students in grades kindergarten through twelve using exemplary materials and instructional approaches;

(4) In an effort to increase precollege and prework interest in math, science, and technology fields, in collaboration with the community and technical colleges, the four-year institutions of higher education, and the workforce training and education coordinating board, conducting outreach efforts to attract middle and high school students to careers in math, science, and technology and to educate students about the coursework that is necessary to be adequately prepared to succeed in these fields;

(5) Coordinating youth opportunities in math, science, and technology, including facilitating student participation in school clubs, state-level fairs, national competitions, and encouraging partnerships between students and university faculty or industry to facilitate such student participation;

(6) Developing and maintaining public-private partnerships to generate business and industry assistance to accomplish the following:

(a) Increasing student engagement and career awareness, including increasing student participation in the youth opportunities in subsection (5) of this section;

(b) Creation and promotion of student scholarships, internships, and apprenticeships;

(c) Provision of relevant teacher experience and training, including on-the-job professional development opportunities;

(d) Upgrading kindergarten through twelfth grade school equipment and facilities to support high quality math, science, and technology programs;

(7) Assembling a cadre of inspiring speakers employed or experienced in the relevant fields to speak to kindergarten through twelfth grade students to demonstrate the breadth of the opportunities in the relevant fields as well as share the types of coursework that are necessary for someone to be successful in the relevant field;

(8) Providing technical assistance to schools and school districts, including working with counselors in support of the math, science, and technology programs;

(9) Subject to available funding, working with the state board for community and technical colleges to develop high-demand applied baccalaureate programs that align with high quality secondary science, technology, engineering, and mathematics programs and career and technical education programs; and

(10) Reporting annually to the legislature about the actions taken to provide statewide coordination for math, science, and technology. [2013 c 55 § 1; 2007 c 396 § 15. Formerly RCW 28A.300.515.]

Finding—Intent—2007 c 396: "The legislature finds that knowledge, skills, and opportunities in mathematics, science, and technology should be increased for all students in Washington. The legislature intends to foster capacity between and among the educational sectors to enable continuous and sustainable growth of the learning and teaching of mathematics, science, and technologies. The legislature intends to foster high quality mathematics, science, and technology programs to increase the number of students in the kindergarten through twelfth grade pipeline who are prepared and aspire to continue in the areas of mathematics, science, and technology, whether it be at a college, university, or in the workforce." [2007 c 396 § 12.]

Captions not law—2007 c 396: See note following RCW 28A.305.215.

28A.188.030 STEM education innovation alliance.

(1) The STEM education innovation alliance is established to advise the governor and to provide vision, guidance, assistance, and advice to support the initiatives under this chapter, as well as other current or proposed programs and initiatives across the spectrum of early learning through postsecondary education, that are intended to increase learning opportunities and improve educational outcomes in STEM.

(2) The governor's office, in consultation with the superintendent of public instruction, shall invite representatives of STEM businesses, business and labor organizations with expertise in STEM fields, one or more nonprofit organizations with a mission to enhance STEM education from early learning through postsecondary education, school districts and institutions of higher education that have demonstrated leadership and innovation in STEM education, and STEM educators to participate in the alliance. Representatives from the governor's office, the office of the superintendent of public instruction, and other state education agencies shall also participate as members of the alliance.

(3) The STEM education innovation alliance shall initiate its work by aligning and combining previous STEM education strategic plans into a single, cohesive, and comprehensive STEM framework for action and accountability. The framework must concentrate on a limited number of selected

and specific measures that are meaningful indicators of progress in increasing STEM learning opportunities and in achieving the intended longer-term outcomes of such efforts. The framework must use measures that are quantifiable and based on data that are regularly and reliably collected statewide.

(4) Staff support for the STEM education innovation alliance shall be provided by the governor's office and the office of financial management, with support from the office of the superintendent of public instruction and other state education agencies as necessary. [2013 2nd sp.s. c 25 § 2.]

28A.188.040 STEM education report card—Coordination of data collection and analysis—Reports by education agencies and the employment security department.

(1) The STEM education innovation alliance shall develop a STEM education report card, based on the STEM framework for action and accountability, to monitor progress in increasing learning opportunities and aligning strategic plans and activities in order to prepare students for STEM-related jobs and careers, with the longer-term goal of improving educational, workforce, and economic outcomes in STEM.

(2) The report card must:

(a) Illustrate the most recent data for the indicators and measures of the STEM framework for action and accountability;

(b) Provide information from state education agencies that indicates the extent that activities and resources are aligned with and support the STEM framework for action and accountability;

(c) Provide data regarding current and projected STEM job openings in the state; and

(d) Be prominently displayed on a web site designed for this purpose.

(3)(a) The education data center under RCW 43.41.400 must coordinate data collection and analysis to support the report card.

(b) The state education agencies must annually report on how their policies, activities, and expenditures of public resources align with and support the STEM framework for action and accountability. The focus of the reporting under this subsection is on programs and initiatives specifically identified in law or budget proviso as related to STEM education. The agencies must use a common metric for the reporting, designed by the education data center in consultation with the STEM education innovation alliance. For the purposes of this section, "state education agencies" includes the office of the superintendent of public instruction, the student achievement council, the state board for community and technical colleges, the workforce training and education coordinating board, the professional educator standards board, the state board of education, and the department of early learning.

(c) The employment security department must create an annual report on current and projected job openings in STEM fields and submit the report to the education data center for inclusion in the STEM education report card.

(4) The STEM education innovation alliance must publish the first STEM education report card with baseline data on the identified measures by January 10, 2014, and must

update the report card by each January 10th thereafter. [2013 2nd sp.s. c 25 § 3.]

28A.188.050 Statewide STEM organization. (1) To the extent funds are appropriated specifically for this purpose, the office of financial management shall contract with a statewide nonprofit organization with expertise in promoting and supporting STEM education from early learning through postsecondary education. The purpose of the contract is to identify, test, and develop scalable, cost-effective, and evidence-based approaches for increasing learning opportunities and improving educational outcomes in STEM that are aligned with the STEM framework for action and accountability. The activities to be conducted under the contract shall be as provided in this section, with specific performance expectations negotiated between the office of the governor, the office of financial management, and the selected organization.

(2) Under the terms of the contract, the organization selected under this section shall:

(a) Conduct a statewide communications campaign to expand awareness of the importance of STEM literacy and the opportunities presented by STEM education and careers, particularly as a strategy to close the educational opportunity gap for disadvantaged students and promote economic development in disadvantaged communities;

(b) Expand regional networks of schools, institutions of higher education, educational service districts, STEM businesses, and community-based organizations to align STEM learning opportunities with best practices and local economic development;

(c) Establish an innovation fund and offer competitive grants to support innovative practices in STEM education, from early learning through postsecondary education, including developing models of interdisciplinary instruction and project-based learning;

(d) Expand STEM professional development opportunities for educators, faculty, and principals, including developing technology-enabled learning systems to support implementation of state learning standards; and

(e) Create opportunities to extend STEM learning into early learning programs. [2013 2nd sp.s. c 25 § 4.]

28A.188.060 Identification and dissemination of resources and materials to encourage interdisciplinary instruction and project-based learning. (1) Subject to funds appropriated specifically for this purpose, the office of the superintendent of public instruction, in consultation with the STEM education innovation alliance, must identify and disseminate resources and materials to elementary, middle, and high schools that are intended to encourage and increase interdisciplinary instruction and project-based learning in STEM.

(2) In collaboration with work groups of STEM educators and using the work of regional STEM networks and innovation grant recipients under RCW 28A.188.050, the office of the superintendent of public instruction must:

(a) Identify interdisciplinary STEM instructional modules appropriate for different grade levels;

(b) Identify project-based learning models, projects, lessons, and guides appropriate for different grade levels; and

(c) Make the information collected in this section, including online resource guides, available for teachers to incorporate into their classroom instruction.

(3) The office of the superintendent of public instruction must also disseminate information and research on best practices in interdisciplinary instruction and project-based learning in STEM. [2013 2nd sp.s. c 25 § 5.]

28A.188.070 Specialized courses in science, technology, engineering, and mathematics (STEM)—Grants to high schools—Selection criteria—Data collection by education data center—Reports. (1) Subject to funds appropriated for this purpose, the office of the superintendent of public instruction shall allocate grants to high schools to implement specialized courses in science, technology, engineering, and mathematics (STEM) careers as provided by a national multidisciplinary science, technology, engineering, and mathematics program. Grant funds must be allocated on a one-time basis and may be used to purchase course curriculum and equipment, initial course student materials, and support professional development for course teachers.

(2) The superintendent of public instruction must select grant recipients based on the criteria in this subsection (2). This is a competitive grant process. Successful high school applicants must:

(a) Demonstrate engaged and committed high school and district leadership and faculty in support of expanding specialized STEM courses;

(b) Demonstrate that faculty are appropriately trained to offer specialized STEM courses or a plan for faculty to obtain the appropriate training;

(c) Demonstrate capacity to offer the specialized STEM courses and maximize the use of grant resources by addressing: Availability of appropriate physical space, meeting program technology requirements, providing projected enrollment at the high school and from area high schools as appropriate, planned hours and days each week the program is to be offered, and other specific program requirements set forth by the superintendent of public instruction;

(d) Provide the plan for course implementation that includes a beginning date for first classes as well as plans for recruiting and retaining students in the course;

(e) Provide a plan to promote opportunities for students to acquire college credit;

(f) Demonstrate a history of successful partnerships within the community and partner support for implementing specialized STEM courses. Partner support may include one or more of the following: Supplying materials, instruction support, internships, mentorships, apprenticeships, and other program components;

(g) Demonstrate connections to community and technical college programs as well as links to four-year higher education institution STEM programs; and

(h) Demonstrate capacity to continue the course in years succeeding the initial grant year.

(3)(a) The education data center in the office of financial management must, with the office of the superintendent of public instruction, collect student course enrollment and course completion information.

(b) The education data center must: (i) Study mathematics and science course-taking patterns of students completing

specialized STEM courses; and (ii) follow the students to employment or further training and education in the two years following high school. This study must be designed to inform policymakers about the extent to which specialized science, technology, engineering, and mathematics classes taken by students reduce mathematics remediation of students entering the workplace, apprenticeships, community and technical colleges, and four-year institutions of higher education. Study findings must be reported annually beginning January 2014 and each January thereafter through January 2018 to the governor, appropriate state agencies, and the appropriate education and fiscal committees of the legislature. [2011 2nd sp.s. c 1 § 4. Formerly RCW 28A.700.120.]

Findings—Intent—2011 2nd sp.s. c 1: See note following RCW 28A.700.100.

28A.188.080 Mathematics, engineering, and science achievement program—Findings and intent. The legislature finds that high technology is important to the state's economy and the welfare of its citizens. The legislature finds that certain groups, as characterized by sex or ethnic background, are traditionally underrepresented in mathematics, engineering, and the science-related professions in this state. The legislature finds that women and minority students have been traditionally discouraged from entering the fields of science and mathematics including teaching in these fields. The legislature finds that attitudes and knowledges acquired during the kindergarten through eighth grade prepare students to succeed in high school science and mathematics programs and that special skills necessary for these fields need to be acquired during the ninth through twelfth grades. It is the intent of the legislature to promote a mathematics, engineering, and science achievement program to help increase the number of people in these fields and teaching in these fields from groups underrepresented in these fields. [1989 c 66 § 1; 1984 c 265 § 1. Formerly RCW 28A.625.200, 28A.03.430.]

Additional notes found at www.leg.wa.gov

28A.188.082 Mathematics, engineering, and science achievement program—Establishment and administration—Goals. A program to increase the number of people from groups underrepresented in the fields of mathematics, engineering, and the physical sciences in this state shall be established by the University of Washington. The program shall be administered through the University of Washington and designed to:

(1) Encourage students in the targeted groups in the common schools, with a particular emphasis on those students in middle and junior high schools and the sixth through twelfth grades, to acquire the academic skills needed to study mathematics, engineering, or related sciences at an institution of higher education;

(2) Promote the awareness of career opportunities including the career opportunities of teaching in the fields of science and mathematics and the skills necessary to achieve those opportunities among students sufficiently early in their educational careers to permit and encourage the students to acquire the skills;

(3) Promote cooperation among institutions of higher education, the superintendent of public instruction and local

school districts in working towards the goals of the program; and

(4) Solicit contributions of time and resources from public and private institutions of higher education, high schools, middle and junior high schools, and private business and industry. [1990 c 286 § 1; 1989 c 66 § 2; 1984 c 265 § 2. Formerly RCW 28A.625.210, 28A.03.432.]

Additional notes found at www.leg.wa.gov

28A.188.084 Mathematics, engineering, and science achievement program—Coordinator—Staff. A coordinator shall be hired to administer the program. Additional staff as necessary may be hired. [1984 c 265 § 3. Formerly RCW 28A.625.220, 28A.03.434.]

Additional notes found at www.leg.wa.gov

28A.188.086 Mathematics, engineering, and science achievement program—Selection standards. The coordinator shall develop standards and criteria for selecting students who participate in the program which may include predictive instruments to ascertain aptitude and probability of success. The standards shall include requirements that students take certain courses, maintain a certain grade point average, and participate in activities sponsored by the program. Women and students from minority groups, which are traditionally underrepresented in mathematics and science-related professions and which meet the requirements established by the coordinator shall be selected. [1984 c 265 § 4. Formerly RCW 28A.625.230, 28A.03.436.]

Additional notes found at www.leg.wa.gov

28A.188.088 Local program centers. The coordinator shall establish local program centers throughout the state to implement *RCW 28A.625.210 through 28A.625.230. Each center shall be managed by a center director. Additional staff as necessary may be hired. [1990 c 33 § 521; 1984 c 265 § 5. Formerly RCW 28A.625.240, 28A.03.438.]

*Reviser's note: RCW 28A.625.210 through 28A.625.230 were reclassified as RCW 28A.188.082 through 28A.188.086 pursuant to 2013 2nd sp.s. c 25 § 8.

Additional notes found at www.leg.wa.gov

28A.188.090 Lighthouse programs—Science, technology, engineering, and mathematics focus. (1) Subject to funds appropriated for this purpose, the superintendent of public instruction shall designate schools at the elementary, middle, and high school level to serve as resources and examples of how to combine the following best practices:

- (a) A small, highly personalized learning community;
- (b) An interdisciplinary curriculum with a strong focus on science, technology, engineering, and mathematics delivered through a project-based instructional approach; and
- (c) Active partnerships with businesses and the local community to connect learning beyond the classroom.

(2) The designated elementary, middle, and high schools shall serve as lighthouse programs and provide technical assistance and advice to other schools and communities in the initial stages of creating an alternative learning environment focused on science, technology, engineering, and mathematics. The designated schools must have proven experience and be recognized as model programs.

(3) In addition, the office of the superintendent of public instruction shall work with the designated elementary, middle, and high schools to publicize the models of best practices in science, technology, engineering, and mathematics instruction used by the designated schools and shall encourage other schools and communities to work with the designated schools to replicate similar models. [2012 c 151 § 1; 2010 c 238 § 2. Formerly RCW 28A.630.065.]

Intent—2010 c 238: "(1) The legislature has made a commitment to support multiple strategies to improve teaching and learning of science, technology, engineering, and mathematics in Washington's public schools. In recent years, Washington has adopted new technology, mathematics, and science learning standards; initiated funding for middle schools to provide a career and technical program in science, technology, engineering, and mathematics at the same rate as a high school operating a similar program; provided professional development for mathematics and science teachers; created a scholarship program to encourage students to enter mathematics and science degree programs; supported career and technical education in high-demand fields; and authorized alternative ways for teachers to earn certification in the mathematics and science fields.

(2) At the local level, school districts and their communities are also finding new ways to improve teaching and learning of science, technology, engineering, and mathematics. Some districts have combined several best practices into promising learning models for students. For example, Aviation high school in the Highline school district offers a small, highly personalized learning community that is focused on interdisciplinary immersion in science, technology, engineering, and mathematics using a hands-on, project-based curriculum. Delta high school in the Tri-Cities is a collaboration among three school districts, a skill center, two institutions of higher education, a community foundation, and local business leaders. The science and math institute at Point Defiance in Tacoma offers students field-based applied learning using the natural, historical, and community resources of a large metropolitan park. These schools draw students from across regions who are seeking an exciting, rigorous, and nontraditional learning experience. Other schools and communities across the state are seeking to replicate these innovative learning models.

(3) The legislature intends to support continued expansion of the type of innovation and creativity displayed by Aviation, Delta, and the science and math institute by designating so-called "lighthouse" high schools to serve as resources and examples of best practices in science, technology, engineering, and mathematics instruction." [2010 c 238 § 1.]

28A.188.092 Lighthouse programs—Science, technology, engineering, and mathematics education lighthouse account. The science, technology, engineering, and mathematics education lighthouse account is created in the custody of the state treasurer. The purpose of the account is to support schools designated as lighthouse schools under *RCW 28A.630.065 to serve as resources to other schools and communities interested in replicating similar models. Revenues to the account may include gifts from the private sector, federal funds, any appropriations made by the state legislature, or revenues from other sources. Grants to the designated lighthouse schools and their administration shall be paid from the account. Only the superintendent of public instruction or the superintendent's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2012 c 151 § 2. Formerly RCW 28A.630.066.]

***Reviser's note:** RCW 28A.630.065 was recodified as RCW 28A.188.090 pursuant to 2013 2nd sp.s. c 25 § 8.

Chapter 28A.195 RCW PRIVATE SCHOOLS

Sections

28A.195.090 Online school programs.

28A.195.090 Online school programs. (1) If a private school that has been approved under this chapter by the state board of education seeks approval also to offer and administer an online school program as defined under RCW 28A.250.010, including under contract with a third party, the requirements for minimum instructional hour offerings under RCW 28A.195.010(1) shall be deemed met for the online school program. A residential dwelling of a parent, guardian, or custodian shall be deemed an adequate physical facility for students enrolled in the online school program. The online school program is not required to be offered for the same grade levels as the approved private school.

(2) The state board of education may approve an online school program under this section that meets other applicable requirements under this chapter.

(3) No private school offering and administering an online program under this section, third party that contracts with a private school to offer and administer an online program, or parent or guardian providing an online program may receive state funding to provide the program. [2013 c 161 § 2.]

Findings—2013 c 161: "The legislature supports student access to a variety of educational options, both public and private. However, state policies regarding the approval of private schools were created before online learning was possible. Consequently, these policies do not provide for approval criteria that are sufficiently flexible to accommodate online learning. While some policy adjustments have been made to permit public online choices, current law does not provide a clear process for private schools to obtain state approval to offer similar learning options." [2013 c 161 § 1.]

Chapter 28A.205 RCW EDUCATION CENTERS (Formerly: Educational clinics)

Sections

28A.205.030 Reentry of prior dropouts into common schools, rules—Eligibility for test to earn a high school equivalency certificate.

28A.205.040 Fees—Rules—Priority for payment—Review of records.

28A.205.030 Reentry of prior dropouts into common schools, rules—Eligibility for test to earn a high school equivalency certificate. The superintendent of public instruction shall adopt, by rules, policies and procedures to permit a prior common school dropout to reenter at the grade level appropriate to such individual's ability: PROVIDED, That such individual shall be placed with the class he or she would be in had he or she not dropped out and graduate with that class, if the student's ability so permits notwithstanding any loss of credits prior to reentry and if such student earns credits at the normal rate subsequent to reentry.

Notwithstanding any other provision of law, any certified education center student sixteen years of age or older, upon completion of an individual student program, is eligible to take a test to earn a high school equivalency certificate as provided in RCW 28B.50.536 in accordance with rules adopted under RCW 28A.305.190 as given throughout the state. [2013 c 39 § 6. Prior: 1993 c 218 § 2; 1993 c 211 § 3;

1990 c 33 § 182; 1977 ex.s. c 341 § 3. Formerly RCW 28A.97.030.]

Additional notes found at www.leg.wa.gov

28A.205.040 Fees—Rules—Priority for payment—Review of records. (1)(a) From funds appropriated for that purpose, the superintendent of public instruction shall pay fees to a certified center on a monthly basis for each student enrolled in compliance with RCW 28A.205.020. The superintendent shall set fees by rule.

(b) Revisions in such fees proposed by an education center shall become effective after thirty days notice unless the superintendent finds such a revision is unreasonable in which case the revision shall not take effect. The administration of any test to earn a high school equivalency certificate as provided in RCW 28B.50.536 in accordance with rules adopted under RCW 28A.305.190 shall not be a part of such initial diagnostic procedure.

(c) Reimbursements shall not be made for students who are absent.

(d) No center shall make any charge to any student, or the student's parent, guardian or custodian, for whom a fee is being received under the provisions of this section.

(2) Payments shall be made from available funds first to those centers that have in the judgment of the superintendent demonstrated superior performance based upon consideration of students' educational gains taking into account such students' backgrounds, and upon consideration of cost effectiveness. In considering the cost effectiveness of nonprofit centers the superintendent shall take into account not only payments made under this section but also factors such as tax exemptions, direct and indirect subsidies or any other cost to taxpayers at any level of government which result from such nonprofit status.

(3) To be eligible for such payment, every such center, without prior notice, shall permit a review of its accounting records by personnel of the state auditor during normal business hours.

(4) If total funds for this purpose approach depletion, the superintendent shall notify the centers of the date after which further funds for reimbursement of the centers' services will be exhausted. [2013 c 39 § 7; 2006 c 263 § 412; 1999 c 348 § 4; 1990 c 33 § 183; 1979 ex.s. c 174 § 2; 1977 ex.s. c 341 § 4. Formerly RCW 28A.97.040.]

Findings—Purpose—Part headings not law—2006 c 263: See notes following RCW 28A.150.230.

Intent—1999 c 348: See note following RCW 28A.205.010.

Additional notes found at www.leg.wa.gov

Chapter 28A.210 RCW

HEALTH—SCREENING AND REQUIREMENTS

Sections

- 28A.210.260 Public and private schools—Administration of medication—Conditions.
 28A.210.270 Public and private schools—Administration of medication—Immunity from liability—Discontinuance, procedure.
 28A.210.383 Epinephrine autoinjectors (EPI pens)—School supply—Use.

28A.210.260 Public and private schools—Administration of medication—Conditions. Public school districts and private schools which conduct any of grades kindergar-

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ten through the twelfth grade may provide for the administration of oral medication, topical medication, eye drops, ear drops, or nasal spray, of any nature to students who are in the custody of the school district or school at the time of administration, but are not required to do so by this section, subject to the following conditions:

(1) The board of directors of the public school district or the governing board of the private school or, if none, the chief administrator of the private school shall adopt policies which address the designation of employees who may administer oral medications, topical medications, eye drops, ear drops, or nasal spray to students, the acquisition of parent requests and instructions, and the acquisition of requests from licensed health professionals prescribing within the scope of their prescriptive authority and instructions regarding students who require medication for more than fifteen consecutive school days, the identification of the medication to be administered, the means of safekeeping medications with special attention given to the safeguarding of legend drugs as defined in chapter 69.41 RCW, and the means of maintaining a record of the administration of such medication;

(2) The board of directors shall seek advice from one or more licensed physicians or nurses in the course of developing the foregoing policies;

(3) The public school district or private school is in receipt of a written, current and unexpired request from a parent, or a legal guardian, or other person having legal control over the student to administer the medication to the student;

(4) The public school district or the private school is in receipt of (a) a written, current and unexpired request from a licensed health professional prescribing within the scope of his or her prescriptive authority for administration of the medication, as there exists a valid health reason which makes administration of such medication advisable during the hours when school is in session or the hours in which the student is under the supervision of school officials, and (b) written, current and unexpired instructions from such licensed health professional prescribing within the scope of his or her prescriptive authority regarding the administration of prescribed medication to students who require medication for more than fifteen consecutive workdays;

(5) The medication is administered by an employee designated by or pursuant to the policies adopted pursuant to subsection (1) of this section and in substantial compliance with the prescription of a licensed health professional prescribing within the scope of his or her prescriptive authority or the written instructions provided pursuant to subsection (4) of this section. If a school nurse is on the premises, a nasal spray that is a legend drug or a controlled substance must be administered by the school nurse. If no school nurse is on the premises, a nasal spray that is a legend drug or a controlled substance may be administered by a trained school employee or parent-designated adult who is not a school nurse. The board of directors shall allow school personnel, who have received appropriate training and volunteered for such training, to administer a nasal spray that is a legend drug or a controlled substance. After a school employee who is not a school nurse administers a nasal spray that is a legend drug or a controlled substance, the employee shall summon emergency medical assistance as soon as practicable;

(6) The medication is first examined by the employee administering the same to determine in his or her judgment that it appears to be in the original container and to be properly labeled; and

(7) The board of directors shall designate a professional person licensed pursuant to chapter 18.71 RCW or chapter 18.79 RCW as it applies to registered nurses and advanced registered nurse practitioners, to delegate to, train, and supervise the designated school district personnel in proper medication procedures;

(8)(a) For the purposes of this section, "parent-designated adult" means a volunteer, who may be a school district employee, who receives additional training from a health care professional or expert in epileptic seizure care selected by the parents, and who provides care for the child consistent with the individual health plan.

(b) To be eligible to be a parent-designated adult, a school district employee not licensed under chapter 18.79 RCW must file, without coercion by the employer, a voluntary written, current, and unexpired letter of intent stating the employee's willingness to be a parent-designated adult. If a school employee who is not licensed under chapter 18.79 RCW chooses not to file a letter under this section, the employee shall not be subject to any employer reprisal or disciplinary action for refusing to file a letter;

(9) The board of directors shall designate a professional person licensed under chapter 18.71, 18.57, or 18.79 RCW as it applies to registered nurses and advanced registered nurse practitioners, to consult and coordinate with the student's parents and health care provider, and train and supervise the appropriate school district personnel in proper procedures for care for students with epilepsy to ensure a safe, therapeutic learning environment. Training may also be provided by an epilepsy educator who is nationally certified. Parent-designated adults who are school employees are required to receive the training provided under this subsection. Parent-designated adults who are not school employees must show evidence of comparable training. The parent-designated adult must also receive additional training as established in subsection (8)(a) of this section for the additional care the parents have authorized the parent-designated adult to provide. The professional person designated under this subsection is not responsible for the supervision of the parent-designated adult for those procedures that are authorized by the parents. [2013 c 180 § 1; 2012 c 16 § 1; 2000 c 63 § 1; 1994 sp.s. c 9 § 720; 1982 c 195 § 1. Formerly RCW 28A.31.150.]

Additional notes found at www.leg.wa.gov

28A.210.270 Public and private schools—Administration of medication—Immunity from liability—Discontinuance, procedure. (1) In the event a school employee administers oral medication, topical medication, eye drops, ear drops, or nasal spray to a student pursuant to RCW 28A.210.260 in substantial compliance with the prescription of the student's licensed health professional prescribing within the scope of the professional's prescriptive authority or the written instructions provided pursuant to RCW 28A.210.260(4), and the other conditions set forth in RCW 28A.210.260 have been substantially complied with, then the employee, the employee's school district or school of employment, and the members of the governing board and

chief administrator thereof shall not be liable in any criminal action or for civil damages in their individual or marital or governmental or corporate or other capacities as a result of the administration of the medication.

(2) The administration of oral medication, topical medication, eye drops, ear drops, or nasal spray to any student pursuant to RCW 28A.210.260 may be discontinued by a public school district or private school and the school district or school, its employees, its chief administrator, and members of its governing board shall not be liable in any criminal action or for civil damages in their governmental or corporate or individual or marital or other capacities as a result of the discontinuance of such administration: PROVIDED, That the chief administrator of the public school district or private school, or his or her designee, has first provided actual notice orally or in writing in advance of the date of discontinuance to a parent or legal guardian of the student or other person having legal control over the student. [2013 c 180 § 2; 2012 c 16 § 2; 2000 c 63 § 2; 1990 c 33 § 208; 1982 c 195 § 2. Formerly RCW 28A.31.155.]

Additional notes found at www.leg.wa.gov

28A.210.383 Epinephrine autoinjectors (EPI pens)—School supply—Use. (1) School districts and nonpublic schools may maintain at a school in a designated location a supply of epinephrine autoinjectors based on the number of students enrolled in the school.

(2)(a) A licensed health professional with the authority to prescribe epinephrine autoinjectors may prescribe epinephrine autoinjectors in the name of the school district or school to be maintained for use when necessary. Epinephrine prescriptions must be accompanied by a standing order for the administration of school-supplied, undesignated epinephrine autoinjectors for potentially life-threatening allergic reactions.

(b) There are no changes to current prescription or self-administration practices for children with existing epinephrine autoinjector prescriptions or a guided anaphylaxis care plan.

(c) Epinephrine autoinjectors may be obtained from donation sources, but must be accompanied by a prescription.

(3)(a) When a student has a prescription for an epinephrine autoinjector on file, the school nurse or designated trained school personnel may utilize the school district or school supply of epinephrine autoinjectors to respond to an anaphylactic reaction under a standing protocol according to RCW 28A.210.300.

(b) When a student does not have an epinephrine autoinjector or prescription for an epinephrine autoinjector on file, the school nurse may utilize the school district or school supply of epinephrine autoinjectors to respond to an anaphylactic reaction under a standing protocol according to RCW 28A.210.300.

(c) Epinephrine autoinjectors may be used on school property, including the school building, playground, and school bus, as well as during field trips or sanctioned excursions away from school property. The school nurse or designated trained school personnel may carry an appropriate supply of school-owned epinephrine autoinjectors on field trips or excursions.

(4)(a) If a student is injured or harmed due to the administration of epinephrine that a licensed health professional with prescribing authority has prescribed and a pharmacist has dispensed to a school under this section, the licensed health professional with prescribing authority and pharmacist may not be held responsible for the injury unless he or she issued the prescription with a conscious disregard for safety.

(b) In the event a school nurse or other school employee administers epinephrine in substantial compliance with a student's prescription that has been prescribed by a licensed health professional within the scope of the professional's prescriptive authority, if applicable, and written policies of the school district or private school, then the school employee, the employee's school district or school of employment, and the members of the governing board and chief administrator thereof are not liable in any criminal action or for civil damages in their individual, marital, governmental, corporate, or other capacity as a result of providing the epinephrine.

(c) School employees, except those licensed under chapter 18.79 RCW, who have not agreed in writing to the use of epinephrine autoinjectors as a specific part of their job description, may file with the school district a written letter of refusal to use epinephrine autoinjectors. This written letter of refusal may not serve as grounds for discharge, nonrenewal of an employment contract, or other action adversely affecting the employee's contract status.

(5) The office of the superintendent of public instruction shall review the anaphylaxis policy guidelines required under RCW 28A.210.380 and make a recommendation to the education committees of the legislature by December 1, 2013, based on student safety, regarding whether to designate other trained school employees to administer epinephrine autoinjectors to students without prescriptions for epinephrine autoinjectors demonstrating the symptoms of anaphylaxis when a school nurse is not in the vicinity. [2013 c 268 § 2.]

Findings—2013 c 268: "(1) The legislature finds that allergies are a serious medical disorder that affect more than one in five persons in the United States and are the sixth leading cause of chronic disease. Roughly one in thirteen children has a food allergy, and the incidence is rising. Up to forty percent of food-allergic children may be at risk for anaphylaxis, a severe and potentially life-threatening reaction. Anaphylaxis may also occur due to an insect sting, drug allergy, or other causes. Twenty-five percent of first-time anaphylactic reactions among children occur in a school setting. Anaphylaxis can occur anywhere on school property, including the classroom, playground, school bus, or on field trips.

(2) Rapid and appropriate administration of the drug epinephrine, also known as adrenaline, to a patient experiencing an anaphylactic reaction may make the difference between life and death. In a school setting, epinephrine is typically administered intramuscularly via an epinephrine autoinjector device. Medical experts agree that the benefits of emergency epinephrine administration far outweigh the risks.

(3) The legislature further finds that, on many days, as much as twenty percent of the nation's combined adult and child population can be found in public and nonpublic schools. Therefore, schools need to be prepared to treat potentially life-threatening anaphylactic reactions in the event a student is experiencing a first-time anaphylactic reaction, a student does not have his or her own epinephrine autoinjector device available, or if a school nurse is not in the vicinity at the time." [2013 c 268 § 1.]

Chapter 28A.225 RCW COMPULSORY SCHOOL ATTENDANCE AND ADMISSION

Sections

- 28A.225.023 Youth dependent pursuant to chapter 13.34 RCW—Review of unexpected or excessive absences—Support for youth's school work.
- 28A.225.220 Adults, children from other districts, agreements for attending school—Tuition.
- 28A.225.225 Applications from school employees' children, nonresident students, or students receiving home-based instruction to attend district school—Acceptance and rejection standards—Notification.
- 28A.225.330 Enrolling students from other districts—Requests for information and permanent records—Withheld transcripts—Immunity from liability—Notification to teachers and security personnel—Rules.

28A.225.023 Youth dependent pursuant to chapter 13.34 RCW—Review of unexpected or excessive absences—Support for youth's school work. A school district representative or school employee shall review unexpected or excessive absences with a youth who is dependent pursuant to chapter 13.34 RCW and adults involved with that youth, to include the youth's caseworker, educational liaison, attorney if one is appointed, parent or guardians, and foster parents or the person providing placement for the youth. The purpose of the review is to determine the cause of the absences, taking into account: Unplanned school transitions, periods of running from care, in-patient treatment, incarceration, school adjustment, educational gaps, psychosocial issues, and unavoidable appointments during the school day. A school district representative or a school employee must proactively support the youth's school work so the student does not fall behind and to avoid suspension or expulsion based on truancy. [2013 c 182 § 9.]

Findings—2013 c 182: See note following RCW 13.34.030.

28A.225.220 Adults, children from other districts, agreements for attending school—Tuition. (1) Any board of directors may make agreements with adults choosing to attend school, and may charge the adults reasonable tuition.

(2) A district is strongly encouraged to honor the request of a parent or guardian for his or her child to attend a school in another district or the request of a parent or guardian for his or her child to transfer as a student receiving home-based instruction.

(3) A district shall release a student to a nonresident district that agrees to accept the student if:

(a) A financial, educational, safety, or health condition affecting the student would likely be reasonably improved as a result of the transfer; or

(b) Attendance at the school in the nonresident district is more accessible to the parent's place of work or to the location of child care; or

(c) There is a special hardship or detrimental condition; or

(d) The purpose of the transfer is for the student to enroll in an online course or online school program offered by an online provider approved under RCW 28A.250.020.

(4) A district may deny the request of a resident student to transfer to a nonresident district if the release of the student would adversely affect the district's existing desegregation plan.

(5) For the purpose of helping a district assess the quality of its education program, a resident school district may request an optional exit interview or questionnaire with the parents or guardians of a child transferring to another district. No parent or guardian may be forced to attend such an interview or complete the questionnaire.

(6) Beginning with the 1993-94 school year, school districts may not charge transfer fees or tuition for nonresident students enrolled under subsection (3) of this section and RCW 28A.225.225. Reimbursement of a high school district for cost of educating high school pupils of a nonhigh school district shall not be deemed a transfer fee as affecting the apportionment of current state school funds. [2013 2nd sp.s. c 18 § 510. Prior: 1995 c 335 § 602; 1995 c 52 § 2; 1993 c 336 § 1008; 1990 1st ex.s. c 9 § 201; 1969 c 130 § 10; 1969 ex.s. c 223 § 28A.58.240; prior: 1963 c 47 § 2; prior: 1921 c 44 § 1, part; 1899 c 142 § 8, part; RRS § 4780, part. Formerly RCW 28A.58.240, 28.58.240.]

Application—Enforcement of laws protecting health and safety—2013 2nd sp.s. c 18: See note following RCW 28A.600.022.

Findings—Intent—Part headings not law—1993 c 336: See notes following RCW 28A.150.210.

Findings—1993 c 336: See note following RCW 28A.150.210.

Finding—1990 1st ex.s. c 9: "The legislature finds that academic achievement of Washington students can and should be improved. The legislature further finds that student success depends, in large part, on increased parental involvement in their children's education.

In order to take another step toward improving education in Washington, it is the purpose of this act to enhance the ability of parents to exercise choice in where they prefer their children attend school; inform parents of their options under local policies and state law for the intradistrict and inter-district enrollment of their children; and provide additional program opportunities for secondary students." [1990 1st ex.s. c 9 § 101.]

Education of children with disabilities: RCW 28A.155.040, 28A.155.050.

Additional notes found at www.leg.wa.gov

28A.225.225 Applications from school employees' children, nonresident students, or students receiving home-based instruction to attend district school—Acceptance and rejection standards—Notification. (1) Except for students who reside out-of-state and students under RCW 28A.225.217, a district shall accept applications from nonresident students who are the children of full-time certificated and classified school employees, and those children shall be permitted to enroll:

(a) At the school to which the employee is assigned;

(b) At a school forming the district's K through 12 continuum which includes the school to which the employee is assigned; or

(c) At a school in the district that provides early intervention services pursuant to RCW 28A.155.065 or preschool services pursuant to RCW 28A.155.070, if the student is eligible for such services.

(2) A district may reject applications under this section if:

(a) The student's disciplinary records indicate a history of convictions for offenses or crimes, violent or disruptive behavior, or gang membership;

(b) The student has been expelled or suspended from a public school for more than ten consecutive days. Any policy allowing for readmission of expelled or suspended students under this subsection (2)(b) must apply uniformly to both resident and nonresident applicants;

(c) Enrollment of a child under this section would displace a child who is a resident of the district, except that if a child is admitted under subsection (1) of this section, that child shall be permitted to remain enrolled at that school, or in that district's kindergarten through twelfth grade continuum, until he or she has completed his or her schooling; or

(d) The student has repeatedly failed to comply with requirements for participation in an online school program, such as participating in weekly direct contact with the teacher or monthly progress evaluations.

(3) A nonhigh district that is participating in an innovation academy cooperative may not accept an application from a high school student that conflicts with RCW 28A.340.080.

(4) Except as provided in subsection (1) of this section, all districts accepting applications from nonresident students or from students receiving home-based instruction for admission to the district's schools shall consider equally all applications received. Each school district shall adopt a policy establishing rational, fair, and equitable standards for acceptance and rejection of applications by June 30, 1990. The policy may include rejection of a nonresident student if:

(a) Acceptance of a nonresident student would result in the district experiencing a financial hardship;

(b) The student's disciplinary records indicate a history of convictions for offenses or crimes, violent or disruptive behavior, or gang membership;

(c) Accepting of the nonresident student would conflict with RCW 28A.340.080; or

(d) The student has been expelled or suspended from a public school for more than ten consecutive days. Any policy allowing for readmission of expelled or suspended students under this subsection (4)(d) must apply uniformly to both resident and nonresident applicants.

For purposes of subsections (2)(a) and (4)(b) of this section, "gang" means a group which: (i) Consists of three or more persons; (ii) has identifiable leadership; and (iii) on an ongoing basis, regularly conspires and acts in concert mainly for criminal purposes.

(5) The district shall provide to applicants written notification of the approval or denial of the application in a timely manner. If the application is rejected, the notification shall include the reason or reasons for denial and the right to appeal under RCW 28A.225.230(3). [2013 2nd sp.s. c 18 § 511; 2013 c 192 § 2; 2009 c 380 § 7; 2008 c 192 § 1; 2003 c 36 § 1; 1999 c 198 § 2; 1997 c 265 § 3; 1995 c 52 § 3; 1994 c 293 § 1; 1990 1st ex.s. c 9 § 203.]

Application—Enforcement of laws protecting health and safety—2013 2nd sp.s. c 18: See note following RCW 28A.600.022.

Finding—Severability—1990 1st ex.s. c 9: See notes following RCW 28A.225.220.

Additional notes found at www.leg.wa.gov

28A.225.330 Enrolling students from other districts—Requests for information and permanent records—Withheld transcripts—Immunity from liability—Notification to teachers and security personnel—Rules. (1) When enrolling a student who has attended school in another school district, the school enrolling the student may request the parent and the student to briefly indicate in writing whether or not the student has:

- (a) Any history of placement in special educational programs;
- (b) Any past, current, or pending disciplinary action;
- (c) Any history of violent behavior, or behavior listed in RCW 13.04.155;
- (d) Any unpaid fines or fees imposed by other schools; and
- (e) Any health conditions affecting the student's educational needs.

(2) The school enrolling the student shall request the school the student previously attended to send the student's permanent record including records of disciplinary action, history of violent behavior or behavior listed in RCW 13.04.155, attendance, immunization records, and academic performance. If the student has not paid a fine or fee under RCW 28A.635.060, or tuition, fees, or fines at approved private schools the school may withhold the student's official transcript, but shall transmit information about the student's academic performance, special placement, immunization records, records of disciplinary action, and history of violent behavior or behavior listed in RCW 13.04.155. If the official transcript is not sent due to unpaid tuition, fees, or fines, the enrolling school shall notify both the student and parent or guardian that the official transcript will not be sent until the obligation is met, and failure to have an official transcript may result in exclusion from extracurricular activities or failure to graduate.

(3) Upon request, school districts shall furnish a set of unofficial educational records to a parent or guardian of a student who is transferring out of state and who meets the definition of a child of a military family in transition under Article II of RCW 28A.705.010. School districts may charge the parent or guardian the actual cost of providing the copies of the records.

(4) If information is requested under subsection (2) of this section, the information shall be transmitted within two school days after receiving the request and the records shall be sent as soon as possible. The records of a student who meets the definition of a child of a military family in transition under Article II of RCW 28A.705.010 shall be sent within ten days after receiving the request. Any school district or district employee who releases the information in compliance with this section is immune from civil liability for damages unless it is shown that the school district employee acted with gross negligence or in bad faith. The professional educator standards board shall provide by rule for the discipline under chapter 28A.410 RCW of a school principal or other chief administrator of a public school building who fails to make a good faith effort to assure compliance with this subsection.

(5) Any school district or district employee who releases the information in compliance with federal and state law is immune from civil liability for damages unless it is shown that the school district or district employee acted with gross negligence or in bad faith.

(6) When a school receives information under this section or RCW 13.40.215 that a student has a history of disciplinary actions, criminal or violent behavior, or other behavior that indicates the student could be a threat to the safety of educational staff or other students, the school shall provide

this information to the student's teachers and security personnel.

(7) A school may not prevent a student who is dependent pursuant to chapter 13.34 RCW from enrolling if there is incomplete information as enumerated in subsection (1) of this section during the ten business days that the department of social and health services has to obtain that information under RCW 74.13.631. In addition, upon enrollment of a student who is dependent pursuant to chapter 13.34 RCW, the school district must make reasonable efforts to obtain and assess that child's educational history in order to meet the child's unique needs within two business days. [2013 c 182 § 10; 2009 c 380 § 2; 2006 c 263 § 805; 1999 c 198 § 3; 1997 c 266 § 4. Prior: 1995 c 324 § 2; 1995 c 311 § 25; 1994 c 304 § 2.]

Findings—2013 c 182: See note following RCW 13.34.030.

Findings—Purpose—Part headings not law—2006 c 263: See notes following RCW 28A.150.230.

Findings—Intent—Severability—1997 c 266: See notes following RCW 28A.600.455.

Additional notes found at www.leg.wa.gov

Chapter 28A.230 RCW

COMPULSORY COURSEWORK AND ACTIVITIES

Sections

- 28A.230.020 Common school curriculum.
- 28A.230.097 Career and technical high school course equivalencies.
- 28A.230.179 Cardiopulmonary resuscitation instruction.
- 28A.230.180 Access to campus and student information directories by official recruiting representatives—Informing students of educational and career opportunities.

28A.230.020 Common school curriculum. All common schools shall give instruction in reading, handwriting, orthography, written and mental arithmetic, geography, the history of the United States, English grammar, physiology and hygiene with special reference to the effects of alcohol and drug abuse on the human system, science with special reference to the environment, and such other studies as may be prescribed by rule of the superintendent of public instruction. All teachers shall stress the importance of the cultivation of manners, the fundamental principles of honesty, honor, industry and economy, the minimum requisites for good health including the beneficial effect of physical exercise and methods to prevent exposure to and transmission of sexually transmitted diseases, and the worth of kindness to all living creatures and the land. The prevention of child abuse may be offered as part of the curriculum in the common schools. [2013 c 23 § 48; 2006 c 263 § 414; 1991 c 116 § 6; 1988 c 206 § 403; 1987 c 232 § 1; 1986 c 149 § 4; 1969 c 71 § 3; 1969 ex.s. c 223 § 28A.05.010. Prior: 1909 p 262 § 2; RRS § 4681; prior: 1897 c 118 § 65; 1895 c 5 § 1; 1890 p 372 § 45; 1886 p 19 § 52. Formerly RCW 28A.05.010, 28.05.010, and 28.05.020.]

Findings—Purpose—Part headings not law—2006 c 263: See notes following RCW 28A.150.230.

Child abuse and neglect—Development of primary prevention program: RCW 28A.300.160.

Districts to develop programs and establish programs regarding child abuse and neglect prevention: RCW 28A.230.080.

Additional notes found at www.leg.wa.gov

28A.230.097 Career and technical high school course equivalencies. (1) Each high school or school district board of directors shall adopt course equivalencies for career and technical high school courses offered to students in high schools and skill centers. A career and technical course equivalency may be for whole or partial credit. Each school district board of directors shall develop a course equivalency approval procedure. Boards of directors must approve AP computer science courses as equivalent to high school mathematics or science, and must denote on a student's transcript that AP computer science qualifies as a math-based quantitative course for students who take the course in their senior year. In order for a board to approve AP computer science as equivalent to high school mathematics, the student must be concurrently enrolled in or have successfully completed algebra II.

(2) Career and technical courses determined to be equivalent to academic core courses, in full or in part, by the high school or school district shall be accepted as meeting core requirements, including graduation requirements, if the courses are recorded on the student's transcript using the equivalent academic high school department designation and title. Full or partial credit shall be recorded as appropriate. The high school or school district shall also issue and keep record of course completion certificates that demonstrate that the career and technical courses were successfully completed as needed for industry certification, college credit, or preapprenticeship, as applicable. The certificate shall be either part of the student's high school and beyond plan or the student's culminating project, as determined by the student. The office of the superintendent of public instruction shall develop and make available electronic samples of certificates of course completion. [2013 c 241 § 2; 2008 c 170 § 202; 2006 c 114 § 2.]

Findings—Intent—2013 c 241: "(1) The legislature finds that:

(a) Through such initiatives as grants for high-demand career and technical education programs and participation in the Microsoft IT academy, the state has previously supported K-12 computer science education;

(b) However, even though there were nearly sixty-five thousand student enrollments in high school computer science courses in the 2011-12 school year, more than half of those enrollments were in beginning or exploratory courses. Fewer than twelve hundred students enrolled in AP computer science courses;

(c) National studies of K-12 computer science education indicate that, in part because computer science is not treated as an academic subject, students may not perceive advanced computer science as relevant to their future academic or career success;

(d) Public institutions of higher education have expanded capacity to grant certificates and degrees in computer science and related fields in response to high employer demand and high student demand. Additional expansion and improvement will be dependent on new resources, updated equipment, and the availability of expert faculty;

(e) Information technology job vacancies exist at all levels of training and education and across all industries that are critical to Washington's economy; and

(f) Strategies are needed to support additional opportunities for Washington students to have careers in the innovative, technology-based or technology-enhanced industries located in our state.

(2) Therefore the legislature intends to take additional steps to improve and expand access to computer science education, particularly in advanced courses that could prepare students for careers in the field." [2013 c 241 § 1.]

Findings—Intent—Part headings not law—2008 c 170: See RCW 28A.700.005 and 28A.700.901.

Finding—Intent—2006 c 114: "(1) The legislature finds that Washington's performance-based education system should seek to provide fundamental academic knowledge and skills for all students, and to provide the opportunity for students to acquire knowledge and skills likely to contribute

to their own economic well-being and that of their families and communities.

(2) The legislature recognizes that career and technical options are available for students.

(3) High schools or school districts should take advantage of their opportunity to offer course credits, including credits toward graduation requirements, for knowledge and skills in fundamental academic content areas that students gain in career and technical education courses.

(4) Therefore the legislature intends to create a rigorous and high quality career and technical high school alternative assessment that assures students meet state standards, and also reflects nationally recognized standards for the knowledge and skills needed to pursue employment and careers in technical fields." [2006 c 114 § 1.]

28A.230.179 Cardiopulmonary resuscitation instruction. (1) Each school district that operates a high school must offer instruction in cardiopulmonary resuscitation to students as provided in this section. Beginning with the 2013-14 school year, instruction in cardiopulmonary resuscitation must be included in at least one health class necessary for graduation.

(2) Instruction in cardiopulmonary resuscitation under this section must:

(a) Be an instructional program developed by the American heart association or the American red cross or be nationally recognized and based on the most current national evidence-based emergency cardiovascular care guidelines for cardiopulmonary resuscitation;

(b) Include appropriate use of an automated external defibrillator, which may be taught by video; and

(c) Incorporate hands-on practice in addition to cognitive learning.

(3) School districts may offer the instruction in cardiopulmonary resuscitation directly or arrange for the instruction to be provided by available community-based providers. The instruction is not required to be provided by a certificated teacher. Certificated teachers providing the instruction are not required to be certified trainers of cardiopulmonary resuscitation. A student is not required to earn certification in cardiopulmonary resuscitation to successfully complete the instruction for the purposes of this section. [2013 c 181 § 3.]

Findings—Intent—2013 c 181: "The legislature finds that more than three hundred sixty thousand people in the United States experience cardiac arrest outside of a hospital every year, and only ten percent survive because the remainder do not receive timely cardiopulmonary resuscitation. When administered immediately, cardiopulmonary resuscitation doubles or triples survival rates from cardiac arrest. Sudden cardiac arrest can happen to anyone at any time. Many victims appear healthy and have no known heart disease or other risk factors. The legislature finds that schools are the hearts of our community, and preparing students to help with a sudden cardiac arrest emergency could save the life of a child, parent, or teacher. Washington state has a longstanding history of training members of the public in cardiopulmonary resuscitation with community-based training programs. The legislature finds that training students will continue the legacy of providing high quality emergency cardiac care to its citizens. Therefore, the legislature intends to create a generation of lifesavers by putting cardiopulmonary resuscitation skills in the hands of all high school graduates and providing schools with a flexible framework to prepare for an emergency." [2013 c 181 § 1.]

28A.230.180 Access to campus and student information directories by official recruiting representatives—Informing students of educational and career opportunities. If the board of directors of a school district provides access to the campus and the student information directory to persons or groups which make students aware of occupational or educational options, the board shall provide access to official recruiting representatives of the job corps, peace

corps, and AmeriCorps, and to official recruiting representatives of the military forces of the state and the United States for the purpose of informing students of educational and career opportunities available in the military, which must be equal to and no less than access provided to other postsecondary occupational or educational representatives. As used in this section, "access" includes, but is not limited to, the number of days provided and the type of presentation space. [2013 c 25 § 1; 1980 c 96 § 1. Formerly RCW 28A.58.535.]

Chapter 28A.232 RCW
ALTERNATIVE LEARNING
EXPERIENCE COURSES

Sections

28A.232.005	Finding—Intent.
28A.232.010	Alternative learning experience courses—Generally—Rules—Reports.
28A.232.020	Calculation and allocation of appropriations.

28A.232.005 Finding—Intent. (1) Under Article IX of the Washington state Constitution, all children are entitled to an opportunity to receive a basic education. Although the state must assure that students in public schools have opportunities to participate in the instructional program of basic education, there is no obligation for either the state or school districts to provide that instruction using a particular delivery method or through a particular program.

(2) The legislature finds ample evidence of the need to examine and reconsider policies under which alternative learning that occurs outside the classroom using an individual student learning plan may be considered equivalent to full-time attendance in school, including for funding purposes. Previous legislative studies have raised questions about financial practices and accountability in alternative learning experience courses. Since 2005, there has been significant enrollment growth in alternative learning experience online courses, with evidence of unexpected financial impact when large numbers of nonresident students enroll in courses. Based on this evidence, there is a rational basis on which to conclude that there are different costs associated with providing courses not primarily based on full-time, daily contact between teachers and students and not primarily occurring on-site in a classroom.

(3) For these reasons, the legislature intends to allow for continuing review and revision of the way in which state funding allocations are used to support alternative learning experience courses. [2013 2nd sp.s. c 18 § 501; 2011 1st sp.s. c 34 § 1.]

Application—Enforcement of laws protecting health and safety—2013 2nd sp.s. c 18: See note following RCW 28A.600.022.

28A.232.010 Alternative learning experience courses—Generally—Rules—Reports. (1) The definitions in this subsection apply throughout this chapter unless the context clearly requires otherwise.

(a) "Alternative learning experience course" means a course, or for grades kindergarten through eight grade-level coursework, that is a delivery method for the program of basic education and is:

(i) Provided in whole or in part independently from a regular classroom setting or schedule, but may include some components of direct instruction;

(ii) Supervised, monitored, assessed, evaluated, and documented by a certificated teacher employed by the school district or under contract as permitted by applicable rules; and

(iii) Provided in accordance with a written student learning plan that is implemented pursuant to the school district's policy and rules adopted by the superintendent of public instruction for alternative learning experiences.

(b) "In-person" means face-to-face instructional contact in a physical classroom environment.

(c) "Instructional contact time" means instructional time with a certificated teacher. Instructional contact time must be for the purposes of actual instruction, review of assignments, testing, evaluation of student progress, or other learning activities or requirements identified in the student's written student learning plan. Instructional contact time must be related to an alternative learning experience course identified in the student's written student learning plan. Instructional contact time may occur in a group setting between the teacher and multiple students and may be delivered either in-person or remotely using technology.

(d) "Online course" means an alternative learning experience course that has the same meaning as provided in RCW 28A.250.010.

(e) "Remote course" means an alternative learning experience course that is not an online course where the student has in-person instructional contact time for less than twenty percent of the total weekly time for the course. No minimum in-person instructional contact time is required.

(f) "Site-based course" means an alternative learning experience course where the student has in-person instructional contact time for at least twenty percent of the total weekly time for the course.

(g) "Total weekly time" means the estimated average hours per school week the student will engage in learning activities to meet the requirements of the written student learning plan.

(2) School districts may claim state funding under RCW 28A.232.020, to the extent otherwise allowed by state law including the provisions of RCW 28A.250.060, for students enrolled in remote, site-based, or online alternative learning experience courses. High school courses must meet district or state graduation requirements and be offered for high school credit.

(3) School districts that offer alternative learning experience courses may not provide any compensation, reimbursement, gift, reward, or gratuity to any parents, guardians, or students for participation in the courses. School district employees are prohibited from receiving any compensation or payment as an incentive to increase student enrollment of out-of-district students in alternative learning experience courses. This prohibition includes, but is not limited to, providing funds to parents, guardians, or students for the purchase of educational materials, supplies, experiences, services, or technological equipment. A district may purchase educational materials, equipment, or other nonconsumable supplies for students' use in alternative learning experience courses if the purchase is consistent with the district's

approved curriculum, conforms to applicable laws and rules, and is made in the same manner as such purchases are made for students in the district's regular instructional program. Items so purchased remain the property of the school district upon program completion. School districts may not purchase or contract for instructional or cocurricular experiences and services that are included in an alternative learning experience written student learning plan, including but not limited to lessons, trips, and other activities, unless substantially similar experiences and services are available to students enrolled in the district's regular instructional program. School districts that purchase or contract for such experiences and services for students enrolled in an alternative learning experience course must submit an annual report to the office of the superintendent of public instruction detailing the costs and purposes of the expenditures. These requirements extend to contracted providers of alternative learning experience courses, and each district shall be responsible for monitoring the compliance of its providers with these requirements. However, nothing in this subsection shall prohibit school districts from contracting with school district employees to provide services or experiences to students, or from contracting with online providers approved by the office of the superintendent of public instruction pursuant to chapter 28A.250 RCW.

(4) Each school district offering or contracting to offer alternative learning experience courses must:

(a) Report annually to the superintendent of public instruction regarding the course types and offerings, and number of students participating in each;

(b) Document the district of residence for each student enrolled in an alternative learning experience course; and

(c) Beginning in the 2013-14 school year and continuing through the 2016-17 school year, pay costs associated with a biennial measure of student outcomes and financial audit of the district's alternative learning experience courses by the office of the state auditor.

(5) A school district offering or contracting to offer an alternative learning experience course to a nonresident student must inform the resident school district if the student drops out of the course or is otherwise no longer enrolled.

(6) School districts must assess the educational progress of enrolled students at least annually, using, for full-time students, the state assessment for the student's grade level and using any other annual assessments required by the school district. Part-time students must also be assessed at least annually. However, part-time students who are either receiving home-based instruction under chapter 28A.200 RCW or who are enrolled in an approved private school under chapter 28A.195 RCW are not required to participate in the assessments required under chapter 28A.655 RCW. The rules must address how students who reside outside the geographic service area of the school district are to be assessed.

(7) Beginning with the 2013-14 school year, school districts must designate alternative learning experience courses as such when reporting course information to the office of the superintendent of public instruction under RCW 28A.300.500.

(8)(a) The superintendent of public instruction shall adopt rules necessary to implement this section.

(b) Rules adopted for weekly direct personal contact requirements and monthly progress evaluation must be flexible and reflect the needs of the student and the student's individual learning plan rather than specifying an amount of time. In addition, the rules must reduce documentation requirements, particularly for students making satisfactory progress, based on the unique aspects of the alternative learning experience course types defined in this section and taking into consideration the technical and system capabilities associated with the different course types.

(c) The rules must establish procedures that address how the counting of students must be coordinated by resident and nonresident districts for state funding so that no student is counted for more than one full-time equivalent in the aggregate. [2013 2nd sp.s. c 18 § 502; 2011 1st sp.s. c 34 § 2. Formerly RCW 28A.150.325.]

Application—Enforcement of laws protecting health and safety—2013 2nd sp.s. c 18: See note following RCW 28A.600.022.

28A.232.020 Calculation and allocation of appropriations. The superintendent of public instruction shall separately calculate and allocate moneys appropriated under RCW 28A.150.260 to school districts for each full-time equivalent student enrolled in an alternative learning experience course. The calculation shall be based on the estimated statewide annual average allocation per full-time equivalent student in grades nine through twelve in general education, excluding small high school enhancements, and including applicable rules and provisions of the omnibus appropriations act. [2013 2nd sp.s. c 18 § 503.]

Effective date—2013 2nd sp.s. c 18 § 503: "Section 503 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 30, 2013]." [2013 2nd sp.s. c 18 § 602.]

Application—Enforcement of laws protecting health and safety—2013 2nd sp.s. c 18: See note following RCW 28A.600.022.

Chapter 28A.250 RCW ONLINE LEARNING

Sections

28A.250.010	Definitions.
28A.250.020	Multidistrict online providers—Approval criteria—Advisory committee.
28A.250.050	Student access to online courses and online learning programs—Policies and procedures—Course credit—Dissemination of information—Development of local or regional online learning programs.
28A.250.060	Availability of state funding for students enrolled in online courses or programs.
28A.250.070	Rights of students to attend nonresident school district for the purposes of enrolling in online courses or online school programs—Standard release form.
28A.250.080	Administration of statewide student assessment—Waiver of scheduled dates.

28A.250.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1)(a) "Multidistrict online provider" means:

(i) A private or nonprofit organization that enters into a contract with a school district to provide online courses or programs to K-12 students from more than one school district;

(ii) A private or nonprofit organization that enters into contracts with multiple school districts to provide online courses or programs to K-12 students from those districts; or

(iii) Except as provided in (b) of this subsection, a school district that provides online courses or programs to students who reside outside the geographic boundaries of the school district.

(b) "Multidistrict online provider" does not include a school district online learning program in which fewer than ten percent of the students enrolled in the program are from other districts under the interdistrict student transfer provisions of RCW 28A.225.225. "Multidistrict online provider" also does not include regional online learning programs that are jointly developed and implemented by two or more school districts or an educational service district through an interdistrict cooperative program agreement that addresses, at minimum, how the districts share student full-time equivalency for state basic education funding purposes and how categorical education programs, including special education, are provided to eligible students.

(2)(a) "Online course" means a course or grade-level coursework where:

(i) More than half of the course content is delivered electronically using the internet or other computer-based methods;

(ii) More than half of the teaching is conducted from a remote location through an online course learning management system or other online or electronic tools;

(iii) A certificated teacher has the primary responsibility for the student's instructional interaction. Instructional interaction between the teacher and the student includes, but is not limited to, direct instruction, review of assignments, assessment, testing, progress monitoring, and educational facilitation; and

(iv) Students have access to the teacher synchronously, asynchronously, or both.

(b) "Online school program" means a school program that offers a sequential set of online courses or grade-level coursework that may be taken in a single school term or throughout the school year in a manner that could provide a full-time basic education program if so desired by the student. Students may enroll in the program as part-time or full-time students.

(c) An online course or online school program may be delivered to students at school as part of the regularly scheduled school day. An online course or online school program also may be delivered to students, in whole or in part, independently from a regular classroom schedule, but such courses or programs must comply with RCW 28A.232.010 and associated rules adopted by the superintendent of public instruction to qualify for state basic education funding.

(3) "Online provider" means any provider of an online course or program, including multidistrict online providers, all school district online learning programs, and all regional online learning programs. [2013 2nd sp.s. c 18 § 504; 2011 1st sp.s. c 34 § 5; 2009 c 542 § 2.]

Application—Enforcement of laws protecting health and safety—2013 2nd sp.s. c 18: See note following RCW 28A.600.022.

Finding—Intent—2011 1st sp.s. c 34: See note following RCW 28A.150.325.

28A.250.020 Multidistrict online providers—Approval criteria—Advisory committee. (1) The superintendent of public instruction, in collaboration with the state board of education, shall develop and implement approval criteria and a process for approving online providers; a process for monitoring and if necessary rescinding the approval of courses or programs offered by an online provider; and an appeals process. The criteria and processes for multidistrict online providers shall be adopted by rule by December 1, 2009.

(2) When developing the approval criteria, the superintendent of public instruction shall require that providers offering online courses or programs have accreditation, or are candidates for accreditation, through the Northwest accreditation commission or another national, regional, or state accreditation program listed by the office of the superintendent of public instruction. In addition to other criteria, the approval criteria shall include the degree of alignment with state academic standards and require that all teachers be certificated in accordance with Washington state law. When reviewing online providers that offer high school courses, the superintendent of public instruction shall assure that the courses offered by the provider are eligible for high school credit. However, final decisions regarding whether credit meets the school district's graduation requirements shall remain the responsibility of the school districts.

(3) Initial approval of online providers by the superintendent of public instruction shall be for four years. The superintendent of public instruction shall develop a process for the renewal of approvals and for rescinding approvals based on noncompliance with approval requirements. Any multidistrict online provider that was approved by the digital learning commons or accredited by the Northwest association of accredited schools before July 26, 2009, and that meets the teacher certification requirements of subsection (2) of this section, is exempt from the initial approval process under this section until August 31, 2012, but must comply with the process for renewal of approvals and must comply with approval requirements.

(4) The superintendent of public instruction shall make the first round of decisions regarding approval of multidistrict online providers by April 1, 2010. The first round of decisions regarding approval of online providers that are not multidistrict online providers shall be made by April 1, 2013. Thereafter, the superintendent of public instruction shall make annual approval decisions no later than November 1st of each year.

(5) The superintendent of public instruction shall establish an online learning advisory committee within existing resources that shall provide advice to the superintendent regarding the approval criteria, major components of the web site, the model school district policy, model agreements, and other related matters. The committee shall include a representative of each of the following groups: Private and public online providers, parents of online students, accreditation organizations, educational service districts, school principals, teachers, school administrators, school board members, institutions of higher education, and other individuals as determined by the superintendent. Members of the advisory committee shall be selected by the superintendent based on nominations from statewide organizations, shall serve three-year

terms, and may be reappointed. The superintendent shall select the chair of the committee. [2013 2nd sp.s. c 18 § 505; 2011 1st sp.s. c 34 § 6; 2009 c 542 § 3.]

Application—Enforcement of laws protecting health and safety—2013 2nd sp.s. c 18: See note following RCW 28A.600.022.

Finding—Intent—2011 1st sp.s. c 34: See note following RCW 28A.150.325.

28A.250.050 Student access to online courses and online learning programs—Policies and procedures—Course credit—Dissemination of information—Development of local or regional online learning programs. (1) By August 31, 2010, all school district boards of directors shall develop policies and procedures regarding student access to online courses and online learning programs. The policies and procedures shall include but not be limited to: Student eligibility criteria; the types of online courses available to students through the school district; the methods districts will use to support student success, which may include a local advisor; when the school district will and will not pay course fees and other costs; the granting of high school credit; and a process for students and parents or guardians to formally acknowledge any course taken for which no credit is given. The policies and procedures shall take effect beginning with the 2010-11 school year. School districts shall submit their policies to the superintendent of public instruction by September 15, 2010. By December 1, 2010, the superintendent of public instruction shall summarize the school district policies regarding student access to online courses and submit a report to the legislature.

(2) School districts must award credit and grades for online high school courses successfully completed by a student that meet the school district's graduation requirements and are provided by an approved online provider.

(3) School districts shall provide students with information regarding online courses that are available through the school district. The information shall include the types of information described in subsection (1) of this section.

(4) When developing local or regional online learning programs, school districts shall incorporate into the program design the approval criteria developed by the superintendent of public instruction under RCW 28A.250.020. [2013 2nd sp.s. c 18 § 506; 2011 1st sp.s. c 34 § 11; 2009 c 542 § 6.]

Application—Enforcement of laws protecting health and safety—2013 2nd sp.s. c 18: See note following RCW 28A.600.022.

Finding—Intent—2011 1st sp.s. c 34: See note following RCW 28A.150.325.

28A.250.060 Availability of state funding for students enrolled in online courses or programs. (1) Beginning with the 2011-12 school year, school districts may claim state funding under RCW 28A.232.020, to the extent otherwise allowed by state law, for students enrolled in online courses or programs only if the online courses or programs are:

(a) Offered by a multidistrict online provider approved under RCW 28A.250.020 by the superintendent of public instruction;

(b) Offered by a school district online learning program if the program serves students who reside within the geographic boundaries of the school district, including school

district programs in which fewer than ten percent of the program's students reside outside the school district's geographic boundaries; or

(c) Offered by a regional online learning program where courses are jointly developed and offered by two or more school districts or an educational service district through an interdistrict cooperative program agreement.

(2) Beginning with the 2013-14 school year, school districts may claim state funding under RCW 28A.232.020, to the extent otherwise allowed by state law, for students enrolled in online courses or programs only if the online courses or programs are offered by an online provider approved under RCW 28A.250.020 by the superintendent of public instruction.

(3) Criteria shall be established by the superintendent of public instruction to allow online courses that have not been approved by the superintendent of public instruction to be eligible for state funding if the course is in a subject matter in which no courses have been approved and, if it is a high school course, the course meets Washington high school graduation requirements. [2013 2nd sp.s. c 18 § 507; 2011 1st sp.s. c 34 § 8; 2009 c 542 § 7.]

Application—Enforcement of laws protecting health and safety—2013 2nd sp.s. c 18: See note following RCW 28A.600.022.

Finding—Intent—2011 1st sp.s. c 34: See note following RCW 28A.150.325.

28A.250.070 Rights of students to attend nonresident school district for the purposes of enrolling in online courses or online school programs—Standard release form. Nothing in this chapter is intended to diminish the rights of students to attend a nonresident school district in accordance with RCW 28A.225.220 through 28A.225.230 for the purposes of enrolling in online courses or online school programs. The office of online learning under RCW 28A.250.030 shall develop a standard form, which must be used by all school districts, for releasing a student to a nonresident school district for the purposes of enrolling in an online course or online school program. [2013 2nd sp.s. c 18 § 508; 2009 c 542 § 8.]

Application—Enforcement of laws protecting health and safety—2013 2nd sp.s. c 18: See note following RCW 28A.600.022.

28A.250.080 Administration of statewide student assessment—Waiver of scheduled dates. An online school program may request a waiver from the office of the superintendent of public instruction to administer one or more sections of the statewide student assessment for grades three through eight for some or all students enrolled in the program on alternate days or on an alternate schedule, as long as the administration is within the testing period established by the office. The office may deny a request for a waiver if the online school program's proposal does not maintain adequate test security or would reduce the reliability of the assessment results by providing an inequitable advantage for some students. [2013 2nd sp.s. c 18 § 509.]

Application—Enforcement of laws protecting health and safety—2013 2nd sp.s. c 18: See note following RCW 28A.600.022.

Chapter 28A.290 RCW
QUALITY EDUCATION COUNCIL

Sections

28A.290.010 Quality education council—Purpose—Membership and staffing—Reports.

28A.290.010 Quality education council—Purpose—Membership and staffing—Reports. (1) The quality education council is created to recommend and inform the ongoing implementation by the legislature of an evolving program of basic education and the financing necessary to support such program. The council shall develop strategic recommendations on the program of basic education for the common schools. The council shall take into consideration the capacity report produced under RCW 28A.300.172 and the availability of data and progress of implementing the data systems required under RCW 28A.655.210. Any recommendations for modifications to the program of basic education shall be based on evidence that the programs effectively support student learning. The council shall update the statewide strategic recommendations every four years. The recommendations of the council are intended to:

(a) Inform future educational policy and funding decisions of the legislature and governor;

(b) Identify measurable goals and priorities for the educational system in Washington state for a ten-year time period, including the goals of basic education, ongoing strategies for coordinating statewide efforts to eliminate the achievement gap and reduce student dropout rates, and strategies to increase learning opportunities in science, technology, engineering, and mathematics that are aligned with the STEM framework for action and accountability developed under RCW 28A.188.030; and

(c) Enable the state of Washington to continue to implement an evolving program of basic education.

(2) The council may request updates and progress reports from the office of the superintendent of public instruction, the state board of education, the professional educator standards board, and the department of early learning on the work of the agencies as well as educational working groups established by the legislature.

(3) The chair of the council shall be selected from the councilmembers. The council shall be composed of the following members:

(a) Four members of the house of representatives, with two members representing each of the major caucuses and appointed by the speaker of the house of representatives;

(b) Four members of the senate, with two members representing each of the major caucuses and appointed by the president of the senate;

(c) One representative each from the office of the governor, office of the superintendent of public instruction, state board of education, professional educator standards board, and department of early learning; and

(d) One nonlegislative representative from the educational opportunity gap oversight and accountability committee established under RCW 28A.300.136, to be selected by the members of the committee.

(4) The council shall meet no more than four days a year.

(5)(a) The council shall submit an initial report to the governor and the legislature by January 1, 2010, detailing its

recommendations, including recommendations for resolving issues or decisions requiring legislative action during the 2010 legislative session, and recommendations for any funding necessary to continue development and implementation of chapter 548, Laws of 2009.

(b) The initial report shall, at a minimum, include:

(i) Consideration of how to establish a statewide beginning teacher mentoring and support system;

(ii) Recommendations for a program of early learning for at-risk children;

(iii) A recommended schedule for the concurrent phase-in of the changes to the instructional program of basic education and the implementation of the funding formulas and allocations to support the new instructional program of basic education as established under chapter 548, Laws of 2009. The phase-in schedule shall have full implementation completed by September 1, 2018; and

(iv) A recommended schedule for phased-in implementation of the new distribution formula for allocating state funds to school districts for the transportation of students to and from school, with phase-in beginning no later than September 1, 2013.

(6) The council shall submit a report to the legislature by January 1, 2012, detailing its recommendations for a comprehensive plan for a voluntary program of early learning. Before submitting the report, the council shall seek input from the early learning advisory council created in RCW 43.215.090.

(7) The council shall submit a report to the governor and the legislature by December 1, 2010, that includes:

(a) Recommendations for specific strategies, programs, and funding, including funding allocations through the funding distribution formula in RCW 28A.150.260, that are designed to close the achievement gap and increase the high school graduation rate in Washington public schools. The council shall consult with the educational opportunity gap oversight and accountability committee and the building bridges work group in developing its recommendations; and

(b) Recommendations for assuring adequate levels of state-funded classified staff to support essential school and district services.

(8) The council shall be staffed by the office of the superintendent of public instruction and the office of financial management. Additional staff support shall be provided by the state entities with representatives on the council. Senate committee services and the house of representatives office of program research may provide additional staff support.

(9) Legislative members of the council shall serve without additional compensation but may be reimbursed for travel expenses in accordance with RCW 44.04.120 while attending sessions of the council or on official business authorized by the council. Nonlegislative members of the council may be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060. [2013 2nd sp.s. c 25 § 7; 2011 1st sp.s. c 21 § 54. Prior: 2010 c 236 § 15; 2010 c 234 § 4; 2009 c 548 § 114.]

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

Intent—2010 c 234: See note following RCW 43.215.090.

Effective date—2010 c 236 § 6: "Section 6 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support

of the state government and its existing public institutions, and takes effect immediately [March 29, 2010]." [2010 c 236 § 20.]

Intent—2009 c 548: See RCW 28A.150.1981.

Finding—2009 c 548: See note following RCW 28A.410.270.

Intent—Finding—2009 c 548: See note following RCW 28A.305.130.

Chapter 28A.300 RCW

SUPERINTENDENT OF PUBLIC INSTRUCTION

Sections

28A.300.042	Student data-related reports—Disaggregation of data by subgroups.
28A.300.046	"Student absence from school"—Rules—Collection of attendance and discipline data.
28A.300.136	Educational opportunity gap oversight and accountability committee—Policy and strategy recommendations.
28A.300.145	Educational materials regarding sex offenses, sex offenders, and victims of sexual assault (<i>as amended by 2013 c 10</i>).
28A.300.145	Educational materials regarding sex offenses, sex offenders, and victims of sexual assault (<i>as amended by 2013 c 85</i>).
28A.300.285	Harassment, intimidation, and bullying prevention policies and procedures—Model policy and procedure—Training materials—Posting on web site—Rules—Advisory committee.
28A.300.2851	School bullying and harassment—Work group.
28A.300.471	Medical emergency response and automated external defibrillator program.
28A.300.515	Recodified as RCW 28A.188.020.
28A.300.560	Data on college credit through dual credit courses—Posting on web site.
28A.300.565	Grants to implement emergency response systems.
28A.300.570	Support of reading and early literacy.

Mental health first aid training for teachers and educational staff: RCW 43.20A.765.

Model school district plan for recognition, initial screening, and response to emotional or behavioral distress in students: RCW 28A.320.1271.

28A.300.042 Student data-related reports—Disaggregation of data by subgroups. (1) All student data-related reports required of the superintendent of public instruction in this title must be disaggregated by at least the following subgroups of students: White, Black, Hispanic, American Indian/Alaskan Native, Asian, Pacific Islander/Hawaiian Native, low income, transitional bilingual, migrant, special education, and students covered by section 504 of the federal rehabilitation act of 1973, as amended (29 U.S.C. Sec. 794).

(2) All student data-related reports required of the superintendent of public instruction regarding student suspensions and expulsions as required in RCW 28A.300.046 are subject to disaggregation by subgroups including:

- (a) Gender;
- (b) Foster care;
- (c) Homeless, if known;
- (d) School district;
- (e) School;
- (f) Grade level;
- (g) Behavior infraction code, including:
 - (i) Bullying;
 - (ii) Tobacco;
 - (iii) Alcohol;
 - (iv) Illicit drug;
 - (v) Fighting without major injury;
 - (vi) Violence without major injury;
 - (vii) Violence with major injury;
 - (viii) Possession of a weapon; and

(ix) Other behavior resulting from a short-term or long-term suspension, expulsion, or interim alternative education setting intervention;

(h) Intervention applied, including:

(i) Short-term suspension;

(ii) Long-term suspension;

(iii) Emergency expulsion;

(iv) Expulsion;

(v) Interim alternative education settings;

(vi) No intervention applied; and

(vii) Other intervention applied that is not described in this subsection (2)(h);

(i) Number of days a student is suspended or expelled, to be

counted in half or full days; and

(j) Any other categories added at a future date by the data governance group.

(3) All student data-related reports required of the superintendent of public instruction regarding student suspensions and expulsions as required in RCW 28A.300.046 are subject to cross-tabulation at a minimum by the following:

(a) School and district;

(b) Race, low income, special education, transitional bilingual, migrant, foster care, homeless, students covered by section 504 of the federal rehabilitation act of 1973, as amended (29 U.S.C. Sec. 794), and categories to be added in the future;

(c) Behavior infraction code; and

(d) Intervention applied. [2013 2nd sp.s. c 18 § 307; 2009 c 468 § 4.]

Application—Enforcement of laws protecting health and safety—2013 2nd sp.s. c 18: See note following RCW 28A.600.022.

Findings—Intent—2009 c 468: See note following RCW 28A.300.136.

28A.300.046 "Student absence from school"—Rules—Collection of attendance and discipline data.

(1)(a) The superintendent of public instruction shall adopt rules establishing a standard definition of student absence from school. In adopting the definition, the superintendent shall review current practices in Washington school districts, definitions used in other states, and any national standards or definitions used by the national center for education statistics or other national groups. The superintendent shall also consult with the building bridges work group established under RCW 28A.175.075.

(b) Using the definition of student absence adopted under this section, the superintendent shall establish an indicator for measuring student attendance in high schools for purposes of the PASS program under RCW 28A.175.130.

(2)(a) The K-12 data governance group under RCW 28A.300.507 shall establish the parameters and an implementation schedule for statewide collection through the comprehensive education and data research system of: (i) Student attendance data using the definitions of student absence adopted under this section; and (ii) student discipline data with a focus on suspensions and expulsions from school.

(b) Student suspension and expulsion data collected for the purposes of this subsection (2) must be:

(i) Made publicly available and easily accessible on the superintendent of public instruction's web site; and

(ii) Disaggregated and cross-tabulated as established under RCW 28A.300.042.

(c) School districts must collect and submit student attendance data and student discipline data for high school students through the comprehensive education and data research system for purposes of the PASS program under RCW 28A.175.130 beginning in the 2012-13 school year. [2013 2nd sp.s. c 18 § 306; 2011 c 288 § 10.]

Application—Enforcement of laws protecting health and safety—2013 2nd sp.s. c 18: See note following RCW 28A.600.022.

28A.300.136 Educational opportunity gap oversight and accountability committee—Policy and strategy recommendations. (1) An educational opportunity gap oversight and accountability committee is created to synthesize the findings and recommendations from the 2008 achievement gap studies into an implementation plan, and to recommend policies and strategies to the superintendent of public instruction, the professional educator standards board, and the state board of education to close the achievement gap.

(2) The committee shall recommend specific policies and strategies in at least the following areas:

(a) Supporting and facilitating parent and community involvement and outreach;

(b) Enhancing the cultural competency of current and future educators and the cultural relevance of curriculum and instruction;

(c) Expanding pathways and strategies to prepare and recruit diverse teachers and administrators;

(d) Recommending current programs and resources that should be redirected to narrow the gap;

(e) Identifying data elements and systems needed to monitor progress in closing the gap;

(f) Making closing the achievement gap part of the school and school district improvement process; and

(g) Exploring innovative school models that have shown success in closing the achievement gap.

(3) Taking a multidisciplinary approach, the committee may seek input and advice from other state and local agencies and organizations with expertise in health, social services, gang and violence prevention, substance abuse prevention, and other issues that disproportionately affect student achievement and student success.

(4) The educational opportunity gap oversight and accountability committee shall be composed of the following members:

(a) The chairs and ranking minority members of the house and senate education committees, or their designees;

(b) One additional member of the house of representatives appointed by the speaker of the house and one additional member of the senate appointed by the president of the senate;

(c) A representative of the office of the education ombuds;

(d) A representative of the center for the improvement of student learning in the office of the superintendent of public instruction;

(e) A representative of federally recognized Indian tribes whose traditional lands and territories lie within the borders of Washington state, designated by the federally recognized tribes; and

(f) Four members appointed by the governor in consultation with the state ethnic commissions, who represent the following populations: African-Americans, Hispanic Americans, Asian Americans, and Pacific Islander Americans.

(5) The governor and the tribes are encouraged to designate members who have experience working in and with schools.

(6) The committee may convene ad hoc working groups to obtain additional input and participation from community members. Members of ad hoc working groups shall serve without compensation and shall not be reimbursed for travel or other expenses.

(7) The chair or cochairs of the committee shall be selected by the members of the committee. Staff support for the committee shall be provided by the center for the improvement of student learning. Members of the committee shall serve without compensation but must be reimbursed as provided in RCW 43.03.050 and 43.03.060. Legislative members of the committee shall be reimbursed for travel expenses in accordance with RCW 44.04.120.

(8) The superintendent of public instruction, the state board of education, the professional educator standards board, and the quality education council shall work collaboratively with the educational opportunity gap oversight and accountability committee to close the achievement gap. [2013 c 23 § 49; 2011 1st sp.s. c 21 § 33; 2010 c 235 § 901; 2009 c 468 § 2.]

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

Finding—2010 c 235: See note following RCW 28A.405.245.

Findings—Intent—2009 c 468: "(1) The legislature finds compelling evidence from five commissioned studies that additional progress must be made to address the achievement gap. Many students are in demographic groups that are overrepresented in measures such as school disciplinary sanctions; failure to meet state academic standards; failure to graduate; enrollment in special education and underperforming schools; enrollment in advanced placement courses, honors programs, and college preparatory classes; and enrollment in and completion of college. The studies contain specific recommendations that are data-driven and drawn from education research, as well as the personal, professional, and cultural experience of those who contributed to the studies. The legislature finds there is no better opportunity to make a strong commitment to closing the achievement gap and to affirm the state's constitutional obligation to provide opportunities to learn for all students without distinction or preference on account of race, ethnicity, socioeconomic status, or gender.

(2) The legislature further finds that access to comprehensive and consistent data that is disaggregated in the smallest units allowable by law is important in closing the achievement gap. Policymakers and educators need as much information as possible not only about students' academic progress, but also about other factors across multiple disciplines that affect student performance.

(3) A consistent and powerful theme throughout the achievement gap studies was the need for cultural competency in instruction, curriculum, assessment, and professional development. Cultural competency forms a foundation for efforts to address the achievement gap, and more work is needed to embed it into the public school system.

(4) Therefore, following the priority recommendations from the achievement gap studies, the legislature intends to:

(a) Provide resources to support parent and community involvement and outreach efforts by public schools, including such items as additional notices and communication to parents, translations, translators, parent and community meetings, and school events within the community. The legislature encourages school districts to consult with the office of the education ombudsman in developing plans for parent and community involvement and outreach;

(b) Require that teachers demonstrate cultural competency in the classroom and with students at each level of state teacher certification, and provide additional opportunities for professional development in cultural com-

petency for current teachers;

(c) Create local alternative routes to teacher certification for paraeducators and individuals in the communities surrounding schools and school districts that are struggling to address the achievement gap;

(d) Reexamine the study recommendations regarding data and accountability and identify ways for the education data system to address these needs; and

(e) Sustain efforts to close the achievement gap over the long term by creating a high profile achievement gap oversight and accountability committee that will provide ongoing advice to education agencies and report annually to the legislature and the governor." [2009 c 468 § 1.]

28A.300.145 Educational materials regarding sex offenses, sex offenders, and victims of sexual assault (as amended by 2013 c 10). The Washington coalition of sexual assault programs, in consultation with the Washington association of sheriffs and police chiefs, the Washington association of prosecuting attorneys, the Washington state school directors' association, the association of Washington school principals, the center for children and youth justice, youthcare, the committee for children, the department of early learning, the department of social and health services, the office of crime victims advocacy, other relevant organizations, and the office of the superintendent of public instruction, shall ~~((develop))~~ by June 1, 2014, update existing educational materials ((to be)) made available throughout the state to inform parents and other interested community members about:

(1) The laws related to sex offenses, including registration, community notification~~((+))~~, and the classification of sex offenders based on an assessment of the risk of reoffending;

(2) How to recognize behaviors characteristic of sex offenses and sex offenders;

(3) How to prevent victimization, particularly that of young children;

(4) How to take advantage of community resources for victims of sexual assault; ~~((and))~~

(5) How to prevent children from being recruited into sex trafficking; and

(6) Other information as deemed appropriate. [2013 c 10 § 3; 2006 c 135 § 2.]

Finding—2013 c 10: See note following RCW 28A.410.035.

28A.300.145 Educational materials regarding sex offenses, sex offenders, and victims of sexual assault (as amended by 2013 c 85). (1) The Washington coalition of sexual assault programs, in consultation with the Washington association of sheriffs and police chiefs, the Washington association of prosecuting attorneys, and the office of the superintendent of public instruction, shall develop educational materials to be made available throughout the state to inform parents, students, school districts, and other interested community members about:

~~((+))~~ (a) The laws related to sex offenses, including the legal elements of sexual [sex] offenses under chapter 9A.44 RCW where a minor is a victim, the consequences upon conviction, and sex offender registration, community notification~~((+))~~, and the classification of sex offenders based on an assessment of the risk of reoffending;

~~((2))~~ (b) How to recognize behaviors characteristic of sex offenses and sex offenders;

~~((3))~~ (c) How to prevent victimization, particularly that of young children;

~~((4))~~ (d) How to take advantage of community resources for victims of sexual assault; and

~~((5))~~ (e) Other information as deemed appropriate.

(2) By September 1, 2014, and biennially thereafter, the Washington coalition of sexual assault programs, in consultation with the Washington association of sheriffs and police chiefs, the Washington association of prosecuting attorneys, and the office of the superintendent of public instruction, shall review and update the educational materials developed under subsection (1) of this section to assure that they remain current and accurate, and are age-appropriate for a variety of ages.

(3) Every public school that offers sexual health education must assure that sexual health education complies with existing requirements in the January 2005 guidelines for sexual health information and disease prevention developed by the department of health and the superintendent of public instruction. Specifically, sexual health education must attempt to achieve the objective "take responsibility for and understand the consequences of their own behavior" and the objective "avoid exploitive or manipulative relationships." To do this, sexual health education programs should include age-appropriate information about the legal elements of sexual [sex] offenses under chapter 9A.44 RCW where a minor is a victim and the consequences

upon conviction, as well as the other information required to be included in informational materials prepared pursuant to subsection (1) of this section. Public schools that offer sexual health education are encouraged to incorporate the materials developed under subsection (1) of this section into the curriculum. [2013 c 85 § 1; 2006 c 135 § 2.]

Reviser's note: RCW 28A.300.145 was amended twice during the 2013 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

28A.300.285 Harassment, intimidation, and bullying prevention policies and procedures—Model policy and procedure—Training materials—Posting on web site—Rules—Advisory committee. (1) By August 1, 2011, each school district shall adopt or amend if necessary a policy and procedure that at a minimum incorporates the revised model policy and procedure provided under subsection (4) of this section that prohibits the harassment, intimidation, or bullying of any student. It is the responsibility of each school district to share this policy with parents or guardians, students, volunteers, and school employees in accordance with rules adopted by the superintendent of public instruction. Each school district shall designate one person in the district as the primary contact regarding the antiharassment, intimidation, or bullying policy. The primary contact shall receive copies of all formal and informal complaints, have responsibility for assuring the implementation of the policy and procedure, and serve as the primary contact on the policy and procedures between the school district, the office of the education ombuds, and the office of the superintendent of public instruction.

(2) "Harassment, intimidation, or bullying" means any intentional electronic, written, verbal, or physical act, including but not limited to one shown to be motivated by any characteristic in RCW 9A.36.080(3), or other distinguishing characteristics, when the intentional electronic, written, verbal, or physical act:

(a) Physically harms a student or damages the student's property; or

(b) Has the effect of substantially interfering with a student's education; or

(c) Is so severe, persistent, or pervasive that it creates an intimidating or threatening educational environment; or

(d) Has the effect of substantially disrupting the orderly operation of the school.

Nothing in this section requires the affected student to actually possess a characteristic that is a basis for the harassment, intimidation, or bullying.

(3) The policy and procedure should be adopted or amended through a process that includes representation of parents or guardians, school employees, volunteers, students, administrators, and community representatives. It is recommended that each such policy emphasize positive character traits and values, including the importance of civil and respectful speech and conduct, and the responsibility of students to comply with the district's policy prohibiting harassment, intimidation, or bullying.

(4)(a) By August 1, 2010, the superintendent of public instruction, in consultation with representatives of parents, school personnel, the office of the education ombuds, the Washington state school directors' association, and other interested parties, shall provide to the education committees

of the legislature a revised and updated model harassment, intimidation, and bullying prevention policy and procedure. The superintendent of public instruction shall publish on its web site, with a link to the safety center web page, the revised and updated model harassment, intimidation, and bullying prevention policy and procedure, along with training and instructional materials on the components that shall be included in any district policy and procedure. The superintendent shall adopt rules regarding school districts' communication of the policy and procedure to parents, students, employees, and volunteers.

(b) The office of the superintendent of public instruction has the authority to update with new technologies access to this information in the safety center, to the extent resources are made available.

(c) Each school district shall by August 15, 2011, provide to the superintendent of public instruction a brief summary of its policies, procedures, programs, partnerships, vendors, and instructional and training materials to be posted on the school safety center web site, and shall also provide the superintendent with a link to the school district's web site for further information. The district's primary contact for bullying and harassment issues shall annually by August 15th verify posted information and links and notify the school safety center of any updates or changes.

(5) The Washington state school directors' association, with the assistance of the office of the superintendent of public instruction, shall convene an advisory committee to develop a model policy prohibiting acts of harassment, intimidation, or bullying that are conducted via electronic means by a student while on school grounds and during the school day. The policy shall include a requirement that materials meant to educate parents and students about the seriousness of cyberbullying be disseminated to parents or made available on the school district's web site. The school directors' association and the advisory committee shall develop sample materials for school districts to disseminate, which shall also include information on responsible and safe internet use as well as what options are available if a student is being bullied via electronic means including, but not limited to, reporting threats to local police and when to involve school officials, the internet service provider, or phone service provider. The school directors' association shall submit the model policy and sample materials, along with a recommendation for local adoption, to the governor and the legislature and shall post the model policy and sample materials on its web site by January 1, 2008. Each school district board of directors shall establish its own policy by August 1, 2008.

(6) As used in this section, "electronic" or "electronic means" means any communication where there is the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means. [2013 c 23 § 50; 2010 c 239 § 2; 2007 c 407 § 1; 2002 c 207 § 2.]

Finding—Intent—2010 c 239: "The legislature finds that despite a recognized law prohibiting harassment, intimidation, and bullying of students in public schools and despite widespread adoption of antiharassment policies by school districts, harassment of students continues and has not declined since the law was enacted. Furthermore, students and parents continue to seek assistance against harassment, and schools need to disseminate more widely their antiharassment policies and procedures. The legislature intends to expand the tools, information, and strategies that can be used to combat harassment, intimidation, and bullying of students, and increase

awareness of the need for respectful learning communities in all public schools." [2010 c 239 § 1.]

Findings—2002 c 207: "The legislature declares that a safe and civil environment in school is necessary for students to learn and achieve high academic standards. The legislature finds that harassment, intimidation, or bullying, like other disruptive or violent behavior, is conduct that disrupts both a student's ability to learn and a school's ability to educate its students in a safe environment.

Furthermore, the legislature finds that students learn by example. The legislature commends school administrators, faculty, staff, and volunteers for demonstrating appropriate behavior, treating others with civility and respect, and refusing to tolerate harassment, intimidation, or bullying." [2002 c 207 § 1.]

28A.300.2851 School bullying and harassment—

Work group. (1) The office of the superintendent of public instruction and the office of the education ombuds shall convene a work group on school bullying and harassment prevention to develop, recommend, and implement strategies to improve school climate and create respectful learning environments in all public schools in Washington. The superintendent of public instruction or a designee shall serve as the chair of the work group.

(2) The work group shall:

(a) Consider whether additional disaggregated data should be collected regarding incidents of bullying and harassment or disciplinary actions and make recommendations to the office of the superintendent of public instruction for collection of such data;

(b) Examine possible procedures for anonymous reporting of incidents of bullying and harassment;

(c) Identify curriculum and best practices for school districts to improve school climate, create respectful learning environments, and train staff and students in de-escalation and intervention techniques;

(d) Identify curriculum and best practices for incorporating instruction about mental health, youth suicide prevention, and prevention of bullying and harassment;

(e) Recommend best practices for informing parents about the harassment, intimidation, and bullying prevention policy and procedure under RCW 28A.300.285 and involving parents in improving school climate;

(f) Recommend training for district personnel who are designated as the primary contact regarding the policy and procedure and for school resource officers and other school security personnel;

(g) Recommend educator preparation and certification requirements in harassment, intimidation, and bullying prevention and de-escalation and intervention techniques for teachers, educational staff associates, and school administrators;

(h) Examine and recommend policies for discipline of students and staff who harass, intimidate, or bully; and

(i) In collaboration with the state board for community and technical colleges, examine and recommend policies to protect K-12 students attending community and technical colleges from harassment, intimidation, and bullying.

(3) The work group must include representatives from the state board of education, the Washington state parent teacher association, the Washington state association of school psychologists, school directors, school administrators, principals, teachers, school counselors, classified school staff, youth, community organizations, and parents.

(4) The work group shall submit a biennial progress and status report to the governor and the education committees of the legislature, beginning December 1, 2011, with additional reports by December 1, 2013, and December 1, 2015.

(5) The work group is terminated effective January 1, 2016. [2013 c 23 § 51; 2011 c 185 § 2.]

Finding—2011 c 185: "The legislature finds that having updated school district policies and procedures is a step in the right direction for preventing bullying, intimidation, and harassment, but more steps are needed. A work group could help to maintain focus and attention on antibullying and antiharassment, as well as monitor progress. In addition, students' knowledge and understanding of two key correlates of bullying and harassment, depression and youth suicide, could be enhanced through instruction and assessments that address mental health and suicide prevention." [2011 c 185 § 1.]

28A.300.471 Medical emergency response and automated external defibrillator program. (1) An automated external defibrillator is often a critical component in the chain of survival for a cardiac arrest victim.

(2) The office of the superintendent of public instruction, in consultation with school districts and stakeholder groups, shall develop guidance for a medical emergency response and automated external defibrillator program for high schools.

(3) The medical emergency response and automated external defibrillator program must comply with current evidence-based guidance from the American heart association or other national science organization.

(4) The office of the superintendent of public instruction, in consultation with the department of health, shall assist districts in carrying out a program under this section, including providing guidelines and advice for seeking grants for the purchase of automated external defibrillators or seeking donations of automated external defibrillators. The superintendent may coordinate with local health districts or other organizations in seeking grants and donations for this purpose. [2013 c 181 § 2.]

Findings—Intent—2013 c 181: See note following RCW 28A.230.179.

28A.300.515 Recodified as RCW 28A.188.020. See Supplementary Table of Disposition of Former RCW Sections, this volume.

28A.300.560 Data on college credit through dual credit courses—Posting on web site. In addition to data on student enrollment in dual credit courses, the office of the superintendent of public instruction shall collect and post on the Washington state report card web site the rates at which students earn college credit through a dual credit course, using the following criteria:

(1) Students who achieve a score of three or higher on an AP examination;

(2) Students who achieve a score of four or higher on an examination of the international baccalaureate diploma programme;

(3) Students who successfully complete a Cambridge advanced international certificate of education examination;

(4) Students who successfully complete a course through the college in the high school program under RCW 28A.600.290 and are awarded credit by the partnering institution of higher education; and

(5) Students who satisfy the dual enrollment and class performance requirements to earn college credit through a tech prep course; and

(6) Students who successfully complete a course through the running start program under RCW 28A.600.300 and are awarded credit by the institution of higher education. [2013 c 184 § 4.]

Findings—2013 c 184: See note following RCW 28A.320.195.

28A.300.565 Grants to implement emergency response systems. Subject to funds appropriated specifically for this purpose, the office of the superintendent of public instruction shall allocate grants to school districts on a competitive basis for the purpose of implementing emergency response systems using evolving technology to expedite the response and arrival of law enforcement in the event of a threat or emergency at a school. [2013 c 233 § 4.]

28A.300.570 Support of reading and early literacy. In support of reading and early literacy, the office of the superintendent of public instruction is responsible for:

(1) Continuing to work collaboratively with state and regional partners such as the department of early learning and the educational service districts to establish early literacy benchmarks and standards and to implement the Washington state comprehensive literacy plan;

(2) Disseminating research and information to school districts about evidence-based programs and practices in reading readiness skills, early literacy, and reading instruction;

(3) Providing statewide models to support school districts that are implementing response to intervention initiatives, positive behavior intervention support systems, or other similar comprehensive models of data-based identification and early intervention; and

(4) Within available funds and in partnership with the educational service districts, providing technical assistance and professional development opportunities for school districts. [2013 2nd sp.s. c 18 § 101.]

Application—Enforcement of laws protecting health and safety—2013 2nd sp.s. c 18: See note following RCW 28A.600.022.

Chapter 28A.305 RCW STATE BOARD OF EDUCATION

Sections

28A.305.130 Powers and duties—Purpose.

28A.305.190 Eligibility to take test to earn a high school equivalency certificate.

28A.305.130 Powers and duties—Purpose. The purpose of the state board of education is to provide advocacy and strategic oversight of public education; implement a standards-based accountability framework that creates a unified system of increasing levels of support for schools in order to improve student academic achievement; provide leadership in the creation of a system that personalizes education for each student and respects diverse cultures, abilities, and learning styles; and promote achievement of the goals of RCW 28A.150.210. In addition to any other powers and duties as provided by law, the state board of education shall:

(1) Hold regularly scheduled meetings at such time and place within the state as the board shall determine and may hold such special meetings as may be deemed necessary for the transaction of public business;

(2) Form committees as necessary to effectively and efficiently conduct the work of the board;

(3) Seek advice from the public and interested parties regarding the work of the board;

(4) For purposes of statewide accountability:

(a) Adopt and revise performance improvement goals in reading, writing, science, and mathematics, by subject and grade level, once assessments in these subjects are required statewide; academic and technical skills, as appropriate, in secondary career and technical education programs; and student attendance, as the board deems appropriate to improve student learning. The goals shall be consistent with student privacy protection provisions of RCW 28A.655.090(7) and shall not conflict with requirements contained in Title I of the federal elementary and secondary education act of 1965, or the requirements of the Carl D. Perkins vocational education act of 1998, each as amended. The goals may be established for all students, economically disadvantaged students, limited English proficient students, students with disabilities, and students from disproportionately academically under-achieving racial and ethnic backgrounds. The board may establish school and school district goals addressing high school graduation rates and dropout reduction goals for students in grades seven through twelve. The board shall adopt the goals by rule. However, before each goal is implemented, the board shall present the goal to the education committees of the house of representatives and the senate for the committees' review and comment in a time frame that will permit the legislature to take statutory action on the goal if such action is deemed warranted by the legislature;

(b)(i) Identify the scores students must achieve in order to meet the standard on the statewide student assessment and, for high school students, to obtain a certificate of academic achievement. The board shall also determine student scores that identify levels of student performance below and beyond the standard. The board shall consider the incorporation of the standard error of measurement into the decision regarding the award of the certificates. The board shall set such performance standards and levels in consultation with the superintendent of public instruction and after consideration of any recommendations that may be developed by any advisory committees that may be established for this purpose.

(ii) By the end of the 2014-15 school year, establish the scores students must achieve to meet the standard and earn a certificate of academic achievement on the tenth grade English language arts assessment and the end-of-course mathematics assessments developed in accordance with RCW 28A.655.070 to be used as the state transitions to high school assessments developed with a multistate consortium.

(iii) By the end of the 2014-15 school year, establish the scores students must achieve to meet the standard and earn a certificate of academic achievement on the high school English language arts assessment and the comprehensive mathematics assessment developed with a multistate consortium in accordance with RCW 28A.655.070. To determine the appropriate score, the state board shall review the transition experience of Washington students to the consortium-

developed assessments, examine the student scores used in other states that are administering the consortium-developed assessments, and review the scores in other states that require passage of an eleventh grade assessment as a high school graduation requirement. The scores established by the state board of education for the purposes of earning a certificate of academic achievement and graduation from high school may be different from the scores used for the purpose of determining a student's career and college readiness.

(iv) The legislature shall be advised of the initial performance standards for the high school statewide student assessment. Any changes recommended by the board in the performance standards for the high school assessment shall be presented to the education committees of the house of representatives and the senate by November 30th of the school year in which the changes will take place to permit the legislature to take statutory action before the changes are implemented if such action is deemed warranted by the legislature. The legislature shall be advised of the initial performance standards and any changes made to the elementary level performance standards and the middle school level performance standards. The board must provide an explanation of and rationale for all initial performance standards and any changes, for all grade levels of the statewide student assessment. If the board changes the performance standards for any grade level or subject, the superintendent of public instruction must recalculate the results from the previous ten years of administering that assessment regarding students below, meeting, and beyond the state standard, to the extent that this data is available, and post a comparison of the original and recalculated results on the superintendent's web site;

(c) Annually review the assessment reporting system to ensure fairness, accuracy, timeliness, and equity of opportunity, especially with regard to schools with special circumstances and unique populations of students, and a recommendation to the superintendent of public instruction of any improvements needed to the system; and

(d) Include in the biennial report required under RCW 28A.305.035, information on the progress that has been made in achieving goals adopted by the board;

(5) Accredit, subject to such accreditation standards and procedures as may be established by the state board of education, all private schools that apply for accreditation, and approve, subject to the provisions of RCW 28A.195.010, private schools carrying out a program for any or all of the grades kindergarten through twelve. However, no private school may be approved that operates a kindergarten program only and no private school shall be placed upon the list of accredited schools so long as secret societies are knowingly allowed to exist among its students by school officials;

(6) Articulate with the institutions of higher education, workforce representatives, and early learning policymakers and providers to coordinate and unify the work of the public school system;

(7) Hire an executive director and an administrative assistant to reside in the office of the superintendent of public instruction for administrative purposes. Any other personnel of the board shall be appointed as provided by RCW 28A.300.020. The board may delegate to the executive director by resolution such duties as deemed necessary to efficiently carry on the business of the board including, but not

limited to, the authority to employ necessary personnel and the authority to enter into, amend, and terminate contracts on behalf of the board. The executive director, administrative assistant, and all but one of the other personnel of the board are exempt from civil service, together with other staff as now or hereafter designated as exempt in accordance with chapter 41.06 RCW; and

(8) Adopt a seal that shall be kept in the office of the superintendent of public instruction. [2013 2nd sp.s. c 22 § 7; 2011 1st sp.s. c 6 § 1; 2009 c 548 § 502; 2008 c 27 § 1; 2006 c 263 § 102; 2005 c 497 § 104; 2002 c 205 § 3; 1997 c 13 § 5; 1996 c 83 § 1; 1995 c 369 § 9; 1991 c 116 § 11; 1990 c 33 § 266. Prior: 1987 c 464 § 1; 1987 c 39 § 1; prior: 1986 c 266 § 86; 1986 c 149 § 3; 1984 c 40 § 2; 1979 ex.s. c 173 § 1; 1975-'76 2nd ex.s. c 92 § 1; 1975 1st ex.s. c 275 § 50; 1974 ex.s. c 92 § 1; 1971 ex.s. c 215 § 1; 1971 c 48 § 2; 1969 ex.s. c 223 § 28A.04.120; prior: 1963 c 32 § 1; 1961 c 47 § 1; prior: (i) 1933 c 80 § 1; 1915 c 161 § 1; 1909 c 97 p 236 § 5; 1907 c 240 § 3; 1903 c 104 § 12; 1897 c 118 § 27; 1895 c 150 § 1; 1890 p 352 § 8; Code 1881 § 3165; RRS § 4529. (ii) 1919 c 89 § 3; RRS § 4684. (iii) 1909 c 97 p 238 § 6; 1897 c 118 § 29; RRS § 4530. Formerly RCW 28A.04.120, 28.04.120, 28.58.280, 28.58.281, 28.58.282, 43.63.140.]

Findings—Intent—2013 2nd sp.s. c 22: See note following RCW 28A.655.061.

Effective date—2011 1st sp.s. c 6: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 31, 2011]." [2011 1st sp.s. c 6 § 2.]

Intent—Finding—2009 c 548: "(1)(a) The legislature intends to develop a system in which the state and school districts share accountability for achieving state educational standards and supporting continuous school improvement. The legislature recognizes that comprehensive education finance reform and the increased investment of public resources necessary to implement that reform must be accompanied by a new mechanism for clearly defining the relationships and expectations for the state, school districts, and schools. It is the legislature's intent that this be accomplished through the development of a proactive, collaborative accountability system that focuses on a school improvement system that engages and serves the local school board, parents, students, staff in the schools and districts, and the community. The improvement system shall be based on progressive levels of support, with a goal of continuous improvement in student achievement and alignment with the federal system of accountability.

(b) The legislature further recognizes that it is the state's responsibility to provide schools and districts with the tools and resources necessary to improve student achievement. These tools include the necessary accounting and data reporting systems, assessment systems to monitor student achievement, and a system of general support, targeted assistance, recognition, and, if necessary, state intervention.

(2) The legislature has already charged the state board of education to develop criteria to identify schools and districts that are successful, in need of assistance, and those where students persistently fail, as well as to identify a range of intervention strategies and a performance incentive system. The legislature finds that the state board of education should build on the work that the board has already begun in these areas. As development of these formulas, processes, and systems progresses, the legislature should monitor the progress." [2009 c 548 § 501.]

Intent—2009 c 548: See RCW 28A.150.1981.

Finding—2009 c 548: See note following RCW 28A.410.270.

Findings—Purpose—Part headings not law—2006 c 263: See notes following RCW 28A.150.230.

Effective date—2005 c 497 §§ 104, 302, 402, and 406 through 408: "Sections 104, 302, 402, and 406 through 408 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 2005." [2005 c 497 § 410.]

Intent—Part headings not law—2005 c 497: See notes following RCW 28A.305.011.

Findings—Severability—Effective dates—2002 c 205 §§ 2, 3, and 4: See notes following RCW 28A.320.125.

Child abuse and neglect—Development of primary prevention program: RCW 28A.300.160.

Districts to develop programs and establish programs regarding child abuse and neglect prevention: RCW 28A.225.200.

Professional certification not required of superintendents or deputy or assistant superintendents: RCW 28A.410.120.

Use of force on children—Policy—Actions presumed unreasonable: RCW 9A.16.100.

Additional notes found at www.leg.wa.gov

28A.305.190 Eligibility to take test to earn a high school equivalency certificate. The state board of education shall adopt rules governing the eligibility of a child sixteen years of age and under nineteen years of age to take a test to earn a high school equivalency certificate as provided in RCW 28B.50.536 if the child provides a substantial and warranted reason for leaving the regular high school education program, if the child was home-schooled, or if the child is an eligible student enrolled in a dropout reengagement program under RCW 28A.175.100 through 28A.175.110. [2013 c 39 § 8; 2010 c 20 § 6; 1993 c 218 § 1; 1991 c 116 § 5; 1973 c 51 § 2. Formerly RCW 28A.04.135.]

Intent—2010 c 20: See note following RCW 28A.175.100.

Waiver of fees or residency requirements at community colleges for students completing a high school education: RCW 28B.15.520.

Additional notes found at www.leg.wa.gov

Chapter 28A.310 RCW

EDUCATIONAL SERVICE DISTRICTS

Sections

28A.310.500 Youth suicide screening and referral—Response to emotional or behavioral distress in students—Training for educators and staff.

28A.310.501 Civil liability—2013 c 197.

28A.310.500 Youth suicide screening and referral—Response to emotional or behavioral distress in students—Training for educators and staff. Each educational service district shall develop and maintain the capacity to offer training for educators and other school district staff on youth suicide screening and referral, and on recognition, initial screening, and response to emotional or behavioral distress in students, including but not limited to indicators of possible substance abuse, violence, and youth suicide. An educational service district may demonstrate capacity by employing staff with sufficient expertise to offer the training or by contracting with individuals or organizations to offer the training. Training may be offered on a fee-for-service basis, or at no cost to school districts or educators if funds are appropriated specifically for this purpose or made available through grants or other sources. [2013 c 197 § 6.]

Finding—Intent—2013 c 197: See note following RCW 43.20A.765.

Findings—Intent—2013 c 197: See note following RCW 28A.410.226.

28A.310.501 Civil liability—2013 c 197. This act does not create any civil liability on the part of the state or any state agency, officer, employee, agent, political subdivision, or school district. [2013 c 197 § 10.]

Finding—Intent—2013 c 197: See note following RCW 43.20A.765.

Findings—Intent—2013 c 197: See note following RCW 28A.410.226.

Chapter 28A.320 RCW

PROVISIONS APPLICABLE TO ALL DISTRICTS

Sections

28A.320.125	Safe school plans—Requirements—Duties of school districts, schools, and educational service districts—Reports—Drills—Rules.
28A.320.126	Emergency response system.
28A.320.127	Plan for recognition, screening, and response to emotional or behavioral distress in students.
28A.320.1271	Model school district plan for recognition, initial screening, and response to emotional or behavioral distress in students.
28A.320.193	Community service—Policy—Incentive.
28A.320.195	Academic acceleration for high school students—Adoption of policy.
28A.320.196	Academic acceleration incentive program—Dual credit courses—Allocation of funds—Reports.
28A.320.202	Comprehensive system of instruction and services in reading and early literacy.
28A.320.203	Reading skills—Report cards.
28A.320.208	Notice to parents and guardians of student assessments, graduation requirements, and additional district graduation requirements.

28A.320.125 Safe school plans—Requirements—Duties of school districts, schools, and educational service districts—Reports—Drills—Rules. (1) The legislature considers it to be a matter of public safety for public schools and staff to have current safe school plans and procedures in place, fully consistent with federal law. The legislature further finds and intends, by requiring safe school plans to be in place, that school districts will become eligible for federal assistance. The legislature further finds that schools are in a position to serve the community in the event of an emergency resulting from natural disasters or man-made disasters.

(2) Schools and school districts shall consider the guidance provided by the superintendent of public instruction, including the comprehensive school safety checklist and the model comprehensive safe school plans that include prevention, intervention, all hazard/crisis response, and postcrisis recovery, when developing their own individual comprehensive safe school plans. Each school district shall adopt, no later than September 1, 2008, and implement a safe school plan consistent with the school mapping information system pursuant to RCW 36.28A.060. The plan shall:

(a) Include required school safety policies and procedures;

(b) Address emergency mitigation, preparedness, response, and recovery;

(c) Include provisions for assisting and communicating with students and staff, including those with special needs or disabilities;

(d) Use the training guidance provided by the Washington emergency management division of the state military department in collaboration with the Washington state office of the superintendent of public instruction school safety center and the school safety center advisory committee;

(e) Require the building principal to be certified on the incident command system;

(f) Take into account the manner in which the school facilities may be used as a community asset in the event of a community-wide emergency; and

(g) Set guidelines for requesting city or county law enforcement agencies, local fire departments, emergency service providers, and county emergency management agencies to meet with school districts and participate in safety-related drills.

(3) To the extent funds are available, school districts shall annually:

(a) Review and update safe school plans in collaboration with local emergency response agencies;

(b) Conduct an inventory of all hazardous materials;

(c) Update information on the school mapping information system to reflect current staffing and updated plans, including:

(i) Identifying all staff members who are trained on the national incident management system, trained on the incident command system, or are certified on the incident command system; and

(ii) Identifying school transportation procedures for evacuation, to include bus staging areas, evacuation routes, communication systems, parent-student reunification sites, and secondary transportation agreements consistent with the school mapping information system; and

(d) Provide information to all staff on the use of emergency supplies and notification and alert procedures.

(4) To the extent funds are available, school districts shall annually record and report on the information and activities required in subsection (3) of this section to the Washington association of sheriffs and police chiefs.

(5) School districts are encouraged to work with local emergency management agencies and other emergency responders to conduct one tabletop exercise, one functional exercise, and two full-scale exercises within a four-year period.

(6) Schools shall conduct no less than one safety-related drill each month that school is in session. Schools shall complete no less than one drill using the school mapping information system, three drills for lockdowns, one drill for shelter-in-place, three drills for fire evacuation in accordance with the state fire code, and one other safety-related drill to be determined by the school. Schools should consider drills for earthquakes, tsunamis, or other high-risk local events. Schools shall document the date and time of such drills. This subsection is intended to satisfy all federal requirements for comprehensive school emergency drills and evacuations.

(7) Educational service districts are encouraged to apply for federal emergency response and crisis management grants with the assistance of the superintendent of public instruction and the Washington emergency management division of the state military department.

(8) The superintendent of public instruction may adopt rules to implement provisions of this section. These rules may include, but are not limited to, provisions for evacuations, lockdowns, or other components of a comprehensive safe school plan. [2013 c 14 § 1; 2009 c 578 § 10; 2007 c 406 § 1; 2002 c 205 § 2.]

Findings—2002 c 205: "Following the tragic events of September 11, 2001, the government's primary role in protecting the health, safety, and well-being of its citizens has been underscored. The legislature recognizes

that there is a need to focus on the development and implementation of comprehensive safe school plans for each public school. The legislature recognizes that comprehensive safe school plans for each public school are an integral part of rebuilding public confidence. In developing these plans, the legislature finds that a coordinated effort is essential to ensure the most effective response to any type of emergency. Further, the legislature recognizes that comprehensive safe school plans for each public school are of paramount importance and will help to assure students, parents, guardians, school employees, and school administrators that our schools provide the safest possible learning environment." [2002 c 205 § 1.]

Additional notes found at www.leg.wa.gov

28A.320.126 Emergency response system. School districts must work collaboratively with local law enforcement agencies and school security personnel to develop an emergency response system using evolving technology to expedite the response and arrival of law enforcement in the event of a threat or emergency at a school. School districts are encouraged to use the model policies developed by the school safety [center] advisory committee of the office of the superintendent of public instruction as a resource. Each school district must submit a progress report on its implementation of an emergency response system as required under this section to the office of the superintendent of public instruction by December 1, 2014. [2013 c 233 § 1.]

Model policies and strategies—Recommendations—Report—2013 c 233: "(1) The school safety advisory committee convened by the office of the superintendent of public instruction shall develop model policies and strategies for school districts and local law enforcement agencies to design emergency response systems using evolving technology to expedite the response and arrival of law enforcement in the event of a threat or emergency at a school. The committee shall develop policies and strategies appropriate for a range of different threat or emergency scenarios.

(2)(a) The school safety advisory committee shall also develop recommendations related to incorporating school safety features in the planning and design of new or remodeled school facilities. The recommendations shall address, at a minimum:

- (i) Options to address public access to school buildings and grounds;
- (ii) Interior design features to address public access to classrooms; and
- (iii) Options and best practices to protect students and staff in the event of a threat during school hours.

(b) The recommendations shall consider and provide flexibility regarding varying campus designs, geographic locations, site-specific needs, grade-level configurations, cost-effectiveness, and coordination with local law enforcement in a manner suitable to the locale.

(3) The school safety advisory committee shall submit a report to the education committees of the legislature by December 1, 2013, and post the report, model policies and recommendations developed under this section, and other resource information to assist school districts on the school safety center web site." [2013 c 233 § 3.]

28A.320.127 Plan for recognition, screening, and response to emotional or behavioral distress in students.

(1) Beginning in the 2014-15 school year, each school district must adopt a plan for recognition, initial screening, and response to emotional or behavioral distress in students, including but not limited to indicators of possible substance abuse, violence, and youth suicide. The school district must annually provide the plan to all district staff.

(2) At a minimum the plan must address:

- (a) Identification of training opportunities in recognition, screening, and referral that may be available for staff;
- (b) How to use the expertise of district staff who have been trained in recognition, screening, and referral;
- (c) How staff should respond to suspicions, concerns, or warning signs of emotional or behavioral distress in students;

(d) Identification and development of partnerships with community organizations and agencies for referral of students to health, mental health, substance abuse, and social support services, including development of at least one memorandum of understanding between the district and such an entity in the community or region;

(e) Protocols and procedures for communication with parents;

(f) How staff should respond to a crisis situation where a student is in imminent danger to himself or herself or others; and

(g) How the district will provide support to students and staff after an incident of violence or youth suicide.

(3) The plan under this section may be a separate plan or a component of another district plan or policy, such as the harassment, intimidation, and bullying prevention policy under RCW 28A.300.2851 or the comprehensive safe school plan required under RCW 28A.320.125. [2013 c 197 § 4.]

Finding—Intent—2013 c 197: See note following RCW 43.20A.765.

Findings—Intent—2013 c 197: See note following RCW 28A.410.226.

Civil liability—2013 c 197: See RCW 28A.310.501.

28A.320.1271 Model school district plan for recognition, initial screening, and response to emotional or behavioral distress in students. The office of the superintendent of public instruction and the school safety [center] advisory committee shall develop a model school district plan for recognition, initial screening, and response to emotional or behavioral distress in students, including but not limited to indicators of possible substance abuse, violence, and youth suicide. The model plan must incorporate research-based best practices, including practices and protocols used in schools and school districts in other states. The model plan must be posted by February 1, 2014, on the school safety center web site, along with relevant resources and information to support school districts in developing and implementing the plan required under RCW 28A.320.127. [2013 c 197 § 5.]

Finding—Intent—2013 c 197: See note following RCW 43.20A.765.

Findings—Intent—2013 c 197: See note following RCW 28A.410.226.

Civil liability—2013 c 197: See RCW 28A.310.501.

28A.320.193 Community service—Policy—Incentive. By September 1, 2013, each school district shall adopt a policy that is supportive of community service and provides an incentive, such as recognition or credit, for students who participate in community service. [2013 c 176 § 2.]

Finding—2013 c 176: "The legislature finds that volunteering connects students to their communities and provides an opportunity for students to practice and apply their academic and social skills in preparation for entering the workforce. Community service can better prepare and inspire students to continue their education beyond high school. Community service is also associated with increased civic awareness and participation by students." [2013 c 176 § 1.]

28A.320.195 Academic acceleration for high school students—Adoption of policy. (1) Each school district board of directors is encouraged to adopt an academic acceleration policy for high school students as provided under this section.

(2) Under an academic acceleration policy:

(a) The district automatically enrolls any student who meets the state standard on the high school statewide student assessment in the next most rigorous level of advanced courses offered by the high school. Students who successfully complete such an advanced course are then enrolled in the next most rigorous level of advanced course, with the objective that students will eventually be automatically enrolled in courses that offer the opportunity to earn dual credit for high school and college.

(b) The subject matter of the advanced courses in which the student is automatically enrolled depends on the content area or areas of the statewide student assessment where the student has met the state standard. Students who meet the state standard on both end-of-course mathematics assessments are considered to have met the state standard for high school mathematics. Students who meet the state standard in both reading and writing are eligible for enrollment in advanced courses in English, social studies, humanities, and other related subjects.

(c) The district must notify students and parents or guardians regarding the academic acceleration policy and the advanced courses available to students.

(d) The district must provide a parent or guardian with an opportunity to opt out of the academic acceleration policy and enroll a student in an alternative course. [2013 c 184 § 2.]

Findings—2013 c 184: "(1) The legislature finds that progress is being made in making dual high school and college credit courses available for students:

(a) Overall dual credit program enrollments increased by almost four percent between 2009 and 2012;

(b) The number of dual credit programs offered by Washington high schools increased by almost fifteen percent between the 2009-10 school year and the 2011-12 school year; and

(c) Dual credit program participation rates for low-income students increased more than fourteen percent between the 2009-10 school year and the 2011-12 school year.

(2) However, the legislature further finds that more can be done to promote academic acceleration for all students and eliminate barriers, real or perceived, that may prevent students from enrolling in rigorous advanced courses, including dual credit courses." [2013 c 184 § 1.]

28A.320.196 Academic acceleration incentive program—Dual credit courses—Allocation of funds—Reports. (1) Subject to funds appropriated specifically for this purpose, the academic acceleration incentive program is established as provided in this section. The intent of the legislature is that the funds awarded under the program be used to support teacher training, curriculum, technology, examination fees, and other costs associated with offering dual credit courses to high school students.

(2) The office of the superintendent of public instruction shall allocate half of the funds appropriated for the purposes of this section on a competitive basis to provide one-time grants for high schools to expand the availability of dual credit courses. To be eligible for a grant, a school district must have adopted an academic acceleration policy as provided under RCW 28A.320.195. In making grant awards, the office of the superintendent of public instruction must give priority to grants for high schools with a high proportion of low-income students and high schools seeking to develop

new capacity for dual credit courses rather than proposing marginal expansion of current capacity.

(3) The office of the superintendent of public instruction shall allocate half of the funds appropriated for the purposes of this section to school districts as an incentive award for each student who earned dual high school and college credit, as described under subsection (4) of this section, for courses offered by the district's high schools during the previous school year. School districts must distribute the award to the high schools that generated the funds. The award amount for low-income students eligible to participate in the federal free and reduced-price meals program who earn dual credits must be set at one hundred twenty-five percent of the base award for other students. A student who earns more than one dual credit in the same school year counts only once for the purposes of the incentive award.

(4) For the purposes of this section, the following students are considered to have earned dual high school and college credit in a course offered by a high school:

(a) Students who achieve a score of three or higher on an AP examination;

(b) Students who achieve a score of four or higher on an examination of the international baccalaureate diploma programme;

(c) Students who successfully complete a Cambridge advanced international certificate of education examination;

(d) Students who successfully complete a course through the college in the high school program under RCW 28A.600.290 and are awarded credit by the partnering institution of higher education; and

(e) Students who satisfy the dual enrollment and class performance requirements to earn college credit through a tech prep course.

(5) If a high school provides access to online courses for students to earn dual high school and college credit at no cost to the student, such a course is considered to be offered by the high school. Students enrolled in the running start program under RCW 28A.600.300 do not generate an incentive award under this section.

(6) The office of the superintendent of public instruction shall report to the education policy committees and the fiscal committees of the legislature, by January 1st of each year, information about the demographics of the students earning dual credits in the schools receiving grants under this section for the prior school year. Demographic data shall be disaggregated pursuant to RCW 28A.300.042. [2013 c 184 § 3.]

Contingency—2013 c 184 § 3: "If specific funding for purposes of section 3 of this act, referencing section 3 of this act by bill or chapter and section number, is not provided by June 30, 2013, in the omnibus operating appropriations act, section 3 of this act is null and void." The omnibus appropriations act provided funding for "this act" by bill and chapter but not section number. See section 513(21), chapter 4, Laws of 2013 2nd sp. sess. [2013 c 184 § 5.]

Findings—2013 c 184: See note following RCW 28A.320.195.

28A.320.202 Comprehensive system of instruction and services in reading and early literacy. School districts are responsible for providing a comprehensive system of instruction and services in reading and early literacy to kindergarten through fourth grade students that is based on the degree of student need for additional support. Reading and

early literacy systems provided by school districts must include:

(1) Annual use of screening assessments and other tools to identify at-risk readers in kindergarten through fourth grade, such as the Washington kindergarten inventory of developing skills, the Washington state early learning and development guidelines for birth through third grade, the second grade reading assessment under RCW 28A.300.310, and locally used assessments and other tools; and

(2) Research-based family involvement and engagement strategies, including strategies to help families and guardians assist in improving students' reading and early literacy skills at home. [2013 2nd sp.s. c 18 § 102.]

Application—Enforcement of laws protecting health and safety—2013 2nd sp.s. c 18: See note following RCW 28A.600.022.

28A.320.203 Reading skills—Report cards. (1) Each school district shall require that report cards for students in kindergarten through fourth grade include information regarding how the student is progressing on acquiring reading skills and whether the student is at grade level in reading.

(2) If a student is not reading at or above grade level, the teacher, with the support of other school personnel as appropriate, must explain to the parent or guardian which interventions and strategies will be used to help improve the student's reading skills and must provide strategies for parents or guardians to assist with improving the student's reading skills at home.

(3) Each school shall report to the school district the number of students in grades kindergarten through four who are reading below grade level and the interventions that are being provided to improve the reading skills of the students, with the information disaggregated by subgroups of students. The school district shall aggregate the reports from the schools and provide the reports to the office of the superintendent of public instruction. The office of the superintendent of public instruction shall submit a statewide report annually to the education committees of the legislature and the educational opportunity gap oversight and accountability committee. [2013 2nd sp.s. c 18 § 104.]

Application—Enforcement of laws protecting health and safety—2013 2nd sp.s. c 18: See note following RCW 28A.600.022.

28A.320.208 Notice to parents and guardians of student assessments, graduation requirements, and additional district graduation requirements. (1) At the beginning of each school year, school districts must notify parents and guardians of enrolled students from eighth through twelfth grade about each student assessment required by the state, the minimum state-level graduation requirements, and any additional school district graduation requirements. The information may be provided when the student is enrolled, contained in the student or parent handbook, or posted on the school district's web site. The notification must include the following:

(a) When each assessment will be administered;

(b) Which assessments will be required for graduation and what options students have to meet graduation requirements if they do not pass a given assessment;

(c) Whether the results of the assessment will be used for program placement or grade-level advancement;

(d) When the assessment results will be released to parents or guardians and whether there will be an opportunity for parents and teachers to discuss strategic adjustments; and

(e) Whether the assessment is required by the school district, state, federal government, or more than one of these entities.

(2) The office of the superintendent of public instruction shall provide information to the school districts to enable the districts to provide the information to the parents and guardians in accordance with subsection (1) of this section. [2013 2nd sp.s. c 22 § 8.]

Findings—Intent—2013 2nd sp.s. c 22: See note following RCW 28A.655.061.

Chapter 28A.335 RCW SCHOOL DISTRICTS' PROPERTY

Sections

28A.335.010 School buildings, maintenance, furnishing, and insuring—
School building security.

28A.335.190 Advertising for bids—Competitive bid procedures—Purchases from inmate work programs—Telephone or written quotation solicitation, limitations—Emergencies.

28A.335.010 School buildings, maintenance, furnishing, and insuring—School building security. (1) Every board of directors, unless otherwise specifically provided by law, shall:

(a) Cause all school buildings to be properly heated, lighted, and ventilated and maintained in a clean and sanitary condition; and

(b) Maintain and repair, furnish, and insure such school buildings.

(2) Every board of directors, unless otherwise specifically provided by law, shall also:

(a) Consider installing a perimeter security control mechanism or system on all school campuses, as appropriate to the design of the campus; and

(b) For new school construction projects or remodeling projects of more than forty percent of an existing school building that are initiated after July 28, 2013, consider school building plans and designs that promote:

(i) An optimal level of security for the specific school site that incorporates evolving technology and best practices to protect students and staff in the event of a threat during school hours;

(ii) Direct control and observation of the public entering school grounds; and

(iii) The public entering school grounds through as few entrances as possible, such as through the main entrance of a school's administrative offices.

(3) The purpose of subsection (2) of this section is to promote generally the safety of all students and staff in Washington public schools. Nothing in subsection (2) of this section creates any civil liability for school districts, or creates a new cause of action or new theory of negligence against a school district board of directors, a school district, or the state. [2013 c 233 § 2; 1969 ex.s. c 223 § 28A.58.102. Prior: 1969 c 53 § 1, part; 1967 ex.s. c 29 § 1, part; 1967 c 12 § 1, part; 1965 ex.s. c 49 § 1, part; 1963 c 104 § 1, part; 1963 c 5 § 1, part; 1961 c 305 § 1, part; 1961 c 237 § 1, part; 1961 c 66 § 1,

part; 1955 c 68 § 2, part. Formerly RCW 28A.58.102, 28.58.100(3), part, and (4) part.]

Energy audits and energy capital improvements: RCW 28A.320.330.

28A.335.190 Advertising for bids—Competitive bid procedures—Purchases from inmate work programs—Telephone or written quotation solicitation, limitations—Emergencies. (1) When, in the opinion of the board of directors of any school district, the cost of any furniture, supplies, equipment, building, improvements, or repairs, or other work or purchases, except books, will equal or exceed the threshold levels specified in subsections (2) and (4) of this section, complete plans and specifications for such work or purchases shall be prepared and notice by publication given in at least one newspaper of general circulation within the district, once each week for two consecutive weeks, of the intention to receive bids and that specifications and other information may be examined at the office of the board or any other officially designated location. The cost of any public work, improvement, or repair for the purposes of this section shall be the aggregate of all amounts to be paid for labor, material, and equipment on one continuous or interrelated project where work is to be performed simultaneously or in close sequence. The bids shall be in writing and shall be opened and read in public on the date and in the place named in the notice and after being opened shall be filed for public inspection.

(2) Every purchase of furniture, equipment, or supplies, except books, the cost of which is estimated to be in excess of forty thousand dollars, shall be on a competitive basis. The board of directors shall establish a procedure for securing telephone and/or written quotations for such purchases. Whenever the estimated cost is from forty thousand dollars up to seventy-five thousand dollars, the procedure shall require quotations from at least three different sources to be obtained in writing or by telephone, and recorded for public perusal. Whenever the estimated cost is in excess of seventy-five thousand dollars, the public bidding process provided in subsection (1) of this section shall be followed.

(3) Any school district may purchase goods produced or provided in whole or in part from class II inmate work programs operated by the department of corrections pursuant to RCW 72.09.100, including but not limited to furniture, equipment, or supplies. School districts are encouraged to set as a target to contract, beginning after June 30, 2006, to purchase up to one percent of the total goods required by the school districts each year, goods produced or provided in whole or in part from class II inmate work programs operated by the department of corrections.

(4) The board may make improvements or repairs to the property of the district through a department within the district without following the public bidding process provided in subsection (1) of this section when the total of such improvements or repairs does not exceed the sum of seventy-five thousand dollars. Whenever the estimated cost of a building, improvement, repair, or other public works project is one hundred thousand dollars or more, the public bidding process provided in subsection (1) of this section shall be followed unless the contract is let using the small works roster process in RCW 39.04.155 or under any other procedure authorized for school districts. One or more school districts may autho-

rize an educational service district to establish and operate a small works roster for the school district under the provisions of RCW 39.04.155.

(5) The contract for the work or purchase shall be awarded to the lowest responsible bidder as described in RCW 39.26.160(2) but the board may by resolution reject any and all bids and make further calls for bids in the same manner as the original call. On any work or purchase the board shall provide bidding information to any qualified bidder or the bidder's agent, requesting it in person.

(6) In the event of any emergency when the public interest or property of the district would suffer material injury or damage by delay, upon resolution of the board declaring the existence of such an emergency and reciting the facts constituting the same, the board may waive the requirements of this section with reference to any purchase or contract: PROVIDED, That an "emergency," for the purposes of this section, means a condition likely to result in immediate physical injury to persons or to property of the school district in the absence of prompt remedial action.

(7) This section does not apply to the direct purchase of school buses by school districts and educational services in accordance with RCW 28A.160.195.

(8) This section does not apply to the purchase of Washington grown food.

(9) At the discretion of the board, a school district may develop and implement policies and procedures to facilitate and maximize to the extent practicable, purchases of Washington grown food including, but not limited to, policies that permit a percentage price preference for the purpose of procuring Washington grown food.

(10) As used in this section, "Washington grown" has the definition in RCW 15.64.060.

(11) As used in this section, "price percentage preference" means the percent by which a responsive bid from a responsible bidder whose product is a Washington grown food may exceed the lowest responsive bid submitted by a responsible bidder whose product is not a Washington grown food. [2013 c 223 § 1; 2008 c 215 § 6. Prior: 2005 c 346 § 2; 2005 c 286 § 1; 2000 c 138 § 201; 1995 1st sp.s. c 10 § 3; 1994 c 212 § 1; 1990 c 33 § 362; 1985 c 324 § 1; 1980 c 61 § 1; 1975-'76 2nd ex.s. c 26 § 1; 1969 ex.s. c 49 § 2; 1969 ex.s. c 223 § 28A.58.135; prior: 1961 c 224 § 1. Formerly RCW 28A.58.135, 28.58.135.]

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

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

Alternative public works contracting procedures: Chapter 39.10 RCW.

Chapter 28A.340 RCW

SMALL HIGH SCHOOL COOPERATIVE PROJECTS

Sections

28A.340.080 Innovation academy cooperatives—Formation—Student enrollment.

28A.340.080 Innovation academy cooperatives—Formation—Student enrollment. (1) Two or more non-high school districts may form an interdistrict cooperative to offer an innovation academy cooperative, as defined in RCW

28A.340.085 and subject to the approval of the office of the superintendent of public instruction under RCW 28A.340.090, for high school students residing in the participating nonhigh school districts or for high school students residing in other school districts who enroll in the cooperative's reporting district under RCW 28A.225.220 through 28A.225.230. However, a high school student residing in a school district that is not a participating member of the cooperative may not enroll exclusively in alternative learning experience courses or programs as defined by *RCW 28A.150.325. Nothing in this section is intended to affect or otherwise modify the superintendent of public instruction's duty to approve and monitor online providers pursuant to RCW 28A.250.020.

(2) Enrollment in an innovation academy cooperative is optional for students. For students residing in a participating nonhigh school district who enroll in a high school district rather than the innovation academy cooperative, the provisions of RCW 28A.540.110 and chapter 28A.545 RCW apply to the nonhigh school district.

(3) Each innovation academy cooperative shall designate one of the participating nonhigh school districts to report enrolled students for funding purposes. The reporting district shall claim the monthly full-time equivalent students enrolled in the innovation academy cooperative and receive state funding allocations, including basic education allocations that are based on the small high school allocation under the appropriations act to the extent the number of students enrolled in the innovation academy cooperative meets the criteria for a small high school. [2013 c 192 § 1; 2010 c 99 § 2.]

***Reviser's note:** RCW 28A.150.325 was recodified as RCW 28A.232.010 pursuant to 2013 2nd sp.s. c 18 § 517.

Implementation review—Report—2010 c 99: "The office of the superintendent of public instruction shall review the implementation of RCW 28A.340.080 through 28A.340.090 to identify keys to success and any barriers to successful implementation of innovation academy cooperatives and submit a report to the education committees of the legislature by January 1, 2013." [2010 c 99 § 9.]

Findings—Intent—2010 c 99: "The legislature finds that the availability of technology, online learning, and field and project-based curricula offer new opportunities for school districts to design innovative programs for high school students. However, the legislature also finds that while small, rural school districts desire to offer innovative learning options for students in their communities, they are constrained by state laws and rules that appear to prohibit nonhigh school districts from creating options for their high school students in cooperation with other nonhigh school districts. Therefore, the legislature intends to authorize and encourage innovative, cooperative high school programs for students from very small school districts." [2010 c 99 § 1.]

Chapter 28A.400 RCW EMPLOYEES

Sections

28A.400.205 Cost-of-living increases for employees.
28A.400.317 Physical abuse or sexual misconduct by school employees—
Duty to report—Training.

28A.400.205 Cost-of-living increases for employees.

(1) School district employees shall be provided an annual salary cost-of-living increase in accordance with this section.

(a) The cost-of-living increase shall be calculated by applying the rate of the yearly increase in the cost-of-living index to any state-funded salary base used in state funding

formulas for teachers and other school district employees. Beginning with the 2001-02 school year, and for each subsequent school year, except for the 2013-14 and 2014-15 school years, each school district shall be provided a cost-of-living allocation sufficient to grant this cost-of-living increase.

(b) A school district shall distribute its cost-of-living allocation for salaries and salary-related benefits in accordance with the district's salary schedules, collective bargaining agreements, and compensation policies. No later than the end of the school year, each school district shall certify to the superintendent of public instruction that it has spent funds provided for cost-of-living increases on salaries and salary-related benefits.

(c) Any funded cost-of-living increase shall be included in the salary base used to determine cost-of-living increases for school employees in subsequent years. For teachers and other certificated instructional staff, the rate of the annual cost-of-living increase funded for certificated instructional staff shall be applied to the base salary used with the statewide salary allocation schedule established under RCW 28A.150.410 and to any other salary models used to recognize school district personnel costs.

(2) For the purposes of this section, "cost-of-living index" means, for any school year, the previous calendar year's annual average consumer price index, using the official current base, compiled by the bureau of labor statistics, United States department of labor for the state of Washington. If the bureau of labor statistics develops more than one consumer price index for areas within the state, the index covering the greatest number of people, covering areas exclusively within the boundaries of the state, and including all items shall be used for the cost-of-living index in this section. [2013 2nd sp.s. c 5 § 1; 2011 1st sp.s. c 18 § 1; 2009 c 573 § 1; 2003 1st sp.s. c 20 § 1; 2001 c 4 § 2 (Initiative Measure No. 732, approved November 7, 2000).]

Effective date—2013 2nd sp.s. c 5: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2013." [2013 2nd sp.s. c 5 § 5.]

Effective date—2011 1st sp.s. c 18: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2011." [2011 1st sp.s. c 18 § 7.]

Effective date—2009 c 573: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2009." [2009 c 573 § 4.]

Additional notes found at www.leg.wa.gov

28A.400.317 Physical abuse or sexual misconduct by school employees—Duty to report—Training. (1) A certificated or classified school employee who has knowledge or reasonable cause to believe that a student has been a victim of physical abuse or sexual misconduct by another school employee, shall report such abuse or misconduct to the appropriate school administrator. The school administrator shall cause a report to be made to the proper law enforcement agency if he or she has reasonable cause to believe that the misconduct or abuse has occurred as required under RCW 26.44.030. During the process of making a reasonable cause determination, the school administrator shall contact all parties involved in the complaint.

(2) Certificated and classified school employees shall receive training regarding their reporting obligations under state law in their orientation training when hired and then every three years thereafter. The training required under this subsection may be incorporated within existing training programs and related resources.

(3) Nothing in this section changes any of the duties established under RCW 26.44.030. [2013 c 10 § 4; 2004 c 135 § 1.]

Finding—2013 c 10: See note following RCW 28A.410.035.

Chapter 28A.405 RCW CERTIFICATED EMPLOYEES

Sections

28A.405.415 Bonuses—National board for professional standards certification.

28A.405.415 Bonuses—National board for professional standards certification. (1) Certificated instructional staff who have attained certification from the national board for professional teaching standards shall receive a bonus each year in which they maintain the certification. The bonus shall be calculated as follows: The annual bonus shall be five thousand dollars in the 2007-08 school year. Thereafter, the annual bonus shall increase by inflation, except that the bonus shall not be increased during the 2013-14 and 2014-15 school years.

(2) Certificated instructional staff who have attained certification from the national board for professional teaching standards shall be eligible for bonuses in addition to that provided by subsection (1) of this section if the individual is in an instructional assignment in a school in which at least seventy percent of the students qualify for the free and reduced-price lunch program.

(3) The amount of the additional bonus under subsection (2) of this section for those meeting the qualifications of subsection (2) of this section is five thousand dollars.

(4) The bonuses provided under this section are in addition to compensation received under a district's salary schedule adopted in accordance with RCW 28A.405.200 and shall not be included in calculations of a district's average salary and associated salary limitations under RCW 28A.400.200.

(5) The bonuses provided under this section shall be paid in a lump sum amount. [2013 2nd sp.s. c 5 § 4; 2011 1st sp.s. c 18 § 4; 2009 c 539 § 6; 2008 c 175 § 2; 2007 c 398 § 2.]

Effective date—2013 2nd sp.s. c 5: See note following RCW 28A.400.205.

Effective date—2011 1st sp.s. c 18: See note following RCW 28A.400.205.

Effective date—2009 c 539: See note following RCW 28A.655.200.

Findings—2007 c 398: "The legislature finds and declares:

(1) The national board for professional teaching standards has established high and rigorous standards for what highly accomplished teachers should know and be able to do in order to increase student learning results;

(2) The national board certifies teachers who meet these standards through a rigorous, performance-based assessment process;

(3) A certificate awarded by the national board attests that a teacher has met high and rigorous standards and has demonstrated the ability to make sound professional judgments about how to best meet students' learning needs and effectively help students meet challenging academic standards; and

(4) Teachers who attain national board certification should be acknowl-

edged and rewarded in order to encourage more teachers to pursue certification for the benefit of Washington students." [2007 c 398 § 1.]

Chapter 28A.410 RCW CERTIFICATION

Sections

- 28A.410.035 Qualifications—Coursework on issues of abuse; sexual abuse and exploitation of a minor; and emotional or behavioral distress in students, including possible substance abuse, violence, and youth suicide.
- 28A.410.090 Revocation or suspension of certificate or permit to teach—Reprimand—Criminal basis—Complaints—Investigation—Process.
- 28A.410.220 Washington professional educator standards board—Performance standards and professional-level certification assessment—Basic skills assessment—Assessment of subject knowledge—Administration of section—Rule-making authority.
- 28A.410.226 Washington professional educator standards board—Training program on youth suicide screening—Certificates for school nurses, social workers, psychologists, and counselors—Adoption of standards.
- 28A.410.271 Washington professional educator standards board—Adoption of standards for educational interpreters.

28A.410.035 Qualifications—Coursework on issues of abuse; sexual abuse and exploitation of a minor; and emotional or behavioral distress in students, including possible substance abuse, violence, and youth suicide. (1) To receive initial certification as a teacher in this state after August 31, 1991, an applicant shall have successfully completed a course on issues of abuse. The content of the course shall discuss the identification of physical abuse, emotional abuse, sexual abuse, and substance abuse; commercial sexual abuse of a minor, as defined in RCW 9.68A.100; sexual exploitation of a minor, as defined in RCW 9.68A.040; information on the impact of abuse on the behavior and learning abilities of students; discussion of the responsibilities of a teacher to report abuse or provide assistance to students who are the victims of abuse; and methods for teaching students about abuse of all types and their prevention.

(2) The professional educator standards board shall incorporate into the content required for the course under this section, knowledge and skill standards pertaining to recognition, initial screening, and response to emotional or behavioral distress in students, including but not limited to indicators of possible substance abuse, violence, and youth suicide. To receive initial certification after August 31, 2014, an applicant must have successfully completed a course that includes the content of this subsection. The board shall consult with the office of the superintendent of public instruction and the department of health in developing the standards. [2013 c 197 § 3; 2013 c 10 § 2; 1990 c 90 § 1. Formerly RCW 28A.405.025.]

Reviser's note: This section was amended by 2013 c 10 § 2 and by 2013 c 197 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Finding—Intent—2013 c 197: See note following RCW 43.20A.765.

Findings—Intent—2013 c 197: See note following RCW 28A.410.226.

Finding—2013 c 10: "The legislature finds that when teachers and school staff are trained in identifying and preventing child sexual abuse, commercial sexual abuse of minors, and sexual exploitation of minors, students benefit." [2013 c 10 § 1.]

Civil liability—2013 c 197: See RCW 28A.310.501.

28A.410.090 Revocation or suspension of certificate or permit to teach—Reprimand—Criminal basis—Complaints—Investigation—Process. (1)(a) Any certificate or permit authorized under the provisions of this chapter, chapter 28A.405 RCW, or rules promulgated thereunder may be revoked or suspended by the authority authorized to grant the same based upon a criminal records report authorized by law, or upon the complaint of the professional educator standards board or any school district superintendent, educational service district superintendent, or private school administrator for immorality, violation of written contract, unprofessional conduct, intemperance, or crime against the law of the state. A reprimand may be issued as an alternative to suspension or revocation of a certificate or permit. School district superintendents, educational service district superintendents, the professional educator standards board, or private school administrators may file a complaint concerning any certificated employee of a school district, educational service district, or private school and this filing authority is not limited to employees of the complaining superintendent or administrator. Such written complaint shall state the grounds and summarize the factual basis upon which a determination has been made that an investigation by the superintendent of public instruction is warranted.

(b) If the superintendent of public instruction has reasonable cause to believe that an alleged violation of this chapter or rules adopted under it has occurred based on a written complaint alleging physical abuse or sexual misconduct by a certificated school employee filed by a parent or another person, but no complaint has been forwarded to the superintendent by a school district superintendent, educational service district superintendent, or private school administrator, and that a school district superintendent, educational service district superintendent, or private school administrator has sufficient notice of the alleged violation and opportunity to file a complaint, the superintendent of public instruction may cause an investigation to be made of the alleged violation, together with such other matters that may be disclosed in the course of the investigation related to certificated personnel.

(2) A parent or another person may file a written complaint with the superintendent of public instruction alleging physical abuse or sexual misconduct by a certificated school employee if:

(a) The parent or other person has already filed a written complaint with the educational service district superintendent concerning that employee;

(b) The educational service district superintendent has not caused an investigation of the allegations and has not forwarded the complaint to the superintendent of public instruction for investigation; and

(c) The written complaint states the grounds and factual basis upon which the parent or other person believes an investigation should be conducted.

(3) Any certificate or permit authorized under the provisions of this chapter, chapter 28A.405 RCW, or rules adopted thereunder may be revoked or suspended by the authority authorized to grant the same upon complaint from the professional educator standards board alleging unprofessional conduct in the form of a fraudulent submission of a test for educators. A reprimand may be issued as an alternative to suspension or revocation of a certificate or permit. The

professional educator standards board must issue to the superintendent of public instruction a written complaint stating the grounds and factual basis upon which the professional educator standards board believes an investigation should be conducted pursuant to this section. In all cases under this subsection, the person whose certificate is in question shall be given an opportunity to be heard and has the right to appeal as established in *RCW 28A.410.100.

(4)(a) Any such certificate or permit authorized under this chapter or chapter 28A.405 RCW shall be revoked by the authority authorized to grant the certificate upon a guilty plea or the conviction of any felony crime specified under RCW 28A.400.322, in accordance with this section. The person whose certificate is in question shall be given an opportunity to be heard.

(b) Mandatory permanent revocation upon a guilty plea or the conviction of felony crimes specified under RCW 28A.400.322(1) shall apply to such convictions or guilty pleas which occur after July 23, 1989, and before July 26, 2009.

(c) Mandatory permanent revocation upon a guilty plea or conviction of felony crimes specified under RCW 28A.400.322(2) shall apply to such convictions or guilty pleas that occur on or after July 26, 2009.

(d) Revocation of any certificate or permit authorized under this chapter or chapter 28A.405 RCW for a guilty plea or criminal conviction of a crime specified under RCW 28A.400.322 occurring prior to July 23, 1989, shall be subject to the provisions of subsection (1) of this section.

(5)(a) Any such certificate or permit authorized under this chapter or chapter 28A.405 RCW shall be suspended or revoked, according to the provisions of this subsection, by the authority authorized to grant the certificate upon a finding that an employee has engaged in an unauthorized use of school equipment to intentionally access material depicting sexually explicit conduct or has intentionally possessed on school grounds any material depicting sexually explicit conduct; except for material used in conjunction with established curriculum. A first time violation of this subsection shall result in either suspension or revocation of the employee's certificate or permit as determined by the office of the superintendent of public instruction. A second violation shall result in a mandatory revocation of the certificate or permit.

(b) In all cases under this subsection (5), the person whose certificate is in question shall be given an opportunity to be heard and has the right to appeal as established in *RCW 28A.410.100. Certificates or permits shall be suspended or revoked under this subsection only if findings are made on or after July 24, 2005. For the purposes of this subsection, "sexually explicit conduct" has the same definition as provided in RCW 9.68A.011.

(6) Any such certificate or permit authorized under this chapter or chapter 28A.405 RCW shall be revoked by the authority authorized to grant the certificate upon a finding that the certificate holder obtained the certificate through fraudulent means, including fraudulent misrepresentation of required academic credentials or prior criminal record. In all cases under this subsection, the person whose certificate is in question shall be given an opportunity to be heard and has the right to appeal as established in *RCW 28A.410.100. Certificates or permits shall be revoked under this subsection only

if findings are made on or after July 26, 2009. [2013 c 163 § 1; 2009 c 396 § 5; 2005 c 461 § 2; 2004 c 134 § 2; 1996 c 126 § 2; 1992 c 159 § 4; 1990 c 33 § 408; 1989 c 320 § 1; 1975 1st ex.s. c 275 § 137; 1974 ex.s. c 55 § 2; 1971 c 48 § 51; 1969 ex.s. c 223 § 28A.70.160. Prior: 1909 c 97 p 345 § 1; RRS § 4992; prior: 1897 c 118 § 148. Formerly RCW 28A.70.160, 28.70.160.]

***Reviser's note:** The right to appeal was eliminated from RCW 28A.410.100 by 2009 c 531 § 3.

Findings—1992 c 159: See note following RCW 28A.400.303.

Notification of conviction or guilty plea of certain felony crimes: RCW 43.43.845.

Additional notes found at www.leg.wa.gov

28A.410.220 Washington professional educator standards board—Performance standards and professional-level certification assessment—Basic skills assessment—Assessment of subject knowledge—Administration of section—Rule-making authority. (1)(a) Beginning not later than September 1, 2001, the Washington professional educator standards board shall make available and pilot a means of assessing an applicant's knowledge in the basic skills. For the purposes of this section, "basic skills" means the subjects of at least reading, writing, and mathematics. Beginning September 1, 2002, except as provided in (c) and (d) of this subsection and subsection (4) of this section, passing this assessment shall be required for admission to approved teacher preparation programs and for persons from out-of-state applying for a Washington state residency teaching certificate.

(b) On an individual student basis, approved teacher preparation programs may admit into their programs a candidate who has not achieved the minimum basic skills assessment score established by the Washington professional educator standards board. Individuals so admitted may not receive residency certification without passing the basic skills assessment under this section.

(c) The Washington professional educator standards board may establish criteria to ensure that persons from out-of-state who are applying for residency certification and persons applying to master's degree level teacher preparation programs can demonstrate to the board's satisfaction that they have the requisite basic skills based upon having completed another basic skills assessment acceptable to the Washington professional educator standards board or by some other alternative approved by the Washington professional educator standards board.

(d) The Washington professional educator standards board may identify and accept other tests and test scores as long as the tests are comparable in rigor to the basic skills assessment and candidates meet or exceed the basic skills requirements established by the board. The board must set the acceptable score for admission to teacher certification programs at no lower than the average national scores for the SAT or ACT.

(2) The Washington professional educator standards board shall set performance standards and develop, pilot, and implement a uniform and externally administered professional-level certification assessment based on demonstrated teaching skill. In the development of this assessment, consid-

eration shall be given to changes in professional certification program components such as the culminating seminar.

(3) Beginning not later than September 1, 2002, the Washington professional educator standards board shall provide for the initial piloting and implementation of a means of assessing an applicant's knowledge in the subjects for which the applicant has applied for an endorsement to his or her residency or professional teaching certificate. The assessment of subject knowledge shall not include instructional methodology. Beginning September 1, 2005, passing this assessment shall be required to receive an endorsement for certification purposes.

(4) The Washington professional educator standards board may permit exceptions from the assessment requirements under subsections (1), (2), and (3) of this section on a case-by-case basis.

(5) The Washington professional educator standards board shall provide for reasonable accommodations for individuals who are required to take the assessments in subsection (1), (2), or (3) of this section if the individuals have learning or other disabilities.

(6) With the exception of applicants exempt from the requirements of subsections (1), (2), and (3) of this section, an applicant must achieve a minimum assessment score or scores established by the Washington professional educator standards board on each of the assessments under subsections (1), (2), and (3) of this section.

(7) The Washington professional educator standards board and superintendent of public instruction, as determined by the Washington professional educator standards board, may contract with one or more third parties for:

(a) The development, purchase, administration, scoring, and reporting of scores of the assessments established by the Washington professional educator standards board under subsections (1), (2), and (3) of this section;

(b) Related clerical and administrative activities; or

(c) Any combination of the purposes in this subsection.

(8) Applicants for admission to a Washington teacher preparation program and applicants for residency and professional certificates who are required to successfully complete one or more of the assessments under subsections (1), (2), and (3) of this section, and who are charged a fee for the assessment by a third party contracted with under subsection (7) of this section, shall pay the fee charged by the contractor directly to the contractor. Such fees shall be reasonably related to the actual costs of the contractor in providing the assessment.

(9) The superintendent of public instruction is responsible for supervision and providing support services to administer this section.

(10) The Washington professional educator standards board shall collaboratively select or develop and implement the assessments and minimum assessment scores required under this section with the superintendent of public instruction and shall provide opportunities for representatives of other interested educational organizations to participate in the selection or development and implementation of such assessments in a manner deemed appropriate by the Washington professional educator standards board.

(11) The Washington professional educator standards board shall adopt rules under chapter 34.05 RCW that are

reasonably necessary for the effective and efficient implementation of this section. [2013 c 193 § 2; 2008 c 176 § 2; 2002 c 92 § 2; 2000 c 39 § 201.]

Finding—Intent—2013 c 193: "The legislature finds that the use of a basic skills test as an entrance requirement to teacher certification programs has unintentionally created a barrier to the effective recruitment of candidates from underrepresented populations who are otherwise qualified for the program. Therefore, the legislature intends to expand the pool of potential teacher candidates by expanding the types of testing instruments and assessments that may be used to measure basic skills. The legislature intends to review any alternative assessments to ensure that candidates must continue to meet the established standards for admission to a teacher certification program." [2013 c 193 § 1.]

Findings—Part headings and section captions not law—2000 c 39: See notes following RCW 28A.410.200.

28A.410.226 Washington professional educator standards board—Training program on youth suicide screening—Certificates for school nurses, social workers, psychologists, and counselors—Adoption of standards. (1) As provided under subsections (2) and (3) of this section, individuals certified by the professional educator standards board as a school nurse, school social worker, school psychologist, or school counselor must complete a training program on youth suicide screening and referral as a condition of certification. The training program must be at least three hours in length. The professional educator standards board must adopt standards for the minimum content of the training in consultation with the office of the superintendent of public instruction and the department of health. In developing the standards, the board must consider training programs listed on the best practices registry of the American foundation for suicide prevention and the suicide prevention resource center.

(2) This section applies to the following certificates if the certificate is first issued or is renewed on or after July 1, 2015:

- (a) Continuing certificates for school nurses;
- (b) Continuing certificates for school social workers;
- (c) Continuing and professional certificates for school psychologists; and
- (d) Continuing and professional certificates for school counselors.

(3) A school counselor who holds or submits a school counseling certificate from the national board for professional teaching standards or a school psychologist who holds or submits a school psychologist certificate from the national association of school psychologists in lieu of a professional certificate must complete the training program under subsection (1) of this section by July 1, 2015, or within the five-year period before the certificate is first submitted to the professional educator standards board, whichever is later, and at least once every five years thereafter in order to be considered certified by the professional educator standards board.

(4) The professional educator standards board shall consider the training program under subsection (1) of this section as approved continuing education under RCW 28A.415.020 and shall count the training program toward meeting continuing education requirements for certification as a school nurse, school social worker, school psychologist, or school counselor. [2013 c 197 § 2.]

Findings—Intent—2013 c 197: "(1) The legislature finds that:

- (a) According to the state department of health, suicide is the second

leading cause of death for Washington youth between the ages of ten and twenty-four. Suicide rates among Washington youth remain higher than that national average;

(b) An increasing body of research shows an association between adverse childhood experiences such as trauma, violence, or abuse, and school performance. Children and teens spend a significant amount of time in school. Teachers and other school staff who interact with students daily are in a prime position to recognize the signs of emotional or behavioral distress and make appropriate referrals. School personnel need effective training to help build the skills and confidence to assist youth in seeking help;

(c) Educators are not necessarily trained to address significant social, emotional, or behavioral issues exhibited by youth. Rather, best practices guidelines suggest that school districts should form partnerships with qualified health, mental health, and social services agencies to provide support; and

(d) Current safe school plans prepared by school districts tend to focus more on natural disasters and external threats and less on how to recognize and respond to potential crises among the students inside the school.

(2) Therefore, the legislature intends to increase the capacity for school districts to recognize and respond to youth in need through additional training, more comprehensive planning, and emphasis on partnerships between schools and communities." [2013 c 197 § 1.]

Finding—Intent—2013 c 197: See note following RCW 43.20A.765.

Civil liability—2013 c 197: See RCW 28A.310.501.

28A.410.271 Washington professional educator standards board—Adoption of standards for educational interpreters. (1) The definitions in this subsection apply throughout this section.

(a) "Educational interpreters" means school district employees, whether certificated or classified, providing sign language translation and further explanation of concepts introduced by the teacher for students who are deaf, deaf-blind, or hearing impaired.

(b) "Educational interpreter assessment" means an assessment that includes both written assessment and performance assessment that is offered by a national organization of professional sign language interpreters and transliterators, and is designed to assess performance in more than one sign system or sign language.

(2) The professional educator standards board shall adopt standards for educational interpreters and identify and publicize educational interpreter assessments that are available and meet the definition in this section. The board shall establish a performance standard for each educational interpreter assessment for the purposes of this section, defining what constitutes a minimum assessment result.

(3) By the beginning of the 2016-17 school year, educational interpreters who are employed by school districts must have successfully achieved the performance standard established by the professional educator standards board on one of the educational interpreter assessments identified by the board.

(4) By December 31, 2013, the professional educator standards board shall recommend to the education committees of the house of representatives and the senate, how to appropriately use the national interpreter certification and the educational interpreter performance assessment for educational interpreters in Washington public schools.

(5) The provisions of this section do not apply to educational interpreters employed to interpret a sign system or sign language for which no educational interpreter assessment has been identified by the professional educator standards board. [2013 c 151 § 2.]

Finding—Intent—2013 c 151: "The legislature finds that although the professional educator standards board has begun work on standards and assessments for educational interpreters as directed by the 2012 supplemental operating budget, there is a need formally to codify this as an ongoing responsibility. The legislature also intends to specify how the standards and assessments will be used to improve learning opportunities for students who are deaf, deaf-blind, or hearing impaired." [2013 c 151 § 1.]

Chapter 28A.415 RCW

INSTITUTES, WORKSHOPS, AND TRAINING

(Formerly: Teachers' institutes, workshops, and other in-service training)

Sections

28A.415.010	Center for improvement of teaching—Improvement of teaching coordinating council—Teachers' institutes and workshops.
28A.415.250	Repealed.
28A.415.260	Repealed.
28A.415.265	Educator support program.
28A.415.400	Reading instruction and early literacy—Professional development.

28A.415.010 Center for improvement of teaching—Improvement of teaching coordinating council—Teachers' institutes and workshops. It shall be the responsibility of each educational service district board to establish a center for the improvement of teaching. The center shall administer, coordinate, and act as fiscal agent for such programs related to the recruitment and training of certificated and classified K-12 education personnel as may be delegated to the center by the superintendent of public instruction under RCW 28A.310.470. To assist in these activities, each educational service district board shall establish an improvement of teaching coordinating council to include, at a minimum, representatives as specified in RCW 28A.415.040. An existing in-service training task force, established pursuant to RCW 28A.415.040, may serve as the improvement of teaching coordinating council. The educational service district board shall ensure coordination of programs established pursuant to RCW 28A.415.030, 28A.410.060, and 28A.415.265.

The educational service district board may arrange each year for the holding of one or more teachers' institutes and/or workshops for professional staff preparation and in-service training in such manner and at such time as the board believes will be of benefit to the teachers and other professional staff of school districts within the educational service district and shall comply with rules of the professional educator standards board pursuant to RCW 28A.410.060 or the superintendent of public instruction. The board may provide such additional means of teacher and other professional staff preparation and in-service training as it may deem necessary or appropriate and there shall be a proper charge against the educational service district general expense fund when approved by the educational service district board.

Educational service district boards of contiguous educational service districts, by mutual arrangements, may hold joint institutes and/or workshops, the expenses to be shared in proportion to the numbers of certificated personnel as shown by the last annual reports of the educational service districts holding such joint institutes or workshops.

In local school districts employing more than one hundred teachers and other professional staff, the school district superintendent may hold a teachers' institute of one or more days in such district, said institute when so held by the school

district superintendent to be in all respects governed by the provisions of this title and rules relating to teachers' institutes held by educational service district superintendents. [2013 2nd sp.s. c 18 § 402; 2006 c 263 § 807; 1991 c 285 § 1; 1990 c 33 § 414; 1975-'76 2nd ex.s. c 15 § 18. Prior: 1975 1st ex.s. c 275 § 139; 1975 1st ex.s. c 192 § 2; 1971 ex.s. c 282 § 31; 1969 ex.s. c 176 § 146; 1969 ex.s. c 223 § 28A.71.100; prior: 1965 c 139 § 21. Formerly RCW 28A.71.100, 28.71.100.]

Application—Enforcement of laws protecting health and safety—2013 2nd sp.s. c 18: See note following RCW 28A.600.022.

Findings—Purpose—Part headings not law—2006 c 263: See notes following RCW 28A.150.230.

Transitional bilingual instruction program—In-service training: RCW 28A.180.040(1)(f).

Additional notes found at www.leg.wa.gov

28A.415.250 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

28A.415.260 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

28A.415.265 Educator support program. (1) The educator support program is established to provide professional development and mentor support for beginning educators and educators on probation under RCW 28A.405.100, to be composed of the beginning educator support team for beginning educators and continuous improvement coaching for educators on probation, as provided in this section.

(2)(a) Subject to funds appropriated for this specific purpose, the office of the superintendent of public instruction shall allocate funds for the beginning educator support team on a competitive basis to individual school districts or consortia of districts. School districts are encouraged to include educational service districts in creating regional consortia. In allocating funds, the office of the superintendent of public instruction shall give priority to school districts with low-performing schools identified under RCW 28A.657.020 as being challenged schools in need of improvement. A portion of the appropriated funds may be used for program coordination and provision of statewide or regional professional development through the office of the superintendent of public instruction.

(b) A beginning educator support team must include the following components:

(i) A paid orientation or individualized assistance before the start of the school year for beginning educators;

(ii) Assignment of a trained and qualified mentor for the first three years for beginning educators, with intensive support in the first year and decreasing support over the following years depending on the needs of the beginning educator;

(iii) Professional development for beginning educators that is designed to meet their unique needs for supplemental training and skill development;

(iv) Professional development for mentors;

(v) Release time for mentors and their designated educators to work together, as well as time for educators to observe accomplished peers; and

(vi) A program evaluation using a standard evaluation tool provided from the office of the superintendent of public

instruction that measures increased knowledge, skills, and positive impact on student learning for program participants.

(3) Subject to funds separately appropriated for this specific purpose, the beginning educator support team components under subsection (2) of this section may be provided for continuous improvement coaching to support educators on probation under RCW 28A.405.100. [2013 2nd sp.s. c 18 § 401.]

Application—Enforcement of laws protecting health and safety—2013 2nd sp.s. c 18: See note following RCW 28A.600.022.

28A.415.400 Reading instruction and early literacy—Professional development. (1) High-quality professional development is essential for educators to keep abreast of the important advances in research that are occurring regarding instructional strategies and curriculum. Professional development in early literacy is especially important to support the instruction of young readers since reading proficiency is a crucial element for student academic success.

(2) Subject to funds appropriated for this specific purpose, the office of the superintendent of public instruction shall create partnerships with the educational service districts and public or private institutions of higher education with approved educator preparation programs to develop and deliver research-based professional development learning opportunities in reading instruction and early literacy for teachers of kindergarten through fourth grade students. [2013 2nd sp.s. c 18 § 103.]

Application—Enforcement of laws protecting health and safety—2013 2nd sp.s. c 18: See note following RCW 28A.600.022.

Chapter 28A.500 RCW LOCAL EFFORT ASSISTANCE

Sections

28A.500.020 Definitions. (*Effective until August 1, 2018.*)

28A.500.020 Definitions. (*Effective until August 1, 2018.*) (1) Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(a) "Prior tax collection year" means the year immediately preceding the year in which the local effort assistance shall be allocated.

(b) "Statewide average fourteen percent levy rate" means fourteen percent of the total levy bases as defined in RCW 84.52.0531 (3) through (5) for calendar years 2014 and 2015, and as defined in RCW 84.52.0531 (3) and (4) in calendar years 2016 and thereafter, summed for all school districts, and divided by the total assessed valuation for excess levy purposes in the prior tax collection year for all districts as adjusted to one hundred percent by the county indicated ratio established in RCW 84.48.075.

(c) The "district's fourteen percent levy amount" means the school district's maximum levy authority after transfers determined under RCW 84.52.0531(2) (a) through (c) divided by the district's maximum levy percentage determined under *RCW 84.52.0531(6) multiplied by fourteen percent.

(d) The "district's fourteen percent levy rate" means the district's fourteen percent levy amount divided by the district's assessed valuation for excess levy purposes for the

prior tax collection year as adjusted to one hundred percent by the county indicated ratio.

(e) "Districts eligible for local effort assistance" means those districts with a fourteen percent levy rate that exceeds the statewide average fourteen percent levy rate.

(2) Unless otherwise stated all rates, percents, and amounts are for the calendar year for which local effort assistance is being calculated under this chapter. [2013 2nd sp.s. c 4 § 957; 2010 c 237 § 5; 2004 c 21 § 1; 1999 c 317 § 2.]

***Reviser's note:** RCW 84.52.0531 was amended by 2013 c 242 § 8, changing subsection (6) to subsection (7).

Expiration date—2013 2nd sp.s. c 4 § 957: "Section 957 of this act expires August 1, 2018." [2013 2nd sp.s. c 4 § 1905.]

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

Intent—2010 c 237: See note following RCW 84.52.0531.

Expiration date—2010 c 237 §§ 1, 5, and 6: See note following RCW 84.52.0531.

Effective date—2010 c 237 §§ 1 and 3-9: See note following RCW 84.52.0531.

Expiration date—2010 c 237; 2006 c 119; 2004 c 21: See note following RCW 84.52.0531.

Chapter 28A.525 RCW BOND ISSUES

Sections

28A.525.162 Allotment of appropriations for school plant facilities—Local school district participation—Computing state funding assistance—Rules.

28A.525.166 Allotment of appropriations for school plant facilities—Computation of state aid for school plant project.

28A.525.162 Allotment of appropriations for school plant facilities—Local school district participation—Computing state funding assistance—Rules. (1) Funds appropriated to the superintendent of public instruction from the common school construction fund shall be allotted by the superintendent of public instruction in accordance with this chapter.

(2) No allotment shall be made to a school district until such district has provided local funds equal to or greater than the difference between the total approved project cost and the amount of state funding assistance to the district for financing the project computed pursuant to RCW 28A.525.166, with the following exceptions:

(a) The superintendent of public instruction may waive the local requirement for state funding assistance for districts which have provided funds for school building construction purposes through the authorization of bonds or through the authorization of excess tax levies or both in an amount equivalent to two and one-half percent of the value of its taxable property, as defined in RCW 39.36.015.

(b) No such local funds shall be required as a condition to the allotment of funds from the state for the purpose of making major or minor structural changes to existing school facilities in order to bring such facilities into compliance with the barrier free access requirements of section 504 of the federal rehabilitation act of 1973 (29 U.S.C. Sec. 706) and rules implementing the act.

(3) For the purpose of computing the state funding assistance percentage under RCW 28A.525.166 when a school

district is granted authority to enter into contracts, adjusted valuation per pupil shall be calculated using headcount student enrollments from the most recent October enrollment reports submitted by districts to the superintendent of public instruction, adjusted as follows:

(a) In the case of projects for which local bonds were approved after May 11, 1989:

(i) For districts which have been designated as serving high school districts under RCW 28A.540.110, students residing in the nonhigh district so designating shall be excluded from the enrollment count if the student is enrolled in any grade level not offered by the nonhigh district;

(ii) The enrollment of nonhigh school districts shall be increased by the number of students residing within the district who are enrolled in a serving high school district so designated by the nonhigh school district under RCW 28A.540.110, including only students who are enrolled in grade levels not offered by the nonhigh school district; and

(iii) The number of preschool students with disabilities included in the enrollment count shall be multiplied by one-half;

(b) In the case of construction or modernization of high school facilities in districts serving students from nonhigh school districts, the adjusted valuation per pupil shall be computed using the combined adjusted valuations and enrollments of each district, each weighted by the percentage of the district's resident high school students served by the high school district;

(c) The number of kindergarten students included in the enrollment count shall be counted as one headcount student; and

(d) The number of students residing outside the school district who are enrolled in alternative learning experience courses under RCW 28A.232.010 shall be excluded from the total.

(4) In lieu of the exclusion in subsection (3)(d) of this section, a district may submit an alternative calculation for excluding students enrolled in alternative learning experience courses. The alternative calculation must show the student headcount use of district classroom facilities on a regular basis for a regular duration by out-of-district alternative learning experience students subtracted by the headcount of in-district alternative learning experience students not using district classroom facilities on a regular basis for a reasonable duration. The alternative calculation must be submitted in a form approved by the office of the superintendent of public instruction. The office of the superintendent of public instruction must develop rules to define "regular basis" and "reasonable duration."

(5) The superintendent of public instruction, considering policy recommendations from the school facilities citizen advisory panel, shall prescribe such rules as are necessary to equate insofar as possible the efforts made by school districts to provide capital funds by the means aforesaid.

(6) For the purposes of this section, "preschool students with disabilities" means children of preschool age who have developmental disabilities who are entitled to services under RCW 28A.155.010 through 28A.155.100 and are not included in the kindergarten enrollment count of the district. [2013 2nd sp.s. c 18 § 513; 2012 c 244 § 2; 2009 c 129 § 5; 2006 c 263 § 309; 1995 c 77 § 24; 1990 c 33 § 455; 1989 c

321 § 1; 1980 c 154 § 18; 1974 ex.s. c 56 § 1; 1970 ex.s. c 42 § 5; 1969 ex.s. c 244 § 2. Formerly RCW 28A.47.801, 28.47.801.]

Application—Enforcement of laws protecting health and safety—2013 2nd sp.s. c 18: See note following RCW 28A.600.022.

Intent—2012 c 244: "The school construction assistance funding formula is used to determine state funding contributions to school construction projects. It is the intent of the legislature that the formula use the most accurate method available to reflect the actual number of students using districts' school facilities. State funding currently provides all-day kindergarten for over twenty percent of kindergarten students and RCW 28A.150.315 calls for the continued phasing-in of all-day kindergarten each year until full state-wide implementation is achieved in the 2017-18 school year. In addition, because alternative learning experience programs of education take place in whole, or in part, outside the regular classroom setting, and because online alternative learning experience programs are delivered primarily electronically using the internet or other computer-based methods, it is appropriate to consider the impact of alternative learning experience students in assessing school space needs. The legislature acknowledges the review of the formula conducted by the office of the superintendent of public instruction and accepts many recommendations from the resulting December 2011 report. The legislature also intends to provide financial assistance for school districts affected by the transition to the new funding formula. This assistance will be limited to grants to cover direct district expenditures for contracted architects, engineers, and other consultants for projects that are no longer eligible for state assistance under the new formula or for projects requiring significant redesign work as a result of reduced state assistance under the new formula." [2012 c 244 § 1.]

Effective date—2012 c 244: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 30, 2012]." [2012 c 244 § 4.]

Intent—2009 c 129: See note following RCW 28A.335.230.

Findings—Purpose—Part headings not law—2006 c 263: See notes following RCW 28A.150.230.

Purpose—Effective dates—Savings—Disposition of certain funds—Severability—1980 c 154: See notes following chapter 82.45 RCW digest.

Additional notes found at www.leg.wa.gov

28A.525.166 Allotment of appropriations for school plant facilities—Computation of state aid for school plant project. Allocations to school districts of state funds provided by RCW 28A.525.162 through 28A.525.180 shall be made by the superintendent of public instruction and the amount of state funding assistance to a school district in financing a school plant project shall be determined in the following manner:

(1) The boards of directors of the districts shall determine the total cost of the proposed project, which cost may include the cost of acquiring and preparing the site, the cost of constructing the building or of acquiring a building and preparing the same for school use, the cost of necessary equipment, taxes chargeable to the project, necessary architects' fees, and a reasonable amount for contingencies and for other necessary incidental expenses: PROVIDED, That the total cost of the project shall be subject to review and approval by the superintendent.

(2) The state funding assistance percentage for a school district shall be computed by the following formula:

The ratio of the school district's adjusted valuation per pupil divided by the ratio of the total state adjusted valuation per pupil shall be subtracted from three, and then the result of the foregoing shall be divided by three plus (the ratio of the school district's adjusted valuation per pupil divided by the ratio of the total state adjusted valuation per pupil).

$$\begin{array}{l} \text{Computed} \\ \text{State} \\ \text{Ratio} = \end{array} \frac{\text{District adjusted 3+valuation per pupil}}{\text{Total state adjusted valuation per pupil}} \div \frac{\text{District adjusted 3+valuation per pupil}}{\text{Total state adjusted valuation per pupil}} = \text{State \% Funding Assistance}$$

PROVIDED, That in the event the state funding assistance percentage to any school district based on the above formula is less than twenty percent and such school district is otherwise eligible for state funding assistance under RCW 28A.525.162 through 28A.525.180, the superintendent may establish for such district a state funding assistance percentage not in excess of twenty percent of the approved cost of the project, if the superintendent finds that such additional assistance is necessary to provide minimum facilities for housing the pupils of the district.

(3) In addition to the computed state funding assistance percentage developed in subsection (2) of this section, a school district shall be entitled to additional percentage points determined by the average percentage of growth for the past three years. One percent shall be added to the computed state funding assistance percentage for each percent of growth, with a maximum of twenty percent.

(4) In computing the state funding assistance percentage in subsection (2) of this section and adjusting the percentage under subsection (3) of this section, students residing outside the school district who are enrolled in alternative learning experience courses under RCW 28A.232.010 shall be excluded from the count of total pupils. In lieu of the exclusion in this subsection, a district may submit an alternative calculation for excluding students enrolled in alternative learning experience courses. The alternative calculation must show the student headcount use of district classroom facilities on a regular basis for a reasonable duration by out-of-district alternative learning experience students subtracted by the headcount of in-district alternative learning experience students not using district classroom facilities on a regular basis for a reasonable duration. The alternative calculation must be submitted in a form approved by the office of the superintendent of public instruction. The office of the superintendent of public instruction must develop rules to define "regular basis" and "reasonable duration."

(5) The approved cost of the project determined in the manner prescribed in this section multiplied by the state funding assistance percentage derived as provided for in this section shall be the amount of state funding assistance to the district for the financing of the project: PROVIDED, That need therefor has been established to the satisfaction of the superintendent: PROVIDED, FURTHER, That additional state funding assistance may be allowed if it is found by the superintendent, considering policy recommendations from the school facilities citizen advisory panel that such assistance is necessary in order to meet (a) a school housing emergency resulting from the destruction of a school building by fire, the condemnation of a school building by properly constituted authorities, a sudden excessive and clearly foreseeable future increase in school population, or other conditions similarly emergent in nature; or (b) a special school housing burden resulting from projects of statewide significance or imposed by virtue of the admission of nonresident students

into educational programs established, maintained and operated in conformity with the requirements of law; or (c) a deficiency in the capital funds of the district resulting from financing, subsequent to April 1, 1969, and without benefit of the state funding assistance provided by prior state assistance programs, the construction of a needed school building project or projects approved in conformity with the requirements of such programs, after having first applied for and been denied state funding assistance because of the inadequacy of state funds available for the purpose, or (d) a condition created by the fact that an excessive number of students live in state owned housing, or (e) a need for the construction of a school building to provide for improved school district organization or racial balance, or (f) conditions similar to those defined under (a), (b), (c), (d), and (e) of this subsection, creating a like emergency. [2013 2nd sp.s. c 18 § 514; 2012 c 244 § 3. Prior: 2009 c 421 § 5; 2009 c 129 § 6; 2006 c 263 § 311; 1997 c 369 § 9; 1990 c 33 § 457; 1989 c 321 § 3; 1975 1st ex.s. c 98 § 1; 1974 ex.s. c 56 § 3; 1969 ex.s. c 244 § 4. Formerly RCW 28A.47.803, 28.47.803.]

Application—Enforcement of laws protecting health and safety—2013 2nd sp.s. c 18: See note following RCW 28A.600.022.

Intent—Effective date—2012 c 244: See notes following RCW 28A.525.162.

Effective date—2009 c 421: See note following RCW 43.157.005.

Intent—2009 c 129: See note following RCW 28A.335.230.

Findings—Purpose—Part headings not law—2006 c 263: See notes following RCW 28A.150.230.

Project of statewide significance—Defined: RCW 43.157.010.

Additional notes found at www.leg.wa.gov

Chapter 28A.600 RCW STUDENTS

Sections	
28A.600.015	Rules incorporating due process guarantees of pupils with regard to expulsions and suspensions.
28A.600.020	Exclusion of student from classroom—Written disciplinary procedures—Long-term suspension or expulsion.
28A.600.022	Suspended or expelled students—Reengagement plan.
28A.600.460	Classroom discipline—Policies—Classroom placement of student offenders—Data on disciplinary actions.
28A.600.485	Restraint of students with individualized education programs or plans developed under section 504 of the rehabilitation act of 1973—Procedures—Definitions.
28A.600.486	District policy on the use of isolation and restraint—Notice to parents and guardians of children who have individualized education programs or plans developed under section 504 of the rehabilitation act of 1973.
28A.600.490	Discipline task force—Development of standard definitions—Development of data collection standards—Membership—Statewide student data system revision.

28A.600.015 Rules incorporating due process guarantees of pupils with regard to expulsions and suspensions. (1) The superintendent of public instruction shall adopt and distribute to all school districts lawful and reasonable rules prescribing the substantive and procedural due process guarantees of pupils in the common schools. Such rules shall authorize a school district to use informal due process procedures in connection with the short-term suspension of students to the extent constitutionally permissible: PROVIDED, That the superintendent of public instruction deems the interest of students to be adequately protected. When a student suspension or expulsion is appealed, the rules shall

authorize a school district to impose the suspension or expulsion temporarily after an initial hearing for no more than ten consecutive school days or until the appeal is decided, whichever is earlier. Any days that the student is temporarily suspended or expelled before the appeal is decided shall be applied to the term of the student suspension or expulsion and shall not limit or extend the term of the student suspension or expulsion. An expulsion or suspension of a student may not be for an indefinite period of time.

(2) Short-term suspension procedures may be used for suspensions of students up to and including, ten consecutive school days.

(3) Emergency expulsions must end or be converted to another form of corrective action within ten school days from the date of the emergency removal from school. Notice and due process rights must be provided when an emergency expulsion is converted to another form of corrective action. [2013 2nd sp.s. c 18 § 302; 2006 c 263 § 701; 1996 c 321 § 2; 1975-'76 2nd ex.s. c 97 § 1; 1971 ex.s. c 268 § 2. Formerly RCW 28A.305.160, 28A.04.132.]

Application—Enforcement of laws protecting health and safety—2013 2nd sp.s. c 18: See note following RCW 28A.600.022.

Findings—Purpose—Part headings not law—2006 c 263: See notes following RCW 28A.150.230.

28A.600.020 Exclusion of student from classroom—Written disciplinary procedures—Long-term suspension or expulsion. (1) The rules adopted pursuant to RCW 28A.600.010 shall be interpreted to ensure that the optimum learning atmosphere of the classroom is maintained, and that the highest consideration is given to the judgment of qualified certificated educators regarding conditions necessary to maintain the optimum learning atmosphere.

(2) Any student who creates a disruption of the educational process in violation of the building disciplinary standards while under a teacher's immediate supervision may be excluded by the teacher from his or her individual classroom and instructional or activity area for all or any portion of the balance of the school day, or up to the following two days, or until the principal or designee and teacher have conferred, whichever occurs first. Except in emergency circumstances, the teacher first must attempt one or more alternative forms of corrective action. In no event without the consent of the teacher may an excluded student return to the class during the balance of that class or activity period or up to the following two days, or until the principal or his or her designee and the teacher have conferred.

(3) In order to preserve a beneficial learning environment for all students and to maintain good order and discipline in each classroom, every school district board of directors shall provide that written procedures are developed for administering discipline at each school within the district. Such procedures shall be developed with the participation of parents and the community, and shall provide that the teacher, principal or designee, and other authorities designated by the board of directors, make every reasonable attempt to involve the parent or guardian and the student in the resolution of student discipline problems. Such procedures shall provide that students may be excluded from their individual classes or activities for periods of time in excess of that provided in subsection (2) of this section if such students

have repeatedly disrupted the learning of other students. The procedures must be consistent with the rules of the superintendent of public instruction and must provide for early involvement of parents in attempts to improve the student's behavior.

(4) The procedures shall assure, pursuant to RCW 28A.400.110, that all staff work cooperatively toward consistent enforcement of proper student behavior throughout each school as well as within each classroom.

(5)(a) A principal shall consider imposing long-term suspension or expulsion as a sanction when deciding the appropriate disciplinary action for a student who, after July 27, 1997:

(i) Engages in two or more violations within a three-year period of RCW 9A.46.120, 28A.320.135, 28A.600.455, 28A.600.460, 28A.635.020, 28A.600.020, 28A.635.060, 9A.1.280, or 28A.320.140; or

(ii) Engages in one or more of the offenses listed in RCW 13.04.155.

(b) The principal shall communicate the disciplinary action taken by the principal to the school personnel who referred the student to the principal for disciplinary action.

(6) Any corrective action involving a suspension or expulsion from school for more than ten days must have an end date of not more than one calendar year from the time of corrective action. Districts shall make reasonable efforts to assist students and parents in returning to an educational setting prior to and no later than the end date of the corrective action. Where warranted based on public health or safety, a school may petition the superintendent of the school district, pursuant to policies and procedures adopted by the office of the superintendent of public instruction, for authorization to exceed the one calendar year limitation provided in this subsection. The superintendent of public instruction shall adopt rules outlining the limited circumstances in which a school may petition to exceed the one calendar year limitation, including safeguards to ensure that the school district has made every effort to plan for the student's return to school. School districts shall report to the office of the superintendent of public instruction the number of petitions made to the school board and the number of petitions granted on an annual basis.

(7) Nothing in this section prevents a public school district, educational service district, the Washington state center for childhood deafness and hearing loss, or the state school for the blind if it has suspended or expelled a student from the student's regular school setting from providing educational services to the student in an alternative setting or modifying the suspension or expulsion on a case-by-case basis. [2013 2nd sp.s. c 18 § 303; 2006 c 263 § 706; 1997 c 266 § 11; 1990 c 33 § 497; 1980 c 171 § 1; 1972 ex.s. c 142 § 5. Formerly RCW 28A.58.1011.]

Application—Enforcement of laws protecting health and safety—2013 2nd sp.s. c 18: See note following RCW 28A.600.022.

Findings—Purpose—Part headings not law—2006 c 263: See notes following RCW 28A.150.230.

Findings—Intent—Severability—1997 c 266: See notes following RCW 28A.600.455.

28A.600.022 Suspended or expelled students—Reengagement plan. (1) School districts should make efforts to

have suspended or expelled students return to an educational setting as soon as possible. School districts should convene a meeting with the student and the student's parents or guardians within twenty days of the student's long-term suspension or expulsion, but no later than five days before the student's enrollment, to discuss a plan to reengage the student in a school program.

(2) In developing a reengagement plan, school districts should consider shortening the length of time that the student is suspended or expelled, other forms of corrective action, and supportive interventions that aid in the student's academic success and keep the student engaged and on track to graduate. School districts must create a reengagement plan tailored to the student's individual circumstances, including consideration of the incident that led to the student's long-term suspension or expulsion. The plan should aid the student in taking the necessary steps to remedy the situation that led to the student's suspension or expulsion.

(3) Any reengagement meetings conducted by the school district involving the suspended or expelled student and his or her parents or guardians are not intended to replace a petition for readmission. [2013 2nd sp.s. c 18 § 308.]

Application—Enforcement of laws protecting health and safety—2013 2nd sp.s. c 18: "Nothing in chapter 18, Laws of 2013 2nd sp. sess. prevents a public school district, law enforcement agencies, or law enforcement personnel from enforcing laws protecting health and human safety." [2013 2nd sp.s. c 18 § 309.]

28A.600.460 Classroom discipline—Policies—Classroom placement of student offenders—Data on disciplinary actions. (1) School district boards of directors shall adopt policies that restore discipline to the classroom. Such policies must provide for at least the following: Allowing each teacher to take disciplinary action to correct a student who disrupts normal classroom activities, abuses or insults a teacher as prohibited by RCW 28A.635.010, willfully disobeys a teacher, uses abusive or foul language directed at a school district employee, school volunteer, or another student, violates school rules, or who interferes with an orderly education process. Disciplinary action may include but is not limited to: Oral or written reprimands; written notification to parents of disruptive behavior, a copy of which must be provided to the principal.

(2) A student committing an offense under chapter 9A.36, 9A.40, 9A.46, or 9A.48 RCW when the activity is directed toward the teacher, shall not be assigned to that teacher's classroom for the duration of the student's attendance at that school or any other school where the teacher is assigned.

(3) A student who commits an offense under chapter 9A.36, 9A.40, 9A.46, or 9A.48 RCW, when directed toward another student, may be removed from the classroom of the victim for the duration of the student's attendance at that school or any other school where the victim is enrolled. A student who commits an offense under one of the chapters enumerated in this section against a student or another school employee, may be expelled or suspended.

(4) Nothing in this section is intended to limit the authority of a school under existing law and rules to expel or suspend a student for misconduct or criminal behavior.

(5) All school districts must collect data on disciplinary actions taken in each school and must record these actions using the statewide student data system, based on the data collection standards established by the office of the superintendent of public instruction and the K-12 data governance group. The information shall be made available to the public, but public release of the data shall not include personally identifiable information including, but not limited to, a student's social security number, name, or address. [2013 2nd sp.s. c 18 § 305; 1997 c 266 § 9.]

Application—Enforcement of laws protecting health and safety—2013 2nd sp.s. c 18: See note following RCW 28A.600.022.

Findings—Intent—Severability—1997 c 266: See notes following RCW 28A.600.455.

28A.600.485 Restraint of students with individualized education programs or plans developed under section 504 of the rehabilitation act of 1973—Procedures—Definitions. (1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Isolation" means excluding a student from his or her regular instructional area and restricting the student alone within a room or any other form of enclosure, from which the student may not leave.

(b) "Restraint" means physical intervention or force used to control a student, including the use of a restraint device.

(c) "Restraint device" means a device used to assist in controlling a student, including but not limited to metal handcuffs, plastic ties, ankle restraints, leather cuffs, other hospital-type restraints, pepper spray, tasers, or batons.

(2) The provisions of this section apply only to any restraint of a student who has an individualized education program or plan developed under section 504 of the rehabilitation act of 1973 that results in a physical injury to a student or a staff member, any restraint of a student who has an individualized education program or plan developed under section 504 of the rehabilitation act of 1973, and any isolation of a student who has an individualized education program or plan developed under section 504 of the rehabilitation act of 1973. The provisions of this section apply only to incidents of restraint or isolation that occur while a student who has an individualized education program or plan developed under section 504 of the rehabilitation act of 1973 is participating in school-sponsored instruction or activities.

(3) Following the release of a student from the use of restraint or isolation, the school must implement follow-up procedures. These procedures must include reviewing the incident with the student and the parent or guardian to address the behavior that precipitated the restraint or isolation and reviewing the incident with the staff member who administered the restraint or isolation to discuss whether proper procedures were followed.

(4) Any school employee, resource officer, or school security officer who uses any chemical spray, mechanical restraint, or physical force on a student during school-sponsored instruction or activities must inform the building administrator or building administrator's designee as soon as possible, and within two business days submit a written report of the incident to the district office. The written report should include, at a minimum, the following information:

- (a) The date and time of the incident;
- (b) The name and job title of the individual who administered the restraint or isolation;
- (c) A description of the activity that led to the restraint or isolation;
- (d) The type of restraint or isolation used on the student, including the duration; and
- (e) Whether the student or staff was physically injured during the restraint or isolation and any medical care provided.

(5) The principal or principal's designee must make a reasonable effort to verbally inform the student's parent or guardian within twenty-four hours of the incident, and must send written notification as soon as practical but postmarked no later than five business days after the restraint or isolation occurred. If the school or school district customarily provides the parent or guardian with school-related information in a language other than English, the written report under this section must be provided to the parent or guardian in that language. [2013 c 202 § 2.]

Findings—2013 c 202: "The legislature finds that preserving a safe and beneficial learning environment for all students requires the establishment and enforcement of appropriate student discipline policies. The legislature further finds that although physical restraint and isolation of a student should be avoided, there may be circumstances where school district boards of directors have authorized these actions to preserve the safety of other students and school staff. Nevertheless, if an incident of student restraint or isolation occurs, school personnel should be held accountable for providing a thorough explanation of the circumstances." [2013 c 202 § 1.]

28A.600.486 District policy on the use of isolation and restraint—Notice to parents and guardians of children who have individualized education programs or plans developed under section 504 of the rehabilitation act of 1973. Parents and guardians of children who have individualized education programs or plans developed under section 504 of the rehabilitation act of 1973 must be provided a copy of the district policy on the use of isolation and restraint at the time that the program or plan is created. [2013 c 202 § 4.]

Findings—2013 c 202: See note following RCW 28A.600.485.

28A.600.490 Discipline task force—Development of standard definitions—Development of data collection standards—Membership—Statewide student data system revision. (1) The office of the superintendent of public instruction shall convene a discipline task force to develop standard definitions for causes of student disciplinary actions taken at the discretion of the school district. The task force must also develop data collection standards for disciplinary actions that are discretionary and for disciplinary actions that result in the exclusion of a student from school. The data collection standards must include data about education services provided while a student is subject to a disciplinary action, the status of petitions for readmission to the school district when a student has been excluded from school, credit retrieval during a period of exclusion, and school dropout as a result of disciplinary action.

(2) The discipline task force shall include representatives from the K-12 data governance group, the educational opportunity gap oversight and accountability committee, the state ethnic commissions, the governor's office of Indian affairs,

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the office of the education ombudsman [ombuds], school districts, and other education and advocacy organizations.

(3) The office of the superintendent of public instruction and the K-12 data governance group shall revise the statewide student data system to incorporate the student discipline data collection standards recommended by the discipline task force, and begin collecting data based on the revised standards in the 2015-16 school year. [2013 2nd sp.s. c 18 § 301.]

Application—Enforcement of laws protecting health and safety—2013 2nd sp.s. c 18: See note following RCW 28A.600.022.

Chapter 28A.625 RCW AWARDS

Sections

28A.625.200	Recodified as RCW 28A.188.080.
28A.625.210	Recodified as RCW 28A.188.082.
28A.625.220	Recodified as RCW 28A.188.084.
28A.625.230	Recodified as RCW 28A.188.086.
28A.625.240	Recodified as RCW 28A.188.088.

28A.625.200 Recodified as RCW 28A.188.080. See Supplementary Table of Disposition of Former RCW Sections, this volume.

28A.625.210 Recodified as RCW 28A.188.082. See Supplementary Table of Disposition of Former RCW Sections, this volume.

28A.625.220 Recodified as RCW 28A.188.084. See Supplementary Table of Disposition of Former RCW Sections, this volume.

28A.625.230 Recodified as RCW 28A.188.086. See Supplementary Table of Disposition of Former RCW Sections, this volume.

28A.625.240 Recodified as RCW 28A.188.088. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 28A.630 RCW TEMPORARY PROVISIONS—SPECIAL PROJECTS

Sections

28A.630.065	Recodified as RCW 28A.188.090.
28A.630.066	Recodified as RCW 28A.188.092.

28A.630.065 Recodified as RCW 28A.188.090. See Supplementary Table of Disposition of Former RCW Sections, this volume.

28A.630.066 Recodified as RCW 28A.188.092. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 28A.642 RCW DISCRIMINATION PROHIBITION

Sections

28A.642.070	Schools established under state-tribal education compacts.
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28A.642.070 Schools established under state-tribal education compacts. Nothing in this chapter prohibits schools established under chapter 28A.715 RCW from:

- (1) Implementing a policy of Indian preference in employment; or
- (2) Prioritizing the admission of tribal members where capacity of the school’s programs or facilities is not as large as demand. [2013 c 242 § 6.]

**Chapter 28A.655 RCW
ACADEMIC ACHIEVEMENT
AND ACCOUNTABILITY**

Sections

28A.655.061	High school assessment system—Certificate of academic achievement—Exemptions—Options to retake high school assessment—Objective alternative assessment—Student learning plans.
28A.655.066	Statewide end-of-course assessments for high school mathematics. <i>(Effective until September 1, 2019.)</i>
28A.655.066	Repealed. <i>(Effective September 1, 2019.)</i>
28A.655.068	Statewide high school assessment in science.
28A.655.070	Essential academic learning requirements and assessments—Duties of the superintendent of public instruction.
28A.655.185	Intent—Apple award program.
28A.655.230	Reading skills—Meeting for grade placement and strategies for student improvement—Exemptions.
28A.655.235	Reading skills—Intensive reading and literacy improvement strategy—Calculation of tested students at or below basic on third grade student assessment—State menu of best practices.

28A.655.061 High school assessment system—Certificate of academic achievement—Exemptions—Options to retake high school assessment—Objective alternative assessment—Student learning plans. (1) The high school assessment system shall include but need not be limited to the statewide student assessment, opportunities for a student to retake the content areas of the assessment in which the student was not successful, and, if approved by the legislature pursuant to subsection (10) of this section, one or more objective alternative assessments for a student to demonstrate achievement of state academic standards. The objective alternative assessments for each content area shall be comparable in rigor to the skills and knowledge that the student must demonstrate on the statewide student assessment for each content area.

(2) Subject to the conditions in this section, a certificate of academic achievement shall be obtained and is evidence that the students have successfully met the state standard in the content areas included in the certificate. With the exception of students satisfying the provisions of RCW 28A.155.045 or 28A.655.0611, acquisition of the certificate is required for graduation from a public high school but is not the only requirement for graduation.

(3)(a) Beginning with the graduating class of 2008 through the graduating class of 2015, with the exception of students satisfying the provisions of RCW 28A.155.045, a student who meets the state standards on the reading, writing, and mathematics high school statewide student assessment shall earn a certificate of academic achievement. The mathematics assessment shall be the end-of-course assessment for the first year of high school mathematics that assesses the standards common to algebra I and integrated mathematics I or the end-of-course assessment for the second year of high

school mathematics that assesses standards common to geometry and integrated mathematics II.

(b) As the state transitions from reading and writing assessments to an English language arts assessment and from end-of-course assessments to a comprehensive assessment for high school mathematics, a student in a graduating class of 2016 through 2018 shall earn a certificate of academic achievement if the student meets the state standard as follows:

(i) Students in the graduating class of 2016 may use the results from:

(A) The reading and writing assessment or the English language arts assessment developed with the multistate consortium; and

(B) The end-of-course assessment for the first year of high school mathematics, the end-of-course assessment for the second year of high school mathematics, or the comprehensive mathematics assessment developed with the multistate consortium.

(ii) Students in the graduating classes of 2017 and 2018 may use the results from:

(A) The tenth grade English language arts assessment developed by the superintendent of public instruction using resources from the multistate consortium or the English language arts assessment developed with the multistate consortium; and

(B) The end-of-course assessment for the first year of high school mathematics, the end-of-course assessment for the second year of high school mathematics, or the comprehensive mathematics assessment developed with the multistate consortium.

(c) Beginning with the graduating class of 2019, a student who meets the state standards on the high school English language arts assessment developed with the multistate consortium and the comprehensive mathematics assessment developed with the multistate consortium shall earn a certificate of academic achievement.

(d) If a student does not successfully meet the state standards in one or more content areas required for the certificate of academic achievement, then the student may retake the assessment in the content area at least twice a year at no cost to the student. If the student successfully meets the state standards on a retake of the assessment then the student shall earn a certificate of academic achievement. Once objective alternative assessments are authorized pursuant to subsection (10) of this section, a student may use the objective alternative assessments to demonstrate that the student successfully meets the state standards for that content area if the student has taken the statewide student assessment at least once. If the student successfully meets the state standards on the objective alternative assessments then the student shall earn a certificate of academic achievement.

(4) Beginning with the graduating class of 2015, a student must meet the state standards in science in addition to the other content areas required under subsection (3) of this section on the statewide student assessment, a retake, or the objective alternative assessments in order to earn a certificate of academic achievement.

(5) The state board of education may not require the acquisition of the certificate of academic achievement for students in home-based instruction under chapter 28A.200

RCW, for students enrolled in private schools under chapter 28A.195 RCW, or for students satisfying the provisions of RCW 28A.155.045.

(6) A student may retain and use the highest result from each successfully completed content area of the high school assessment.

(7) School districts must make available to students the following options:

(a) To retake the statewide student assessment at least twice a year in the content areas in which the student did not meet the state standards if the student is enrolled in a public school; or

(b) To retake the statewide student assessment at least twice a year in the content areas in which the student did not meet the state standards if the student is enrolled in a high school completion program at a community or technical college. The superintendent of public instruction and the state board for community and technical colleges shall jointly identify means by which students in these programs can be assessed.

(8) Students who achieve the standard in a content area of the high school assessment but who wish to improve their results shall pay for retaking the assessment, using a uniform cost determined by the superintendent of public instruction.

(9) Opportunities to retake the assessment at least twice a year shall be available to each school district.

(10)(a) The office of the superintendent of public instruction shall develop options for implementing objective alternative assessments, which may include an appeals process for students' scores, for students to demonstrate achievement of the state academic standards. The objective alternative assessments shall be comparable in rigor to the skills and knowledge that the student must demonstrate on the statewide student assessment and be objective in its determination of student achievement of the state standards. Before any objective alternative assessments in addition to those authorized in RCW 28A.655.065 or (b) of this subsection are used by a student to demonstrate that the student has met the state standards in a content area required to obtain a certificate, the legislature shall formally approve the use of any objective alternative assessments through the omnibus appropriations act or by statute or concurrent resolution.

(b)(i) A student's score on the mathematics, reading or English, or writing portion of the SAT or the ACT may be used as an objective alternative assessment under this section for demonstrating that a student has met or exceeded the state standards for the certificate of academic achievement. The state board of education shall identify the scores students must achieve on the relevant portion of the SAT or ACT to meet or exceed the state standard in the relevant content area on the statewide student assessment. A student's score on the science portion of the ACT or the science subject area tests of the SAT may be used as an objective alternative assessment under this section as soon as the state board of education determines that sufficient data is available to identify reliable equivalent scores for the science content area of the statewide student assessment. After the first scores are established, the state board may increase but not decrease the scores required for students to meet or exceed the state standards.

(ii) A student who scores at least a three on the grading scale of one to five for selected AP examinations may use the

score as an objective alternative assessment under this section for demonstrating that a student has met or exceeded state standards for the certificate of academic achievement. A score of three on the AP examinations in calculus or statistics may be used as an alternative assessment for the mathematics portion of the statewide student assessment. A score of three on the AP examinations in English language and composition may be used as an alternative assessment for the writing portion of the statewide student assessment; and for the English language arts portion of the assessment developed with the multistate consortium, once established in the 2014-15 school year. A score of three on the AP examinations in English literature and composition, macroeconomics, microeconomics, psychology, United States history, world history, United States government and politics, or comparative government and politics may be used as an alternative assessment for the reading portion of the statewide student assessment; and for the English language arts portion of the assessment developed with the multistate consortium, once established in the 2014-15 school year. A score of three on the AP examination in biology, physics, chemistry, or environmental science may be used as an alternative assessment for the science portion of the statewide student assessment.

(ii) A student who scores at least a four on selected externally administered international baccalaureate (IB) examinations may use the score as an objective alternative assessment under this section for demonstrating that the student has met or exceeded state standards for the certificate of academic achievement. A score of four on the higher level IB examinations for any of the IB English language and literature courses or for any of the IB individuals and societies courses may be used as an alternative assessment for the reading, writing, or English language arts portions of the statewide student assessment. A score of four on the higher level IB examinations for any of the IB mathematics courses may be used as an alternative assessment for the mathematics portion of the statewide student assessment. A score of four on the higher level IB examinations for IB biology, chemistry, or physics may be used as an alternative assessment for the science portion of the statewide student assessment.

(11) To help assure continued progress in academic achievement as a foundation for high school graduation and to assure that students are on track for high school graduation, each school district shall prepare plans for and notify students and their parents or legal guardians as provided in this subsection. Student learning plans are required for eighth grade students who were not successful on any or all of the content areas of the state assessment during the previous school year or who may not be on track to graduate due to credit deficiencies or absences. The parent or legal guardian shall be notified about the information in the student learning plan, preferably through a parent conference and at least annually. To the extent feasible, schools serving English language learner students and their parents shall translate the plan into the primary language of the family. The plan shall include the following information as applicable:

(a) The student's results on the state assessment;

(b) If the student is in the transitional bilingual program, the score on his or her Washington language proficiency test II;

- (c) Any credit deficiencies;
- (d) The student's attendance rates over the previous two years;
- (e) The student's progress toward meeting state and local graduation requirements;
- (f) The courses, competencies, and other steps needed to be taken by the student to meet state academic standards and stay on track for graduation;
- (g) Remediation strategies and alternative education options available to students, including informing students of the option to continue to receive instructional services after grade twelve or until the age of twenty-one;
- (h) The alternative assessment options available to students under this section and RCW 28A.655.065;
- (i) School district programs, high school courses, and career and technical education options available for students to meet graduation requirements; and
- (j) Available programs offered through skill centers or community and technical colleges, including the college high school diploma options under RCW 28B.50.535. [2013 2nd sp.s. c 22 § 2; 2011 1st sp.s. c 22 § 2; 2010 c 244 § 1; 2009 c 524 § 5; 2008 c 321 § 2. Prior: 2007 c 355 § 5; 2007 c 354 § 2; 2006 c 115 § 4; 2004 c 19 § 101.]

Findings—Intent—2013 2nd sp.s. c 22: "The legislature finds that the superintendent of public instruction was authorized to align the state essential academic learning requirements for mathematics, reading, writing, and communication with the common set of standards for students in grades kindergarten through twelve, known as the common core state standards, which were initiated by the governors and chief school officers of forty-five states, including Washington. The legislature further finds that Washington has joined one of two multistate consortia using a federal grant to develop new English language arts and mathematics assessments in grades three through eight and grade eleven that are, among other factors, aligned with the common core state standards and intended to demonstrate a student's career and college readiness. The legislature further finds that the assessments are required to be ready for use by the 2014-15 school year.

The legislature intends to reduce the overall costs of the state assessment system by implementing the eleventh grade English language arts and mathematics assessments being developed by a multistate consortium in which Washington is participating, maximize use of the consortium assessments by developing a tenth grade high school English language arts assessment and modifying the algebra I and geometry end-of-course assessment to be used only during the transition to the consortium-developed assessments, and reduce to three the number of assessments that will be required for students to graduate beginning with the class of 2019.

The legislature further intends that the eleventh grade consortium-developed assessments have two different student performance standards: One for the purposes of high school graduation that will be established by the state board of education and one that is intended to demonstrate a student's career and college readiness." [2013 2nd sp.s. c 22 § 1.]

Finding—Intent—2011 1st sp.s. c 22: "(1) The legislature continues to support end-of-course assessments as a fair and practical way to measure students' knowledge and skills in high school science, but the legislature also recognizes that there are important scientific concepts, principles, and content that are not able to be captured in a single course or a single assessment. The legislature also does not wish to narrow the high school science curriculum to a singular focus on biology.

(2) However, the legislature finds that the financial resources for developing additional end-of-course assessments for high school science are not available in the 2011-2013 biennium. Nevertheless, the legislature intends to revisit this issue in the future and further intends at an appropriate time to direct the superintendent of public instruction to develop one or more end-of-course assessments in additional science subjects." [2011 1st sp.s. c 22 § 1.]

Intent—2009 c 524: See note following RCW 28B.50.535.

Findings—2008 c 321: "The legislature finds that high school students need to graduate with the skills necessary to be successful in college and work. The state graduation requirements help to ensure that Washington high school graduates have the basic skills to be competitive in a global economy. Under education reform started in 1993, time was to be the vari-

able, obtaining the skills was to be the constant. Therefore, students who need additional time to gain the academic skills needed for college and the workplace should have the opportunities they need to reach high academic achievement, even if that takes more than the standard four years of high school.

Different students face different challenges and barriers to their academic success. Some students struggle to meet the standard on a single portion of the Washington assessment of student learning while excelling in the other subject areas; other students struggle to complete the necessary state or local graduation credits; while still others have their knowledge tested on the assessments and have completed all the credit requirements but are struggling because English is not their first language. The legislature finds that many of these students need additional time and support to achieve academic proficiency and meet all graduation requirements." [2008 c 321 § 1.]

Finding—Intent—2007 c 355: See note following RCW 28B.50.534.

Findings—Intent—2007 c 354: "(1) The legislature maintains a strong commitment to high expectations and high academic achievement for all students. The legislature finds that Washington schools and students are making significant progress in improving achievement in reading and writing. Schools are adapting instruction and providing remediation for students who need additional assistance. Reading and writing are being taught across the curriculum. Therefore, the legislature does not intend to make changes to the Washington assessment of student learning or high school graduation requirements in reading and writing.

(2) However, students are having difficulty improving their academic achievement in mathematics and science, particularly as measured by the high school Washington assessment of student learning. The legislature finds that corrections are needed in the state's high school assessment system that will improve alignment between learning standards, instruction, diagnosis, and assessment of students' knowledge and skills in high school mathematics and science. The legislature further finds there is a sense of urgency to make these corrections and intends to revise high school graduation requirements in mathematics and science only for the minimum period for corrections to be fully implemented." [2007 c 354 § 1.]

Part headings and captions not law—2004 c 19: "Part headings and captions used in this act are not any part of the law." [2004 c 19 § 301.]

Severability—2004 c 19: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2004 c 19 § 302.]

Effective date—2004 c 19: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 18, 2004]." [2004 c 19 § 303.]

28A.655.066 Statewide end-of-course assessments for high school mathematics. (Effective until September 1, 2019.)

(1)(a) In consultation with the state board of education, the superintendent of public instruction shall develop statewide end-of-course assessments for high school mathematics that measure student achievement of the state mathematics standards. The superintendent shall take steps to ensure that the language of the assessments is responsive to a diverse student population. The assessments shall be implemented statewide in the 2010-11 school year.

(b) The superintendent shall develop end-of-course assessments for the first year of high school mathematics that include the standards common to algebra I and integrated mathematics I and for the second year of high school mathematics that include the standards common to geometry and integrated mathematics II. The assessments under this subsection (1)(b) shall be used to demonstrate that a student meets the state standard on the mathematics content area of the high school statewide student assessment for purposes of RCW 28A.655.061.

(c) The superintendent of public instruction shall also develop subtests for the end-of-course assessments that measure standards for the first two years of high school mathe-

mathematics that are unique to algebra I, integrated mathematics I, geometry, and integrated mathematics II. The results of the subtests shall be reported at the student, teacher, school, and district level.

(2) All of the objective alternative assessments available to students under RCW 28A.655.061 and 28A.655.065 shall be available to any student who has taken an end-of-course assessment once but does not meet the state mathematics standard on an end-of-course assessment.

(3) The superintendent of public instruction shall report at least annually or more often if necessary to keep the education committees of the legislature informed on each step of the development and implementation process under this section. [2013 2nd sp.s. c 22 § 3; 2011 c 25 § 2; 2009 c 310 § 3; 2008 c 163 § 3.]

Findings—Intent—2013 2nd sp.s. c 22: See note following RCW 28A.655.061.

Findings—Intent—2011 c 25: "The legislature finds that acquiring mathematical skills and knowledge is critical for the future financial and personal success of public school graduates. However, the legislature finds that requiring students in the classes of 2013 and 2014 to meet the standards on two high school mathematics end-of-course assessments to graduate would not be fair to students or a valid use of the new end-of-course assessments. Specifically, a majority of these students will have taken algebra I or integrated mathematics one or more years before taking the end-of-course assessments. In addition, teachers need more time to incorporate the new 2008 mathematics standards into their instruction to properly prepare students for the new assessment requirements. Instead, the legislature intends to provide a reasonable transition period and require students in the classes of 2013 and 2014 to meet the standard on only one assessment. Students in subsequent classes will be required to meet the standards on both assessments." [2011 c 25 § 1.]

Findings—2008 c 163: "The legislature finds that, according to a recent report from a consultant retained by the state board of education, end-of-course assessments have certain advantages over comprehensive assessments such as the current form of the Washington assessment of student learning, and in most other areas end-of-course assessments are comparable to comprehensive assessments in meeting public policy objectives for a statewide assessment system. The legislature further finds that because the state's assessment contract will be renegotiated before the end of 2008, the 2008 legislature has an opportunity to provide policy direction in the design of the state assessment system and the design of the Washington assessment of student learning." [2008 c 163 § 1.]

28A.655.066 Repealed. (Effective September 1, 2019.)

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

28A.655.068 Statewide high school assessment in science. (1) Beginning in the 2011-12 school year, the statewide high school assessment in science shall be an end-of-course assessment for biology that measures the state standards for life sciences, in addition to systems, inquiry, and application as they pertain to life sciences.

(2)(a) The superintendent of public instruction may develop or adopt science end-of-course assessments or a comprehensive science assessment that includes subjects in addition to biology for purposes of RCW 28A.655.061, when so directed by the legislature. The legislature intends to transition from a biology end-of-course assessment to a more comprehensive science assessment in a manner consistent with the way in which the state transitioned to an English language arts assessment and a comprehensive mathematics assessment. The legislature further intends that the transition will include at least two years of using the student assessment results from either the biology end-of-course assessment or

the more comprehensive assessment in order to provide students with reasonable opportunities to demonstrate high school competencies while being mindful of the increasing rigor of the new assessment.

(b) The superintendent of public instruction shall develop or adopt a science assessment in accordance with RCW 28A.655.070(10) that is not biased toward persons with different learning styles, racial or ethnic backgrounds, or on the basis of gender.

(c) Before the next subsequent school year after the legislature directs the superintendent to develop or adopt a new science assessment, the superintendent of public instruction shall review the objective alternative assessments for the science assessment and make recommendations to the legislature regarding additional objective alternatives, if any.

(3) The superintendent of public instruction may participate with consortia of multiple states as common student learning standards and assessments in science are developed. The superintendent of public instruction, in consultation with the state board of education, may modify the essential academic learning requirements and statewide student assessments in science, including the high school assessment, according to the multistate common student learning standards and assessments as long as the education committees of the legislature have opportunities for review before the modifications are adopted, as provided under RCW 28A.655.070.

(4) The statewide high school assessment under this section shall be used to demonstrate that a student meets the state standards in the science content area of the statewide student assessment for purposes of RCW 28A.655.061. [2013 2nd sp.s. c 22 § 4; 2011 1st sp.s. c 22 § 3.]

Findings—Intent—2013 2nd sp.s. c 22: See note following RCW 28A.655.061.

Finding—Intent—2011 1st sp.s. c 22: See note following RCW 28A.655.061.

28A.655.070 Essential academic learning requirements and assessments—Duties of the superintendent of public instruction.

(1) The superintendent of public instruction shall develop essential academic learning requirements that identify the knowledge and skills all public school students need to know and be able to do based on the student learning goals in RCW 28A.150.210, develop student assessments, and implement the accountability recommendations and requests regarding assistance, rewards, and recognition of the state board of education.

(2) The superintendent of public instruction shall:

(a) Periodically revise the essential academic learning requirements, as needed, based on the student learning goals in RCW 28A.150.210. Goals one and two shall be considered primary. To the maximum extent possible, the superintendent shall integrate goal four and the knowledge and skill areas in the other goals in the essential academic learning requirements; and

(b) Review and prioritize the essential academic learning requirements and identify, with clear and concise descriptions, the grade level content expectations to be assessed on the statewide student assessment and used for state or federal accountability purposes. The review, prioritization, and identification shall result in more focus and targeting with an emphasis on depth over breadth in the number of grade level

content expectations assessed at each grade level. Grade level content expectations shall be articulated over the grades as a sequence of expectations and performances that are logical, build with increasing depth after foundational knowledge and skills are acquired, and reflect, where appropriate, the sequential nature of the discipline. The office of the superintendent of public instruction, within seven working days, shall post on its web site any grade level content expectations provided to an assessment vendor for use in constructing the statewide student assessment.

(3)(a) In consultation with the state board of education, the superintendent of public instruction shall maintain and continue to develop and revise a statewide academic assessment system in the content areas of reading, writing, mathematics, and science for use in the elementary, middle, and high school years designed to determine if each student has mastered the essential academic learning requirements identified in subsection (1) of this section. School districts shall administer the assessments under guidelines adopted by the superintendent of public instruction. The academic assessment system may include a variety of assessment methods, including criterion-referenced and performance-based measures.

(b) Effective with the 2009 administration of the Washington assessment of student learning and continuing with the statewide student assessment, the superintendent shall redesign the assessment in the content areas of reading, mathematics, and science in all grades except high school by shortening test administration and reducing the number of short answer and extended response questions.

(c) By the 2014-15 school year, the superintendent of public instruction, in consultation with the state board of education, shall modify the statewide student assessment system to transition to assessments developed with a multistate consortium, as provided in this subsection:

(i) The assessments developed with a multistate consortium to assess student proficiency in English language arts and mathematics shall be administered beginning in the 2014-15 school year. The reading and writing assessments shall not be administered by the superintendent of public instruction or schools after the 2013-14 school year.

(ii) The high school assessments in English language arts and mathematics in (c)(i) of this subsection shall be used for the purposes of earning a certificate of academic achievement for high school graduation under the timeline established in RCW 28A.655.061 and for assessing student career and college readiness.

(iii) During the transition period specified in RCW 28A.655.061, the superintendent of public instruction shall use test items and other resources from the consortium assessment to develop and administer a tenth grade high school English language arts assessment, an end-of-course mathematics assessment to assess the standards common to algebra I and integrated mathematics I, and an end-of-course mathematics assessment to assess the standards common to geometry and integrated mathematics II.

(4) If the superintendent proposes any modification to the essential academic learning requirements or the statewide assessments, then the superintendent shall, upon request, provide opportunities for the education committees of the house of representatives and the senate to review the assessments

and proposed modifications to the essential academic learning requirements before the modifications are adopted.

(5) The assessment system shall be designed so that the results under the assessment system are used by educators as tools to evaluate instructional practices, and to initiate appropriate educational support for students who have not mastered the essential academic learning requirements at the appropriate periods in the student's educational development.

(6) By September 2007, the results for reading and mathematics shall be reported in a format that will allow parents and teachers to determine the academic gain a student has acquired in those content areas from one school year to the next.

(7) To assist parents and teachers in their efforts to provide educational support to individual students, the superintendent of public instruction shall provide as much individual student performance information as possible within the constraints of the assessment system's item bank. The superintendent shall also provide to school districts:

(a) Information on classroom-based and other assessments that may provide additional achievement information for individual students; and

(b) A collection of diagnostic tools that educators may use to evaluate the academic status of individual students. The tools shall be designed to be inexpensive, easily administered, and quickly and easily scored, with results provided in a format that may be easily shared with parents and students.

(8) To the maximum extent possible, the superintendent shall integrate knowledge and skill areas in development of the assessments.

(9) Assessments for goals three and four of RCW 28A.150.210 shall be integrated in the essential academic learning requirements and assessments for goals one and two.

(10) The superintendent shall develop assessments that are directly related to the essential academic learning requirements, and are not biased toward persons with different learning styles, racial or ethnic backgrounds, or on the basis of gender.

(11) The superintendent shall consider methods to address the unique needs of special education students when developing the assessments under this section.

(12) The superintendent shall consider methods to address the unique needs of highly capable students when developing the assessments under this section.

(13) The superintendent shall post on the superintendent's web site lists of resources and model assessments in social studies, the arts, and health and fitness. [2013 2nd sp.s. c 22 § 5; 2008 c 163 § 2; 2007 c 354 § 5; 2005 c 497 § 106; 2004 c 19 § 204; 1999 c 388 § 501.]

Findings—Intent—2013 2nd sp.s. c 22: See note following RCW 28A.655.061.

Findings—2008 c 163: See note following RCW 28A.655.066.

Findings—Intent—2007 c 354: See note following RCW 28A.655.061.

Intent—Part headings not law—Effective date—2005 c 497: See notes following RCW 28A.305.011.

Part headings and captions not law—Severability—Effective date—2004 c 19: See notes following RCW 28A.655.061.

28A.655.185 Intent—Apple award program. (1) It is the intent of the legislature, through the creation of the apple award, to honor and reward students in Washington's public elementary schools who have shown significant improvement in their school's results on the statewide student assessment.

(2) The apple award program is created to honor and reward public elementary schools that have the greatest combined average increase in the percentage of students meeting the fourth grade reading, mathematics, and writing standards on the statewide student assessment each school year. Beginning in the 2014-15 school year, the award shall be based on the percentage of students meeting the fourth grade English language arts and mathematics standards. The program shall be administered by the superintendent of public instruction.

(3) Within the amounts appropriated for this purpose, each school that receives an apple award shall be provided with a twenty-five thousand dollar grant to be used for capital construction purposes that have been selected by students in the school and approved by the district's school directors. The funds may be used exclusively for capital construction projects on school property or on other public property in the community, city, or county in which the school is located. [2013 2nd sp.s. c 22 § 9; 2005 c 495 § 1.]

Findings—Intent—2013 2nd sp.s. c 22: See note following RCW 28A.655.061.

28A.655.230 Reading skills—Meeting for grade placement and strategies for student improvement—Exemptions. (1) The definitions in this subsection apply throughout this section and RCW 28A.655.235 unless the context clearly requires otherwise.

(a) "Basic" means a score on the statewide student assessment at a level two in a four-level scoring system.

(b) "Below basic" means a score on the statewide student assessment at a level one in a four-level scoring system.

(c) "Not meet the state standard" means a score on the statewide student assessment at either a level one or a level two in a four-level scoring system.

(2) Beginning in the 2014-15 school year, for any student who receives a score of below basic on the third grade statewide student assessment in English language arts, a meeting must be scheduled before the end of the school year between the student's parent or guardian, teacher, and the principal of the school the student attends or the principal's designee to discuss appropriate grade placement and recommended intensive strategies to improve the student's reading skills. For students to be placed in fourth grade, the strategies discussed must include an intensive improvement strategy provided, supported, or contracted by the school district that includes a summer program or other option identified by the parents, teacher, principal, or principal's designee as appropriately meeting the student's need to prepare for fourth grade. The parents or guardians must be fully informed about the strategies and the parent's or guardian's consent must be obtained regarding the appropriate grade placement and the intensive improvement strategy to be implemented. The school district must implement the strategy selected in consultation with the student's parents or guardians.

(3) If a student does not have a score in English language arts on the third grade statewide student assessment but the

district determines, using district or classroom-based diagnostic assessments or another standardized assessment, that the student's performance is equivalent to below basic in English language arts, the policy in subsection (2) of this section applies.

(4) Students participating in the transitional bilingual instruction program are exempt from the policy in subsection (2) of this section, unless the student has participated in the transitional bilingual instruction program for three school years and receives a score of below basic on the third grade statewide student assessment in English language arts.

(5) Students with disabilities whose individualized education program includes specially designed instruction in reading or English language arts are exempt from subsections (2), (3), and (4) of this section. Communication and consultation with parents or guardians of such students shall occur through the individualized education program process required under chapter 28A.155 RCW and associated administrative rules. [2013 2nd sp.s. c 18 § 105.]

Application—Enforcement of laws protecting health and safety—2013 2nd sp.s. c 18: See note following RCW 28A.600.022.

28A.655.235 Reading skills—Intensive reading and literacy improvement strategy—Calculation of tested students at or below basic on third grade student assessment—State menu of best practices. (1)(a) Beginning in the 2015-16 school year, except as otherwise provided in this subsection (1), for any student who received a score of basic or below basic on the third grade statewide student assessment in English language arts in the previous school year, the school district must implement an intensive reading and literacy improvement strategy from a state menu of best practices established in accordance with subsection (3) of this section or an alternative strategy in accordance with subsection (4) of this section.

(b) Reading and literacy improvement strategies for students with disabilities whose individualized education program includes specially designed instruction in reading or English language arts shall be as provided in the individualized education program.

(2)(a) Also beginning in the 2015-16 school year, in any school where more than forty percent of the tested students received a score of basic or below basic on the third grade statewide student assessment in English language arts in the previous school year, as calculated under this subsection (2), the school district must implement an intensive reading and literacy improvement strategy from a state menu of best practices established in accordance with subsection (3) of this section or an alternative strategy in accordance with subsection (4) of this section for all students in grades kindergarten through four at the school.

(b) For the purposes of this subsection (2), the office of the superintendent of public instruction shall exclude the following from the calculation of a school's percentage of tested students receiving a score of basic or below basic on the third grade statewide student assessment:

(i) Students enrolled in the transitional bilingual instruction program unless the student has participated in the transitional bilingual instruction program for three school years;

(ii) Students with disabilities whose individualized education program specifies a different standard to measure

reading performance than is required for the statewide student assessment; and

(iii) Schools with fewer than ten students in third grade.

(3) The office of the superintendent of public instruction shall convene a panel of experts, including the Washington state institute for public policy, to develop a state menu of best practices and strategies for intensive reading and literacy improvement designed to assist struggling students in reaching grade level in reading by the end of fourth grade. The state menu must also include best practices and strategies to improve the reading and literacy of students who are English language learners and for system improvements that schools and school districts can implement to improve reading instruction for all students. The office of the superintendent of public instruction shall publish the state menu by July 1, 2014, and update the state menu by each July 1st thereafter.

(4) School districts may use an alternative practice or strategy that is not on a state menu developed under subsection (3) of this section for two school years initially. If the district is able to demonstrate improved outcomes for participating students over the previous two school years at a level commensurate with the best practices and strategies on the state menu, the office of the superintendent of public instruction must approve use of the alternative practice or strategy by the district for one additional school year. Subsequent annual approval by the superintendent of public instruction to use the alternative practice or strategy is dependent on the district continuing to demonstrate an increase in improved outcomes for participating students. [2013 2nd sp.s. c 18 § 106.]

Application—Enforcement of laws protecting health and safety—2013 2nd sp.s. c 18: See note following RCW 28A.600.022.

Chapter 28A.657 RCW
ACCOUNTABILITY SYSTEM

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28A.657.100	Required action districts—Progress reports—Release from designation—Assignment to level two of the required action process.
28A.657.105	Required action process—Level two schools and plans.
28A.657.110	Accountability framework for system of support for challenged schools—Washington achievement index—Recognition of schools for exemplary performance—Use of state system to replace federal accountability system.

28A.657.125 Repealed.
28A.657.130 Education accountability system oversight committee—Membership—Duties—Reports.

28A.657.005 Findings. (1) The legislature finds that an effective educational accountability system is premised on creating and maintaining partnerships between the state and local school district boards of directors. The legislature also recognizes it takes time to make significant changes that are sustainable over the long term in an educational system that serves more than one million students from diverse communities.

(2) The legislature further finds that it is the state’s responsibility to create a coherent and effective accountability framework for the continuous improvement of all schools and school districts. This system must provide an excellent and equitable education for all students, an aligned federal and state accountability system, and the tools necessary for schools and school districts to be accountable. These tools include accounting and data reporting systems, assessment systems to monitor student achievement, and a comprehensive system of differentiated support, targeted assistance, and, if necessary, intervention.

(3) The office of the superintendent of public instruction is responsible for developing and implementing the accountability tools to build district capacity and working within federal and state guidelines. The legislature assigned the state board of education responsibility and oversight for creating an accountability framework. This framework provides a unified system of support for challenged schools that aligns with basic education, increases the level of support based upon the magnitude of need, and uses data for decisions. Such a system will identify schools and their districts for recognition as well as for additional state support.

(4) For a specific group of persistently lowest-achieving schools and their districts, it is necessary to provide a required action process that creates a partnership between the state and local district to target funds and assistance to turn around the identified schools. The legislature finds that state takeover of persistently lowest-achieving schools is unlikely to produce long-term improvement in student achievement because takeover is an unsustainable approach to school governance and an inadequate response to addressing the underlying barriers to improved outcomes for all students. However, in the rare case of a persistently lowest-achieving school that continues to fail to improve even after required action and supplemental assistance, it is appropriate and necessary to assign the superintendent of public instruction the responsibility to intercede, provide robust technical assistance, and direct the necessary interventions. Even though the superintendent of public instruction continues to work in partnership with the local school board, the superintendent of public instruction is accountable for assuring that adequate steps are taken to improve student achievement in these schools.

(5) Phase I of this accountability system will recognize schools that have done an exemplary job of raising student achievement and closing the achievement gaps using the Washington achievement index adopted by the state board of education. The state board of education shall have ongoing collaboration with the educational opportunity gap oversight and accountability committee regarding the measures used to

measure the closing of the achievement gaps and recognition provided to the school districts for closing the achievement gaps. Phase I will also target the lowest five percent of persistently lowest-achieving schools defined under federal guidelines to provide federal funds and federal intervention models through a voluntary option in 2010, and for those who do not volunteer and have not improved student achievement, a required action process beginning in 2011.

(6) Phase II of this accountability system will work toward implementing the Washington achievement index for identification of challenged schools in need of improvement, including those that are not Title I schools, and the use of state and local intervention models and federal and state funds through a comprehensive system of differentiated support, targeted assistance, and intervention beginning in the 2014-15 school year. If federal approval of the Washington achievement index is not obtained, the federal guidelines for identifying schools will continue to be used. If it ever becomes necessary, a process is established to assign responsibility to the superintendent of public instruction to intervene in persistently lowest-achieving schools that have failed to improve despite required action.

(7) The expectation from implementation of this accountability system is the improvement of student achievement for all students to prepare them for postsecondary education, work, and global citizenship in the twenty-first century. [2013 c 159 § 1; 2010 c 235 § 101.]

Finding—2010 c 235: See note following RCW 28A.405.245.

28A.657.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "All students group" means those students in grades three through eight and high school who take the state's assessment in reading or English language arts and mathematics required under 20 U.S.C. Sec. 6311(b)(3).

(2) "Title I" means Title I, part A of the federal elementary and secondary education act of 1965 (ESEA) (20 U.S.C. Secs. 6311-6322).

(3) "Turnaround principles" include but are not limited to the following:

- (a) Providing strong leadership;
- (b) Ensuring teachers are effective and able to improve instruction;
- (c) Increasing learning time;
- (d) Strengthening the school's instructional program;
- (e) Using data to inform instruction;
- (f) Establishing a safe and supportive school environment; and
- (g) Engaging families and communities. [2013 c 159 § 2; 2010 c 235 § 112.]

Finding—2010 c 235: See note following RCW 28A.405.245.

28A.657.020 Persistently lowest-achieving schools—Challenged schools—Identification—Criteria—Washington achievement index. (1) Beginning in 2010, and each year thereafter through December 1, 2012, the superintendent of public instruction shall annually identify schools as one of the state's persistently lowest-achieving schools if the school is a Title I school, or a school that is eligible for but does not

receive Title I funds, that is among the lowest-achieving five percent of Title I or Title I eligible schools in the state.

(2) The criteria for determining whether a school is among the persistently lowest-achieving five percent of Title I schools, or Title I eligible schools, under subsection (1) of this section shall be established by the superintendent of public instruction. The criteria must meet all applicable requirements for the receipt of a federal school improvement grant under the American recovery and reinvestment act of 2009 and Title I of the elementary and secondary education act of 1965, and take into account both:

(a) The academic achievement of the "all students" group in a school in terms of proficiency on the state's assessment, and any alternative assessments, in reading and mathematics combined; and

(b) The school's lack of progress on the mathematics and reading assessments over a number of years in the "all students" group.

(3)(a) Beginning December 1, 2013, and each December thereafter, the superintendent of public instruction shall annually identify challenged schools in need of improvement and a subset of such schools that are the persistently lowest-achieving schools in the state.

(b) The criteria for determining whether a school is a challenged school in need of improvement shall be adopted by the superintendent of public instruction in rule. The criteria must meet all applicable federal requirements under Title I of the elementary and secondary education act of 1965 and other federal rules or guidance, including applicable requirements for the receipt of federal school improvement funds if available, but shall apply equally to Title I, Title I-eligible, and non-Title I schools in the state. The criteria must take into account the academic achievement of the "all students" group and subgroups of students in a school in terms of proficiency on the state assessments in reading or English language arts and mathematics and a high school's graduation rate for all students and subgroups of students. The superintendent may establish tiered categories of challenged schools based on the relative performance of all students, subgroups of students, and other factors.

(c) The superintendent of public instruction shall also adopt criteria in rule for determining whether a challenged school in need of improvement is also a persistently lowest-achieving school for purposes of the required action district process under this chapter, which shall include the school's lack of progress for all students and subgroups of students over a number of years. The criteria for identifying persistently lowest-achieving schools shall also take into account the level of state or federal resources available to implement a required action plan.

(d) If the Washington achievement index is approved by the United States department of education for use in identifying schools for federal purposes, the superintendent of public instruction shall use the approved index to identify schools under (b) and (c) of this subsection. [2013 c 159 § 3; 2010 c 235 § 102.]

Finding—2010 c 235: See note following RCW 28A.405.245.

28A.657.030 Required action districts—Recommendation for designation—Reconsideration—Designation—Notice. (1) Beginning in January 2011, the superintendent of

public instruction shall annually recommend to the state board of education school districts for designation as required action districts. A district with at least one school identified as a persistently lowest-achieving school according to the criteria established by the superintendent of public instruction under RCW 28A.657.020 shall be designated as a required action district. However, a school district shall not be recommended for designation as a required action district if the district was awarded a federal school improvement grant by the superintendent in 2010 or 2011 and for three consecutive years following receipt of the grant implemented a federal school intervention model at each school identified for improvement. The state board of education may designate a district that received a school improvement grant in 2010 or 2011 as a required action district if after three years of voluntarily implementing a plan the district continues to have a school identified as persistently lowest-achieving and meets the criteria for designation established by the superintendent of public instruction.

(2) The superintendent of public instruction shall provide a school district superintendent with written notice of the recommendation for designation as a required action district by certified mail or personal service. A school district superintendent may request reconsideration of the superintendent of public instruction's recommendation. The reconsideration shall be limited to a determination of whether the school district met the criteria for being recommended as a required action district. A request for reconsideration must be in writing and served on the superintendent of public instruction within ten days of service of the notice of the superintendent's recommendation.

(3) The state board of education shall annually designate those districts recommended by the superintendent in subsection (1) of this section as required action districts. A district designated as a required action district shall be required to notify all parents of students attending a school identified as a persistently lowest-achieving school in the district of the state board of education's designation of the district as a required action district and the process for complying with the requirements set forth in RCW 28A.657.040 through 28A.657.100. [2013 c 159 § 4; 2010 c 235 § 103.]

Finding—2010 c 235: See note following RCW 28A.405.245.

28A.657.050 Required action plans—Development—Publication of guidelines, research, and models—Submission—Contents—Effect on existing collective bargaining agreements. (Effective until June 30, 2019.) (1)(a) The local district superintendent and local school board of a school district designated as a required action district must submit a required action plan to the state board of education for approval. Unless otherwise required by subsection (3) of this section, the plan must be submitted under a schedule as required by the state board. A required action plan must be developed in collaboration with administrators, teachers, and other staff, parents, unions representing any employees within the district, students, and other representatives of the local community.

(b) The superintendent of public instruction shall provide a district with assistance in developing its plan if requested, and shall develop and publish guidelines for the development of required action plans. The superintendent of

public instruction, in consultation with the state board of education, shall also publish a list of research and evidence-based school improvement models, consistent with turnaround principles, that are approved for use in required action plans.

(c) The school board must conduct a public hearing to allow for comment on a proposed required action plan. The local school district shall submit the plan first to the office of the superintendent of public instruction to review and approve that the plan is consistent with federal and state guidelines, as applicable. After the office of the superintendent of public instruction has approved that the plan is consistent with federal and state guidelines, the local school district must submit its required action plan to the state board of education for approval.

(2) A required action plan must include all of the following:

(a) Implementation of an approved school improvement model required for the receipt of federal or state funds for school improvement for those persistently lowest-achieving schools that the district will be focusing on for required action. The approved school improvement model selected must address the concerns raised in the academic performance audit and be intended to improve student performance to allow a school district to be removed from the list of districts designated as a required action district by the state board of education within three years of implementation of the plan. The required action plan for districts with multiple persistently lowest-achieving schools must include separate plans for each school as well as a plan for how the school district will support the schools collectively;

(b) Submission of an application for federal or state funds for school improvement to the superintendent of public instruction;

(c) A budget that provides for adequate resources to implement the model selected and any other requirements of the plan;

(d) A description of the changes in the district's or school's existing policies, structures, agreements, processes, and practices that are intended to attain significant achievement gains for all students enrolled in the school and how the district intends to address the findings of the academic performance audit; and

(e) Identification of the measures that the school district will use in assessing student achievement at a school identified as a persistently lowest-achieving school, which include closing the educational opportunity gap, improving mathematics and reading or English language arts student achievement, and improving graduation rates as defined by the office of the superintendent of public instruction that enable the school to no longer be identified as a persistently lowest-achieving school.

(3)(a) For any district designated for required action, the parties to any collective bargaining agreement negotiated, renewed, or extended under chapter 41.59 or 41.56 RCW after June 10, 2010, must reopen the agreement, or negotiate an addendum, if needed, to make changes to terms and conditions of employment that are necessary to implement a required action plan. For any district applying to participate in a collaborative schools for innovation and success pilot project under RCW 28A.630.104, the parties to any collec-

tive bargaining agreement negotiated, renewed, or extended under chapter 41.59 or 41.56 RCW after June 7, 2012, must reopen the agreement, or negotiate an addendum, if needed, to make changes to terms and conditions of employment that are necessary to implement an innovation and success plan.

(b) If the school district and the employee organizations are unable to agree on the terms of an addendum or modification to an existing collective bargaining agreement, the parties, including all labor organizations affected under the required action plan, shall request the public employment relations commission to, and the commission shall, appoint an employee of the commission to act as a mediator to assist in the resolution of a dispute between the school district and the employee organizations. Beginning in 2011, and each year thereafter, mediation shall commence no later than April 15th. All mediations held under this section shall include the employer and representatives of all affected bargaining units.

(c) If the executive director of the public employment relations commission, upon the recommendation of the assigned mediator, finds that the employer and any affected bargaining unit are unable to reach agreement following a reasonable period of negotiations and mediation, but by no later than May 15th of the year in which mediation occurred, the executive director shall certify any disputed issues for a decision by the superior court in the county where the school district is located. The issues for determination by the superior court must be limited to the issues certified by the executive director.

(d) The process for filing with the court in this subsection (3)(d) must be used in the case where the executive director certifies issues for a decision by the superior court.

(i) The school district shall file a petition with the superior court, by no later than May 20th of the same year in which the issues were certified, setting forth the following:

(A) The name, address, and telephone number of the school district and its principal representative;

(B) The name, address, and telephone number of the employee organizations and their principal representatives;

(C) A description of the bargaining units involved;

(D) A copy of the unresolved issues certified by the executive director for a final and binding decision by the court; and

(E) The academic performance audit that the office of the superintendent of public instruction completed for the school district in the case of a required action district, or the comprehensive needs assessment in the case of a collaborative schools for innovation and success pilot project.

(ii) Within seven days after the filing of the petition, each party shall file with the court the proposal it is asking the court to order be implemented in a required action plan or innovation and success plan for the district for each issue certified by the executive director. Contemporaneously with the filing of the proposal, a party must file a brief with the court setting forth the reasons why the court should order implementation of its proposal in the final plan.

(iii) Following receipt of the proposals and briefs of the parties, the court must schedule a date and time for a hearing on the petition. The hearing must be limited to argument of the parties or their counsel regarding the proposals submitted for the court's consideration. The parties may waive a hearing by written agreement.

(iv) The court must enter an order selecting the proposal for inclusion in a required action plan that best responds to the issues raised in the school district's academic performance audit, and allows for the award of federal or state funds for school improvement to the district from the office of the superintendent of public instruction to implement an approved school improvement model. In the case of an innovation and success plan, the court must enter an order selecting the proposal for inclusion in the plan that best responds to the issues raised in the school's comprehensive needs assessment. The court's decision must be issued no later than June 15th of the year in which the petition is filed and is final and binding on the parties; however the court's decision is subject to appeal only in the case where it does not allow the school district to implement a required action plan consistent with the requirements for the award of federal or state funds for school improvement by the superintendent of public instruction.

(e) Each party shall bear its own costs and attorneys' fees incurred under this statute.

(f) Any party that proceeds with the process in this section after knowledge that any provision of this section has not been complied with and who fails to state its objection in writing is deemed to have waived its right to object.

(4) All contracts entered into between a school district and an employee must be consistent with this section and allow school districts designated as required action districts to implement an approved school improvement model in a required action plan. [2013 c 159 § 5; 2012 c 53 § 10; 2010 c 235 § 105.]

Expiration date—2013 c 159 § 5: "Section 5 of this act expires June 30, 2019." [2013 c 159 § 15.]

Findings—Intent—Expiration date—2012 c 53: See RCW 28A.630.101 and 28A.630.109.

Finding—2010 c 235: See note following RCW 28A.405.245.

28A.657.050 Required action plans—Development—Publication of guidelines, research, and models—Submission—Contents—Effect on existing collective bargaining agreements. (Effective June 30, 2019.)

(1)(a) The local district superintendent and local school board of a school district designated as a required action district must submit a required action plan to the state board of education for approval. Unless otherwise required by subsection (3) of this section, the plan must be submitted under a schedule as required by the state board. A required action plan must be developed in collaboration with administrators, teachers, and other staff, parents, unions representing any employees within the district, students, and other representatives of the local community.

(b) The superintendent of public instruction shall provide a district with assistance in developing its plan if requested, and shall develop and publish guidelines for the development of required action plans. The superintendent of public instruction, in consultation with the state board of education, shall also publish a list of research and evidence-based school improvement models, consistent with turnaround principles, that are approved for use in required action plans.

(c) The school board must conduct a public hearing to allow for comment on a proposed required action plan. The

local school district shall submit the plan first to the office of the superintendent of public instruction to review and approve that the plan is consistent with federal and state guidelines, as applicable. After the office of the superintendent of public instruction has approved that the plan is consistent with federal and state guidelines, the local school district must submit its required action plan to the state board of education for approval.

(2) A required action plan must include all of the following:

(a) Implementation of an approved school improvement model required for the receipt of federal or state funds for school improvement for those persistently lowest-achieving schools that the district will be focusing on for required action. The approved school improvement model selected must address the concerns raised in the academic performance audit and be intended to improve student performance to allow a school district to be removed from the list of districts designated as a required action district by the state board of education within three years of implementation of the plan. The required action plan for districts with multiple persistently lowest-achieving schools must include separate plans for each school as well as a plan for how the school district will support the schools collectively;

(b) Submission of an application for federal or state funds for school improvement to the superintendent of public instruction;

(c) A budget that provides for adequate resources to implement the model selected and any other requirements of the plan;

(d) A description of the changes in the district's or school's existing policies, structures, agreements, processes, and practices that are intended to attain significant achievement gains for all students enrolled in the school and how the district intends to address the findings of the academic performance audit; and

(e) Identification of the measures that the school district will use in assessing student achievement at a school identified as a persistently lowest-achieving school, which include closing the educational opportunity gap, improving mathematics and reading or English language arts student achievement, and improving graduation rates as defined by the office of the superintendent of public instruction that enable the school to no longer be identified as a persistently lowest-achieving school.

(3)(a) For any district designated for required action, the parties to any collective bargaining agreement negotiated, renewed, or extended under chapter 41.59 or 41.56 RCW after June 10, 2010, must reopen the agreement, or negotiate an addendum, if needed, to make changes to terms and conditions of employment that are necessary to implement a required action plan.

(b) If the school district and the employee organizations are unable to agree on the terms of an addendum or modification to an existing collective bargaining agreement, the parties, including all labor organizations affected under the required action plan, shall request the public employment relations commission to, and the commission shall, appoint an employee of the commission to act as a mediator to assist in the resolution of a dispute between the school district and the employee organizations. Beginning in 2011, and each

year thereafter, mediation shall commence no later than April 15th. All mediations held under this section shall include the employer and representatives of all affected bargaining units.

(c) If the executive director of the public employment relations commission, upon the recommendation of the assigned mediator, finds that the employer and any affected bargaining unit are unable to reach agreement following a reasonable period of negotiations and mediation, but by no later than May 15th of the year in which mediation occurred, the executive director shall certify any disputed issues for a decision by the superior court in the county where the school district is located. The issues for determination by the superior court must be limited to the issues certified by the executive director.

(d) The process for filing with the court in this subsection (3)(d) must be used in the case where the executive director certifies issues for a decision by the superior court.

(i) The school district shall file a petition with the superior court, by no later than May 20th of the same year in which the issues were certified, setting forth the following:

(A) The name, address, and telephone number of the school district and its principal representative;

(B) The name, address, and telephone number of the employee organizations and their principal representatives;

(C) A description of the bargaining units involved;

(D) A copy of the unresolved issues certified by the executive director for a final and binding decision by the court; and

(E) The academic performance audit that the office of the superintendent of public instruction completed for the school district.

(ii) Within seven days after the filing of the petition, each party shall file with the court the proposal it is asking the court to order be implemented in a required action plan for the district for each issue certified by the executive director. Contemporaneously with the filing of the proposal, a party must file a brief with the court setting forth the reasons why the court should order implementation of its proposal in the final plan.

(iii) Following receipt of the proposals and briefs of the parties, the court must schedule a date and time for a hearing on the petition. The hearing must be limited to argument of the parties or their counsel regarding the proposals submitted for the court's consideration. The parties may waive a hearing by written agreement.

(iv) The court must enter an order selecting the proposal for inclusion in a required action plan that best responds to the issues raised in the school district's academic performance audit, and allows for the award of federal or state funds for school improvement to the district from the office of the superintendent of public instruction to implement an approved school improvement model. The court's decision must be issued no later than June 15th of the year in which the petition is filed and is final and binding on the parties; however the court's decision is subject to appeal only in the case where it does not allow the school district to implement a required action plan consistent with the requirements for the award of federal or state funds for school improvement by the superintendent of public instruction.

(e) Each party shall bear its own costs and attorneys' fees incurred under this statute.

(f) Any party that proceeds with the process in this section after knowledge that any provision of this section has not been complied with and who fails to state its objection in writing is deemed to have waived its right to object.

(4) All contracts entered into between a school district and an employee must be consistent with this section and allow school districts designated as required action districts to implement an approved school improvement model in a required action plan. [2013 c 159 § 6; 2010 c 235 § 105.]

Effective date—2013 c 159 § 6: "Section 6 of this act takes effect June 30, 2019." [2013 c 159 § 16.]

Finding—2010 c 235: See note following RCW 28A.405.245.

28A.657.060 Required action plans—Approval or nonapproval by state board of education—Resubmission or reconsideration—Implementation. A required action plan developed by a district's school board and superintendent must be submitted to the state board of education for approval. The state board must accept for inclusion in any required action plan the final decision by the superior court on any issue certified by the executive director of the public employment relations commission under the process in RCW 28A.657.050. The state board of education shall approve a plan proposed by a school district only if the plan meets the requirements in RCW 28A.657.050 and provides sufficient remedies to address the findings in the academic performance audit to improve student achievement. Any addendum or modification to an existing collective bargaining agreement, negotiated under RCW 28A.657.050 or by agreement of the district and the exclusive bargaining unit, related to student achievement or school improvement shall not go into effect until approval of a required action plan by the state board of education. If the state board does not approve a proposed plan, it must notify the local school board and local district's superintendent in writing with an explicit rationale for why the plan was not approved. Nonapproval by the state board of education of the local school district's initial required action plan submitted is not intended to trigger any actions under RCW 28A.657.080. With the assistance of the office of the superintendent of public instruction, the superintendent and school board of the required action district shall either: (1) Submit a new plan to the state board of education for approval within forty days of notification that its plan was rejected, or (2) submit a request to the required action plan review panel established under RCW 28A.657.070 for reconsideration of the state board's rejection within ten days of the notification that the plan was rejected. If federal or state funds for school improvement are not available, the plan is not required to be implemented until such funding becomes available. If federal or state funds for this purpose are available, a required action plan must be implemented in the immediate school year following the district's designation as a required action district. [2013 c 159 § 7; 2010 c 235 § 106.]

Finding—2010 c 235: See note following RCW 28A.405.245.

28A.657.070 Required action plan review panel—Membership—Duties—Timelines and procedures for deliberations. (1) A required action plan review panel shall be established to offer an objective, external review of a request from a school district for reconsideration of the state board of education's rejection of the district's required action

plan or reconsideration of a level two required action plan developed only by the superintendent of public instruction as provided under RCW 28A.657.105. The review and reconsideration by the panel shall be based on whether the state board of education or the superintendent of public instruction gave appropriate consideration to the unique circumstances and characteristics identified in the academic performance audit or level two needs assessment and review of the local school district.

(2)(a) The panel shall be composed of five individuals with expertise in school improvement, school and school district restructuring, or parent and community involvement in schools. Two of the panel members shall be appointed by the speaker of the house of representatives; two shall be appointed by the president of the senate; and one shall be appointed by the governor.

(b) The speaker of the house of representatives, president of the senate, and governor shall solicit recommendations for possible panel members from the Washington association of school administrators, the Washington state school directors' association, the association of Washington school principals, the educational opportunity gap oversight and accountability committee, and associations representing certificated teachers, classified school employees, and parents.

(c) Members of the panel shall be appointed no later than December 1, 2010, but the superintendent of public instruction shall convene the panel only as needed to consider a school district's request for reconsideration. Appointments shall be for a four-year term, with opportunity for reappointment. Reappointments in the case of a vacancy shall be made expeditiously so that all requests are considered in a timely manner.

(3)(a) In the case of a rejection of a required action plan, the required action plan review panel may reaffirm the decision of the state board of education, recommend that the state board reconsider the rejection, or recommend changes to the required action plan that should be considered by the district and the state board of education to secure approval of the plan. The state board of education shall consider the recommendations of the panel and issue a decision in writing to the local school district and the panel. If the school district must submit a new required action plan to the state board of education, the district must submit the plan within forty days of the board's decision.

(b) In the case of a level two required action plan where the local school district and the superintendent of public instruction have not come to agreement, the required action plan review panel may reaffirm the level two required action plan submitted by the superintendent of public instruction or recommend changes to the plan that should be considered by the state board of education, the superintendent of public instruction, and the local school district. The state board of education shall consider the recommendations of the panel and issue a decision in writing to the local school district, the superintendent of public instruction, and the panel.

(4) The state board of education and superintendent of public instruction must develop timelines and procedures for the deliberations under this section so that school districts can implement a required action plan within the time frame required under RCW 28A.657.060. [2013 c 159 § 8; 2010 c 235 § 107.]

Finding—2010 c 235: See note following RCW 28A.405.245.

28A.657.090 Required action plans—Implementation—Technical assistance and funds—Progress report.

A school district must implement a required action plan upon approval by the state board of education. The office of the superintendent of public instruction must provide the required action district with technical assistance and federal or state funds for school improvement, if available, to implement an approved plan. The district must submit a report to the superintendent of public instruction that provides the progress the district is making in meeting the student achievement goals based on the state's assessments, identifying strategies and assets used to solve audit findings, and establishing evidence of meeting plan implementation benchmarks as set forth in the required action plan. [2013 c 159 § 9; 2010 c 235 § 109.]

Finding—2010 c 235: See note following RCW 28A.405.245.

28A.657.100 Required action districts—Progress reports—Release from designation—Assignment to level two of the required action process.

(1) The superintendent of public instruction must provide a report twice per year to the state board of education regarding the progress made by all school districts designated as required action districts.

(2) The superintendent of public instruction must recommend to the state board of education that a school district be released from the designation as a required action district after the district implements a required action plan for a period of three years; has made progress, as defined by the superintendent of public instruction using the criteria adopted under RCW 28A.657.020 including progress in closing the educational opportunity gap; and no longer has a school within the district identified as persistently lowest-achieving. The state board shall release a school district from the designation as a required action district upon confirmation that the district has met the requirements for a release.

(3) If the state board of education determines that the required action district has not met the requirements for release after at least three years of implementing a required action plan, the board may recommend that the district remain in required action and submit a new or revised plan under the process in RCW 28A.657.050, or the board may direct that the school district be assigned to level two of the required action process as provided in RCW 28A.657.105. If the required action district received a federal school improvement grant for the same persistently lowest-achieving school in 2010 or 2011, the board may direct that the school district be assigned to level two of the required action process after one year of implementing a required action plan under this chapter if the district is not making progress. Before making a determination of whether to recommend that a school district that is not making progress remain in required action or be assigned to level two of the required action process, the state board of education must submit its findings to the education accountability system oversight committee under RCW 28A.657.130 and provide an opportunity for the oversight committee to review and comment. [2013 c 159 § 10; 2010 c 235 § 110.]

Finding—2010 c 235: See note following RCW 28A.405.245.

28A.657.105 Required action process—Level two schools and plans. (1) School districts assigned by the state board of education to level two of the required action process under this chapter are those with one or more schools that have remained as persistently lowest-achieving for more than three years and have not demonstrated recent and significant improvement or progress toward exiting persistently lowest-achieving status, despite implementation of a required action plan.

(2) Within ninety days following assignment of a school district to level two of the required action process, the superintendent of public instruction shall direct that a needs assessment and review be conducted to determine the reasons why the previous required action plan did not succeed in improving student achievement.

(3)(a) Based on the results of the needs assessment and review, the superintendent of public instruction shall work collaboratively with the school district board of directors to develop a revised required action plan for level two.

(b) The level two required action plan must explicitly address the reasons why the previous plan did not succeed and must specify the interventions that the school district must implement, which may include assignment or reassignment of personnel, reallocation of resources, use of specified curriculum or instructional strategies, use of a specified school improvement model, or any other conditions determined by the superintendent of public instruction to be necessary for the level two required action plan to succeed, which conditions shall be binding on the school district. The level two required action plan shall also include the specific technical assistance and support to be provided by the office of the superintendent of public instruction, which may include assignment of school improvement specialists to have a regular on-site presence in the school and technical assistance provided through the educational service district. Individuals assigned as on-site school improvement specialists must have demonstrated experience in school turnaround and cultural competence.

(c) The level two required action plan must be submitted to the state board of education for approval.

(4) If the superintendent of public instruction and the school district board of directors are unable to come to an agreement on a level two required action plan within ninety days of the completion of the needs assessment and review conducted under subsection (2) of this section, the superintendent of public instruction shall complete and submit a level two required action plan directly to the state board of education for approval. The school district board of directors may submit a request to the required action plan review panel established under RCW 28A.657.070 for reconsideration of the superintendent's level two required action plan within ten days of the submission of the plan to the state board of education. After the state board of education considers the recommendations of the required action plan review panel, the decision of the board regarding the level two required action plan is final and not subject to further reconsideration.

(5) If changes to a collective bargaining agreement are necessary to implement a level two required action plan, the parties must reopen the agreement, or negotiate an addendum, using the process outlined under RCW 28A.657.050. If the level two required action plan is developed by the super-

intendent of public instruction under subsection (4) of this section, a designee of the superintendent shall participate in the discussions among the parties to the collective bargaining agreement.

(6) While a school district is assigned to level two of the required action process under this chapter, the superintendent of public instruction is responsible and accountable for assuring that the level two required action plan is implemented with fidelity. The superintendent of public instruction shall defer to the school district board of directors as the governing authority of the school district and continue to work in partnership with the school district to implement the level two required action plan. However, if the superintendent of public instruction finds that the level two required action plan is not being implemented as specified, including the implementation of any binding conditions within the plan, the superintendent may direct actions that must be taken by school district personnel to implement the level two required action plan or the binding conditions. If necessary, the superintendent of public instruction may exercise authority under RCW 28A.505.120 regarding allocation of funds.

(7) The superintendent of public instruction shall include in the budget estimates and information submitted to the governor under RCW 28A.300.170 a request for sufficient funds to support implementation of the level two required action plans established under this section.

(8) The superintendent of public instruction must recommend to the state board of education that a school district be released from assignment to level two of the required action process after the district implements the level two required action plan for a period of three years; has made progress, as defined by the superintendent of public instruction using the criteria established under RCW 28A.657.020; and no longer has a school within the district identified as persistently lowest-achieving. The state board of education shall release a school district from the level two assignment upon confirmation that the school district has met the requirements for a release. [2013 c 159 § 11.]

28A.657.110 Accountability framework for system of support for challenged schools—Washington achievement index—Recognition of schools for exemplary performance—Use of state system to replace federal accountability system. (1) By November 1, 2013, the state board of education shall propose rules for adoption establishing an accountability framework that creates a unified system of support for challenged schools that aligns with basic education, increases the level of support based upon the magnitude of need, and uses data for decisions. The board must seek input from the public and interested groups in developing the framework. Based on the framework, the superintendent of public instruction shall design a comprehensive system of specific strategies for recognition, provision of differentiated support and targeted assistance, and, if necessary, requiring intervention in schools and school districts. The superintendent shall submit the system design to the state board of education for review. The state board of education shall recommend approval or modification of the system design to the superintendent no later than January 1, 2014, and the system must be implemented statewide no later than the 2014-15 school year. To the extent state funds are appropriated for

this purpose, the system must apply equally to Title I, Title I-eligible, and non-Title I schools in the state.

(2) The state board of education shall develop a Washington achievement index to identify schools and school districts for recognition, for continuous improvement, and for additional state support. The index shall be based on criteria that are fair, consistent, and transparent. Performance shall be measured using multiple outcomes and indicators including, but not limited to, graduation rates and results from statewide assessments. The index shall be developed in such a way as to be easily understood by both employees within the schools and school districts, as well as parents and community members. It is the legislature's intent that the index provide feedback to schools and school districts to self-assess their progress, and enable the identification of schools with exemplary performance and those that need assistance to overcome challenges in order to achieve exemplary performance.

(3) The state board of education, in cooperation with the office of the superintendent of public instruction, shall annually recognize schools for exemplary performance as measured on the Washington achievement index. The state board of education shall have ongoing collaboration with the educational opportunity gap oversight and accountability committee regarding the measures used to measure the closing of the achievement gaps and the recognition provided to the school districts for closing the achievement gaps.

(4) In coordination with the superintendent of public instruction, the state board of education shall seek approval from the United States department of education for use of the Washington achievement index and the state system of differentiated support, assistance, and intervention to replace the federal accountability system under P.L. 107-110, the no child left behind act of 2001.

(5) The state board of education shall work with the education data center established within the office of financial management and the technical working group established in RCW 28A.290.020 to determine the feasibility of using the prototypical funding allocation model as not only a tool for allocating resources to schools and school districts but also as a tool for schools and school districts to report to the state legislature and the state board of education on how the state resources received are being used. [2013 c 159 § 12; 2010 c 235 § 111; 2009 c 548 § 503. Formerly RCW 28A.305.225.]

Finding—2010 c 235: See note following RCW 28A.405.245.

Intent—2009 c 548: See RCW 28A.150.1981.

Finding—2009 c 548: See note following RCW 28A.410.270.

Intent—Finding—2009 c 548: See note following RCW 28A.305.130.

28A.657.125 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

28A.657.130 Education accountability system oversight committee—Membership—Duties—Reports. (1) The education accountability system oversight committee is established to provide ongoing monitoring of the outcomes of the comprehensive system of recognition, support, and intervention for schools and school districts established under this chapter.

(2) The oversight committee shall be composed of the following members:

(a) Two members from each of the largest caucuses of the house of representatives, to be appointed by the speaker of the house of representatives;

(b) Two members from each of the largest caucuses of the senate, to be appointed by the president of the senate;

(c) Two members appointed by the governor; and

(d) One nonlegislative member of the educational opportunity gap oversight and accountability committee.

(3) The oversight committee shall choose a chair from among its membership who shall serve as chair for no more than one consecutive year.

(4) The committee shall:

(a) Monitor the progress and outcomes of the education accountability system established under this chapter, including but not limited to the effectiveness in improving student achievement of the tiered system of assistance and intervention provided to challenged schools in need of improvement, persistently lowest-achieving schools in required action districts, and level two required action districts;

(b) Review and make recommendations to the state board of education regarding the proposed assignment of a required action district to level two of the required action process under RCW 28A.657.105;

(c) Make recommendations to the state board of education, the superintendent of public instruction, the governor, and the legislature as necessary if the oversight committee finds that changes to the accountability system should be made; and

(d) Report biennially to the education committees of the legislature.

(5) Staff support for the oversight committee must be provided by the senate committee services and the house of representatives office of program research.

(6) Legislative members of the oversight committee may be reimbursed for travel expenses in accordance with RCW 44.04.120. Nonlegislative members are entitled to be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060. [2013 c 159 § 13.]

**Chapter 28A.700 RCW
SECONDARY CAREER AND
TECHNICAL EDUCATION**

Sections

28A.700.120 Recodified as RCW 28A.188.070.

28A.700.120 Recodified as RCW 28A.188.070. See Supplementary Table of Disposition of Former RCW Sections, this volume.

**Chapter 28A.715 RCW
STATE-TRIBAL EDUCATION
COMPACTS AUTHORITY**

Sections

28A.715.005 Findings—Intent—Purpose.
28A.715.010 Authority to enter into compacts—Process—Rules.
28A.715.020 Operation of schools.
28A.715.030 Tuition—Fees—Admission—Enrollment priorities.
28A.715.040 Student enrollment reporting—Funding apportionment and allocations—Retention of moneys in accounts.

28A.715.005 Findings—Intent—Purpose. (1) The legislature finds that:

(a) American Indian and Alaska Native students make up 2.5 percent of the total student population in the state and twenty-five percent or more of the student population in fifty-seven schools across the state.

(b) American Indian students in Washington have the highest annual drop-out rate at 9.5 percent, compared to 4.6 percent of all students in each of grades nine through twelve. Of the students expected to graduate in 2010 because they entered the ninth grade in 2006, the American Indian on-time graduation rate was only fifty-eight percent, compared to 76.5 percent of all students.

(c) The teaching of American Indian language, culture, and history are [is] important to American Indian people and critical to the educational attainment and achievement of American Indian children.

(d) The state-tribal education compacts authorized under this chapter reaffirm the state’s important commitment to government-to-government relationships with the tribes that has been recognized by proclamation, and in the centennial accord and the millennium agreement. These state-tribal education compacts build upon the efforts highlighted by the office of the superintendent of public instruction in its 2012 Centennial Accord Agency Highlights, including: The Since Time Immemorial (STI): Tribal Sovereignty in Washington State Curriculum Project that imbeds the history surrounding sovereignty and intergovernmental responsibilities into this state’s classrooms; the agency’s regular meetings with the superintendents of the seven current tribal schools, as well as the federal bureau of Indian education representatives at the regional and national level on issues relating to student academic achievement, accessing of funding for tribal schools, and connecting tribal schools to the K-20 network; and the recent establishment, in statute, of the office of native education within the office of the superintendent of public instruction.

(e) School funding should honor tribal sovereignty and reflect the government-to-government relationship between the state and the tribes, however the current structure that requires negotiation of an interlocal agreement between a school district and a tribal school ignores tribal sovereignty and results in a siphoning of funds for administration that could be better used for teaching and learning.

(2) The legislature further finds that:

(a) There is a preparation gap among entering kindergartners with many children, especially those from low-income homes, arriving at kindergarten without the knowledge, skills, and good health necessary to succeed in school;

(b) Upon entry into the K-12 school system, the educational opportunity gap becomes more evident, with children of color and from low-income homes having lower scores on math, reading, and writing standardized tests, as well as lower graduation rates and higher rates of dropping out of school; and

(c) Comprehensive, culturally competent early learning and greater collaboration between the early learning and K-12 school systems will ensure appropriate connections and smoother transitions for children, and help eliminate or bridge gaps that might otherwise develop.

(3) In light of these findings, it is the intent and purpose of the legislature to authorize the superintendent of public instruction to enter into state-tribal education compacts. [2013 c 242 § 1.]

28A.715.010 Authority to enter into compacts—Process—Rules. (1) The superintendent of public instruction is authorized to enter into state-tribal education compacts.

(2) No later than six months after July 28, 2013, the superintendent of public instruction shall establish an application and approval process, procedures, and timelines for the negotiation, approval or disapproval, and execution of state-tribal education compacts.

(3) The process may be initiated by submission, to the superintendent of public instruction, of a resolution by:

(a) The governing body of a tribe in the state of Washington; or

(b) The governing body of any of the schools in Washington that are currently funded by the federal bureau of Indian affairs, whether directly or through a contract or compact with an Indian tribe or a tribal consortium.

(4) The resolution must be accompanied by an application that indicates the grade or grades from kindergarten through twelve that will be offered and that demonstrates that the school will be operated in compliance with all applicable laws, the rules adopted thereunder, and the terms and conditions set forth in the application.

(5) Within ninety days of receipt of a resolution and application under this section, the superintendent must convene a government-to-government meeting for the purpose of considering the resolution and application and initiating negotiations.

(6) State-tribal education compacts must include provisions regarding:

(a) Compliance;

(b) Notices of violation;

(c) Dispute resolution, which may include nonjudicial processes such as mediation;

(d) Recordkeeping and auditing;

(e) The delineation of the respective roles and responsibilities;

(f) The term or length of the contract, and whether or not it is renewable; and

(g) Provisions for compact termination.

(7) The superintendent of public instruction shall adopt such rules as are necessary to implement this chapter. [2013 c 242 § 2.]

28A.715.020 Operation of schools. (1) A school that is the subject of a state-tribal education compact must operate according to the terms of its compact executed in accordance with RCW 28A.715.010.

(2) Schools that are the subjects of state-tribal education compacts are exempt from all state statutes and rules applicable to school districts and school district boards of directors, except those statutes and rules made applicable under this chapter and in the state-tribal education compact executed under RCW 28A.715.010.

(3) Each school that is the subject of a state-tribal education compact must:

(a) Provide a curriculum and conduct an educational program that satisfies the requirements of RCW 28A.150.200 through 28A.150.240 and 28A.230.010 through 28A.230.195;

(b) Employ certificated instructional staff as required in RCW 28A.410.010, however such schools may hire noncertificated instructional staff of unusual competence and in exceptional cases as specified in RCW 28A.150.203(7);

(c) Comply with the employee record check requirements in RCW 28A.400.303 and the mandatory termination and notification provisions of RCW 28A.400.320, 28A.400.330, 28A.405.470, and 28A.405.475;

(d) Comply with nondiscrimination laws;

(e) Adhere to generally accepted accounting principles and be subject to financial examinations and audits as determined by the state auditor, including annual audits for legal and fiscal compliance; and

(f) Be subject to and comply with legislation enacted after July 28, 2013, governing the operation and management of schools that are the subject of a state-tribal education compact.

(4) No such school may engage in any sectarian practices in its educational program, admissions or employment policies, or operations.

(5) Nothing in this chapter may limit or restrict any enrollment or school choice options otherwise available under Title 28A RCW. [2013 c 242 § 3.]

28A.715.030 Tuition—Fees—Admission—Enrollment priorities. (1) A school that is the subject of a state-tribal education compact may not charge tuition except to the same extent as school districts may be permitted to do so with respect to out-of-state and adult students pursuant to chapter 28A.225 RCW, but may charge fees for participation in optional extracurricular events and activities.

(2) Such schools may not limit admission on any basis other than age group, grade level, or capacity and must otherwise enroll all students who apply.

(3) If capacity is insufficient to enroll all students who apply, a school that is the subject of a state-tribal education compact may prioritize the enrollment of tribal members and siblings of already enrolled students. [2013 c 242 § 4.]

28A.715.040 Student enrollment reporting—Funding apportionment and allocations—Retention of moneys in accounts. (1) A school that is the subject of a state-tribal education compact must report student enrollment. Reporting must be done in the same manner and use the same definitions of enrolled students and annual average full-time equivalent enrollment as is required of school districts. The reporting requirements in this subsection are required for a school to receive state or federal funding that is allocated based on student characteristics.

(2) Funding for a school that is the subject of a state-tribal education compact shall be apportioned by the superintendent of public instruction according to the schedule established under RCW 28A.510.250, including general apportionment, special education, categorical, and other nonbasic education moneys. Allocations for certificated instructional staff must be based on the average staff mix ratio of the school, as calculated by the superintendent of public instruc-

tion using the statewide salary allocation schedule and related documents, conditions, and limitations established by the omnibus appropriations act. Allocations for classified staff and certificated administrative staff must be based on the salary allocations of the school district in which the school is located, subject to conditions and limitations established by the omnibus appropriations act. Nothing in this section requires a school that is the subject of a state-tribal education compact to use the statewide salary allocation schedule. Such a school is eligible to apply for state grants on the same basis as a school district.

(3) Any moneys received by a school that is the subject of a state-tribal education compact from any source that remain in the school's accounts at the end of any budget year must remain in the school's accounts for use by the school during subsequent budget years. [2013 c 242 § 5.]

Title 28B HIGHER EDUCATION

Chapters

- 28B.07** Washington higher education facilities authority.
- 28B.10** Colleges and universities generally.
- 28B.15** College and university fees.
- 28B.20** University of Washington.
- 28B.30** Washington State University.
- 28B.35** Regional universities.
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- 28B.117** Passport to college promise program.
- 28B.119** Washington promise scholarship program.
- 28B.133** Gaining independence for students with dependents program.
- 28B.145** Opportunity scholarship act.

Chapter 28B.07 RCW WASHINGTON HIGHER EDUCATION FACILITIES AUTHORITY

Sections

28B.07.030 Washington higher education facilities authority—Created—Members—Chairperson—Records—Quorum—Compensation and travel expenses.

28B.07.030 Washington higher education facilities authority—Created—Members—Chairperson—Records—Quorum—Compensation and travel expenses.

(1) The Washington higher education facilities authority is hereby established as a public body corporate and politic, with perpetual corporate succession, constituting an agency

of the state of Washington exercising essential governmental functions. The authority is a "public body" within the meaning of RCW 39.53.010.

(2) The authority shall consist of seven members as follows: The governor, lieutenant governor, chair of the student achievement council or the chair's designee, and four public members, one of whom shall be the president of a higher education institution at the time of appointment. The public members shall be residents of the state and appointed by the governor, subject to confirmation by the senate, on the basis of their interest or expertise in the provision of higher education and the financing of higher education. The public members of the authority shall serve for terms of four years. The initial terms of the public members shall be staggered in a manner determined by the governor. In the event of a vacancy on the authority due to death, resignation, or removal of one of the public members, and upon the expiration of the term of any public member, the governor shall appoint a successor for a term expiring on the fourth anniversary of the successor's date of the appointment. If any of the state offices are abolished, the resulting vacancy on the authority shall be filled by the state officer who shall succeed substantially to the power and duties of the abolished office. Any public member of the authority may be removed by the governor for misfeasance, malfeasance, willful neglect of duty, or any other cause after notice and a public hearing, unless such notice and hearing shall be expressly waived in writing.

(3) The governor shall serve as chairperson of the authority. The authority shall elect annually one of its members as secretary. If the governor shall be absent from a meeting of the authority, the secretary shall preside. However, the governor may designate an employee of the governor's office to act on the governor's behalf in all other respects during the absence of the governor at any meeting of the authority. If the designation is in writing and is presented to the person presiding at the meetings of the authority who is included in the designation, the vote of the designee has the same effect as if cast by the governor.

(4) Any person designated by resolution of the authority shall keep a record of the proceedings of the authority and shall be the custodian of all books, documents, and papers filed with the authority, the minute book or a journal of the authority, and the authority's official seal, if any. The person may cause copies to be made of all minutes and other records and documents of the authority, and may give certificates to the effect that such copies are true copies. All persons dealing with the authority may rely upon the certificates.

(5) Four members of the authority constitute a quorum. Members participating in a meeting through the use of any means of communication by which all members participating can hear each other during the meeting shall be deemed to be present in person at the meeting for all purposes. The authority may act on the basis of a motion except when authorizing the issuance and sale of bonds, in which case the authority shall act by resolution. Bond resolutions and other resolutions shall be adopted upon the affirmative vote of four members of the authority, and shall be signed by those members voting yes. Motions shall be adopted upon the affirmative vote of a majority of a quorum of members present at any meeting of the authority. All actions taken by the authority

shall take effect immediately without need for publication or other public notice. A vacancy in the membership of the authority does not impair the power of the authority to act under this chapter.

(6) The members of the authority shall be compensated in accordance with RCW 43.03.240 and shall be entitled to reimbursement, solely from the funds of the authority, for travel expenses as determined by the authority incurred in the discharge of their duties under this chapter. [2013 c 217 § 1; 2011 1st sp.s. c 11 § 137; 2007 c 36 § 14; 1985 c 370 § 48; 1984 c 287 § 62; 1983 c 169 § 3.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Policy—Purpose—2007 c 36: See note following RCW 28B.07.300.

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

Chapter 28B.10 RCW

COLLEGES AND UNIVERSITIES GENERALLY

Sections

- 28B.10.019 Electronic signatures.
- 28B.10.029 Property purchase and disposition—Independent printing production and purchasing authority—Purchase of correctional industries products.
- 28B.10.053 Postsecondary credit for high school coursework—Master list of qualifying courses and qualifying examination scores—Dissemination of information.
- 28B.10.270 Rights of Washington national guard and other military reserve students called to service.
- 28B.10.925 Transfer of ownership of institution-owned vessel—Review of vessel's physical condition.
- 28B.10.926 Transfer of ownership of institution-owned vessel—Further requirements.

28B.10.019 Electronic signatures. (1) Institutions of higher education and state higher education agencies may use or accept secure electronic signatures for any human resource, benefits, or payroll processes that require a signature. Such signatures are valid and enforceable.

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

(a) "Electronic signature" means an electronic sound, symbol, or process, attached to, or logically associated with, a contract or other record and executed or adopted by a person with the intent to sign the record.

(b) "Secure electronic signature" means an electronic signature that:

- (i) Is unique to the person making the signature;
- (ii) Uses a technology or process to make the signature that is under the sole control of the person making the signature;
- (iii) Uses a technology or process that can identify the person using the technology or process; and
- (iv) Can be linked with an electronic record in such a way that it can be used to determine whether the electronic record has been changed since the electronic signature was incorporated in, attached to, or associated with the electronic record. [2013 c 218 § 2.]

Reporting requirements—Review—Report: "(1) In order to enhance the efficiency and effectiveness of operations of institutions of higher education, the office of financial management shall work with the department of enterprise services, the department of transportation, the department of commerce, institutions of higher education, and others as necessary to compre-

hensively review reporting requirements related to the provisions in RCW 19.27A.020, 19.27A.150, 70.235.020, 39.35D.020, 43.19.565, 43.41.130, 47.01.440, 70.94.151, 70.94.161, 70.94.527, 70.120A.010, 70.120A.050, 70.235.030, 70.235.040, 70.235.050, 70.235.060, 70.235.070, 80.80.030, 80.80.040, and 80.80.080. By September 1, 2014, the office of financial management shall report to the governor and the higher education committees of the legislature. The report shall include recommendations for coordinating and streamlining reporting, and promoting the most efficient use of state resources at institutions of higher education.

(2) This section expires August 1, 2015." [2013 c 218 § 1.]

28B.10.029 Property purchase and disposition—Independent printing production and purchasing authority—Purchase of correctional industries products.

(1)(a) An institution of higher education may, consistent with RCW 28B.10.925 and 28B.10.926, exercise independently those powers otherwise granted to the director of enterprise services in chapter 43.19 RCW in connection with the purchase and disposition of all material, supplies, services, and equipment needed for the support, maintenance, and use of the respective institution of higher education.

(b) Property disposition policies followed by institutions of higher education shall be consistent with policies followed by the department of enterprise services.

(c)(i) Except as provided in (c)(ii) and (iii) of this subsection, purchasing policies and procedures followed by institutions of higher education shall be in compliance with chapters 39.19, *39.29, and 43.03 RCW, and RCW 43.19.1917, 43.19.685, 39.26.260 through 39.26.271, and 43.19.560 through 43.19.637.

(ii) Institutions of higher education may use all appropriate means for making and paying for travel arrangements including, but not limited to, electronic booking and reservations, advance payment and deposits for tours, lodging, and other necessary expenses, and other travel transactions based on standard industry practices and federal accountable plan requirements. Such arrangements shall support student, faculty, staff, and other participants' travel, by groups and individuals, both domestic and international, in the most cost-effective and efficient manner possible, regardless of the source of funds.

(iii) Formal sealed, electronic, or web-based competitive bidding is not necessary for purchases or personal services contracts by institutions of higher education for less than one hundred thousand dollars. However, for purchases and personal services contracts of ten thousand dollars or more and less than one hundred thousand dollars, quotations must be secured from at least three vendors to assure establishment of a competitive price and may be obtained by telephone, electronic, or written quotations, or any combination thereof. As part of securing the three vendor quotations, institutions of higher education must invite at least one quotation each from a certified minority and a certified woman-owned vendor that otherwise qualifies to perform the work. A record of competition for all such purchases and personal services contracts of ten thousand dollars or more and less than one hundred thousand dollars must be documented for audit purposes.

(d) Purchases under chapter *39.29, 43.19, or 43.105 RCW by institutions of higher education may be made by using contracts for materials, supplies, services, or equipment negotiated or entered into by, for, or through group purchasing organizations.

(e) The community and technical colleges shall comply with RCW 43.19.450.

(f) Except for the University of Washington, institutions of higher education shall comply with RCW 43.19.769, 43.19.763, and 43.19.781.

(g) If an institution of higher education can satisfactorily demonstrate to the director of the office of financial management that the cost of compliance is greater than the value of benefits from any of the following statutes, then it shall be exempt from them: RCW 43.19.685 and 43.19.637.

(h) Any institution of higher education that chooses to exercise independent purchasing authority for a commodity or group of commodities shall notify the director of enterprise services. Thereafter the director of enterprise services shall not be required to provide those services for that institution for the duration of the enterprise services contract term for that commodity or group of commodities.

(2) The council of presidents and the state board for community and technical colleges shall convene its correctional industries business development advisory committee, and work collaboratively with correctional industries, to:

(a) Reaffirm purchasing criteria and ensure that quality, service, and timely delivery result in the best value for expenditure of state dollars;

(b) Update the approved list of correctional industries products from which higher education shall purchase; and

(c) Develop recommendations on ways to continue to build correctional industries' business with institutions of higher education.

(3) Higher education and correctional industries shall develop a plan to build higher education business with correctional industries to increase higher education purchases of correctional industries products, based upon the criteria established in subsection (2) of this section. The plan shall include the correctional industries' production and sales goals for higher education and an approved list of products from which higher education institutions shall purchase, based on the criteria established in subsection (2) of this section. Higher education and correctional industries shall report to the legislature regarding the plan and its implementation no later than January 30, 2005.

(4)(a) Institutions of higher education shall set as a target to contract, beginning not later than June 30, 2006, to purchase one percent of the total goods and services required by the institutions each year produced or provided in whole or in part from class II inmate work programs operated by the department of corrections. Institutions of higher education shall set as a target to contract, beginning not later than June 30, 2008, to purchase two percent of the total goods and services required by the institutions each year produced or provided in whole or in part from class II inmate work programs operated by the department of corrections.

(b) Institutions of higher education shall endeavor to assure the department of corrections has notifications of bid opportunities with the goal of meeting or exceeding the purchasing target in (a) of this subsection. [2013 c 291 § 27; 2012 c 230 § 4. Prior: 2011 1st sp.s. c 43 § 303; 2011 c 198 § 1; 2010 c 61 § 1; 2004 c 167 § 10; prior: 1998 c 344 § 5; 1998 c 111 § 2; 1996 c 110 § 5; 1993 c 379 § 101.]

***Reviser's note:** Chapter 39.29 RCW was repealed or recodified in its entirety by 2012 c 224 §§ 28 and 29, effective January 1, 2013. For later enactment, see chapter 39.26 RCW.

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

Intent—Findings—1998 c 344: "It is the intent of the legislature to provide the necessary access to quality upper division and graduate higher education opportunities for the citizens of Spokane. The legislature intends that the Spokane branch campus of Washington State University, offering upper-division and graduate programs, be located at the Riverpoint Higher Education Park and that Washington State University be the administrative and fiscal agent for the Riverpoint Higher Education Park. In addition, those programs offered by Eastern Washington University that meet the rules and guidelines established by the higher education coordinating board's program approval process may serve students at the Riverpoint Higher Education Park. The legislature intends to streamline the program planning and approval process in Spokane by eliminating the joint center for higher education; thereby treating the Spokane higher education community like other public higher education communities in Washington that receive program approval from the higher education coordinating board. However, the legislature encourages partnerships, collaboration, and avoidance of program duplication through regular communication among the presidents of Spokane's public and private institutions of higher education. The legislature further intends that the residential mission of Eastern Washington University in Cheney be strengthened and that Eastern Washington University focus on the excellence of its primary campus in Cheney.

In addition, the legislature finds that the Spokane intercollegiate research and technology institute is a vital and necessary element in the academic and economic future of eastern Washington. The legislature also finds that it is in the interest of the state of Washington to support and promote applied research and technology in areas of the state that, because of geographic or historic circumstances, have not developed fully balanced economies. It is the intent of the legislature that institutions of higher education and the *department of community, trade, and economic development work cooperatively with the private sector in the development and implementation of a technology transfer and integration program to promote the economic development and enhance the quality of life in eastern Washington." [1998 c 344 § 1.]

***Reviser's note:** The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

Intent—1993 c 379: "The legislature acknowledges the academic freedom of institutions of higher education, and seeks to improve their efficiency and effectiveness in carrying out their missions. By this act, the legislature intends to increase the flexibility of institutions of higher education to manage personnel, construction, purchasing, printing, and tuition." [1993 c 379 § 1.]

Additional notes found at www.leg.wa.gov

28B.10.053 Postsecondary credit for high school coursework—Master list of qualifying courses and qualifying examination scores—Dissemination of information.

(1) By December 1, 2011, and by June of each odd-numbered year thereafter, the institutions of higher education shall collaboratively develop a master list of postsecondary courses that can be fulfilled by taking the advanced placement, international baccalaureate, or other recognized college-level proficiency examinations, including but not limited to examinations by a national multidisciplinary science, technology, engineering, and mathematics program, and meeting the qualifying examination score or demonstrated competencies for lower division general education requirements or postsecondary professional technical requirements. The master list of postsecondary courses fulfilled by proficiency examinations or demonstrated competencies are those that fulfill lower division general education requirements or career and technical education requirements and qualify for postsecondary credit. From the master list, each institution shall create and publish a list of its courses that can be satisfied by successful proficiency examination scores or demonstrated com-

petencies for lower division general education requirements or postsecondary professional technical requirements. The qualifying examination scores and demonstrated competencies shall be included in the published list. The requirements to develop a master list under this section do not apply if an institution has a clearly published policy of awarding credit for the advanced placement, international baccalaureate, or other recognized college-level placement exams and does not require those credits to meet specific course requirements but generally applies those credits towards degree requirements.

(2) To the maximum extent possible, institutions of higher education shall agree on examination qualifying scores and demonstrated competencies for the credits or courses under subsection (3) of this section, with scores equivalent to qualified or well-qualified. Nothing in this subsection shall prevent an institution of higher education from adopting policies using higher scores for additional purposes.

(3) Each institution of higher education, in designing its certificate, technical degree program, two-year academic transfer program, or first-year student and sophomore courses of a baccalaureate program or baccalaureate degree, must recognize the equivalencies of at least one year of course credit and maximize the application of the credits toward lower division general education requirements that can be earned through successfully demonstrating proficiency on examinations, including but not limited to advanced placement and international baccalaureate examinations. The successful completion of the examination and the award of credit shall be noted on the student's college transcript.

(4) Each institution of higher education must clearly include in its admissions materials and on its web site the credits or the institution's list of postsecondary courses that can be fulfilled by proficiency examinations or demonstrated competencies and the agreed-upon examination scores and demonstrated competencies that qualify for postsecondary credit. Each institution must provide the information to the student achievement council and state board for community and technical colleges in a form that the superintendent of public instruction is able to distribute to school districts. [2013 c 23 § 52; 2012 c 229 § 510; 2011 2nd sp.s. c 3 § 1; 2011 c 77 § 3.]

Effective date—2012 c 229 §§ 101, 117, 401, 402, 501 through 594, 601 through 609, 701 through 708, 801 through 821, 902, and 904: See note following RCW 28B.77.005.

Findings—Intent—Short title—2011 c 77: See notes following RCW 28A.230.130.

28B.10.270 Rights of Washington national guard and other military reserve students called to service. (1) A member of the Washington national guard or any other military reserve component who is a student at an institution of higher education and who is ordered for a period exceeding thirty days to either active state service, as defined in RCW 38.04.010, or to federal active military service has the following rights:

(a) With regard to courses in which the person is enrolled, the person may:

(i) Withdraw from one or more courses for which tuition and fees have been paid that are attributable to the courses. The tuition and fees must be credited to the person's account

at the institution. Any refunds are subject to the requirements of the state or federal financial aid programs of origination. In such a case, the student shall not receive credit for the courses and shall not receive a failing grade, an incomplete, or other negative annotation on the student's record, and the student's grade point average shall not be altered or affected in any manner because of action under this item;

(ii) Be given a grade of incomplete and be allowed to complete the course upon release from active duty under the institution's standard practice for completion of incompletes; or

(iii) Continue and complete the course for full credit. Class sessions the student misses due to performance of state or federal active military service must be counted as excused absences and must not be used in any way to adversely impact the student's grade or standing in the class. Any student who selects this option is not, however, automatically excused from completing assignments due during the period the student is performing state or federal active military service. A letter grade or a grade of pass must only be awarded if, in the opinion of the faculty member teaching the course, the student has completed sufficient work and has demonstrated sufficient progress toward meeting course requirements to justify the grade;

(b) To receive a refund of amounts paid for room, board, and fees attributable to the time period during which the student was serving in state or federal active military service and did not use the facilities or services for which the amounts were paid. Any refund of room, board, and fees is subject to the requirements of the state or federal financial aid programs of origination; and

(c) If the student chooses to withdraw, the student has the right to be readmitted and enrolled as a student at the institution, without penalty or redetermination of admission eligibility, within one year following release from the state or federal active military service.

(2)(a) A member of the Washington national guard or any other military reserve or guard component who is a student at an institution of higher education and who is ordered for a period of thirty days or less to either active or inactive state or federal service and as a result of that service or follow-up medical treatment for injury incurred during that service misses any class, test, examination, laboratory, or class day on which a written or oral assignment is due, or other event upon which a course grade or evaluation is based, is entitled to make up the class, test, examination, laboratory, presentation, or event without prejudice to the final course grade or evaluation. The makeup must be scheduled after the member's return from service and after a reasonable time for the student to prepare for the test, examination, laboratory, presentation, or event.

(b) Class sessions a student misses due to performance of state or federal active or inactive military service must be counted as excused absences and may not be used in any way to adversely impact the student's grade or standing in class.

(c) If the faculty member teaching the course determines that the student has completed sufficient work and has demonstrated sufficient progress toward meeting course requirements to justify the grade without making up the class, test, examination, presentation, or other event, the grade may be awarded without the makeup, but the missed class, test,

examination, laboratory, class day, presentation, or other event must not be used in any way to adversely impact the student's grade or standing in the class.

(3) The protections in this section may be invoked as follows:

(a) The person, or an appropriate officer from the military organization in which the person will be serving, must give written notice that the person is being, or has been, ordered to qualifying service; and

(b) Upon written request from the institution, the person shall provide written verification of service.

(4) This section provides minimum protections for students. Nothing in this section prevents institutions of higher education from providing additional options or protections to students who are ordered to state or federal active military service. [2013 c 271 § 1; 2004 c 161 § 1.]

Effective date—2004 c 161: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 26, 2004]." [2004 c 161 § 7.]

28B.10.925 Transfer of ownership of institution-owned vessel—Review of vessel's physical condition. (1) Prior to transferring ownership of an institution-owned vessel, an institution of higher education shall conduct a thorough review of the physical condition of the vessel, the vessel's operating capability, and any containers and other materials that are not fixed to the vessel.

(2) If the institution of higher education determines that the vessel is in a state of advanced deterioration or poses a reasonably imminent threat to human health or safety, including a threat of environmental contamination, the institution of higher education may: (a) Not transfer the vessel until the conditions identified under this subsection have been corrected; or (b) permanently dispose of the vessel by landfill, deconstruction, or other related method. [2013 c 291 § 25.]

28B.10.926 Transfer of ownership of institution-owned vessel—Further requirements. (1) Following the inspection required under RCW 28B.10.925 and prior to transferring ownership of an institution-owned vessel, the institution of higher education shall obtain the following from the transferee:

(a) The purposes for which the transferee intends to use the vessel; and

(b) Information demonstrating the prospective owner's intent to obtain legal moorage following the transfer, in the manner determined by the institution of higher education.

(2)(a) The institution of higher education shall remove any containers or other materials that are not fixed to the vessel and contain hazardous substances, as defined under RCW 70.105D.020.

(b) However, the institution of higher education may transfer a vessel with:

(i) Those containers or materials described under (a) of this subsection where the transferee demonstrates to the institution of higher education's satisfaction that the container's or material's presence is consistent with the anticipated use of the vessel; and

(ii) A reasonable amount of fuel as determined by the institution of higher education, based on factors including the

vessel's size, condition, and anticipated use of the vessel including initial destination following transfer.

(c) The institution of higher education may consult with the department of ecology in carrying out the requirements of this subsection.

(3) Prior to sale, and unless the vessel has a title or valid marine document, the institution of higher education is required to apply for a certificate of title for the vessel under RCW 88.02.510 and register the vessel under RCW 88.02.550. [2013 c 291 § 26.]

Chapter 28B.15 RCW COLLEGE AND UNIVERSITY FEES

Sections

28B.15.067	Tuition fees—Established.
28B.15.069	Building fees—Services and activities fees—Other fees.
28B.15.102	Institutional tuition increases—Financial aid offset—Reports—Resident first-year undergraduate enrollment at the University of Washington, Seattle campus.
28B.15.190	Student advisory committees—Consideration of student access and success in educational programs—Advising and assisting administration of four-year institutions of higher education.
28B.15.210	Fees—University of Washington—Disposition of building fees.
28B.15.310	Fees—Washington State University—Disposition of building fees.
28B.15.395	Waiver of tuition and fees for wrongly convicted persons and their children.
28B.15.624	Early course registration period for eligible veterans and national guard members. (<i>Expires August 1, 2022.</i>)

28B.15.067 Tuition fees—Established. (1) Tuition fees shall be established under the provisions of this chapter.

(2) Beginning in the 2011-12 academic year, reductions or increases in full-time tuition fees shall be as provided in the omnibus appropriations act for resident undergraduate students at community and technical colleges. The governing boards of the state universities, regional universities, and The Evergreen State College; and the state board for community and technical colleges may reduce or increase full-time tuition fees for all students other than resident undergraduates, including nonresident students, summer school students, and students in other self-supporting degree programs. Percentage increases in full-time tuition may exceed the fiscal growth factor. Except during the 2013-2015 fiscal biennium, the state board for community and technical colleges may pilot or institute differential tuition models. The board may define scale, scope, and rationale for the models.

(3)(a) Beginning with the 2011-12 academic year and through the end of the 2014-15 academic year, the governing boards of the state universities, the regional universities, and The Evergreen State College may reduce or increase full-time tuition fees for all students, including summer school students and students in other self-supporting degree programs. Percentage increases in full-time tuition fees may exceed the fiscal growth factor. Reductions or increases may be made for all or portions of an institution's programs, campuses, courses, or students; however, during the 2013-2015 fiscal biennium, reductions or increases in tuition must be uniform among resident undergraduate students.

(b) Prior to reducing or increasing tuition for each academic year, the governing boards of the state universities, the regional universities, and The Evergreen State College shall

consult with existing student associations or organizations with student undergraduate and graduate representatives regarding the impacts of potential tuition increases. Each governing board shall make public its proposal for tuition and fee increases twenty-one days before the governing board of the institution considers adoption and allow opportunity for public comment. However, the requirement to make public a proposal for tuition and fee increases twenty-one days before the governing board considers adoption shall not apply if the omnibus appropriations act has not passed the legislature by May 15th. Governing boards shall be required to provide data regarding the percentage of students receiving financial aid, the sources of aid, and the percentage of total costs of attendance paid for by aid.

(c) Prior to reducing or increasing tuition for each academic year, the state board for community and technical college system shall consult with existing student associations or organizations with undergraduate student representation regarding the impacts of potential tuition increases. The state board for community and technical colleges shall provide data regarding the percentage of students receiving financial aid, the sources of aid, and the percentage of total costs of attendance paid for by aid.

(4) Beginning with the 2015-16 academic year through the 2018-19 academic year, the governing boards of the state universities, regional universities, and The Evergreen State College may set tuition for resident undergraduates as follows:

(a) If state funding for a college or university falls below the state funding provided in the operating budget for fiscal year 2011, the governing board may increase tuition up to the limits set in (d) of this subsection, reduce enrollments, or both;

(b) If state funding for a college or university is at least at the level of state funding provided in the operating budget for fiscal year 2011, the governing board may increase tuition up to the limits set in (d) of this subsection and shall continue to at least maintain the actual enrollment levels for fiscal year 2011 or increase enrollments as required in the omnibus appropriations act;

(c) If state funding is increased so that combined with resident undergraduate tuition the sixtieth percentile of the total per-student funding at similar public institutions of higher education in the global challenge states under RCW 28B.15.068 is exceeded, the governing board shall decrease tuition by the amount needed for the total per-student funding to be at the sixtieth percentile under RCW 28B.15.068; and

(d) The amount of tuition set by the governing board for an institution under this subsection (4) may not exceed the sixtieth percentile of the resident undergraduate tuition of similar public institutions of higher education in the global challenge states.

(5) The tuition fees established under this chapter shall not apply to high school students enrolling in participating institutions of higher education under RCW 28A.600.300 through 28A.600.400.

(6) The tuition fees established under this chapter shall not apply to eligible students enrolling in a dropout reengagement program through an interlocal agreement between a school district and a community or technical college under RCW 28A.175.100 through 28A.175.110.

(7) The tuition fees established under this chapter shall not apply to eligible students enrolling in a community or technical college participating in the pilot program under RCW 28B.50.534 for the purpose of obtaining a high school diploma.

(8) Beginning in the 2019-20 academic year, reductions or increases in full-time tuition fees for resident undergraduates at four-year institutions of higher education shall be as provided in the omnibus appropriations act.

(9) The legislative advisory committee to the committee on advanced tuition payment established in RCW 28B.95.170 shall:

(a) Review the impact of differential tuition rates on the funded status and future unit price of the Washington advanced college tuition payment program; and

(b) No later than January 14, 2013, make a recommendation to the appropriate policy and fiscal committees of the legislature regarding how differential tuition should be addressed in order to maintain the ongoing solvency of the Washington advanced college tuition payment program. [2013 2nd sp.s. c 4 § 958. Prior: 2012 2nd sp.s. c 7 § 914; 2012 c 228 § 6; 2011 1st sp.s. c 10 § 3; 2010 c 20 § 7; 2009 c 574 § 1; 2007 c 355 § 7; 2006 c 161 § 6; 2003 c 232 § 4; 1997 c 403 § 1; 1996 c 212 § 1; 1995 1st sp.s. c 9 § 4; 1992 c 231 § 4; 1990 1st ex.s. c 9 § 413; 1986 c 42 § 1; 1985 c 390 § 15; 1982 1st ex.s. c 37 § 15; 1981 c 257 § 2.]

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

Effective date—2012 2nd sp.s. c 7: See note following RCW 2.68.020.

Findings—Intent—Short title—2011 1st sp.s. c 10: See notes following RCW 28B.15.031.

Intent—2010 c 20: See note following RCW 28A.175.100.

Finding—Intent—2007 c 355: See note following RCW 28B.50.534.

Effective date—2006 c 161: See note following RCW 49.04.160.

Finding—Intent—2003 c 232: See note following RCW 28B.15.031.

Intent—Purpose—Effective date—1995 1st sp.s. c 9: See notes following RCW 28B.15.031.

Finding—Severability—1990 1st ex.s. c 9: See notes following RCW 28A.225.220.

Additional notes found at www.leg.wa.gov

28B.15.069 Building fees—Services and activities fees—Other fees. (1) The building fee for each academic year shall be a percentage of total tuition fees. This percentage shall be calculated by the office of financial management and be based on the actual percentage the building fee is of total tuition for each tuition category in the 1994-95 academic year, rounded up to the nearest half percent.

(2) The governing boards of each institution of higher education, except for the technical colleges, shall charge to and collect from each student a services and activities fee. A governing board may increase the existing fee annually, consistent with budgeting procedures set forth in RCW 28B.15.045, by a percentage not to exceed the annual percentage increase in student tuition fees for resident undergraduate students: PROVIDED, That such percentage increase shall not apply to that portion of the services and activities fee previously committed to the repayment of bonded debt. These rate adjustments may exceed the fiscal growth factor. For the 2013-2015 fiscal biennium, each governing board is authorized to increase the services and activi-

ties fees by amounts judged reasonable and necessary by the services and activities fee committee and the governing board consistent with the budgeting procedures set forth in RCW 28B.15.045. The services and activities fee committee provided for in RCW 28B.15.045 may initiate a request to the governing board for a fee increase.

(3) Tuition and services and activities fees consistent with subsection (2) of this section shall be set by the state board for community and technical colleges for community college summer school students unless the community college charges fees in accordance with RCW 28B.15.515.

(4) Subject to the limitations of RCW 28B.15.910, each governing board of a community college may charge such fees for ungraded courses, noncredit courses, community services courses, and self-supporting courses as it, in its discretion, may determine, consistent with the rules of the state board for community and technical colleges.

(5) The governing board of a college offering an applied baccalaureate degree program under RCW 28B.50.810 may charge tuition fees for those courses above the associate degree level at rates consistent with rules adopted by the state board for community and technical colleges, not to exceed tuition fee rates at the regional universities. [2013 2nd sp.s. c 4 § 959; 2012 c 229 § 701; 2005 c 258 § 10; 2003 c 232 § 5; 1997 c 403 § 2; 1995 1st sp.s. c 9 § 5.]

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

Effective date—2012 c 229 §§ 101, 117, 401, 402, 501 through 594, 601 through 609, 701 through 708, 801 through 821, 902, and 904: See note following RCW 28B.77.005.

Findings—Intent—2005 c 258: See note following RCW 28B.45.014.

Finding—Intent—2003 c 232: See note following RCW 28B.15.031.

Intent—Purpose—Effective date—1995 1st sp.s. c 9: See notes following RCW 28B.15.031.

28B.15.102 Institutional tuition increases—Financial aid offset—Reports—Resident first-year undergraduate enrollment at the University of Washington, Seattle campus. (1) Beginning with the 2011-12 academic year, any four-year institution of higher education that increases tuition beyond levels assumed in the omnibus appropriations act is subject to the financial aid requirements included in this section and shall remain subject to these requirements through the 2018-19 academic year.

(2) Beginning July 1, 2011, each four-year institution of higher education that raises tuition beyond levels assumed in the omnibus appropriations act shall, in a manner consistent with the goal of enhancing the quality of and access to their institutions, provide financial aid to offset full-time tuition fees for resident undergraduate students as follows:

(a) Subtract from the full-time tuition fees an amount that is equal to the maximum amount of a state need grant award that would be given to an eligible student with a family income at or below fifty percent of the state's median family income as determined by the student achievement council; and

(b) Offset the remainder as follows:

(i) Students with demonstrated need whose family incomes are at or below fifty percent of the state's median family income shall receive financial aid equal to one hundred percent of the remainder if an institution's full-time

tuition fees for resident undergraduate students is five percent or greater of the state's median family income for a family of four as provided by the student achievement council;

(ii) Students with demonstrated need whose family incomes are greater than fifty percent and no more than seventy percent of the state's median family income shall receive financial aid equal to seventy-five percent of the remainder if an institution's full-time tuition fees for resident undergraduate students is ten percent or greater of the state's median family income for a family of four as provided by the student achievement council;

(iii) Students with demonstrated need whose family incomes exceed seventy percent and are less than one hundred percent of the state's median family income shall receive financial aid equal to fifty percent of the remainder if an institution's full-time tuition fees for resident undergraduate students is fifteen percent or greater of the state's median family income for a family of four as provided by the student achievement council; and

(iv) Students with demonstrated need whose family incomes are at or exceed one hundred percent and are no more than one hundred twenty-five percent of the state's median family income shall receive financial aid equal to twenty-five percent of the remainder if an institution's full-time tuition fees for resident undergraduate students is twenty percent or greater of the state's median family income for a family of four as provided by the student achievement council.

(3) The financial aid required in subsection (2) of this section shall:

(a) Be reduced by the amount of other financial aid awards, not including the state need grant;

(b) Be prorated based on credit load; and

(c) Only be provided to students up to demonstrated need.

(4) Financial aid sources and methods may be:

(a) Tuition revenue or locally held funds;

(b) Tuition waivers created by a four-year institution of higher education for the specific purpose of serving low and middle-income students; or

(c) Local financial aid programs.

(5) Use of tuition waivers as specified in subsection (4)(b) of this section shall not be included in determining total state tuition waiver authority as defined in RCW 28B.15.910.

(6) By August 15, 2012, and August 15th every year thereafter, four-year institutions of higher education shall report to the governor and relevant committees of the legislature on the effectiveness of the various sources and methods of financial aid in mitigating tuition increases. A key purpose of these reports is to provide information regarding the results of the decision to grant tuition-setting authority to the four-year institutions of higher education and whether tuition setting authority should continue to be granted to the institutions or revert back to the legislature after consideration of the impacts on students, including educational access, affordability, and quality. These reports shall include:

(a) The amount of additional financial aid provided to middle-income and low-income students with demonstrated need in the aggregate and per student;

(b) An itemization of the sources and methods of financial aid provided by the four-year institution of higher education in the aggregate and per student;

(c) An analysis of the combined impact of federal tuition tax credits and financial aid provided by the institution of higher education on the net cost to students and their families resulting from tuition increases;

(d) In cases where tuition increases are greater than those assumed in the omnibus appropriations act at any four-year institution of higher education, the institution must include an explanation in its report of why this increase was necessary and how the institution will mitigate the effects of the increase. The institution must include in this section of its report a plan and specific timelines; and

(e) An analysis of changes in resident student enrollment patterns, participation rates, graduation rates, and debt load, by race and ethnicity, gender, state and county of origin, age, and socioeconomic status, and a plan to mitigate effects of reduced diversity due to tuition increases. This analysis shall include disaggregated data for resident students in the following income brackets:

(i) Up to seventy percent of the median family income;

(ii) Between seventy-one percent and one hundred twenty-five percent of the median family income; and

(iii) Above one hundred twenty-five percent of the median family income.

(7) Beginning in the 2012-13 academic year, the University of Washington shall enroll during each academic year at least the same number of resident first-year undergraduate students at the Seattle campus, as defined in RCW 28B.15.012, as enrolled during the 2009-10 academic year. This requirement shall not apply to nonresident undergraduate and graduate and professional students. [2013 c 23 § 53; 2012 c 229 § 526; 2011 1st sp.s. c 10 § 6.]

Effective date—2012 c 229 §§ 101, 117, 401, 402, 501 through 594, 601 through 609, 701 through 708, 801 through 821, 902, and 904: See note following RCW 28B.77.005.

Findings—Intent—Short title—2011 1st sp.s. c 10: See notes following RCW 28B.15.031.

28B.15.190 Student advisory committees—Consideration of student access and success in educational programs—Advising and assisting administration of four-year institutions of higher education. (1) One student advisory committee may be formed at each four-year institution of higher education by that institution's recognized student government organization for the purpose of advising and assisting the administration of that four-year institution of higher education on issues that directly affect students' ability to access and succeed in their educational programs. Issues that the student advisory committee may consider include:

(a) The institution's annual budget;

(b) Tuition and fee levels;

(c) Financial aid policies;

(d) Long-range budget priorities and allocation planning; and

(e) Admission and enrollment policies.

(2) Members of a student advisory committee may be appointed in a manner that is consistent with policies adopted by the recognized student government organizations at each

institution. If there is both an undergraduate and graduate recognized student government organization at one institution, members of the student advisory committee may be appointed in a manner consistent with policies adopted by both organizations.

(3) The administration of each four-year institution of higher education must: (a) Make readily available all non-confidential information, documents, and reports requested by the student advisory committee and that are necessary for the committee to provide informed recommendations; and (b) provide the opportunity to present recommendations to the boards of regents or trustees before final decisions of the administration that relate to the issues described in subsection (1) of this section.

(4) A student advisory committee must: (a) Make reasonable efforts to solicit feedback from students regarding the issues described in subsection (1) of this section and matters that are of general interest and impact students; and (b) take reasonable steps to keep students informed of deliberations and actions of the student advisory committee. [2013 c 218 § 4.]

28B.15.210 Fees—University of Washington—Disposition of building fees. Within thirty-five days from the date of collection thereof, all building fees at the University of Washington, including building fees to be charged students registering in the schools of medicine and dentistry, shall be paid into the state treasury and credited as follows:

One-half or such larger portion as may be necessary to prevent a default in the payments required to be made out of the bond retirement fund to the "University of Washington bond retirement fund" and the remainder thereof to the "University of Washington building account." The sum so credited to the University of Washington building account shall be used exclusively for the purpose of erecting, altering, maintaining, equipping, or furnishing buildings, and for certificates of participation under chapter 39.94 RCW, except for any sums transferred as authorized in RCW 28B.20.725(3). The sum so credited to the University of Washington bond retirement fund shall be used for the payment of principal of and interest on bonds outstanding as provided by chapter 28B.20 RCW except for any sums transferred as authorized in RCW 28B.20.725(5). During the 2013-2015 biennium, sums credited to the University of Washington building account shall also be used for routine facility maintenance, utility costs, and facility condition assessments. [2013 2nd sp.s. c 19 § 7026; 2011 1st sp.s. c 48 § 7022. Prior: 2009 c 499 § 1; 2009 c 497 § 6019; 1985 c 390 § 20; 1969 ex.s. c 223 § 28B.15.210; prior: 1963 c 224 § 1; 1959 c 193 § 7; 1957 c 254 § 6; 1947 c 243 § 2; 1945 c 187 § 2; 1939 c 156 § 1; 1933 c 169 § 2; 1921 c 139 § 2; 1919 c 63 § 2; 1915 c 66 § 3; Rem. Supp. 1947 § 4547. Formerly RCW 28.77.040.]

Effective date—2013 2nd sp.s. c 19: See note following RCW 43.34.080.

Effective date—2011 1st sp.s. c 48: See note following RCW 39.35B.050.

Effective date—2009 c 497: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 15, 2009], except for sections 6020, 6021, and 6024 through 6027 of this act which take effect July 1, 2009." [2009 c 497 § 6055.]

28B.15.310 Fees—Washington State University—Disposition of building fees. Within thirty-five days from the date of collection thereof, all building fees shall be paid and credited as follows: To the Washington State University bond retirement fund, one-half or such larger portion as may be necessary to prevent a default in the payments required to be made out of such bond retirement fund; and the remainder thereof to the Washington State University building account.

The sum so credited to the Washington State University building account shall be expended by the board of regents for buildings, equipment, or maintenance on the campus of Washington State University as may be deemed most advisable and for the best interests of the university, and for certificates of participation under chapter 39.94 RCW, except for any sums transferred as authorized by law. During the 2011-2013 biennium, sums credited to the Washington State University building account shall also be used for routine facility maintenance and utility costs. During the 2013-2015 biennium, sums credited to the Washington State University building account shall also be used for routine facility maintenance, utility costs, and facility condition assessments. Expenditures so made shall be accounted for in accordance with existing law and shall not be expended until appropriated by the legislature.

The sum so credited to the Washington State University bond retirement fund shall be used to pay and secure the payment of the principal of and interest on building bonds issued by the university, except for any sums which may be transferred out of such fund as authorized by law. [2013 2nd sp.s. c 19 § 7028; 2011 1st sp.s. c 48 § 7023. Prior: 2009 c 499 § 2; 2009 c 497 § 6020; 1985 c 390 § 22; 1969 ex.s. c 223 § 28B.15.310; prior: 1961 ex.s. c 11 § 2; 1935 c 185 § 1; 1921 c 164 § 2; RRS § 4570. Formerly RCW 28.80.040.]

Effective date—2013 2nd sp.s. c 19: See note following RCW 43.34.080.

Effective date—2011 1st sp.s. c 48: See note following RCW 39.35B.050.

Effective date—2009 c 497: See note following RCW 28B.15.210.

Chapter not to repeal, override, or limit other statutes or actions: RCW 28B.31.100.

28B.15.395 Waiver of tuition and fees for wrongly convicted persons and their children. (1) Subject to the conditions in subsection (2) of this section and the limitations in RCW 28B.15.910, the governing boards of the state universities, the regional universities, The Evergreen State College, and the community colleges, must waive all tuition and fees for the following persons:

(a) A wrongly convicted person; and

(b) Any child or stepchild of a wrongly convicted person who was born or became the stepchild of, or was adopted by, the wrongly convicted person before compensation is awarded under RCW 4.100.060.

(2) The following conditions apply to waivers under subsection (1) of this section:

(a) A wrongly convicted person must be a Washington domiciliary to be eligible for the tuition waiver.

(b) A child must be a Washington domiciliary ages seventeen through twenty-six years to be eligible for the tuition waiver. A child's marital status does not affect eligibility.

(c) Each recipient's continued participation is subject to the school's satisfactory progress policy.

(d) Tuition waivers for graduate students are not required for those who qualify under subsection (1) of this section but are encouraged.

(e) Recipients who receive a waiver under subsection (1) of this section may attend full time or part time. Total credits earned using the waiver may not exceed two hundred quarter credits, or the equivalent of semester credits.

(3) Private vocational schools and private higher education institutions are encouraged to provide waivers consistent with the terms of this section.

(4) For the purposes of this section:

(a) "Child" means a biological child, stepchild, or adopted child who was born of, became the stepchild of, or was adopted by a wrongly convicted person before compensation is awarded under RCW 4.100.060.

(b) "Fees" includes all assessments for costs incurred as a condition to a student's full participation in coursework and related activities at an institution of higher education.

(c) "Washington domiciliary" means a person whose true, fixed, and permanent house and place of habitation is the state of Washington. In ascertaining whether a wrongly convicted person or child is domiciled in the state of Washington, public institutions of higher education must, to the fullest extent possible, rely upon the standards provided in RCW 28B.15.013.

(d) "Wrongly convicted person" means a Washington domiciliary who was awarded damages under RCW 4.100.060. [2013 c 175 § 11.]

28B.15.624 Early course registration period for eligible veterans and national guard members. (Expires August 1, 2022.) (1) Beginning in the 2013-14 academic year, institutions of higher education that offer an early course registration period for any segment of the student population must have a process in place to offer students who are eligible veterans or national guard members early course registration as follows:

(a) New students who are eligible veterans or national guard members and who have completed all of their admission processes must be offered an early course registration period; and

(b) Continuing and returning former students who are eligible veterans or national guard members and who have met current enrollment requirements must be offered early course registration among continuing students with the same level of class standing or credit as determined by the attending institution and according to institutional policies.

(2) For the purposes of this section "eligible veterans or national guard members" has the definition in RCW 28B.15.621.

(3) This section expires August 1, 2022. [2013 c 67 § 1.]

Chapter 28B.20 RCW

UNIVERSITY OF WASHINGTON

Sections

28B.20.476 Sea grant program—Geoduck aquaculture research account.
28B.20.725 Additional powers of board—Issuance of bonds, investments, transfer of funds, etc.

28B.20.476 Sea grant program—Geoduck aquaculture research account. The geoduck aquaculture research account is created in the custody of the state treasurer. All receipts from any legislative appropriations, the aquaculture industry, or any other private or public source directed to the account must be deposited in the account. Expenditures from the account may only be used by the sea grant program for the geoduck research projects identified by RCW 28B.20.475. Only the president of the University of Washington or the president's designee may authorize expenditures from the account. The account is subject to the allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. During the 2013-2015 fiscal biennium, amounts available in the geoduck aquaculture research account may also be appropriated for the sea grant program at the University of Washington to conduct research examining the possible negative and positive effects of evolving shellfish aquaculture techniques and practices on Washington's economy and marine ecosystems. [2013 2nd sp.s. c 4 § 960; 2007 c 216 § 2.]

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

28B.20.725 Additional powers of board—Issuance of bonds, investments, transfer of funds, etc. The board is hereby empowered:

- (1) To reserve the right to issue bonds later on a parity with any bonds being issued;
- (2) To authorize the investing of moneys in the bond retirement fund and any reserve account therein;
- (3) To authorize the transfer of money from the University of Washington building account to the bond retirement fund when necessary to prevent a default in the payments required to be made out of such fund;
- (4) To create a reserve account or accounts in the bond retirement fund to secure the payment of the principal of and interest on any bonds;
- (5) To authorize the transfer to the University of Washington building account of any money on deposit in the bond retirement fund in excess of debt service for a period of three years from the date of such transfer on all outstanding bonds payable out of such fund. However, during the 2011-2013 fiscal biennium, the legislature may transfer to the University of Washington building account moneys that are in excess of the debt service due within one year of the date of transfer on all outstanding bonds payable out of the bond retirement fund. However, during the 2013-2015 fiscal biennium, the legislature may transfer to the University of Washington building account moneys that are in excess of the debt service due within the 2013-2015 fiscal biennium from the date of such transfer on all outstanding bonds payable out of the bond retirement fund. [2013 2nd sp.s. c 19 § 7027; 2011 1st sp.s. c 48 § 7020; 2010 1st sp.s. c 36 § 6008; 1969 ex.s. c 223 § 28B.20.725. Prior: 1959 c 193 § 6. Formerly RCW 28.77.545.]

Effective date—2013 2nd sp.s. c 19: See note following RCW 43.34.080.

Effective date—2011 1st sp.s. c 48: See note following RCW 39.35B.050.

Effective date—2010 1st sp.s. c 36: See note following RCW 43.155.050.

[2013 RCW Supp—page 320]

1977 Bond act for the refunding of outstanding limited obligation revenue bonds of institutions of higher education, as affecting: RCW 28B.14C.080 through 28B.14C.130.

Chapter 28B.30 RCW WASHINGTON STATE UNIVERSITY

Sections

28B.30.750 Additional powers of board—Issuance of bonds, investments, transfer of funds, etc.

28B.30.750 Additional powers of board—Issuance of bonds, investments, transfer of funds, etc. The board is hereby empowered:

- (1) To reserve the right to issue bonds later on a parity with any bonds being issued;
- (2) To authorize the investing of moneys in the bond retirement fund and any reserve account therein;
- (3) To authorize the transfer of money from the Washington State University building account to the bond retirement fund when necessary to prevent a default in the payments required to be made out of such fund;
- (4) To create a reserve account or accounts in the bond retirement fund to secure the payment of the principal of and interest on any bonds;
- (5) To authorize the transfer to the Washington State University building account of any money on deposit in the bond retirement fund in excess of debt service for a period of three years from the date of such transfer on all outstanding bonds payable out of such fund. However, during the 2011-2013 fiscal biennium, the legislature may transfer to the Washington State University building account moneys that are in excess of the debt service due within one year of the date of transfer on all outstanding bonds payable out of the bond retirement fund. However, during the 2013-2015 fiscal biennium, the legislature may transfer to the Washington State University building account moneys that are in excess of the debt service due within the 2013-2015 fiscal biennium from the date of such transfer on all outstanding bonds payable out of the bond retirement fund. [2013 2nd sp.s. c 19 § 7029; 2011 1st sp.s. c 48 § 7021; 2010 1st sp.s. c 36 § 6009; 1969 ex.s. c 223 § 28B.30.750. Prior: 1961 ex.s. c 12 § 6. Formerly RCW 28.80.550.]

Effective date—2013 2nd sp.s. c 19: See note following RCW 43.34.080.

Effective date—2011 1st sp.s. c 48: See note following RCW 39.35B.050.

Effective date—2010 1st sp.s. c 36: See note following RCW 43.155.050.

Chapter not to repeal, override, or limit other statutes or actions: RCW 28B.31.100.

Chapter 28B.35 RCW REGIONAL UNIVERSITIES

Sections

28B.35.202 Educational specialist degrees.
28B.35.216 Doctorate level degrees in audiology.
28B.35.370 Disposition of building fees and normal school fund revenues—Bond payments—Capital projects accounts.

28B.35.202 Educational specialist degrees. The boards of trustees of Central Washington University, Eastern

Washington University, and Western Washington University may offer educational specialist degrees. [2013 c 296 § 1; 2012 c 229 § 810; 2011 c 136 § 1.]

Effective date—2012 c 229 §§ 101, 117, 401, 402, 501 through 594, 601 through 609, 701 through 708, 801 through 821, 902, and 904: See note following RCW 28B.77.005.

28B.35.216 Doctorate level degrees in audiology. The board of trustees of Western Washington University may offer applied, but not research, doctorate level degrees in audiology. [2013 c 281 § 1.]

28B.35.370 Disposition of building fees and normal school fund revenues—Bond payments—Capital projects accounts. Within thirty-five days from the date of collection thereof all building fees of each regional university and The Evergreen State College shall be paid into the state treasury and these together with such normal school fund revenues as provided in RCW 28B.35.751 as are received by the state treasury shall be credited as follows:

(1) On or before June 30th of each year the board of trustees of each regional university and The Evergreen State College, if issuing bonds payable out of its building fees and above described normal school fund revenues, shall certify to the state treasurer the amounts required in the ensuing twelve months to pay and secure the payment of the principal of and interest on such bonds. The amounts so certified by each regional university and The Evergreen State College shall be a prior lien and charge against all building fees and above described normal school fund revenues of such institution. The state treasurer shall thereupon deposit the amounts so certified in the Eastern Washington University capital projects account, the Central Washington University capital projects account, the Western Washington University capital projects account, or The Evergreen State College capital projects account respectively, which accounts are hereby created in the state treasury. The amounts deposited in the respective capital projects accounts shall be used to pay and secure the payment of the principal of and interest on the building bonds issued by such regional universities and The Evergreen State College as authorized by law. If in any twelve month period it shall appear that the amount certified by any such board of trustees is insufficient to pay and secure the payment of the principal of and interest on the outstanding building and above described normal school fund revenue bonds of its institution, the state treasurer shall notify the board of trustees and such board shall adjust its certificate so that all requirements of moneys to pay and secure the payment of the principal of and interest on all such bonds then outstanding shall be fully met at all times.

(2) All normal school fund revenue pursuant to RCW 28B.35.751 shall be deposited in the Eastern Washington University capital projects account, the Central Washington University capital projects account, the Western Washington University capital projects account, or The Evergreen State College capital projects account respectively, which accounts are hereby created in the state treasury. The sums deposited in the respective capital projects accounts shall be appropriated and expended to pay and secure the payment of the principal of and interest on bonds payable out of the building fees and normal school revenue and for the construction, recon-

struction, erection, equipping, maintenance, demolition and major alteration of buildings and other capital assets, and the acquisition of sites, rights-of-way, easements, improvements or appurtenances in relation thereto except for any sums transferred therefrom as authorized by law. During the 2011-2013 biennium, sums in the respective capital accounts shall also be used for routine facility maintenance and utility costs. During the 2013-2015 biennium, sums in the respective capital accounts shall also be used for routine facility maintenance, utility costs, and facility condition assessments.

(3) Funds available in the respective capital projects accounts may also be used for certificates of participation under chapter 39.94 RCW. [2013 2nd sp.s. c 19 § 7030; 2011 1st sp.s. c 48 § 7024. Prior: 2009 c 499 § 5; 2009 c 497 § 6021; 1991 sp.s. c 13 § 49; prior: 1985 c 390 § 47; 1985 c 57 § 15; 1977 ex.s. c 169 § 79; 1969 ex.s. c 223 § 28B.40.370; prior: 1967 c 47 §§ 11, 14; 1965 c 76 § 2; 1961 ex.s. c 14 § 5; 1961 ex.s. c 13 § 4. Formerly RCW 28B.40.370; 28.81.085; 28.81.540.]

Effective date—2013 2nd sp.s. c 19: See note following RCW 43.34.080.

Effective date—2011 1st sp.s. c 48: See note following RCW 39.35B.050.

Effective date—2009 c 497: See note following RCW 28B.15.210.

Additional notes found at www.leg.wa.gov

Chapter 28B.40 RCW THE EVERGREEN STATE COLLEGE

Sections

28B.40.202 Educational specialist degrees.

28B.40.202 Educational specialist degrees. The board of trustees of The Evergreen State College may offer educational specialist degrees. [2013 c 296 § 2.]

Chapter 28B.45 RCW BRANCH CAMPUSES

Sections

28B.45.020 University of Washington Tacoma—University of Washington Bothell.

28B.45.030 Washington State University—Tri-Cities area.

28B.45.040 Washington State University Vancouver.

28B.45.020 University of Washington Tacoma—University of Washington Bothell. (1) The University of Washington is responsible for ensuring the expansion of baccalaureate and graduate educational programs in the central Puget Sound area under rules or guidelines adopted by the student achievement council and in accordance with proportionality agreements emphasizing access for transfer students developed with the state board for community and technical colleges. The University of Washington shall meet that responsibility through the operation of at least two branch campuses. One branch campus shall be located in the Tacoma area. Another branch campus shall be collocated with Cascadia Community College in the Bothell-Woodinville area.

(2) At the University of Washington Tacoma, a top priority is expansion of upper division capacity for transfer stu-

dents and graduate capacity and programs. Beginning in the fall of 2006, the campus may offer lower division courses linked to specific majors in fields not addressed at local community colleges. The campus shall admit lower division students through coadmission or coenrollment agreements with a community college, or through direct transfer for students who have accumulated approximately one year of transferable college credits. In addition to offering lower division courses linked to specific majors as addressed above, the campus may also directly admit first-year students and sophomores.

(3) At the University of Washington Bothell, a top priority is expansion of upper division capacity for transfer students and graduate capacity and programs. The campus shall also seek additional opportunities to collaborate with and maximize its colocation with Cascadia Community College. Beginning in the fall of 2006, the campus may offer lower division courses linked to specific majors in fields not addressed at local community colleges. The campus may admit lower division students through coadmission or coenrollment agreements with a community college, or through direct transfer for students who have accumulated approximately one year of transferable college credits. In addition to offering lower division courses linked to specific majors as addressed above, the campus may also directly admit first-year students and sophomores. [2013 c 23 § 54; 2012 c 229 § 532; 2005 c 258 § 3; 1994 c 217 § 3; 1989 1st ex.s. c 7 § 3.]

Effective date—2012 c 229 §§ 101, 117, 401, 402, 501 through 594, 601 through 609, 701 through 708, 801 through 821, 902, and 904: See note following RCW 28B.77.005.

Findings—Intent—2005 c 258: See note following RCW 28B.45.014.

Additional notes found at www.leg.wa.gov

28B.45.030 Washington State University—Tri-Cities area. (1) Washington State University is responsible for providing baccalaureate and graduate level higher education programs to the citizens of the Tri-Cities area, under rules or guidelines adopted by the student achievement council and in accordance with proportionality agreements emphasizing access for transfer students developed with the state board for community and technical colleges. Washington State University shall meet that responsibility through the operation of a branch campus in the Tri-Cities area. The branch campus shall replace and supersede the Tri-Cities university center. All land, facilities, equipment, and personnel of the Tri-Cities university center shall be transferred from the University of Washington to Washington State University.

(2) Beginning in the fall of 2007, the Washington State University Tri-Cities branch campus may directly admit first-year students and sophomore students. [2013 c 23 § 55; 2012 c 229 § 533; 2006 c 166 § 1; 2005 c 258 § 4; 1989 1st ex.s. c 7 § 4.]

Effective date—2012 c 229 §§ 101, 117, 401, 402, 501 through 594, 601 through 609, 701 through 708, 801 through 821, 902, and 904: See note following RCW 28B.77.005.

Findings—Intent—2005 c 258: See note following RCW 28B.45.014.

28B.45.040 Washington State University Vancouver. (1) Washington State University is responsible for providing baccalaureate and graduate level higher education programs to the citizens of the southwest Washington area, under rules

or guidelines adopted by the student achievement council and in accordance with proportionality agreements emphasizing access for transfer students developed with the state board for community and technical colleges. Washington State University shall meet that responsibility through the operation of a branch campus in the southwest Washington area.

(2) Washington State University Vancouver shall expand upper division capacity for transfer students and graduate capacity and programs and continue to collaborate with local community colleges on coadmission and coenrollment programs. In addition, beginning in the fall of 2006, the campus may admit lower division students directly. By simultaneously admitting first-year students and sophomores, increasing transfer enrollment, coadmitting transfer students, and expanding graduate and professional programs, the campus shall develop into a four-year institution serving the southwest Washington region. [2013 c 23 § 56; 2012 c 229 § 534; 2005 c 258 § 5; 1989 1st ex.s. c 7 § 5.]

Effective date—2012 c 229 §§ 101, 117, 401, 402, 501 through 594, 601 through 609, 701 through 708, 801 through 821, 902, and 904: See note following RCW 28B.77.005.

Findings—Intent—2005 c 258: See note following RCW 28B.45.014.

Chapter 28B.50 RCW COMMUNITY AND TECHNICAL COLLEGES (Formerly: Community colleges)

Sections

- 28B.50.090 College board—Powers and duties.
- 28B.50.100 Boards of trustees—Generally.
- 28B.50.278 Opportunity employment and education center—Opportunity policy work group—Report by college board.
- 28B.50.360 Construction, reconstruction, equipping, and demolition of community and technical college facilities and acquisition of property—Community and technical college capital projects account—Disposition of building fees.
- 28B.50.465 Cost-of-living increases—Academic employees.
- 28B.50.468 Cost-of-living increases—Classified employees.
- 28B.50.536 Test to earn a high school equivalency certificate—Rules—Issuance of high school equivalency certificate.
- 28B.50.805 Programs that support science, technology, engineering, and mathematics programs or career and technical education programs—Selection of colleges—Development of courses leading to a high-demand applied baccalaureate degree.

28B.50.090 College board—Powers and duties. The college board shall have general supervision and control over the state system of community and technical colleges. In addition to the other powers and duties imposed upon the college board by this chapter, the college board shall be charged with the following powers, duties and responsibilities:

(1) Review the budgets prepared by the boards of trustees, prepare a single budget for the support of the state system of community and technical colleges and adult education, and submit this budget to the governor as provided in RCW 43.88.090;

(2) Establish guidelines for the disbursement of funds; and receive and disburse such funds for adult education and maintenance and operation and capital support of the college districts in conformance with the state and district budgets, and in conformance with chapter 43.88 RCW;

(3) Ensure, through the full use of its authority:

(a) That each college district, in coordination with colleges, within a regional area, shall offer thoroughly comprehensive educational, training, and service programs to meet

the needs of both the communities and students served by combining high standards of excellence in academic transfer courses; realistic and practical courses in occupational education, both graded and ungraded; and community services of an educational, cultural, and recreational nature; and adult education, including basic skills and general, family, and workforce literacy programs and services;

(b) That each college district shall maintain an open-door policy, to the end that no student will be denied admission because of the location of the student's residence or because of the student's educational background or ability; that, insofar as is practical in the judgment of the college board, curriculum offerings will be provided to meet the educational and training needs of the community generally and the students thereof; and that all students, regardless of their differing courses of study, will be considered, known and recognized equally as members of the student body: PROVIDED, That the administrative officers of a community or technical college may deny admission to a prospective student or attendance to an enrolled student if, in their judgment, the student would not be competent to profit from the curriculum offerings of the college, or would, by his or her presence or conduct, create a disruptive atmosphere within the college not consistent with the purposes of the institution. This subsection (3)(b) shall not apply to competency, conduct, or presence associated with a disability in a person twenty-one years of age or younger attending a technical college;

(4) Prepare a comprehensive master plan for the development of community and technical college education and training in the state; and assist the office of financial management in the preparation of enrollment projections to support plans for providing adequate college facilities in all areas of the state. The master plan shall include implementation of the vision, goals, priorities, and strategies in the statewide strategic master plan for higher education under *RCW 28B.76.200 based on the community and technical college system's role and mission. The master plan shall also contain measurable performance indicators and benchmarks for gauging progress toward achieving the goals and priorities;

(5) Define and administer criteria and guidelines for the establishment of new community and technical colleges or campuses within the existing districts;

(6) Establish criteria and procedures for modifying district boundary lines and consolidating district structures to form multiple campus districts consistent with the purposes set forth in RCW 28B.50.020 as now or hereafter amended and in accordance therewith make such changes as it deems advisable;

(7) Establish minimum standards to govern the operation of the community and technical colleges with respect to:

(a) Qualifications and credentials of instructional and key administrative personnel, except as otherwise provided in the state plan for vocational education;

(b) Internal budgeting, accounting, auditing, and financial procedures as necessary to supplement the general requirements prescribed pursuant to chapter 43.88 RCW;

(c) The content of the curriculums and other educational and training programs, and the requirement for degrees and certificates awarded by the colleges;

(d) Standard admission policies;

(e) Eligibility of courses to receive state fund support; and

(f) Common student identifiers such that once a student has enrolled at any community or technical college he or she retains the same student identification upon transfer to any college district;

(8) Encourage colleges to use multiple measures to determine whether a student must enroll in a precollege course including, but not limited to, placement tests, the SAT, high school transcripts, college transcripts, or initial class performance, and require colleges to post all the available options for course placement on their web site and in their admissions materials;

(9) Establish and administer criteria and procedures for all capital construction including the establishment, installation, and expansion of facilities within the various college districts;

(10) Encourage innovation in the development of new educational and training programs and instructional methods; coordinate research efforts to this end; and disseminate the findings thereof;

(11) Exercise any other powers, duties and responsibilities necessary to carry out the purposes of this chapter;

(12) Authorize the various community and technical colleges to offer programs and courses in other districts when it determines that such action is consistent with the purposes set forth in RCW 28B.50.020 as now or hereafter amended;

(13) Notwithstanding any other law or statute regarding the sale of state property, sell or exchange and convey any or all interest in any community and technical college real and personal property, except such property as is received by a college district in accordance with RCW 28B.50.140(8), when it determines that such property is surplus or that such a sale or exchange is in the best interests of the community and technical college system;

(14) In order that the treasurer for the state board for community and technical colleges appointed in accordance with RCW 28B.50.085 may make vendor payments, the state treasurer will honor warrants drawn by the state board providing for an initial advance on July 1, 1982, of the current biennium and on July 1st of each succeeding biennium from the state general fund in an amount equal to twenty-four percent of the average monthly allotment for such budgeted biennium expenditures for the state board for community and technical colleges as certified by the office of financial management; and at the conclusion of such initial month and for each succeeding month of any biennium, the state treasurer will reimburse expenditures incurred and reported monthly by the state board treasurer in accordance with chapter 43.88 RCW: PROVIDED, That the reimbursement to the state board for actual expenditures incurred in the final month of each biennium shall be less the initial advance made in such biennium;

(15) Notwithstanding the provisions of subsection (13) of this section, may receive such gifts, grants, conveyances, devises, and bequests of real or personal property from private sources as may be made from time to time, in trust or otherwise, whenever the terms and conditions thereof will aid in carrying out the community and technical college programs and may sell, lease or exchange, invest or expend the same or the proceeds, rents, profits and income thereof

according to the terms and conditions thereof; and adopt regulations to govern the receipt and expenditure of the proceeds, rents, profits and income thereof; and

(16) The college board shall have the power of eminent domain. [2013 c 57 § 1; 2011 c 109 § 1; 2010 c 246 § 3; 2009 c 64 § 4; 2004 c 275 § 57; 2003 c 130 § 6; 1991 c 238 § 33; 1982 c 50 § 1; 1981 c 246 § 2; 1979 c 151 § 20; 1977 ex.s. c 282 § 4; 1973 c 62 § 16; 1969 ex.s. c 261 § 21; 1969 ex.s. c 223 § 28B.50.090. Prior: 1967 ex.s. c 8 § 9.]

***Reviser's note:** RCW 28B.76.200 was repealed by 2011 1st sp.s. c 11 § 244, effective July 1, 2012.

Findings—Intent—2010 c 246: See note following RCW 28B.50.020.

Intent—2009 c 64: See note following RCW 28B.50.020.

Part headings not law—2004 c 275: See note following RCW 28B.76.090.

Findings—Intent—2003 c 130: See note following RCW 28B.77.070.

Construction, reconstruction, equipping facilities—Financing: RCW 28B.50.340.

Development of budget: RCW 43.88.090.

Eminent domain: Title 8 RCW.

State budgeting, accounting, and reporting system: Chapter 43.88 RCW.

Additional notes found at www.leg.wa.gov

28B.50.100 Boards of trustees—Generally. There is hereby created a board of trustees for each college district as set forth in this chapter. Each board of trustees shall be composed of five trustees, except as provided in RCW 28B.50.102, who shall be appointed by the governor for terms commencing October 1st of the year in which appointed. In making such appointments, the governor shall give consideration to geographical diversity, and representing labor, business, women, and racial and ethnic minorities, in the membership of the boards of trustees. The boards of trustees for districts containing technical colleges shall include at least one member from business and one member from labor.

The successors of the trustees initially appointed shall be appointed by the governor to serve for a term of five years except that any person appointed to fill a vacancy occurring prior to the expiration of any term shall be appointed only for the remainder of the term. Each member shall serve until a successor is appointed and qualified.

Every trustee shall be a resident and qualified elector of the college district. No trustee may be an employee of the community and technical college system, a member of the board of directors of any school district, or a member of the governing board of any public or private educational institution.

Each board of trustees shall organize itself by electing a chair from its members. The board shall adopt a seal and may adopt such bylaws, rules, and regulations as it deems necessary for its own government. Three members of the board shall constitute a quorum, but a lesser number may adjourn from time to time and may compel the attendance of absent members in such manner as prescribed in its bylaws, rules, or regulations. The district president, or if there be none, the president of the college, shall serve as, or may designate another person to serve as, the secretary of the board, who shall not be deemed to be a member of the board.

Each board of trustees shall follow procedures for open public meetings in chapter 42.30 RCW. Each board shall provide time for public comment at each meeting.

Members of the boards of trustees may be removed for misconduct or malfeasance in office in the manner provided by RCW 28B.10.500. [2013 c 23 § 58. Prior: 2012 c 228 § 5; 2012 c 148 § 2; 2011 c 336 § 739; 1991 c 238 § 37; 1987 c 330 § 1001; 1983 c 224 § 1; 1979 ex.s. c 103 § 1; 1977 ex.s. c 282 § 2; 1973 c 62 § 17; 1969 ex.s. c 261 § 22; 1969 ex.s. c 223 § 28B.50.100; prior: 1967 ex.s. c 8 § 10.]

Finding—Intent—2012 c 148: "The legislature finds that decisions made by governing boards of each respective institution greatly impact the lives of students and that student participation in the decision-making process can provide insight into the impacts of actions by trustees that are not always measurable through reports and statistics. Students are on campus every day using services and experiencing aspects of the institution that board members may only see on paper, providing a unique and valuable perspective that should not be overlooked.

Students serving on governing boards of higher education have proven effective in Washington and in over thirty other states. For over ten years students at Washington's four-year institutions of higher education have served as voting members on the board of trustees, regents, and the higher education coordinating board, providing greater depth in board deliberations and a well-educated conduit for students to voice ideas and concerns.

The student perspective at community colleges also brings the board closer to their community. Student populations at community colleges are the most diverse of any institution of higher education in the state. Being on campus and in class every day, students are exposed to a more diverse group than any member of the board representing any one group of the community.

Student positions on governing boards are also a valuable tool for developing leadership through experiential learning. Student members learn processes of institutional governance, become involved in campus projects, analyze policy proposals, and participate in board discussions and decision making.

It is the intent of the legislature to enhance community college governance by fostering a more dynamic relationship between students and institutions through the encouragement of student participation in policy development and decision making at the district and state level." [2012 c 148 § 1.]

Chief executive officer as secretary of board: RCW 28B.50.130.

Additional notes found at www.leg.wa.gov

28B.50.278 Opportunity employment and education center—Opportunity policy work group—Report by college board. (1) An opportunity employment and education center is established within the Seattle community college district.

(2) The center shall:

(a) House various educational and social service providers and integrate access to employment, counseling, and public benefit programs and services as well as education, training, financial aid, and counseling services offered through community colleges;

(b) Identify and form partnerships with community-based organizations that enhance the services and supports provided to individuals using the center;

(c) Provide services including, but not limited to, employment security and workforce development council worksorce services; job listing, referral, and placement; job coaching; employment counseling, testing, and career planning; unemployment insurance claim filing assistance; cash grant programs run by the department of social and health services; the basic food program; housing assistance; child support assistance; child care subsidies; WorkFirst and temporary assistance for needy families; general assistance and supplemental security income facilitation; vocational rehabilitation services and referrals; medicaid and medical services;

alcoholism and drug addiction treatment and support act referrals; case management and mental health referrals; community college financial aid; support services; college counseling services related to career pathways and basic skills resources for English language learners; high school completion; and adult basic education; and

(d) In partnership with the state board for community and technical colleges, jointly develop evaluation criteria and performance indicators that demonstrate the degree to which the center is successfully integrating services and improving service delivery.

(3) The chancellor of the Seattle community college district and technical colleges, or the chancellor's designee, shall convene an opportunity policy work group charged with governing the opportunity employment and education center. The work group membership shall include, but not be limited to, representatives of the King county workforce development council, north Seattle community college, the employment security department, and the department of social and health services. A chair shall be chosen from among the work group's membership on an annual basis, with the position of chair rotating among participating agencies. The work group shall:

(a) Determine protocols for service delivery, develop operating policies and procedures, develop cross-agency training for agency employees located at the center, and develop a plan for a common information technology framework that could allow for interagency access to files and information, including any common application and screening systems that facilitate access to state, federal, and local social service and educational programs, within current resources and to the extent federal privacy laws allow;

(b) Develop a release of information form that may be voluntarily completed by opportunity center clients to facilitate the information sharing outlined in (a) of this subsection. The form is created to aid agencies housed at the opportunity center in determining client eligibility for various social and educational services. The form shall address the types of information to be shared, the agencies with which personal information can be shared, the length of time agencies may keep shared information on file, and any other issue areas identified by the opportunity policy work group to comply with all applicable federal and state laws;

(c) Review national best practices for program operation and provide training to program providers both before opening the center and on an ongoing basis; and

(d) Jointly develop integrated solutions to provide more cost-efficient and customer friendly service delivery.

(4) Participating agencies shall identify and apply for any federal waivers necessary to facilitate the intended goals and operation of the center.

(5) The state board for community and technical colleges shall report to legislative committees with subject areas of commerce and labor, human services, and higher education on the following:

(a) By December 1, 2010, the board, in partnership with participating agencies, shall provide recommendations on a proposed site for an additional opportunity employment and education center; and

(b) By December 1, 2011, and annually thereafter, the board shall provide an evaluation of existing centers based on

performance criteria identified by the board and the opportunity policy work group. The report shall also include data on any federal and state legislative barriers to integration.

(6) All future opportunity centers shall be governed by the provisions in this section and are subject to the same reporting requirements. [2013 c 23 § 57; 2010 c 40 § 1.]

28B.50.360 Construction, reconstruction, equipping, and demolition of community and technical college facilities and acquisition of property—Community and technical college capital projects account—Disposition of building fees. Within thirty-five days from the date of start of each quarter all collected building fees of each such community and technical college shall be paid into the state treasury, and shall be credited as follows:

(1) On or before June 30th of each year the college board if issuing bonds payable out of building fees shall certify to the state treasurer the amounts required in the ensuing twelve-month period to pay and secure the payment of the principal of and interest on such bonds. The state treasurer shall thereupon deposit the amounts so certified in the community and technical college capital projects account. Such amounts of the funds deposited in the community and technical college capital projects account as are necessary to pay and secure the payment of the principal of and interest on the building bonds issued by the college board as authorized by this chapter shall be devoted to that purpose. If in any twelve-month period it shall appear that the amount certified by the college board is insufficient to pay and secure the payment of the principal of and interest on the outstanding building bonds, the state treasurer shall notify the college board and such board shall adjust its certificate so that all requirements of moneys to pay and secure the payment of the principal and interest on all such bonds then outstanding shall be fully met at all times.

(2) The community and technical college capital projects account is hereby created in the state treasury. The sums deposited in the capital projects account shall be appropriated and expended to pay and secure the payment of the principal of and interest on bonds payable out of the building fees and for the construction, reconstruction, erection, equipping, maintenance, demolition and major alteration of buildings and other capital assets owned by the state board for community and technical colleges in the name of the state of Washington, and the acquisition of sites, rights-of-way, easements, improvements or appurtenances in relation thereto, engineering and architectural services provided by the department of enterprise services, and for the payment of principal of and interest on any bonds issued for such purposes. During the 2011-2013 biennium, sums in the capital projects account shall also be used for routine facility maintenance and utility costs. During the 2013-2015 biennium, sums in the capital projects account shall also be used for routine facility maintenance and utility costs.

(3) Funds available in the community and technical college capital projects account may also be used for certificates of participation under chapter 39.94 RCW. [2013 2nd sp.s. c 19 § 7031; 2011 1st sp.s. c 48 § 7025; 2009 c 499 § 6; 2005 c 488 § 922; 2004 c 277 § 910; 2002 c 238 § 303; 2000 c 65 § 1; 1997 c 42 § 1; 1991 sp.s. c 13 §§ 47, 48; 1991 c 238 § 51. Prior: 1985 c 390 § 56; 1985 c 57 § 16; 1974 ex.s. c 112 § 4;

1971 ex.s. c 279 § 20; 1970 ex.s. c 15 § 20; prior: 1969 ex.s. c 261 § 28; 1969 ex.s. c 238 § 7; 1969 ex.s. c 223 § 28B.50.360; prior: 1967 ex.s. c 8 § 36.]

Effective date—2013 2nd sp.s. c 19: See note following RCW 43.34.080.

Effective date—2011 1st sp.s. c 48: See note following RCW 39.35B.050.

Part headings not law—2005 c 488: "Part headings in this act are not any part of the law." [2005 c 488 § 956.]

Severability—2005 c 488: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2005 c 488 § 958.]

Effective dates—2005 c 488: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 16, 2005], except for sections 920 and 921 of this act, which take effect June 30, 2005." [2005 c 488 § 959.]

Severability—Effective dates—2004 c 277: See notes following RCW 89.08.550.

Transfer of moneys in community and technical college bond retirement fund to state general fund: RCW 28B.50.401 and 28B.50.402.

Additional notes found at www.leg.wa.gov

28B.50.465 Cost-of-living increases—Academic employees. (1) Academic employees of community and technical college districts shall be provided an annual salary cost-of-living increase in accordance with this section. For purposes of this section, "academic employee" has the same meaning as defined in RCW 28B.52.020.

(a) Beginning with the 2001-2002 fiscal year, and for each subsequent fiscal year, except as provided in (d) of this subsection, each college district shall receive a cost-of-living allocation sufficient to increase academic employee salaries, including mandatory salary-related benefits, by the rate of the yearly increase in the cost-of-living index.

(b) A college district shall distribute its cost-of-living allocation for salaries and salary-related benefits in accordance with the district's salary schedules, collective bargaining agreements, and other compensation policies. No later than the end of the fiscal year, each college district shall certify to the college board that it has spent funds provided for cost-of-living increases on salaries and salary-related benefits.

(c) The college board shall include any funded cost-of-living increase in the salary base used to determine cost-of-living increases for academic employees in subsequent years.

(d) Beginning with the 2001-2002 fiscal year, and for each subsequent fiscal year except for the 2013-2014 and 2014-2015 fiscal years, the state shall fully fund the cost-of-living increase set forth in this section.

(2) For the purposes of this section, "cost-of-living index" means, for any fiscal year, the previous calendar year's annual average consumer price index, using the official current base, compiled by the bureau of labor statistics, United States department of labor for the state of Washington. If the bureau of labor statistics develops more than one consumer price index for areas within the state, the index covering the greatest number of people, covering areas exclusively within the boundaries of the state, and including all items shall be used for the cost-of-living index in this section. [2013 2nd sp.s. c 5 § 2; 2011 1st sp.s. c 18 § 2; 2009 c 573 §

2; 2003 1st sp.s. c 20 § 3; 2001 c 4 § 3 (Initiative Measure No. 732, approved November 7, 2000).]

Effective date—2013 2nd sp.s. c 5: See note following RCW 28A.400.205.

Effective date—2011 1st sp.s. c 18: See note following RCW 28A.400.205.

Effective date—2009 c 573: See note following RCW 28A.400.205.

Additional notes found at www.leg.wa.gov

28B.50.468 Cost-of-living increases—Classified employees. (1) Classified employees of technical colleges shall be provided an annual salary cost-of-living increase in accordance with this section. For purposes of this section, "technical college" has the same meaning as defined in RCW 28B.50.030. This section applies to only those classified employees under the jurisdiction of chapter 41.56 RCW.

(a) Beginning with the 2001-2002 fiscal year, and for each subsequent fiscal year, except as provided in (d) of this subsection, each technical college board of trustees shall receive a cost-of-living allocation sufficient to increase classified employee salaries, including mandatory salary-related benefits, by the rate of the yearly increase in the cost-of-living index.

(b) A technical college board of trustees shall distribute its cost-of-living allocation for salaries and salary-related benefits in accordance with the technical college's salary schedules, collective bargaining agreements, and other compensation policies. No later than the end of the fiscal year, each technical college shall certify to the college board that it has spent funds provided for cost-of-living increases on salaries and salary-related benefits.

(c) The college board shall include any funded cost-of-living increase in the salary base used to determine cost-of-living increases for technical college classified employees in subsequent years.

(d) Beginning with the 2001-2002 fiscal year, and for each subsequent fiscal year except for the 2013-2014 and 2014-2015 fiscal years, the state shall fully fund the cost-of-living increase set forth in this section.

(2) For the purposes of this section, "cost-of-living index" means, for any fiscal year, the previous calendar year's annual average consumer price index, using the official current base, compiled by the bureau of labor statistics, United States department of labor for the state of Washington. If the bureau of labor statistics develops more than one consumer price index for areas within the state, the index covering the greatest number of people, covering areas exclusively within the boundaries of the state, and including all items shall be used for the cost-of-living index in this section. [2013 2nd sp.s. c 5 § 3; 2011 1st sp.s. c 18 § 3; 2009 c 573 § 3; 2003 1st sp.s. c 20 § 4; 2001 c 4 § 4 (Initiative Measure No. 732, approved November 7, 2000).]

Effective date—2013 2nd sp.s. c 5: See note following RCW 28A.400.205.

Effective date—2011 1st sp.s. c 18: See note following RCW 28A.400.205.

Effective date—2009 c 573: See note following RCW 28A.400.205.

Additional notes found at www.leg.wa.gov

28B.50.536 Test to earn a high school equivalency certificate—Rules—Issuance of high school equivalency

certificate. (1) Subject to rules adopted by the state board of education under RCW 28A.305.190, the state board for community and technical colleges shall adopt rules governing the eligibility of persons sixteen years of age and older to take a test to earn a high school equivalency certificate, rules governing the administration of the test, and rules governing the issuance of a high school equivalency certificate to persons who successfully complete the test.

(2) A high school equivalency certificate is a certificate issued jointly by the college board and the office of the superintendent of public instruction that indicates that the holder has attained standard scores at or above the minimum proficiency level prescribed by the college board on a high school equivalency test. The college board must identify and accept a high school equivalency test that is at least as rigorous as the general educational development test. The high school equivalency test identified by the college board must cover reading, writing, mathematics, science, and social studies subject areas.

(3) High school equivalency certificates issued under this section shall be issued in such form and substance as agreed upon by the state board for community and technical colleges and superintendent of public instruction. [2013 c 39 § 9; 1993 c 218 § 3.]

28B.50.805 Programs that support science, technology, engineering, and mathematics programs or career and technical education programs—Selection of colleges—Development of courses leading to a high-demand applied baccalaureate degree. Subject to the availability of amounts appropriated for this specific purpose and in addition to other applied baccalaureate degree programs and pursuant to the criteria in RCW 28B.50.810, the college board shall select community or technical colleges to develop and offer two programs that support the continuation of high quality science, technology, engineering, and mathematics programs or career and technical education programs offered to students in kindergarten through twelfth grade who are prepared and aspire to continue in these high-demand areas in college and the workforce. Subject to available funding, a college selected under this section may develop the curriculum for and design and deliver courses leading to a high-demand applied baccalaureate degree. [2013 c 55 § 2.]

Chapter 28B.67 RCW

CUSTOMIZED EMPLOYMENT TRAINING

Sections

28B.67.030 Employment training finance account. (*Expires July 1, 2017.*)

28B.67.030 Employment training finance account. (*Expires July 1, 2017.*) (1) All payments received from a participant in the Washington customized employment training program created in RCW 28B.67.020 must be deposited into the employment training finance account, which is hereby created in the custody of the state treasurer. Only the state board for community and technical colleges may authorize expenditures from the account and no appropriation is required for expenditures. The money in the account must be used solely for training allowances under the Washington customized employment training program created in RCW

28B.67.020 and for providing up to seventy-five thousand dollars per year for training, marketing, and facilitation services to increase the use of the program. The deposit of payments under this section from a participant ceases when the board specifies that the participant has met the monetary obligations of the program. During the 2013-2015 fiscal biennium, the legislature may transfer from the employment training finance account to the state general fund such amounts as reflect the excess fund balance in the account.

(2) All revenue solicited and received under the provisions of RCW 28B.67.020(4) must be deposited into the employment training finance account to provide training allowances.

(3) The definitions in RCW 28B.67.010 apply to this section.

(4) This section expires July 1, 2017. [2013 2nd sp.s. c 4 § 961; 2012 c 46 § 2; 2010 1st sp.s. c 26 § 4. Prior: 2009 c 564 § 1804; 2009 c 296 § 2; 2006 c 112 § 8.]

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

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

Chapter 28B.76 RCW

OFFICE OF STUDENT FINANCIAL ASSISTANCE

(Formerly: Higher education coordinating board)

Sections

28B.76.502 Financial aid counseling curriculum for institutions with state need grant recipients.

28B.76.502 Financial aid counseling curriculum for institutions with state need grant recipients. (1) The office must provide a financial aid counseling curriculum to institutions of higher education with state need grant recipients. The curriculum must be available via a web site. The curriculum must include, but not be limited to:

(a) An explanation of the state need grant program rules, including maintaining satisfactory progress, repayment rules, and usage limits;

(b) Information on campus and private scholarships and work-study opportunities, including the application processes;

(c) An overview of student loan options with an emphasis on the repayment obligations a student borrower assumes regardless of program completion, including the likely consequences of default and sample monthly repayment amounts based on a range of student levels of indebtedness;

(d) An overview of financial literacy, including basic money management skills such as living within a budget and handling credit and debt;

(e) Average salaries for a wide range of jobs;

(f) Perspectives from a diverse group of students who are or were recipients of financial aid, including student loans; and

(g) Contact information for local financial aid resources and the federal student aid ombuds's office.

(2) By the 2013-14 academic year, the institution of higher education must take reasonable steps to ensure that each state need grant recipient receives information outlined in subsection (1)(a) through (g) of this section by directly ref-

erencing or linking to the web site on the conditions of award statement provided to each recipient.

(3) By July 1, 2013, the office must disseminate the curriculum to all institutions of higher education participating in the state need grant program. The institutions of higher education may require nonstate need grant recipients to participate in all or portions of the financial aid counseling. [2013 c 23 § 59; 2012 c 31 § 1.]

Chapter 28B.77 RCW

STUDENT ACHIEVEMENT COUNCIL

(Formerly: Council for higher education)

Sections

- 28B.77.020 Educational attainment goals and priorities—Short-term strategic action plan—Ten-year roadmap—System reviews—Role of education data center—Responsibility for work of the office—Additional duties.
- 28B.77.090 Accountability monitoring and reporting system—Data requirements—Uniform dashboard format for display of data—Use of performance data.
- 28B.77.220 Transfer associate degrees—Work groups—Implementation—Progress reports.

28B.77.020 Educational attainment goals and priorities—Short-term strategic action plan—Ten-year roadmap—System reviews—Role of education data center—Responsibility for work of the office—Additional duties.

(1) Aligned with the state's biennial budget and policy cycles, the council shall propose educational attainment goals and priorities to meet the state's evolving needs. The council shall identify strategies for meeting the goals and priorities by means of a short-term strategic action plan and a ten-year plan that serves as a roadmap.

(a) The goals must address the needs of Washington residents to reach higher levels of educational attainment and Washington's workforce needs for certificates and degrees in particular fields of study.

(b) The council shall identify the resources it deems appropriate to meet statewide goals and also recognize current state economic conditions and state resources.

(c) In proposing goals, the council shall collaborate with the superintendent of public instruction, the professional educator standards board, the state board of education, the state board for community and technical colleges, the four-year institutions of higher education, independent colleges and degree-granting institutions, certificate-granting institutions, and the workforce training and education coordinating board.

(2) The council shall update the strategic action plan every two years with the first strategic action plan to be submitted to the governor and the legislature by December 1, 2012. The ten-year roadmap must be updated every two years with the first roadmap to be submitted to the governor and the legislature by December 1, 2013. The council must provide regular updates to the joint higher education committee created in RCW 44.04.360 as needed.

(3) In order to develop the ten-year roadmap, the council shall conduct strategic planning in collaboration with agencies and stakeholders and include input from the legislature. The council must also consult with the STEM education innovation alliance established under RCW 28A.188.030 in order to align strategies under the roadmap with the STEM framework for education and accountability developed by the

alliance. The roadmap must encompass all sectors of higher education, including secondary to postsecondary transitions. The roadmap must outline strategies that address:

(a) Strategic planning, which includes setting benchmarks and goals for long-term degree production generally and in particular fields of study;

(b) Expanding access, affordability, quality, efficiency, and accountability among the various institutions of higher education;

(c) Higher education finance planning and strategic investments including budget recommendations necessary to meet statewide goals;

(d) System design and coordination;

(e) Improving student transitions;

(f) Higher education data and analysis, in collaboration with the education data center, which includes outcomes for recruitment, retention, and success of students;

(g) College and career access preparedness, in collaboration with the office of the superintendent of public instruction and the state board of education;

(h) Expanding participation and success for racial and ethnic minorities in higher education;

(i) Development and expansion of innovations in higher education including innovations to increase attainment of postsecondary certificates, and associate, baccalaureate, graduate, and professional degrees; and innovations to improve precollege education in terms of cost-effectiveness and transitions to college-level education;

(j) Strengthening the education pipeline and degree production in science, technology, engineering, and mathematics fields, and aligning strategies under the roadmap with the STEM framework for action and accountability developed under RCW 28A.188.030; and

(k) Relevant policy research.

(4) As needed, the council must conduct system reviews consistent with RCW 28B.77.080.

(5) The council shall facilitate the development and expansion of innovative practices within, between, and among the sectors to increase educational attainment and assess the effectiveness of the innovations.

(6) The council shall use the data and analysis produced by, and in consultation with, the education data center created in RCW 43.41.400 in developing policy recommendations and proposing goals. In conducting research and analysis the council at a minimum must:

(a) Identify barriers to increasing educational attainment, evaluate effectiveness of various educational models, identify best practices, and recommend methods to overcome barriers;

(b) Analyze data from multiple sources including data from academic research and from areas and agencies outside of education including but not limited to data from the department of health, the department of corrections, and the department of social and health services to determine best practices to remove barriers and to improve educational attainment;

(c) Assess educational achievement disaggregated by income level, age, gender, race and ethnicity, country of origin, and other relevant demographic groups working with data from the education data center;

(d) Track progress toward meeting the state's goals;

(e) Communicate results and provide access to data analysis to policymakers, the superintendent of public instruction, institutions of higher education, students, and the public; and

(f) Use data from the education data center wherever appropriate to conduct duties in (a) through (e) of this subsection.

(7) The council shall collaborate with the appropriate state agencies and stakeholders, including the state board of education, the office of the superintendent of public instruction, the state board for community and technical colleges, the workforce training and education coordinating board, and the four-year institutions of higher education to improve student transitions and success including but not limited to:

(a) Setting minimum college admission standards for four-year institutions of higher education, including a requirement that coursework in American sign language or an American Indian language satisfies any requirement for instruction in a language other than English that the council or the institutions may establish as a general undergraduate admissions requirement;

(b) Proposing comprehensive policies and programs to encourage students to prepare for, understand how to access, and pursue postsecondary college and career programs, including specific policies and programs for students with disabilities;

(c) Recommending policies that require coordination between or among sectors such as dual high school-college programs, awarding college credit for advanced high school work, and transfer between two and four-year institutions of higher education or between different four-year institutions of higher education; and

(d) Identifying transitions issues and solutions for students, from high school to postsecondary education including community and technical colleges, four-year institutions of higher education, apprenticeships, training, or workplace education; between two-year and four-year institutions of higher education; and from postsecondary education to career. In addressing these issues the council must recognize that these transitions may occur multiple times as students continue their education.

(8) The council directs the work of the office, which includes administration of student financial aid programs under RCW 28B.76.090, including the state need grant and other scholarships, the Washington advanced college tuition payment program, and work-study programs.

(9) The council may administer state and federal grants and programs including but not limited to those programs that provide incentives for improvements related to increased access and success in postsecondary education.

(10) The council shall protect higher education consumers including:

(a) Approving degree-granting postsecondary institutions consistent with existing statutory criteria;

(b) Establishing minimum criteria to assess whether students who attend proprietary institutions of higher education shall be eligible for the state need grant and other forms of state financial aid.

(i) The criteria shall include retention rates, completion rates, loan default rates, and annual tuition increases, among other criteria for students who receive state need grant as in chapter 28B.92 RCW and any other state financial aid.

(ii) The council may remove proprietary institutions of higher education from eligibility for the state need grant or other form of state financial aid if it finds that the institution or college does not meet minimum criteria.

(iii) The council shall report by December 1, 2014, to the joint higher education committee in RCW 44.04.360 on the outcomes of students receiving state need grants, impacts on meeting the state's higher education goals for educational attainment, and options for prioritization of the state need grant and possible consequences of implementing each option. When examining options for prioritizing the state need grant the council shall consider awarding grants based on need rather than date of application and making awards based on other criteria selected by the council.

(11) The council shall adopt residency requirements by rule.

(12) The council shall arbitrate disputes between and among four-year institutions of higher education and the state board for community and technical colleges at the request of one or more of the institutions involved, or at the request of the governor, or from a resolution adopted by the legislature. The decision of the council shall be binding on the participants in the dispute.

(13) The council may solicit, accept, receive, and administer federal funds or private funds, in trust, or otherwise, and contract with foundations or with for-profit or nonprofit organizations to support the purposes and functions of the council.

(14) The council shall represent the broad public interest above the interests of the individual institutions of higher education. [2013 2nd sp.s. c 25 § 6; 2012 c 229 § 104.]

28B.77.090 Accountability monitoring and reporting system—Data requirements—Uniform dashboard format for display of data—Use of performance data. (1) An accountability monitoring and reporting system is established as part of a continuing effort to make meaningful and substantial progress towards the achievement of long-term performance goals in higher education.

(2) To provide consistent, easily understood data among the public four-year institutions of higher education within Washington and in other states, the following data must be reported to the education data center annually by December 1st, and at a minimum include data recommended by a national organization representing state chief executives. The education data center in consultation with the council may change the data requirements to be consistent with best practices across the country. This data must, to the maximum extent possible, be disaggregated by race and ethnicity, gender, state and county of origin, age, and socioeconomic status, and include the following for the four-year institutions of higher education:

(a) Bachelor's degrees awarded;

(b) Graduate and professional degrees awarded;

(c) Graduation rates: The number and percentage of students who graduate within four years for bachelor's degrees and within the extended time, which is six years for bachelor's degrees;

(d) Transfer rates: The annual number and percentage of students who transfer from a two-year to a four-year institution of higher education;

(e) Time and credits to degree: The average length of time in years and average number of credits that graduating students took to earn a bachelor's degree;

(f) Enrollment in remedial education: The number and percentage of entering first-time undergraduate students who place into and enroll in remedial mathematics, English, or both;

(g) Success beyond remedial education: The number and percentage of entering first-time undergraduate students who complete entry college-level math and English courses within the first two consecutive academic years;

(h) Credit accumulation: The number and percentage of first-time undergraduate students completing two quarters or one semester worth of credit during their first academic year;

(i) Retention rates: The number and percentage of entering undergraduate students who enroll consecutively from fall-to-spring and fall-to-fall at an institution of higher education;

(j) Course completion: The percentage of credit hours completed out of those attempted during an academic year;

(k) Program participation and degree completion rates in bachelor and advanced degree programs in the sciences, which includes agriculture and natural resources, biology and biomedical sciences, computer and information sciences, engineering and engineering technologies, health professions and clinical sciences, mathematics and statistics, and physical sciences and science technologies, including participation and degree completion rates for students from traditionally underrepresented populations;

(l) Annual enrollment: Annual unduplicated number of students enrolled over a twelve-month period at institutions of higher education including by student level;

(m) Annual first-time enrollment: Total first-time students enrolled in a four-year institution of higher education;

(n) Completion ratio: Annual ratio of undergraduate and graduate degrees and certificates, of at least one year in expected length, awarded per one hundred full-time equivalent undergraduate students at the state level;

(o) Market penetration: Annual ratio of undergraduate and graduate degrees and certificates, of at least one year in program length, awarded relative to the state's population age eighteen to twenty-four years old with a high school diploma;

(p) Student debt load: Median three-year distribution of debt load, excluding private loans or debts incurred before coming to the institution;

(q) Data related to enrollment, completion rates, participation rates, and debt load shall be disaggregated for students in the following income brackets to the maximum extent possible:

(i) Up to seventy percent of the median family income;

(ii) Between seventy-one percent and one hundred twenty-five percent of the median family income; and

(iii) Above one hundred twenty-five percent of the median family income; and

(r) Yearly percentage increases in the average cost of undergraduate instruction.

(3) Four-year institutions of higher education must count all students when collecting data, not only first-time, full-time first-year students.

(4) In conjunction with the office of financial management, all four-year institutions of higher education must dis-

play the data described in subsection (2) of this section in a uniform dashboard format on the office of financial management's web site no later than December 1, 2011, and updated thereafter annually by December 1st. To the maximum extent possible, the information must be viewable by race and ethnicity, gender, state and county of origin, age, and socioeconomic status. The information may be tailored to meet the needs of various target audiences such as students, researchers, and the general public.

(5) The council shall use performance data from the education data center for the purposes of strategic planning, to report on progress toward achieving statewide goals, and to develop priorities proposed in the ten-year plan for higher education. [2013 c 23 § 60; 2012 c 229 § 115; 2011 1st sp.s. c 10 § 8; 2004 c 275 § 11. Formerly RCW 28B.76.270.]

Review of higher education accountability measures—2012 c 229: "(1) The state board for community and technical colleges, in consultation with the student achievement council, shall regularly review higher education accountability measures, assess whether any of the measures for four-year institutions of higher education in RCW 28B.77.090(2) should be applied as performance measures for community and technical colleges, and whether performance indicators for the community and technical colleges should be added to the data dashboard in RCW 28B.77.090(4). The board shall report recommendations regarding appropriate changes to required community and technical college accountability measures to the governor and the legislature by December 1, 2012.

(2) This section expires August 1, 2013." [2012 c 229 § 119.]

Findings—Intent—Short title—2011 1st sp.s. c 10: See notes following RCW 28B.15.031.

Part headings not law—2004 c 275: See note following RCW 28B.76.090.

28B.77.220 Transfer associate degrees—Work groups—Implementation—Progress reports. (1) The council must convene work groups to develop transfer associate degrees that will satisfy lower division requirements at public four-year institutions of higher education for specific academic majors. Work groups must include representatives from the state board for community and technical colleges and the council of presidents, as well as faculty from two and four-year institutions. Work groups may include representatives from independent four-year institutions.

(2) Each transfer associate degree developed under this section must enable a student to complete the lower-division courses or competencies for general education requirements and preparation for the major that a direct-entry student would typically complete in the first-year student and sophomore years for that academic major.

(3) Completion of a transfer associate degree does not guarantee a student admission into an institution of higher education or admission into a major, minor, or professional program at an institution of higher education that has competitive admission standards for the program based on grade point average or other performance criteria.

(4) During the 2004-05 academic year, the work groups must develop transfer degrees for elementary education, engineering, and nursing. As necessary based on demand or identified need, the council must convene additional groups to identify and develop additional transfer degrees. The council must give priority to majors in high demand by transfer students and majors that the general direct transfer agreement associate degree does not adequately prepare students to enter automatically upon transfer.

(5) The council, in collaboration with the intercollege relations commission, must collect and maintain lists of courses offered by each community and technical college and public four-year institution of higher education that fall within each transfer associate degree.

(6) The council must monitor implementation of transfer associate degrees by public four-year institutions to ensure compliance with subsection (2) of this section.

(7) Beginning January 10, 2005, the council must submit a progress report on the development of transfer associate degrees to the higher education committees of the house of representatives and the senate. The first progress report must include measurable benchmark indicators to monitor the effectiveness of the initiatives in improving transfer and baseline data for those indicators before the implementation of the initiatives. Subsequent reports must be submitted by January 10th of each odd-numbered year and must monitor progress on the indicators, describe development of additional transfer associate degrees, and provide other data on improvements in transfer efficiency. [2013 c 23 § 61; 2012 c 229 § 541; 2004 c 55 § 2. Formerly RCW 28B.76.250.]

Effective date—2012 c 229 §§ 101, 117, 401, 402, 501 through 594, 601 through 609, 701 through 708, 801 through 821, 902, and 904: See note following RCW 28B.77.005.

Findings—Intent—2004 c 55: "(1) The legislature finds that community and technical colleges play a vital role for students obtaining baccalaureate degrees. In 2002, more than forty percent of students graduating with a baccalaureate degree had transferred from a community or technical college.

(2) The legislature also finds that demand continues to grow for baccalaureate degrees. Increased demand comes from larger numbers of students seeking access to higher education and greater expectations from employers for the knowledge and skills needed to expand the state's economy. Community and technical colleges are an essential partner in meeting this demand.

(3) However, the legislature also finds that current policies and procedures do not provide for efficient transfer of courses, credits, or prerequisites for academic majors. Furthermore, the state's public higher education system must expand its capacity to enroll transfer students in baccalaureate education. The *higher education coordinating board must take a leadership role in working with the community and technical colleges and four-year institutions to ensure efficient and seamless transfer across the state.

(4) Therefore, it is the legislature's intent to build clearer pathways to baccalaureate degrees, improve statewide coordination of transfer and articulation, and ensure long-term capacity in the state's higher education system for transfer students." [2004 c 55 § 1.]

***Reviser's note:** The higher education coordinating board was abolished by 2011 1st sp.s. c 11 § 301, effective July 1, 2012.

Chapter 28B.85 RCW

DEGREE-GRANTING INSTITUTIONS

Sections

28B.85.020 Council's duties—Rule-making authority.

28B.85.020 Council's duties—Rule-making authority. (1) The council:

(a) Shall adopt by rule, in accordance with chapter 34.05 RCW, minimum standards for degree-granting institutions concerning granting of degrees, quality of education, unfair business practices, financial stability, and other necessary measures to protect citizens of this state against substandard, fraudulent, or deceptive practices. The rules shall require that an institution operating in Washington:

(i) Be accredited;

(ii) Have applied for accreditation and such application is pending before the accrediting agency;

(iii) Have been granted a waiver by the council waiving the requirement of accreditation; or

(iv) Have been granted an exemption by the council from the requirements of this subsection (1)(a);

(b) May investigate any entity the council reasonably believes to be subject to the jurisdiction of this chapter. In connection with the investigation, the council may administer oaths and affirmations, issue subpoenas and compel attendance, take evidence, and require the production of any books, papers, correspondence, memorandums, or other records which the council deems relevant or material to the investigation. The council, including its staff and any other authorized persons, may conduct site inspections, the cost of which shall be borne by the institution, and examine records of all institutions subject to this chapter;

(c) May negotiate and enter into interstate reciprocity agreements with other state or multistate entities if the agreements are consistent with the purposes in this chapter as determined by the council;

(d) May enter into agreements with degree-granting institutions of higher education based in this state, that are otherwise exempt under the provisions of subsection (1)(a) of this section, for the purpose of ensuring consistent consumer protection in interstate distance delivery of higher education;

(e) Shall develop an interagency agreement with the workforce training and education coordinating board to regulate degree-granting private vocational schools with respect to degree and nondegree programs; and

(f) Shall develop and disseminate information to the public about entities that sell or award degrees without requiring appropriate academic achievement at the postsecondary level, including but not limited to, a description of the substandard and potentially fraudulent practices of these entities, and advice about how the public can recognize and avoid the entities. To the extent feasible, the information shall include links to additional resources that may assist the public in identifying specific institutions offering substandard or fraudulent degree programs.

(2) Financial disclosures provided to the council by degree-granting private vocational schools are not subject to public disclosure under chapter 42.56 RCW. [2013 c 218 § 3; 2012 c 229 § 543; 2006 c 234 § 3; 2005 c 274 § 246; 2004 c 96 § 1; 1996 c 305 § 1; 1994 c 38 § 1; 1986 c 136 § 2.]

Effective date—2012 c 229 §§ 101, 117, 401, 402, 501 through 594, 601 through 609, 701 through 708, 801 through 821, 902, and 904: See note following RCW 28B.77.005.

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

Additional notes found at www.leg.wa.gov

Chapter 28B.92 RCW

STATE STUDENT FINANCIAL AID PROGRAMS

Sections

28B.92.030 Definitions.

28B.92.030 Definitions. As used in this chapter:

(1) "Council" means the student achievement council.

(2) "Disadvantaged student" means a posthigh school student who by reason of adverse cultural, educational, environmental, experiential, familial or other circumstances is unable to qualify for enrollment as a full-time student in an institution of higher education, who would otherwise qualify as a needy student, and who is attending an institution of higher education under an established program designed to qualify the student for enrollment as a full-time student.

(3) "Financial aid" means loans and/or grants to needy students enrolled or accepted for enrollment as a student at institutions of higher education.

(4) "Institution" or "institutions of higher education" means:

(a) Any public university, college, community college, or technical college operated by the state of Washington or any political subdivision thereof; or

(b) Any other university, college, school, or institute in the state of Washington offering instruction beyond the high school level that is a member institution of an accrediting association recognized by rule of the council for the purposes of this section and that agrees to and complies with program rules adopted pursuant to RCW 28B.92.150. However, any institution, branch, extension or facility operating within the state of Washington that is affiliated with an institution operating in another state must be:

(i) A separately accredited member institution of any such accrediting association;

(ii) A branch of a member institution of an accrediting association recognized by rule of the council for purposes of this section, that is eligible for federal student financial aid assistance and has operated as a nonprofit college or university delivering on-site classroom instruction for a minimum of twenty consecutive years within the state of Washington, and has an annual enrollment of at least seven hundred full-time equivalent students; or

(iii) A nonprofit institution recognized by the state of Washington as provided in RCW 28B.77.240.

(5) "Needy student" means a posthigh school student of an institution of higher education who demonstrates to the office the financial inability, either through the student's parents, family and/or personally, to meet the total cost of board, room, books, and tuition and incidental fees for any semester or quarter. "Needy student" also means an opportunity internship graduate as defined by RCW 28C.18.162 who enrolls in a postsecondary program of study as defined in RCW 28C.18.162 within one year of high school graduation.

(6) "Office" means the office of student financial assistance.

(7) "Placebound student" means a student who (a) is unable to complete a college program because of family or employment commitments, health concerns, monetary inability, or other similar factors; and (b) may be influenced by the receipt of an enhanced student financial aid award to complete a baccalaureate degree at an eligible institution. [2013 c 248 § 2; 2012 c 229 § 557; 2011 1st sp.s. c 11 § 159. Prior: 2009 c 238 § 7; 2009 c 215 § 5; 2004 c 275 § 35; 2002 c 187 § 1; 1989 c 254 § 2; 1985 c 370 § 56; 1979 ex.s. c 235 § 1; 1975 1st ex.s. c 132 § 16; 1969 ex.s. c 222 § 8. Formerly RCW 28B.10.802, 28.76.440.]

Findings—Intent—2013 c 248: "The legislature finds that Western Governors University-Washington, recognized by the state of Washington

under RCW 28B.77.240, serves a student population that is nontraditional and geographically diverse. Enrollment in Western Governors University-Washington has grown steadily since 2011 reaching over four thousand three hundred students. These students represent an average age of thirty-seven, sixty-nine percent of whom are classified as underserved, including low-income, ethnic minority, rural, and first-generation students.

The legislature also finds that tuition at Western Governors University-Washington has remained static since 2008 at five thousand seven hundred eighty dollars per year.

Further, the legislature finds that the population served by Western Governors University-Washington deserves to have access to affordable postsecondary education, including baccalaureate degree-granting institutions. Therefore, the legislature intends to provide access to the state need grant program for eligible students attending Western Governors University-Washington.

The legislature also intends that Western Governors University-Washington comply with all reporting requirements established by the student achievement council for state need grant participation, including financial information about students, enrollment, graduation and placement rates, and the institution's standing with its accrediting agency, the Northwest Commission on Colleges and Universities, and the United States department of education." [2013 c 248 § 1.]

Effective date—2013 c 248: "This act takes effect August 1, 2013." [2013 c 248 § 6.]

Effective date—2012 c 229 §§ 101, 117, 401, 402, 501 through 594, 601 through 609, 701 through 708, 801 through 821, 902, and 904: See note following RCW 28B.77.005.

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Findings—Intent—2009 c 238: See note following RCW 28C.18.160.

Findings—Intent—2009 c 215: "The legislature finds that a myriad of financial aid programs exist for students at the federal, state, local, community, and institutional levels. These programs enable thousands of students across Washington to access all sectors of higher education, from apprenticeship programs to public and private four and two-year institutions of higher education. The legislature further finds that Washington state is a national leader in the distribution of financial aid to increase college access and affordability, ranking fourth in the nation in 2007 in terms of state student grant aid funding per capita.

It is the intent of the legislature to promote and expand access to state financial aid programs by determining which programs provide the greatest value to the largest number of students, and by fully supporting those programs. Furthermore, it is the intent of the legislature to designate all existing financial aid an opportunity pathway, with the effect of providing students with a clear understanding of available resources to pay for postsecondary education, thereby increasing access to postsecondary education and meeting the needs of local business and industry.

It is the intent of the legislature that the *higher education coordinating board, the state board for community and technical colleges, the office of the superintendent of public instruction, the workforce training and education coordinating board, and institutions of higher education coordinate the development of outreach tools, such as a web-based portal for information on all opportunity pathway aid programs. The information should be communicated in a format and manner that provides an ease of understanding for students and their families and include other pertinent information on institutions of higher education, costs, and academic programs. It is also the intent of the legislature for institutions of higher education to incorporate this information in promotional materials to prospective and current students and their families." [2009 c 215 § 1.]

***Reviser's note:** The higher education coordinating board ("board") was abolished by 2011 1st sp.s. c 11 § 301, effective July 1, 2012.

Effective date—2009 c 215: "This act takes effect August 1, 2009." [2009 c 215 § 17.]

Part headings not law—2004 c 275: See note following RCW 28B.76.090.

Intent—1989 c 254: "It is the intent of the legislature that nothing in this act shall prevent or discourage an individual from making an effort to repay any state financial aid awarded during his or her collegiate career." [1989 c 254 § 1.]

Loan programs for mathematics and science teachers: RCW 28B.15.760 through 28B.15.766.

Additional notes found at www.leg.wa.gov

Chapter 28B.95 RCW
ADVANCED COLLEGE TUITION
PAYMENT PROGRAM

Sections

28B.95.160 GET ready for math and science scholarship program—
Tuition units—Ownership and redemption.

28B.95.160 GET ready for math and science scholarship program—Tuition units—Ownership and redemption. Ownership of tuition units purchased by the office for the GET ready for math and science scholarship program under RCW 28B.105.070 shall be in the name of the state of Washington and may be redeemed by the state of Washington on behalf of recipients of GET ready for math and science scholarship program scholarships for tuition and fees except that during the 2013-2015 fiscal biennium any unused tuition units may be used for the college bound scholarship program established in chapter 28B.118 RCW. [2013 2nd sp.s. c 4 § 962; 2011 1st sp.s. c 11 § 173; 2007 c 214 § 12.]

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Chapter 28B.105 RCW
GET READY FOR MATH AND SCIENCE
SCHOLARSHIP PROGRAM

Sections

28B.105.010 GET ready for math and science scholarship program—Purpose—Awards.
28B.105.020 Definitions.
28B.105.030 Eligibility.
28B.105.060 Office of the superintendent of public instruction—Duties.
28B.105.110 GET ready for math and science scholarship account.

28B.105.010 GET ready for math and science scholarship program—Purpose—Awards. (1) The GET ready for math and science scholarship program is established. The purpose of the program is to provide scholarships to students who achieve level four on the mathematics or science portions of the high school statewide student assessment or achieve a score in the math section of the SAT or the math section of the ACT that is above the ninety-fifth percentile, major in a mathematics, science, or related field in college, and commit to working in mathematics, science, or a related field for at least three years in Washington following completion of their bachelor's degree. The program shall be administered by the nonprofit organization selected as the private partner in the public-private partnership.

(2) The total annual amount of each GET ready for math and science scholarship may vary, but shall not exceed the annual cost of resident undergraduate tuition fees and mandatory fees at the University of Washington. An eligible recipient may receive a GET ready for math and science scholarship for up to one hundred eighty quarter credits, or the semester equivalent, or for up to five years, whichever comes first.

(3) Scholarships shall be awarded only to the extent that state funds and private matching funds are available for that purpose in the GET ready for math and science scholarship account established in RCW 28B.105.110. [2013 2nd sp.s. c 22 § 10; 2007 c 214 § 1.]

Findings—Intent—2013 2nd sp.s. c 22: See note following RCW 28A.655.061.

28B.105.020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "GET units" means tuition units under the advanced college tuition payment program in chapter 28B.95 RCW.

(2) "Institution of higher education" has the same meaning as in RCW 28B.92.030(4) (a) and (b) (i) and (ii).

(3) "Office" means the office of student financial assistance.

(4) "Program administrator" means the private nonprofit corporation that is registered under Title 24 RCW and qualified as a tax-exempt entity under section 501(c)(3) of the federal internal revenue code, that will serve as the private partner in the public-private partnership under this chapter.

(5) "Qualified program" or "qualified major" means a mathematics, science, or related degree program or major line of study offered by an institution of higher education that is included on the list of programs or majors selected by the office and the program administrator under RCW 28B.105.100. [2013 c 248 § 3; 2011 1st sp.s. c 11 § 183; 2007 c 214 § 2.]

Findings—Intent—Effective date—2013 c 248: See notes following RCW 28B.92.030.

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

28B.105.030 Eligibility. (1) An eligible student is a student who:

(a) Is eligible for resident tuition and fee rates as defined in RCW 28B.15.012;

(b) Achieved level four on the mathematics or science portion of the high school statewide student assessment or achieved a score in the math section of the SAT or the math section of the ACT that is above the ninety-fifth percentile;

(c) Has a family income at or below one hundred twenty-five percent of the state median family income at the time the student applies for a GET ready for math and science scholarship and for up to the two previous years;

(d) Has declared an intention to complete a qualified program or qualified major or has entered a qualified program or declared a qualified major at an institution of higher education;

(e) Has declared an intention to work in a mathematics, science, or related field in Washington for at least three years immediately following completion of a bachelor's degree or higher degree.

(2) An eligible recipient is an eligible student who:

(a) Has been awarded a scholarship in accordance with the selection criteria and process established by the student achievement council and the program administrator;

(b) Enrolls at an institution of higher education within one year of graduating from high school;

(c) Maintains satisfactory academic progress, as defined by the institution of higher education where the student is enrolled;

(d) Takes at least one college-level mathematics or science course each term since enrolling in an institution of higher education; and

(e) Enters a qualified program or qualified major no later than the end of the first term in which the student has junior level standing. [2013 2nd sp.s. c 22 § 11; 2007 c 214 § 3.]

Findings—Intent—2013 2nd sp.s. c 22: See note following RCW 28A.655.061.

28B.105.060 Office of the superintendent of public instruction—Duties. The office of the superintendent of public instruction shall:

(1) Notify elementary, middle, junior high, high school, and school district staff and administrators, and the children's administration of the department of social and health services about the GET ready for math and science scholarship program using methods in place for communicating with schools and school districts; and

(2) Provide data showing the race, ethnicity, income, and other available demographic information of students who achieve level four on the math and science high school statewide student assessment; compare those data with comparable information on the student population as a whole; and submit a report with the analysis to the committees responsible for education and higher education in the legislature on December 1st of even-numbered years. [2013 2nd sp.s. c 22 § 12; 2007 c 214 § 6.]

Findings—Intent—2013 2nd sp.s. c 22: See note following RCW 28A.655.061.

28B.105.110 GET ready for math and science scholarship account. (1) The GET ready for math and science scholarship account is created in the custody of the state treasurer.

(2) The office shall deposit into the account all money received for the GET ready for math and science scholarship program from appropriations and private sources. The account shall be self-sustaining.

(3) Expenditures from the account shall be used for scholarships to eligible students and for purchases of GET units. Purchased GET units shall be owned and held in trust by the office. Expenditures from the account shall be an equal match of state appropriations and private funds raised by the program administrator. During the 2009-2011 fiscal biennium, expenditures from the account not to exceed five percent may be used by the program administrator to carry out the provisions of RCW 28B.105.090.

(4) With the exception of the operating costs associated with the management of the account by the treasurer's office as authorized in chapter 43.79A RCW, the account shall be credited with all investment income earned by the account.

(5) Disbursements from the account are exempt from appropriations and the allotment provisions of chapter 43.88 RCW.

(6) Disbursements from the account shall be made only on the authorization of the office.

(7) During the 2013-2015 fiscal biennium, appropriated state funds available in the GET ready for math and science

scholarship account and GET units owned by the office and not used for the GET ready for math and science scholarship program may be used for the college bound scholarship program created in chapter 28B.118 RCW. [2013 2nd sp.s. c 4 § 963; 2011 1st sp.s. c 11 § 188; 2010 1st sp.s. c 37 § 918. Prior: 2009 c 564 § 1807; 2009 c 564 § 920; 2008 c 329 § 908; 2007 c 214 § 11.]

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Effective date—2010 1st sp.s. c 37: See note following RCW 13.06.050.

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

Severability—2008 c 329: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2008 c 329 § 928.]

Effective date—2008 c 329: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 1, 2008]." [2008 c 329 § 929.]

Chapter 28B.115 RCW

HEALTH PROFESSIONAL CONDITIONAL SCHOLARSHIP PROGRAM

Sections

28B.115.020 Definitions.

28B.115.030 Program established—Duties of office.

28B.115.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Credentialed health care profession" means a health care profession regulated by a disciplining authority in the state of Washington under RCW 18.130.040 or by the pharmacy quality assurance commission under chapter 18.64 RCW and designated by the department in RCW 28B.115.070 as a profession having shortages of credentialed health care professionals in the state.

(2) "Credentialed health care professional" means a person regulated by a disciplining authority in the state of Washington to practice a health care profession under RCW 18.130.040 or by the pharmacy quality assurance commission under chapter 18.64 RCW.

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

(4) "Eligible education and training programs" means education and training programs approved by the department that lead to eligibility for a credential as a credentialed health care professional.

(5) "Eligible expenses" means reasonable expenses associated with the costs of acquiring an education such as tuition, books, equipment, fees, room and board, and other expenses determined by the office.

(6) "Eligible student" means a student who has been accepted into an eligible education or training program and has a declared intention to serve in a health professional shortage area upon completion of the education or training program.

(7) "Forgiven" or "to forgive" or "forgiveness" means to render health care services in a health professional shortage area in the state of Washington in lieu of monetary repayment.

(8) "Health professional shortage areas" means those areas where credentialed health care professionals are in short supply as a result of geographic maldistribution or as the result of a short supply of credentialed health care professionals in specialty health care areas and where vacancies exist in serious numbers that jeopardize patient care and pose a threat to the public health and safety. The department shall determine health professional shortage areas as provided for in RCW 28B.115.070. In making health professional shortage area designations in the state the department may be guided by applicable federal standards for "health manpower shortage areas," and "medically underserved areas," and "medically underserved populations."

(9) "Loan repayment" means a loan that is paid in full or in part if the participant renders health care services in a health professional shortage area as defined by the department.

(10) "Nonshortage rural area" means a nonurban area of the state of Washington that has not been designated as a rural physician shortage area. The department shall identify the nonshortage rural areas of the state.

(11) "Office" means the office of student financial assistance.

(12) "Participant" means a credentialed health care professional who has received a loan repayment award and has commenced practice as a credentialed health care provider in a designated health professional shortage area or an eligible student who has received a scholarship under this program.

(13) "Program" means the health professional loan repayment and scholarship program.

(14) "Required service obligation" means an obligation by the participant to provide health care services in a health professional shortage area for a period to be established as provided for in this chapter.

(15) "Rural physician shortage area" means rural geographic areas where primary care physicians are in short supply as a result of geographic maldistributions and where their limited numbers jeopardize patient care and pose a threat to public health and safety. The department shall designate rural physician shortage areas.

(16) "Satisfied" means paid-in-full.

(17) "Scholarship" means a loan that is forgiven in whole or in part if the recipient renders health care services in a health professional shortage area.

(18) "Sponsoring community" means a rural hospital or hospitals as authorized in chapter 70.41 RCW, a rural health care facility or facilities as authorized in chapter 70.175 RCW, or a city or county government or governments. [2013 c 19 § 46. Prior: 2011 1st sp.s. c 11 § 204; 2011 c 26 § 1; 1991 c 332 § 15; 1989 1st ex.s. c 9 § 717. Formerly RCW 18.150.020.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

28B.115.030 Program established—Duties of office. The health professional loan repayment and scholarship pro-

gram is established for credentialed health professionals and residents serving in health professional shortage areas. The program shall be administered by the office. In administering this program, the office shall:

(1) Select credentialed health care professionals and residents to participate in the loan repayment portion of the loan repayment and scholarship program and select eligible students to participate in the scholarship portion of the loan repayment and scholarship program;

(2) Adopt rules and develop guidelines to administer the program;

(3) Collect and manage repayments from participants who do not meet their service obligations under this chapter;

(4) Publicize the program, particularly to maximize participation among individuals in shortage areas and among populations expected to experience the greatest growth in the workforce;

(5) Solicit and accept grants and donations from public and private sources for the program;

(6) Use a competitive procurement to contract with a fund-raiser to solicit and accept grants and donations from private sources for the program. The fund-raiser shall be paid on a contingency fee basis on a sliding scale but must not exceed fifteen percent of the total amount raised for the program each year. The fund-raiser shall not be a registered state lobbyist; and

(7) Develop criteria for a contract for service in lieu of the service obligation where appropriate, that may be a combination of service and payment. [2013 c 298 § 1; 2011 1st sp.s. c 11 § 205; 1991 c 332 § 16; 1989 1st ex.s. c 9 § 718. Formerly RCW 18.150.030.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Chapter 28B.116 RCW FOSTER CARE ENDOWED SCHOLARSHIP PROGRAM

Sections

28B.116.010 Definitions.

28B.116.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Cost of attendance" means the cost associated with the attendance of the institution of higher education as determined by the office of student financial assistance, including but not limited to tuition, room, board, and books.

(2) "Eligible student" means a student who:

(a) Is between the ages of sixteen and twenty-three;

(b) Has been in foster care in the state of Washington for a minimum of six months since his or her fourteenth birthday;

(c) Is a financially needy student, as defined in RCW 28B.92.030;

(d) Is a resident student, as defined in RCW 28B.15.012(2);

(e) Has entered or will enter an institution of higher education in Washington state within three years of high school graduation or having successfully completed his or her high

school equivalency certificate as provided in RCW 28B.50.536;

(f) Is not pursuing a degree in theology; and

(g) Makes satisfactory progress towards the completion of a degree or certificate program.

(3) "Institution of higher education" means a college or university in the state of Washington that is accredited by an accrediting association recognized as such by rule of the student achievement council.

(4) "Office" means the office of student financial assistance. [2013 c 39 § 10; 2012 c 229 § 568. Prior: 2011 1st sp.s. c 11 § 214; 2005 c 215 § 2.]

Effective date—2012 c 229 §§ 101, 117, 401, 402, 501 through 594, 601 through 609, 701 through 708, 801 through 821, 902, and 904: See note following RCW 28B.77.005.

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Chapter 28B.117 RCW

PASSPORT TO COLLEGE PROMISE PROGRAM

Sections

28B.117.005 Findings—Intent. (*Expires June 30, 2022.*)

28B.117.030 Program design and implementation—Student eligibility—Supplemental scholarship and student assistance. (*Expires June 30, 2022.*)

28B.117.005 Findings—Intent. (*Expires June 30, 2022.*) (1)(a) The legislature finds that in Washington, there are more than seven thousand three hundred children in foster family or group care. These children face unique obstacles and burdens as they transition to adulthood, including lacking continuity in their elementary and high school educations. As compared to the general population of students, twice as many foster care youth change schools at least once during their elementary and secondary school careers, and three times as many change schools at least three times. Only thirty-four percent of foster care youth graduate from high school within four years, compared to seventy percent for the general population. Of the former foster care youth who earn a high school diploma, more than twenty-eight percent earn a high school equivalency certificate as provided in RCW 28B.50.536 instead of a traditional high school diploma. This is almost six times the rate of the general population. Research indicates that holders of high school equivalency certificates tend not to be as economically successful as the holders of traditional high school diplomas. Only twenty percent of former foster care youth who earn a high school degree enroll in college, compared to over sixty percent of the population generally. Of the former foster care youth who do enroll in college, very few go on to earn a degree. Less than two percent of former foster care youth hold bachelor's degrees, compared to twenty-eight percent of Washington's population generally.

(b) Former foster care youth face two critical hurdles to enrolling in college. The first is a lack of information regarding preparation for higher education and their options for enrolling in higher education. The second is finding the financial resources to fund their education. As a result of the unique hurdles and challenges that face former foster care youth, a disproportionate number of them are part of soci-

ety's large group of marginalized youth and are at increased risk of continuing the cycle of poverty and violence that frequently plagues their families.

(c) Former foster care youth suffer from mental health problems at a rate greater than that of the general population. For example, one in four former foster care youth report having suffered from posttraumatic stress disorder within the previous twelve months, compared to only four percent of the general population. Similarly, the incidence of major depression among former foster care youth is twice that of the general population, twenty percent versus ten percent.

(d) There are other barriers for former foster care youth to achieving successful adulthood. One-third of former foster care youth live in households that are at or below the poverty level. This is three times the rate for the general population. The percentage of former foster care youth who report being homeless within one year of leaving foster care varies from over ten percent to almost twenty-five percent. By comparison, only one percent of the general population reports having been homeless at sometime during the past year. One in three former foster care youth lack health insurance, compared to less than one in five people in the general population. One in six former foster care youth receive cash public assistance. This is five times the rate of the general population.

(e) Approximately twenty-five percent of former foster care youth are incarcerated at sometime after leaving foster care. This is four times the rate of incarceration for the general population. Of the former foster care youth who "age out" of foster care, twenty-seven percent of the males and ten percent of the females are incarcerated within twelve to eighteen months of leaving foster care.

(f) Female former foster care youth become sexually active more than seven months earlier than their nonfoster care counterparts, have more sexual partners, and have a mean age of first pregnancy of almost two years earlier than their peers who were not in foster care.

(2) The legislature intends to create the passport to college promise pilot program. The pilot program will initially operate for a six-year period, and will have two primary components, as follows:

(a) Significantly increasing outreach to foster care youth between the ages of fourteen and eighteen regarding the higher education opportunities available to them, how to apply to college, and how to apply for and obtain financial aid; and

(b) Providing financial aid to former foster care youth to assist with the costs of their public undergraduate college education. [2013 c 39 § 11; 2007 c 314 § 1.]

28B.117.030 Program design and implementation—Student eligibility—Supplemental scholarship and student assistance. (*Expires June 30, 2022.*) (1) The office shall design and, to the extent funds are appropriated for this purpose, implement, a program of supplemental scholarship and student assistance for students who have emancipated from the state foster care system after having spent at least one year in care.

(2) The office shall convene and consult with an advisory committee to assist with program design and implementation. The committee shall include but not be limited to former foster care youth and their advocates; representatives

from the state board for community and technical colleges, and from public and private agencies that assist current and former foster care recipients in their transition to adulthood; and student support specialists from public and private colleges and universities.

(3) To the extent that sufficient funds have been appropriated for this purpose, a student is eligible for assistance under this section if he or she:

(a) Spent at least one year in foster care subsequent to his or her sixteenth birthday;

(b) Meets one of the following three requirements:

(i) Emancipated from foster care on or after January 1, 2007;

(ii) Enrolls in extended foster care; or

(iii) Achieves a permanent plan after age seventeen and one-half years;

(c) Is a resident student, as defined in RCW 28B.15.012(2);

(d) Is enrolled with or will enroll on at least a half-time basis with an institution of higher education in Washington state by the age of twenty-one;

(e) Is making satisfactory academic progress toward the completion of a degree or certificate program, if receiving supplemental scholarship assistance;

(f) Has not earned a bachelor's or professional degree; and

(g) Is not pursuing a degree in theology.

(4) A passport to college scholarship under this section:

(a) Shall not exceed resident undergraduate tuition and fees at the highest-priced public institution of higher education in the state; and

(b) Shall not exceed the student's financial need, less a reasonable self-help amount defined by the office, when combined with all other public and private grant, scholarship, and waiver assistance the student receives.

(5) An eligible student may receive a passport to college scholarship under this section for a maximum of five years after the student first enrolls with an institution of higher education or until the student turns age twenty-six, whichever occurs first. If a student turns age twenty-six during an academic year, and would otherwise be eligible for a scholarship under this section, the student shall continue to be eligible for a scholarship for the remainder of the academic year.

(6) The office, in consultation with and with assistance from the state board for community and technical colleges, shall perform an annual analysis to verify that those institutions of higher education at which students have received a scholarship under this section have awarded the student all available need-based and merit-based grant and scholarship aid for which the student qualifies.

(7) In designing and implementing the passport to college student support program under this section, the office, in consultation with and with assistance from the state board for community and technical colleges, shall ensure that a participating college or university:

(a) Has a viable plan for identifying students eligible for assistance under this section, for tracking and enhancing their academic progress, for addressing their unique needs for assistance during school vacations and academic interims, and for linking them to appropriate sources of assistance in their transition to adulthood;

(b) Receives financial and other incentives for achieving measurable progress in the recruitment, retention, and graduation of eligible students. [2013 c 182 § 8; (2012 c 229 § 609 expired June 30, 2013); 2011 1st sp.s. c 11 § 221; 2007 c 314 § 4.]

Expiration date—2013 c 182 § 8: "Section 8 of this act expires June 30, 2022." [2013 c 182 § 11.]

Findings—2013 c 182: See note following RCW 13.34.030.

Expiration date—2012 c 229 §§ 570 and 609: "Sections *570 and 609 of this act expire June 30, 2013." [2012 c 229 § 907.]

***Reviser's note:** Section 570 of this act was vetoed.

Effective date—2012 c 229 §§ 101, 117, 401, 402, 501 through 594, 601 through 609, 701 through 708, 801 through 821, 902, and 904: See note following RCW 28B.77.005.

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Expiration date—2011 1st sp.s. c 11 §§ 220-225: See note following RCW 28B.117.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Chapter 28B.119 RCW WASHINGTON PROMISE SCHOLARSHIP PROGRAM

Sections

28B.119.010 Program design—Parameters.

28B.119.010 Program design—Parameters. The office of student financial assistance shall design the Washington promise scholarship program based on the following parameters:

(1) Scholarships shall be awarded to students graduating from public and approved private high schools under chapter 28A.195 RCW, students participating in home-based instruction as provided in chapter 28A.200 RCW, and persons twenty-one years of age or younger receiving a high school equivalency certificate as provided in RCW 28B.50.536, who meet both an academic and a financial eligibility criteria.

(a) Academic eligibility criteria shall be defined as follows:

(i) Beginning with the graduating class of 2002, students graduating from public and approved private high schools under chapter 28A.195 RCW must be in the top fifteen percent of their graduating class, as identified by each respective high school at the completion of the first term of the student's senior year; or

(ii) Students graduating from public high schools, approved private high schools under chapter 28A.195 RCW, students participating in home-based instruction as provided in chapter 28A.200 RCW, and persons twenty-one years of age or younger receiving a high school equivalency certificate as provided in RCW 28B.50.536, must equal or exceed a cumulative scholastic assessment test I score of twelve hundred on their first attempt or must equal or exceed a composite American college test score of twenty-seven on their first attempt.

(b) To meet the financial eligibility criteria, a student's family income shall not exceed one hundred thirty-five percent of the state median family income adjusted for family size, as determined by the office of student financial assistance for each graduating class. Students not meeting the eli-

gibility requirements for the first year of scholarship benefits may reapply for the second year of benefits, but must still meet the income standard set by the office for the student's graduating class.

(2) Promise scholarships are not intended to supplant any grant, scholarship, or tax program related to postsecondary education. If the office of student financial assistance finds that promise scholarships supplant or reduce any grant, scholarship, or tax program for categories of students, then the office shall adjust the financial eligibility criteria or the amount of scholarship to the level necessary to avoid supplanting.

(3) Within available funds, each qualifying student shall receive two consecutive annual awards, the value of each not to exceed the full-time annual resident tuition rates charged by Washington's community colleges. The office of student financial assistance shall award scholarships to as many students as possible from among those qualifying under this section.

(4) By October 15th of each year, the office of student financial assistance shall determine the award amount of the scholarships, after taking into consideration the availability of funds.

(5) The scholarships may only be used for undergraduate coursework at accredited institutions of higher education in the state of Washington.

(6) The scholarships may be used for undergraduate coursework at Oregon institutions of higher education that are part of the border county higher education opportunity project in RCW 28B.76.685 when those institutions offer programs not available at accredited institutions of higher education in Washington state.

(7) The scholarships may be used for college-related expenses, including but not limited to, tuition, room and board, books, and materials.

(8) The scholarships may not be awarded to any student who is pursuing a degree in theology.

(9) The office of student financial assistance may establish satisfactory progress standards for the continued receipt of the promise scholarship.

(10) The office of student financial assistance shall establish the time frame within which the student must use the scholarship. [2013 c 39 § 12; 2011 1st sp.s. c 11 § 231; 2004 c 275 § 60; 2003 c 233 § 5; 2002 c 204 § 2.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Part headings not law—2004 c 275: See note following RCW 28B.76.090.

Chapter 28B.133 RCW

GAINING INDEPENDENCE FOR STUDENTS WITH DEPENDENTS PROGRAM

Sections

28B.133.010 Program created.
28B.133.050 Use of grants.

28B.133.010 Program created. The educational assistance grant program for students with dependents is hereby created, subject to the availability of receipts of gifts, grants,

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or endowments from private sources. The program is created to serve financially needy students with dependents eighteen years of age or younger, by assisting them directly through a grant program to pursue a degree or certificate at public or private institutions of higher education, as defined in RCW 28B.92.030(4) (a) and (b) (i) and (ii), that participate in the state need grant program. [2013 c 248 § 4; 2004 c 275 § 72; 2003 c 19 § 2.]

Findings—Intent—Effective date—2013 c 248: See notes following RCW 28B.92.030.

Part headings not law—2004 c 275: See note following RCW 28B.76.090.

28B.133.050 Use of grants. The educational assistance grant program for students with dependents grants may be used by eligible participants to attend any public or private college or university in the state of Washington as defined in RCW 28B.92.030(4) (a) and (b) (i) and (ii). Each participating student may receive an amount to be determined by the office of student financial assistance, with a minimum amount of one thousand dollars per academic year, not to exceed the student's documented financial need for the course of study as determined by the institution.

Educational assistance grants for students with dependents are not intended to supplant any grant scholarship or tax program related to postsecondary education. If the office of student financial assistance finds that the educational assistance grants for students with dependents supplant or reduce any grant, scholarship, or tax program for categories of students, then the office shall adjust the financial eligibility criteria or the amount of the grant to the level necessary to avoid supplanting. [2013 c 248 § 5; 2011 1st sp.s. c 11 § 238; 2004 c 275 § 74; 2003 c 19 § 6.]

Findings—Intent—Effective date—2013 c 248: See notes following RCW 28B.92.030.

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Part headings not law—2004 c 275: See note following RCW 28B.76.090.

Chapter 28B.145 RCW

OPPORTUNITY SCHOLARSHIP ACT

Sections

28B.145.010 Definitions.
28B.145.060 Opportunity expansion program—Generally—Reports.

28B.145.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Board" means the higher education coordinating board or its successor.

(2) "Eligible education programs" means high employer demand and other programs of study as determined by the opportunity scholarship board.

(3) "Eligible expenses" means reasonable expenses associated with the costs of acquiring an education such as tuition, books, equipment, fees, room and board, and other expenses as determined by the program administrator in con-

sultation with the *board and the state board for community and technical colleges.

(4) "Eligible student" means a resident student who received his or her high school diploma or high school equivalency certificate as provided in RCW 28B.50.536 in Washington and who:

(a)(i) Has been accepted at a four-year institution of higher education into an eligible education program leading to a baccalaureate degree; or

(ii) Will attend a two-year institution of higher education and intends to transfer to an eligible education program at a four-year institution of higher education;

(b) Declares an intention to obtain a baccalaureate degree; and

(c) Has a family income at or below one hundred twenty-five percent of the state median family income at the time the student applies for an opportunity scholarship.

(5) "High employer demand program of study" has the same meaning as provided in RCW 28B.50.030.

(6) "Participant" means an eligible student who has received a scholarship under the opportunity scholarship program.

(7) "Program administrator" means a college scholarship organization that is a private nonprofit corporation registered under Title 24 RCW and qualified as a tax-exempt entity under section 501(c)(3) of the federal internal revenue code, with expertise in managing scholarships and college advising.

(8) "Resident student" has the same meaning as provided in RCW 28B.15.012. [2013 c 39 § 13; 2011 1st sp.s. c 13 § 2.]

***Reviser's note:** The higher education coordinating board was abolished by 2011 1st sp.s. c 11 § 301, effective July 1, 2012. The office of student financial assistance replaced the higher education coordinating board for higher education financial aid responsibilities pursuant to 2011 1st sp.s. c 11 § 102, effective July 1, 2012.

28B.145.060 Opportunity expansion program—Generally—Reports. (1) The opportunity expansion program is established.

(2) The opportunity scholarship board shall select institutions of higher education to receive opportunity expansion awards. In so doing, the opportunity scholarship board must:

(a) Solicit, receive, and evaluate proposals from institutions of higher education that are designed to directly increase the number of baccalaureate degrees produced in high employer demand and other programs of study, and that include annual numerical targets for the number of such degrees, with a strong emphasis on serving students who received their high school diploma or high school equivalency certificate as provided in RCW 28B.50.536 in Washington or are adult Washington residents who are returning to school to gain a baccalaureate degree;

(b) Develop criteria for evaluating proposals and awarding funds to the proposals deemed most likely to increase the number of baccalaureate degrees and degrees produced in high employer demand and other programs of study;

(c) Give priority to proposals that include a partnership between public and private partnership entities that leverage additional private funds;

(d) Give priority to proposals that are innovative, efficient, and cost-effective, given the nature and cost of the particular program of study;

(e) Consult and operate in consultation with existing higher education stakeholders, including but not limited to: Faculty, labor, student organizations, and relevant higher education agencies; and

(f) Determine which proposals to improve and accelerate the production of baccalaureate degrees in high employer demand and other programs of study will receive opportunity expansion awards for the following state fiscal year, notify the state treasurer, and announce the awards.

(3) The state treasurer, at the direction of the opportunity scholarship board, must distribute the funds that have been awarded to the institutions of higher education from the opportunity expansion account.

(4) Institutions of higher education receiving awards under this section may not supplant existing general fund state revenues with opportunity expansion awards.

(5) Annually, the office of financial management shall report to the opportunity scholarship board, the governor, and the relevant committees of the legislature regarding the percentage of Washington households with incomes in the middle-income bracket or higher. For purposes of this section, "middle-income bracket" means household incomes between two hundred and five hundred percent of the 2010 federal poverty level, as determined by the United States department of health and human services for a family of four, adjusted annually for inflation.

(6) Annually, the student achievement council must report to the opportunity scholarship board, the governor, and the relevant committees of the legislature regarding the increase in the number of degrees in high employer demand and other programs of study awarded by institutions of higher education over the average of the preceding ten academic years.

(7) In its comprehensive plan, the workforce training and education coordinating board shall include specific strategies to reach the goal of increasing the percentage of Washington households living in the middle-income bracket or higher, as calculated by the office of financial management and developed by the agency or education institution that will lead the strategy. [2013 c 39 § 14; 2011 1st sp.s. c 13 § 7.]

Title 28C

VOCATIONAL EDUCATION

Chapters

28C.04 Vocational education.

28C.10 Private vocational schools.

28C.18 Workforce training and education.

Chapter 28C.04 RCW

VOCATIONAL EDUCATION

Sections

28C.04.420 Job skills program—Grants—Reports.

28C.04.535 Washington award for vocational excellence—Granted annually—Notice—Presentation.

28C.04.420 Job skills program—Grants—Reports.

The college board may, subject to appropriation from the legislature or from funds made available from any other public or private source and pursuant to rules adopted by the college board, and with the advice of the workforce training customer advisory committee established in RCW 28C.04.390, provide job skills grants to educational institutions. The job skills grants shall be used exclusively for programs which are consistent with the job skills program. The college board shall work in collaboration with the workforce training customer advisory committee established in RCW 28C.04.390 to assure that:

(1) The program is within the scope of the job skills program under this chapter and may reasonably be expected to succeed and thereby increase employment within the state;

(2) Provision has been made to use any available alternative funding from local, state, and federal sources;

(3) The job skills grant will only be used to cover the costs associated with the program;

(4) The program will not unnecessarily duplicate existing programs and could not be provided by another educational institution more effectively or efficiently;

(5) The program involves an area of skills training and education for which there is a demonstrable need;

(6) The applicant has made provisions for the use of existing federal and state resources for student financial assistance;

(7) The job skills grant is essential to the success of the program as the resources of the applicant are inadequate to attract the technical assistance and financial support necessary for the program from business and industry;

(8) The program represents a collaborative partnership between business, industry, labor, educational institutions, and other partners, as appropriate;

(9)(a) The commitment of financial support from businesses with an annual gross business income of five hundred thousand dollars or more shall be equal to or greater than the amount of the requested job skills grant;

(b) The commitment of financial support from businesses with an annual gross business income of less than five hundred thousand dollars shall be at least equal to the trainees' salaries and benefits while in training;

(c) The annual gross business income shall be the income reported to the department of revenue for the previous fiscal year;

(10) The job skills program gives priority to applications:

(a) Proposing training that provides college credit or leads to a recognized industry credential;

(b) From firms in strategic industry clusters as identified by the state or local areas;

(c) Proposing coordination with other cluster-based programs or initiatives including, but not limited to, industry skill panels, centers of excellence, innovation partnership zones, state-supported cluster growth grants, and local cluster-based economic development initiatives;

(d) From consortia of colleges or consortia of employers; and

(e) Proposing increased capacity for educational institutions that can be made available to industry and students beyond the grant recipients;

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(11) Binding commitments have been made to the college board by the applicant for adequate reporting of information and data regarding the program to the college board, particularly information concerning the recruitment and employment of trainees and students, and including a requirement for an annual or other periodic audit of the books of the applicant directly related to the program, and for such control on the part of the college board as it considers prudent over the management of the program, so as to protect the use of public funds, including, in the discretion of the college board and without limitation, right of access to financial and other records of the applicant directly related to the programs; and

(12) A provision has been made by the applicant to work, in cooperation with the employment security department, to identify and screen potential trainees, and that provision has been made by the applicant for the participation as trainees of low-income persons including temporary assistance for needy families recipients, dislocated workers, and persons from minority and economically disadvantaged groups to participate in the program.

Beginning January 1, 2014, and every year thereafter, the college board shall provide the legislature and the governor with a report describing the activities and outcomes of the state job skills program. [2013 c 103 § 1; 2009 c 554 § 2; 1999 c 121 § 3; 1983 1st ex.s. c 21 § 4.]

Additional notes found at www.leg.wa.gov

28C.04.535 Washington award for vocational excellence—Granted annually—Notice—Presentation. Except for the 2013-14 and 2014-15 school years, the Washington award for vocational excellence shall be granted annually. The workforce training and education coordinating board shall notify the students receiving the award, their vocational instructors, local chambers of commerce, the legislators of their respective districts, and the governor, after final selections have been made. The workforce training and education coordinating board, in conjunction with the governor's office, shall prepare appropriate certificates to be presented to the selected students. Awards shall be presented in public ceremonies at times and places determined by the workforce training and education coordinating board in cooperation with the office of the governor. [2013 2nd sp.s. c 4 § 964; 2011 1st sp.s. c 50 § 930; 1995 1st sp.s. c 7 § 4; 1984 c 267 § 4.]

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

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

Additional notes found at www.leg.wa.gov

Chapter 28C.10 RCW PRIVATE VOCATIONAL SCHOOLS

Sections

28C.10.050 Minimum standards—Denial of application for licensure—Determination that school or program is at risk of closure or termination.

28C.10.082 Tuition recovery trust fund—Created—State treasurer custodian.

28C.10.050 Minimum standards—Denial of application for licensure—Determination that school or program

is at risk of closure or termination. (1) The agency shall adopt by rule minimum standards for entities operating private vocational schools. The minimum standards shall include, but not be limited to, requirements to assess whether a private vocational school is eligible to obtain and maintain a license in this state.

(2) The requirements adopted by the agency shall, at a minimum, require a private vocational school to:

(a) Disclose to the agency information about its ownership and financial position and to demonstrate to the agency that the school is financially viable and responsible and that it has sufficient financial resources to fulfill its commitments to students. Financial disclosures provided to the agency shall not be subject to public disclosure under chapter 42.56 RCW;

(b) Follow a uniform statewide cancellation and refund policy as specified by the agency;

(c) Disclose through use of a school catalog, brochure, or other written material, necessary information to students so that students may make informed enrollment decisions. The agency shall specify what information is required;

(d) Use an enrollment contract or agreement that includes: (i) The school's cancellation and refund policy, (ii) a brief statement that the school is licensed under this chapter and that inquiries may be made to the agency, and (iii) other necessary information as determined by the agency;

(e) Describe accurately and completely in writing to students before their enrollment prerequisites and requirements for (i) completing successfully the programs of study in which they are interested and (ii) qualifying for the fields of employment for which their education is designed;

(f) Comply with the requirements of RCW 28C.10.084;

(g) Assess the basic skills and relevant aptitudes of each potential student to determine that a potential student has the basic skills and relevant aptitudes necessary to complete and benefit from the program in which the student plans to enroll, including but not limited to administering a United States department of education-approved English as a second language exam before enrolling students for whom English is a second language unless the students provide proof of graduation from a United States high school or proof of completion of a high school equivalency certificate as provided in RCW 28B.50.536 in English or results of another academic assessment determined appropriate by the agency. Guidelines for such assessments shall be developed by the agency, in consultation with the schools;

(h) Discuss with each potential student the potential student's obligations in signing any enrollment contract and/or incurring any debt for educational purposes. The discussion shall include the inadvisability of acquiring an excessive educational debt burden that will be difficult to repay given employment opportunities and average starting salaries in the potential student's chosen occupation;

(i) Ensure that any enrollment contract between the private vocational school and its students has an attachment in a format provided by the agency. The attachment shall be signed by both the school and the student. The attachment shall stipulate that the school has complied with (h) of this subsection and that the student understands and accepts his or her responsibilities in signing any enrollment contract or debt application. The attachment shall also stipulate that the enrollment contract shall not be binding for at least five days,

excluding Sundays and holidays, following signature of the enrollment contract by both parties; and

(j) Comply with the requirements related to qualifications of administrators and instructors.

(3) The agency may deny a private vocational school's application for licensure if the school fails to meet the requirements in this section.

(4) The agency may determine that a licensed private vocational school or a particular program of a private vocational school is at risk of closure or termination if:

(a) There is a pattern or history of substantiated student complaints filed with the agency pursuant to RCW 28C.10.120; or

(b) The private vocational school fails to meet minimum licensing requirements and has a pattern or history of failing to meet the minimum requirements.

(5) If the agency determines that a private vocational school or a particular program is at risk of closure or termination, the agency shall require the school to take corrective action. [2013 c 39 § 15; 2007 c 462 § 2; 2005 c 274 § 247; 2001 c 23 § 1; 1990 c 188 § 7; 1987 c 459 § 3; 1986 c 299 § 5.]

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

Additional notes found at www.leg.wa.gov

28C.10.082 Tuition recovery trust fund—Created—State treasurer custodian. The tuition recovery trust fund is hereby established in the custody of the state treasurer. The agency shall deposit in the fund all moneys received under RCW 28C.10.084. Moneys in the fund may be spent only for the purposes under RCW 28C.10.084. Disbursements from the fund shall be on authorization of the agency. During the 2013-2015 fiscal biennium, the legislature may transfer from the tuition recovery trust fund to the state general fund such amounts as reflect the excess fund balance in the fund. The fund is subject to the allotment procedure provided under chapter 43.88 RCW, but no appropriation is required for disbursements. [2013 2nd sp.s. c 4 § 965; 1991 sp.s. c 13 § 85; 1987 c 459 § 2.]

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

Additional notes found at www.leg.wa.gov

Chapter 28C.18 RCW

WORKFORCE TRAINING AND EDUCATION

Sections

28C.18.010 Definitions.

28C.18.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this title.

(1) "Adult basic education" means instruction designed to achieve mastery of skills in reading, writing, oral communication, and computation at a level sufficient to allow the individual to function effectively as a parent, worker, and citizen in the United States, commensurate with that individual's actual ability level, and includes English as a second language and preparation and testing services for a high

school equivalency certificate as provided in RCW 28B.50.536.

(2) "Board" means the workforce training and education coordinating board.

(3) "Director" means the director of the workforce training and education coordinating board.

(4) "Industry skill panel" means a regional partnership of business, labor, and education leaders that identifies skill gaps in a key economic cluster and enables the industry and public partners to respond to and be proactive in addressing workforce skill needs.

(5) "Training system" means programs and courses of secondary vocational education, technical college programs and courses, community college vocational programs and courses, private career school and college programs and courses, employer-sponsored training, adult basic education programs and courses, programs and courses funded by the federal workforce investment act, programs and courses funded by the federal vocational act, programs and courses funded under the federal adult education act, publicly funded programs and courses for adult literacy education, and apprenticeships, and programs and courses offered by private and public nonprofit organizations that are representative of communities or significant segments of communities and provide job training or adult literacy services.

(6) "Vocational education" means organized educational programs offering a sequence of courses which are directly related to the preparation or retraining of individuals in paid or unpaid employment in current or emerging occupations requiring other than a baccalaureate or advanced degree. Such programs shall include competency-based applied learning which contributes to an individual's academic knowledge, higher-order reasoning, and problem-solving skills, work attitudes, general employability skills, and the occupational-specific skills necessary for economic independence as a productive and contributing member of society. Such term also includes applied technology education.

(7) "Workforce development council" means a local workforce investment board as established in P.L. 105-220 Sec. 117.

(8) "Workforce skills" means skills developed through applied learning that strengthen and reinforce an individual's academic knowledge, critical thinking, problem solving, and work ethic and, thereby, develop the employability, occupational skills, and management of home and work responsibilities necessary for economic independence. [2013 c 39 § 16. Prior: 2009 c 151 § 5; 2008 c 103 § 2; 1996 c 99 § 2; 1991 c 238 § 2.]

Findings—Intent—2008 c 103: "(1) The legislature finds that a skilled workforce is essential for employers and job seekers to compete in today's global economy. The engines of economic progress are fueled by education and training. The legislature further finds that industry skill panels are a critical and proven form of public-private partnership that harness the expertise of leaders in business, labor, and education to identify workforce development strategies for industries that drive Washington's regional economies. Industry skill panels foster innovation and enable industry leaders and public partners to be proactive, addressing changing needs for businesses quickly and strategically. Industry skill panels leverage small state investments with private sector investments to ensure that public resources are better aligned with industry needs.

(2) The legislature further finds that industry skill panels support other valuable initiatives such as the department of community, trade, and economic development's cluster-based economic development grants; the community and technical college centers of excellence, high-demand funds, and

the job skills program; and the employment security department's incumbent worker training funds. Industry skill panels provide a framework for coordinating these and other investments in line with economic and workforce development strategies identified by industry leaders. It is the intent of the legislature to support the development and maintenance of industry skill panels in key sectors of the economy as an efficient and effective way to support regional economic development." [2008 c 103 § 1.]

Title 29A ELECTIONS

Chapters

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Chapter 29A.04 RCW GENERAL PROVISIONS

Sections

29A.04.008	Ballot and related terms.
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29A.04.321	State and local general elections—Statewide general election—Exceptions—Special county elections.
29A.04.330	City, town, and district general and special elections—Exceptions.
29A.04.410	Costs borne by constituencies.
29A.04.420	State share.

29A.04.008 Ballot and related terms. As used in this title:

(1) "Ballot" means, as the context implies, either:

(a) The issues and offices to be voted upon in a jurisdiction or portion of a jurisdiction at a particular primary, general election, or special election;

(b) A facsimile of the contents of a particular ballot whether printed on a paper ballot or ballot card or as part of a voting machine or voting device;

(c) A physical or electronic record of the choices of an individual voter in a particular primary, general election, or special election; or

(d) The physical document on which the voter's choices are to be recorded;

(2) "Paper ballot" means a piece of paper on which the ballot for a particular election or primary has been printed, on which a voter may record his or her choices for any candidate or for or against any measure, and that is to be tabulated manually;

(3) "Ballot card" means any type of card or piece of paper of any size on which a voter may record his or her choices for any candidate and for or against any measure and that is to be tabulated on a vote tallying system;

(4) "Sample ballot" means a printed facsimile of all the issues and offices on the ballot in a jurisdiction and is intended to give voters notice of the issues, offices, and candidates that are to be voted on at a particular primary, general election, or special election;

(5) "Provisional ballot" means a ballot issued to a voter who would otherwise be denied an opportunity to vote a regular ballot, for any reason authorized by the Help America Vote Act, including but not limited to the following:

(a) The voter's name does not appear in the list of registered voters for the county;

(b) There is an indication in the voter registration system that the voter has already voted in that primary, special election, or general election, but the voter wishes to vote again;

(c) There is a question on the part of the voter concerning the issues or candidates on which the voter is qualified to vote;

(d) Any other reason allowed by law. [2013 c 11 § 1; 2011 c 10 § 1; 2007 c 38 § 1; 2005 c 243 § 1; 2004 c 271 § 102.]

Notice to registered poll voters—Elections by mail—2011 c 10: "The county auditor of any county that maintained poll sites as of July 22, 2011, shall notify by mail each registered poll voter that all future primaries, special elections, and general elections will be conducted by mail." [2011 c 10 § 85.]

29A.04.013 Canvassing. "Canvassing" means the process of examining ballots or groups of ballots, subtotals, and cumulative totals in order to determine the official returns of a primary, special, or general election and includes the tabulation of any votes that were not previously tabulated. [2013 c 11 § 2; 2011 c 10 § 2; 2003 c 111 § 103; 1990 c 59 § 3. Formerly RCW 29.01.008.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Intent—1990 c 59: "By this act the legislature intends to unify and simplify the laws and procedures governing filing for elective office, ballot layout, ballot format, voting equipment, and canvassing." [1990 c 59 § 1.]

Additional notes found at www.leg.wa.gov

29A.04.079 Infamous crime. An "infamous crime" is a crime punishable by death in the state penitentiary or imprisonment in a state or federal correctional facility. Neither an adjudication in juvenile court pursuant to chapter 13.40 RCW, nor a conviction for a misdemeanor or gross misdemeanor, is an "infamous crime." [2013 c 11 § 3; 2009 c 369 § 1; 2003 c 111 § 114. Prior: 1992 c 7 § 31; 1965 c 9 § 29.01.080; prior: Code 1881 § 3054; 1865 p 25 § 5; RRS § 5113. Formerly RCW 29.01.080.]

Contests, conviction of felony without reversal or restoration of civil rights as grounds for: RCW 29A.68.020.

Denial of civil rights for conviction of infamous crime: State Constitution Art. 6 § 3.

29A.04.086 Major political party. "Major political party" means a political party whose nominees for president and vice president received at least five percent of the total vote cast at the last presidential election. A political party qualifying as a major political party under this section retains such status until the next presidential election at which the presidential and vice presidential candidates of that party do not achieve at least five percent of the vote. [2013 c 11 § 4; 2004 c 271 § 103.]

29A.04.169 Short term. "Short term" means the brief period of time starting upon certification of the general election or issuance of a certificate of election, and ending with the start of the next full term, and is applicable only when there has been a vacancy in the office after the last election at which such office could have been voted upon for an unexpired term. Short term elections are always held in conjunction with elections for the full term for the office. [2013 c 11 § 6; 2003 c 111 § 130; 1975-'76 2nd ex.s. c 120 § 14. Formerly RCW 29.01.180.]

Additional notes found at www.leg.wa.gov

29A.04.216 County auditor—Duties—Exceptions. The county auditor of each county shall be ex officio the supervisor of all primaries and elections, general or special, and it shall be the county auditor's duty to provide places for holding such primaries and elections; to provide the supplies and materials necessary for the conduct of elections; and to publish and post notices of calling such primaries and elections in the manner provided by law. The auditor shall also apportion to each city, town, or district, and to the state of Washington in the odd-numbered year, its share of the expense of such primaries and elections. This section does not apply to general or special elections for any city, town, or district that is not subject to RCW 29A.04.321 and 29A.04.330, but all such elections must be held and conducted at the time, in the manner, and by the officials (with such notice, requirements for filing for office, and certifications by local officers) as provided and required by the laws governing such elections. [2013 c 11 § 7; 2011 c 10 § 6; 2004 c 271 § 104.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

29A.04.225 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.04.240 Recodified as RCW 29A.08.270. See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.04.321 State and local general elections—State-wide general election—Exceptions—Special county elections. (1) All state, county, city, town, and district general elections for the election of federal, state, legislative, judicial, county, city, town, and district officers, and for the submission to the voters of the state, county, city, town, or district of any measure for their adoption and approval or rejection,

shall be held on the first Tuesday after the first Monday of November, in the year in which they may be called. A statewide general election shall be held on the first Tuesday after the first Monday of November of each year. However, the statewide general election held in odd-numbered years shall be limited to (a) city, town, and district general elections as provided for in RCW 29A.04.330, or as otherwise provided by law; (b) the election of federal officers for the remainder of any unexpired terms in the membership of either branch of the Congress of the United States; (c) the election of state and county officers for the remainder of any unexpired terms of offices created by or whose duties are described in Article II, section 15, Article III, sections 16, 17, 19, 20, 21, 22, and 23, and Article IV, sections 3 and 5 of the state Constitution and RCW 2.06.080; (d) the election of county officers in any county governed by a charter containing provisions calling for general county elections at this time; and (e) the approval or rejection of state measures, including proposed constitutional amendments, matters pertaining to any proposed constitutional convention, initiative measures and referendum measures proposed by the electorate, referendum bills, and any other matter provided by the legislature for submission to the electorate.

(2) A county legislative authority may call a special county election by presenting a resolution to the county auditor prior to the proposed election date. A special election called by the county legislative authority shall be held on one of the following dates as decided by such governing body:

- (a) The second Tuesday in February;
- (b) The fourth Tuesday in April;
- (c) The day of the primary as specified by RCW 29A.04.311; or
- (d) The first Tuesday after the first Monday in November.

(3) A resolution calling for a special election on a date set forth in subsection (2)(a) and (b) of this section must be presented to the county auditor at least forty-six days prior to the election date. A resolution calling for a special election on a date set forth in subsection (2)(c) of this section must be presented to the county auditor no later than the Friday immediately before the first day of regular candidate filing. A resolution calling for a special election on a date set forth in subsection (2)(d) of this section must be presented to the county auditor no later than the day of the primary.

(4) In addition to the dates set forth in subsection (2)(a) through (d) of this section, a special election to validate an excess levy or bond issue may be called at any time to meet the needs resulting from fire, flood, earthquake, or other act of God. Such county special election shall be noticed and conducted in the manner provided by law.

(5) This section shall supersede the provisions of any and all other statutes, whether general or special in nature, having different dates for such city, town, and district elections, the purpose of this section being to establish mandatory dates for holding elections. This section shall not be construed as fixing the time for holding primary elections, or elections for the recall of any elective public officer. [2013 c 11 § 8; 2011 c 349 § 3; 2009 c 413 § 2; (2009 c 413 § 1 expired July 1, 2011); 2006 c 344 § 2; 2004 c 271 § 106.]

Effective date—2011 c 349: See note following RCW 29A.04.255.

Effective date—2009 c 413 §§ 2 and 4: "Sections 2 and 4 of this act take effect July 1, 2011." [2009 c 413 § 6.]

Expiration date—2009 c 413 §§ 1 and 3: "Sections 1 and 3 of this act expire July 1, 2011." [2009 c 413 § 5.]

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

29A.04.330 City, town, and district general and special elections—Exceptions. (1) All city, town, and district general elections shall be held throughout the state of Washington on the first Tuesday following the first Monday in November in the odd-numbered years.

This section shall not apply to:

- (a) Elections for the recall of any elective public officer;
- (b) Public utility districts, conservation districts, or district elections at which the ownership of property within those districts is a prerequisite to voting, all of which elections shall be held at the times prescribed in the laws specifically applicable thereto;

(c) Consolidation proposals as provided for in RCW 28A.315.235 and nonhigh capital fund aid proposals as provided for in chapter 28A.540 RCW; and

(d) Special flood control districts consisting of three or more counties.

(2) The county auditor, as ex officio supervisor of elections, upon request in the form of a resolution of the governing body of a city, town, or district, presented to the auditor prior to the proposed election date, shall call a special election in such city, town, or district, and for the purpose of such special election he or she may combine, unite, or divide precincts. Such a special election shall be held on one of the following dates as decided by the governing body:

- (a) The second Tuesday in February;
- (b) The fourth Tuesday in April;
- (c) The day of the primary election as specified by RCW 29A.04.311; or
- (d) The first Tuesday after the first Monday in November.

(3) A resolution calling for a special election on a date set forth in subsection (2)(a) and (b) of this section must be presented to the county auditor at least forty-six days prior to the election date. A resolution calling for a special election on a date set forth in subsection (2)(c) of this section must be presented to the county auditor no later than the Friday immediately before the first day of regular candidate filing. A resolution calling for a special election on a date set forth in subsection (2)(d) of this section must be presented to the county auditor no later than the day of the primary.

(4) In addition to subsection (2)(a) through (d) of this section, a special election to validate an excess levy or bond issue may be called at any time to meet the needs resulting from fire, flood, earthquake, or other act of God, except that no special election may be held between the first day for candidates to file for public office and the last day to certify the returns of the general election other than as provided in subsection (2)(c) and (d) of this section. Such special election shall be conducted and notice thereof given in the manner provided by law.

(5) This section shall supersede the provisions of any and all other statutes, whether general or special in nature, having different dates for such city, town, and district elections, the

purpose of this section being to establish mandatory dates for holding elections. [2013 c 11 § 9; 2011 c 349 § 4. Prior: 2009 c 413 § 4; (2009 c 413 § 3 expired July 1, 2011); 2009 c 144 § 3; 2006 c 344 § 3; 2004 c 266 § 6; 2003 c 111 § 145; 2002 c 43 § 2; 1994 c 142 § 2; 1992 c 37 § 2; 1990 c 33 § 562; 1989 c 4 § 10 (Initiative Measure No. 99); 1986 c 167 § 6; 1980 c 3 § 2; 1975-'76 2nd ex.s. c 111 § 2; 1965 c 123 § 3; 1965 c 9 § 29.13.020; prior: 1963 c 200 § 1; 1955 c 55 § 1; 1951 c 101 § 1; 1949 c 161 § 1; 1927 c 182 § 1; 1923 c 53 § 2; 1921 c 61 § 2; Rem. Supp. 1949 § 5144. Formerly RCW 29.13.020.]

Effective date—2011 c 349: See note following RCW 29A.04.255.

Effective date—2009 c 413 §§ 2 and 4: See note following RCW 29A.04.321.

Expiration date—2009 c 413 §§ 1 and 3: See note following RCW 29A.04.321.

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

Effective date—2004 c 266: See note following RCW 29A.04.575.

Intent—2002 c 43: "The legislature finds that there are conflicting interpretations as to the intent of the legislature in the enactment of chapter 305, Laws of 1999. The purpose of this act is to make statutory changes that further clarify this intent.

It is the intent of the legislature that elections of conservation district supervisors continue to be conducted under procedures in the conservation district statutes, chapter 89.08 RCW, and that such elections not be conducted under the general election laws contained in Title 29 RCW. Further, it is the intent of the legislature that there be no change made with regard to applicability of the public disclosure act, *chapter 42.17 RCW, to conservation district supervisors from those that existed before the enactment of chapter 305, Laws of 1999." [2002 c 43 § 1.]

***Reviser's note:** Provisions in chapter 42.17 RCW relating to public disclosure are recodified in chapter 42.56 RCW by 2005 c 274.

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

Additional notes found at www.leg.wa.gov

29A.04.410 Costs borne by constituencies. Every city, town, and district is liable for its proportionate share of the costs when such elections are held in conjunction with other elections held under RCW 29A.04.321 and 29A.04.330.

Whenever any city, town, or district holds any primary or election, general or special, on an isolated date, all costs of such elections must be borne by the city, town, or district concerned.

The purpose of this section is to clearly establish that the county is not responsible for any costs involved in the holding of any city, town, or district election.

In recovering such election expenses, including a reasonable pro-ration of administrative costs, the county auditor shall certify the cost to the county treasurer with a copy to the clerk or auditor of the city, town, or district concerned. Upon receipt of such certification, the county treasurer shall make the transfer from any available and appropriate city, town, or district funds to the county current expense fund or to the county election reserve fund if such a fund is established. Each city, town, or district must be promptly notified by the county treasurer whenever such transfer has been completed. However, in those districts wherein a treasurer, other than the county treasurer, has been appointed such transfer procedure does not apply, but the district shall promptly issue its warrant for payment of election costs. [2013 c 11 § 10; 2003 c

111 § 146; 1965 c 123 § 5; 1965 c 9 § 29.13.045. Prior: 1963 c 200 § 7; 1951 c 257 § 5. Formerly RCW 29.13.045.]

Diking districts, election to authorize, costs: RCW 85.38.060.

Diking or drainage district, reorganization into improvement district 1917 act, election to authorize: RCW 85.38.060.

1933 act, election to authorize: RCW 85.38.060.

Expense of printing and mailing ballots, envelopes, and instructions: RCW 29A.36.220.

Port districts, formation of, election on, expense of: RCW 53.04.070.

Public utility district elections, expense of: RCW 54.08.041.

Reclamation districts of one million acres, election to form, expense: RCW 89.30.115.

Soil and water conservation district, election to form, expense: RCW 89.08.140.

Water-sewer districts

annexation of territory by, election on, expense: RCW 57.24.050.

formation of, expense: RCW 57.04.055.

29A.04.420 State share. (1) Whenever state officers or measures are voted upon at a state primary or general election held in an odd-numbered year under RCW 29A.04.321, the state of Washington shall assume a prorated share of the costs of that state primary or general election.

(2) Whenever a primary or vacancy election is held to fill a vacancy in the position of United States senator or United States representative under chapter 29A.28 RCW, the state of Washington shall assume a prorated share of the costs of that primary or vacancy election.

(3) The county auditor shall apportion the state's share of these expenses when prorating election costs under RCW 29A.04.410 and shall file such expense claims with the secretary of state.

(4) The secretary of state shall include in his or her biennial budget requests sufficient funds to carry out this section. Reimbursements for election costs shall be from appropriations specifically provided by law for that purpose. [2013 c 11 § 11; 2003 c 111 § 147. Prior: 1985 c 45 § 2; 1977 ex.s. c 144 § 4; 1975-'76 2nd ex.s. c 4 § 1; 1973 c 4 § 2. Formerly RCW 29.13.047.]

Legislative intent—1985 c 45: "It is the intention of the legislature that sections 2 through 7 of this act shall provide an orderly and predictable election procedure for filling vacancies in the offices of United States representative and United States senator." [1985 c 45 § 1.]

Chapter 29A.08 RCW

VOTERS AND REGISTRATION

Sections

29A.08.020	Mailing, date and method.
29A.08.220	Application—Format.
29A.08.230	Oath of applicant.
29A.08.250	Repealed.
29A.08.260	Production, supply, and distribution.
29A.08.270	Information in foreign languages.
29A.08.330	Registration at designated agencies—Procedures.
29A.08.340	Registration or update of registration with driver's license or identification card application or renewal.
29A.08.350	Duties of department of licensing, secretary of state.
29A.08.520	Felony conviction—Provisional and permanent restoration of voting rights.
29A.08.785	Repealed.
29A.08.820	Times for filing challenges—Hearings—Treatment of challenged ballots.

29A.08.020 Mailing, date and method. The definitions set forth in this section apply throughout this chapter, unless the context clearly requires otherwise.

(1) "By mail" means delivery of a completed original voter registration application by mail to a county auditor or the office of the secretary of state.

(2) For voter registration applicants, "date of mailing" means the date of the postal cancellation on the voter registration application. This date will also be used as the date of application for the purpose of meeting the registration cutoff deadline. If the postal cancellation date is illegible then the date of receipt by the elections official is considered the date of application. If an application is received by a county auditor or the office of the secretary of state by the close of business on the fifth day after the cutoff date for voter registration and the postal cancellation date is illegible, the application will be considered to have arrived by the cutoff date for voter registration. [2013 c 11 § 12; 2004 c 267 § 103; 2003 c 111 § 204; 1994 c 57 § 30; 1993 c 434 § 1. Formerly RCW 29.08.010.]

Effective dates—2004 c 267: See note following RCW 29A.08.010.
Additional notes found at www.leg.wa.gov

29A.08.220 Application—Format. (1) The secretary of state shall specify by rule the format of all voter registration applications. These applications shall be compatible with existing voter registration records. An applicant for voter registration shall be required to complete only one application and to provide the required information other than his or her signature no more than one time. These applications shall also contain information for the voter to update his or her registration.

(2) Any application format specified by the secretary for use in registering to vote in state and local elections shall satisfy the requirements of the National Voter Registration Act of 1993 (P.L. 103-31) and the Help America Vote Act of 2002 (P.L. 107-252) for registering to vote in federal elections. [2013 c 11 § 13; 2004 c 267 § 115; 2003 c 111 § 217. Prior: 1994 c 57 § 18; 1990 c 143 § 9; 1973 1st ex.s. c 21 § 7; 1971 ex.s. c 202 § 18; 1965 c 9 § 29.07.140; prior: (i) 1933 c 1 § 30; RRS § 5114-30. (ii) 1933 c 1 § 13, part; RRS § 5114-13, part. Formerly RCW 29.07.140.]

Effective dates—2004 c 267: See note following RCW 29A.08.010.
Additional notes found at www.leg.wa.gov

29A.08.230 Oath of applicant. For all voter registrations, the registrant shall sign the following oath:

"I declare that the facts on this voter registration form are true. I am a citizen of the United States, I will have lived at this address in Washington for at least thirty days immediately before the next election at which I vote, I will be at least eighteen years old when I vote, I am not disqualified from voting due to a court order, and I am not under department of corrections supervision for a Washington felony conviction." [2013 c 11 § 14; 2009 c 369 § 17; 2003 c 111 § 218; 1994 c 57 § 12; 1990 c 143 § 8; 1973 1st ex.s. c 21 § 4; 1971 ex.s. c 202 § 10; 1965 c 9 § 29.07.080. Prior: 1933 c 1 § 12; RRS § 5114-12. Formerly RCW 29.07.080.]

Civil rights

loss of: State Constitution Art. 6 § 3, RCW 29A.08.520.

[2013 RCW Supp—page 346]

restoration of: RCW 9.92.066, 9.94A.637, 9.94A.885, 9.95.260, chapter 9.96 RCW.

Additional notes found at www.leg.wa.gov

29A.08.250 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.08.260 Production, supply, and distribution. (1) All registration applications required under RCW 29A.08.210 and 29A.08.340 shall be produced and furnished by the secretary of state to the county auditors and the department of licensing.

(2) The county auditor shall distribute forms by which a person may register to vote by mail and transfer any previous registration in this state. The county auditor shall keep a supply of voter registration forms in his or her office at all times for political parties and others interested in assisting in voter registration, and shall make every effort to make these forms generally available to the public. The county auditor shall provide voter registration forms to city and town clerks, state offices, schools, fire stations, public libraries, and any other locations considered appropriate by the auditor or secretary of state for extending registration opportunities to all areas of the county. After the initial distribution of voter registration forms to a given location, a representative designated by the official in charge of that location shall notify the county auditor of the need for additional voter registration supplies. [2013 c 11 § 15; 2009 c 369 § 18; 2004 c 267 § 118; 2003 c 111 § 221. Prior: 1993 c 434 § 4. Formerly RCW 29.08.040.]

Effective dates—2004 c 267: See note following RCW 29A.08.010.

29A.08.270 Information in foreign languages. In order to encourage the broadest possible voting participation by all eligible citizens, the secretary of state shall produce voter registration information in the foreign languages required of state agencies. [2003 c 111 § 139; 2001 c 41 § 3. Formerly RCW 29A.04.240, 29.04.085.]

29A.08.330 Registration at designated agencies—Procedures. (1) The secretary of state shall prescribe the method of voter registration for each designated agency. The agency shall use either the state voter registration by mail form with a separate declination form for the applicant to indicate that he or she declines to register at this time, or the agency may use a separate form approved for use by the secretary of state.

(2) The person providing service at the agency shall offer voter registration services to every client whenever he or she applies for service or assistance and with each renewal, recertification, or change of address. The person providing service shall give the applicant the same level of assistance with the voter registration application as is offered to fill out the agency's forms and documents, including information about age and citizenship requirements for voter registration.

(3) The person providing service at the agency shall determine if the prospective applicant wants to register to vote or update his or her voter registration by asking the following question:

"Do you want to register to vote or update your voter registration?"

If the applicant chooses to register or update a registration, the service agent shall ask the following:

- (a) "Are you a United States citizen?"
- (b) "Are you or will you be eighteen years of age on or before the next election?"

If the applicant answers in the affirmative to both questions, the agent shall then provide the applicant with a voter registration form and instructions and shall record that the applicant has requested to register or update a voter registration. If the applicant answers in the negative to either question, the agent shall not provide the applicant with a voter registration form.

(4) If an agency uses a computerized application process, it may, in consultation with the secretary of state, develop methods to capture simultaneously the information required for voter registration during a person's computerized application process.

(5) Each designated agency shall transmit the applications to the secretary of state or appropriate county auditor within three business days. [2013 c 11 § 16; 2009 c 369 § 20; 2005 c 246 § 14; 2003 c 111 § 224. Prior: 2001 c 41 § 7; 1994 c 57 § 28. Formerly RCW 29.07.440.]

Effective date—2005 c 246: See note following RCW 10.64.140.

Additional notes found at www.leg.wa.gov

29A.08.340 Registration or update of registration with driver's license or identification card application or renewal. (1) A person may register to vote or update his or her voter registration when he or she applies for or renews a driver's license or identification card under chapter 46.20 RCW.

(2) To register to vote or update a registration, the applicant shall provide the information required by RCW 29A.08.010.

(3) The driver licensing agent shall record that the applicant has requested to register to vote or update a voter registration. [2013 c 11 § 17; 2003 c 111 § 225; 2001 c 41 § 16; 1999 c 298 § 6; 1994 c 57 § 21; 1990 c 143 § 1. Formerly RCW 29.07.260.]

Civil rights

loss of: State Constitution Art. 6 § 3, RCW 29A.08.520.

restoration of: RCW 9.92.066, 9.94A.637, 9.94A.885, 9.95.260, chapter 9.96 RCW.

Driver licensing agents duties regarding voter registration: RCW 46.20.155.

Additional notes found at www.leg.wa.gov

29A.08.350 Duties of department of licensing, secretary of state. The department of licensing shall produce and transmit to the secretary of state the following information from the records of each individual who requested a voter registration or update at a driver's license facility: The name, address, date of birth, gender of the applicant, the driver's license number, and the date on which the application for voter registration or update was submitted. The secretary of state shall process the registrations and updates as an electronic application. [2013 c 11 § 18; 2009 c 369 § 21; 2004 c 267 § 120; 2003 c 111 § 226; 1994 c 57 § 22; 1990 c 143 § 2. Formerly RCW 29.07.270.]

Effective dates—2004 c 267: See note following RCW 29A.08.010.

Additional notes found at www.leg.wa.gov

29A.08.520 Felony conviction—Provisional and permanent restoration of voting rights. (1) For a felony conviction in a Washington state court, the right to vote is provisionally restored as long as the person is not under the authority of the department of corrections. For a felony conviction in a federal court or any state court other than a Washington state court, the right to vote is restored as long as the person is no longer incarcerated.

(2)(a) Once the right to vote has been provisionally restored, the sentencing court may revoke the provisional restoration of voting rights if the sentencing court determines that a person has willfully failed to comply with the terms of his or her order to pay legal financial obligations.

(b) If the person has failed to make three payments in a twelve-month period and the county clerk or restitution recipient requests, the prosecutor shall seek revocation of the provisional restoration of voting rights from the court.

(c) To the extent practicable, the prosecutor and county clerk shall inform a restitution recipient of the recipient's right to ask for the revocation of the provisional restoration of voting rights.

(3) If the court revokes the provisional restoration of voting rights, the revocation shall remain in effect until, upon motion by the person whose provisional voting rights have been revoked, the person shows that he or she has made a good faith effort to pay as defined in RCW 10.82.090.

(4) The county clerk shall enter into a database maintained by the administrator for the courts the names of all persons whose provisional voting rights have been revoked, and update the database for any person whose voting rights have subsequently been restored pursuant to subsection (6) of this section.

(5) At least twice a year, the secretary of state shall compare the list of registered voters to a list of felons who are not eligible to vote as provided in subsections (1) and (3) of this section. If a registered voter is not eligible to vote as provided in this section, the secretary of state or county auditor shall confirm the match through a date of birth comparison and suspend the voter registration from the official state voter registration list. The secretary of state or county auditor shall send to the person at his or her last known voter registration address and at the department of corrections, if the person is under the authority of the department, a notice of the proposed cancellation and an explanation of the requirements for provisionally and permanently restoring the right to vote and reregistering. To the extent possible, the secretary of state shall time the comparison required by this subsection to allow notice and cancellation of voting rights for ineligible voters prior to a primary or general election.

(6) The right to vote may be permanently restored by one of the following for each felony conviction:

(a) A certificate of discharge issued by the sentencing court, as provided in RCW 9.94A.637;

(b) A court order restoring the right, as provided in RCW 9.92.066;

(c) A final order of discharge issued by the indeterminate sentence review board, as provided in RCW 9.96.050; or

(d) A certificate of restoration issued by the governor, as provided in RCW 9.96.020.

(7) For the purposes of this section, a person is under the authority of the department of corrections if the person is:

(a) Serving a sentence of confinement in the custody of the department of corrections; or

(b) Subject to community custody as defined in RCW 9.94A.030. [2013 c 11 § 19. Prior: (2009 c 369 § 27 repealed by 2013 c 11 § 95); 2009 c 325 § 1; 2005 c 246 § 15; 2004 c 267 § 126; 2003 c 111 § 233; prior: 1994 c 57 § 42. Formerly RCW 29.10.097.]

Effective date—2005 c 246: See note following RCW 10.64.140.

Effective dates—2004 c 267: See note following RCW 29A.08.010.

Restoration of civil rights: RCW 9.92.066, 9.94A.637, 9.94A.885, 9.95.260, chapter 9.96 RCW.

Additional notes found at www.leg.wa.gov

29A.08.785 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.08.820 Times for filing challenges—Hearings—Treatment of challenged ballots. (1) Challenges must be filed with the county auditor of the county in which the challenged voter is registered no later than forty-five days before the election. The county auditor presides over the hearing.

(2) Only if the challenged voter registered to vote less than sixty days before the election, or changed residence less than sixty days before the election without transferring his or her registration, may a challenge be filed not later than ten days before any primary or election, general or special, or within ten days of the voter being added to the voter registration database, whichever is later.

(a) If the challenge is filed within forty-five days before an election at which the challenged voter is eligible to vote, a notation of the challenge must be made immediately in the voter registration system, and the county canvassing board presides over the hearing.

(b) If the challenge is filed before the challenged voter's ballot is received, the ballot must be treated as a challenged ballot.

(c) If the challenge is filed after the challenged voter's ballot is received, the challenge cannot affect the current election. [2013 c 11 § 20; 2011 c 10 § 21; 2006 c 320 § 5; 2003 c 111 § 254; 1987 c 288 § 2; 1983 1st ex.s. c 30 § 3. Formerly RCW 29.10.127.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Right to vote

loss of: State Constitution Art. 6 § 3, RCW 11.88.010, 11.88.090.

restoration of: RCW 9.92.066, 9.94A.637, 9.94A.885, 9.95.260, chapter 9.96 RCW.

Chapter 29A.12 RCW VOTING SYSTEMS

Sections

29A.12.005 "Voting system."
29A.12.080 Requirements for approval.
29A.12.120 Counting center personnel—Instruction, requirements.
29A.12.150 Recording requirements.
29A.12.170 Repealed.

29A.12.005 "Voting system." As used in this chapter, "voting system" means:

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(1) The total combination of mechanical, electromechanical, or electronic equipment including, but not limited to, the software, firmware, and documentation required to program, control, and support the equipment, that is used:

(a) To define ballots;

(b) To cast and count votes;

(c) To report or display election results from the voting system; and

(d) To maintain and produce any audit trail information; and

(2) The practices and associated documentation used:

(a) To identify system components and versions of such components;

(b) To test the system during its development and maintenance;

(c) To maintain records of system errors and defects;

(d) To determine specific system changes to be made to a system after the initial qualification of the system; and

(e) To make available any materials to the voter such as notices, instructions, forms, or paper ballots. [2013 c 11 § 21; 2004 c 267 § 601.]

Effective dates—2004 c 267: See note following RCW 29A.08.010.

29A.12.080 Requirements for approval. No voting device shall be approved by the secretary of state unless it:

(1) Secures to the voter secrecy in the act of voting;

(2) Permits the voter to vote for any person for any office and upon any measure that he or she has the right to vote for;

(3) Correctly registers all votes cast for any and all persons and for or against any and all measures;

(4) Provides that a vote for more than one candidate cannot be cast by one single operation of the voting device or vote tally system except when voting for president and vice president of the United States; and

(5) Except for functions or capabilities unique to this state, has been tested and certified by an independent testing authority designated by the United States election assistance commission. [2013 c 11 § 22; 2006 c 207 § 2; 2003 c 111 § 308. Prior: 1990 c 59 § 26; 1982 c 40 § 6; 1977 ex.s. c 361 § 66; 1971 ex.s. c 6 § 1; 1967 ex.s. c 109 § 18. Formerly RCW 29.33.300, 29.34.080.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.013.

Voting devices, machines—Recording requirements: RCW 29A.12.150.

Additional notes found at www.leg.wa.gov

29A.12.120 Counting center personnel—Instruction, requirements. (1) Before each state primary or general election at which voting systems are to be used, the county auditor shall instruct all counting center personnel who will operate a voting system in the proper conduct of their voting system duties.

(2) The county auditor may waive instructional requirements for counting center personnel who have previously received instruction and who have served for a sufficient length of time to be fully qualified to perform their duties. The county auditor shall keep a record of each person who has received instruction and is qualified to serve at the subsequent primary or election.

(3) No person may operate a voting system in a counting center at a primary or election unless that person has received

the required instruction and is qualified to perform his or her duties in connection with the handling and tallying of ballots for that primary or election. [2013 c 11 § 23; 2011 c 10 § 24; 2003 c 111 § 312. Prior: 1990 c 59 § 29; 1977 ex.s. c 361 § 69. Formerly RCW 29.33.340, 29.34.143.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.013.

Additional notes found at www.leg.wa.gov

29A.12.150 Recording requirements. The secretary of state shall not certify under this title any voting device or machine for use in conducting a primary or general or special election in this state unless the device or machine correctly records on a separate ballot the votes cast by each elector for any person and for or against any measure and such separate ballots are available for audit purposes after such a primary or election. [2013 c 11 § 24; 2003 c 111 § 315; 1998 c 245 § 26; 1991 c 363 § 30; 1990 c 184 § 1. Formerly RCW 29.04.200.]

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

29A.12.170 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 29A.16 RCW PRECINCTS

(Formerly: Precinct and polling place determination and accessibility)

Sections

29A.16.070 Precincts—Boundary changes—Registration transfer.

29A.16.070 Precincts—Boundary changes—Registration transfer. If the boundaries of any city, township, or rural precinct are changed in the manner provided by law, the county auditor shall update the registration records of every registered voter whose place of residence is affected thereby. It shall not be necessary for any registered voter whose registration has been changed from one precinct to another, by a change of boundary, to apply to the county auditor for a transfer of registration. The county auditor shall mail a notice to each registered voter. [2013 c 11 § 78; 2003 c 111 § 1903; 1971 ex.s. c 202 § 27; 1965 c 9 § 29.10.060. Prior: 1933 c 1 § 17; RRS § 5114-17. Formerly RCW 29A.76.030, 29.10.060.]

Chapter 29A.20 RCW QUALIFICATIONS, TERMS, AND REQUIREMENTS FOR ELECTIVE OFFICES

Sections

29A.20.010 Recodified as RCW 29A.24.072.
29A.20.021 Recodified as RCW 29A.24.075.
29A.20.030 Recodified as RCW 29A.60.270.
29A.20.040 Recodified as RCW 29A.60.280.
29A.20.111 Recodified as RCW 29A.56.600.
29A.20.121 Recodified as RCW 29A.56.610.
29A.20.131 Recodified as RCW 29A.56.620.
29A.20.141 Repealed.
29A.20.151 Recodified as RCW 29A.56.630.
29A.20.161 Recodified as RCW 29A.56.640.
29A.20.171 Recodified as RCW 29A.56.650.
29A.20.181 Recodified as RCW 29A.56.660.

29A.20.191 Recodified as RCW 29A.56.670.

29A.20.201 Repealed.

29A.20.010 Recodified as RCW 29A.24.072. See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.20.021 Recodified as RCW 29A.24.075. See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.20.030 Recodified as RCW 29A.60.270. See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.20.040 Recodified as RCW 29A.60.280. See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.20.111 Recodified as RCW 29A.56.600. See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.20.121 Recodified as RCW 29A.56.610. See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.20.131 Recodified as RCW 29A.56.620. See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.20.141 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.20.151 Recodified as RCW 29A.56.630. See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.20.161 Recodified as RCW 29A.56.640. See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.20.171 Recodified as RCW 29A.56.650. See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.20.181 Recodified as RCW 29A.56.660. See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.20.191 Recodified as RCW 29A.56.670. See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.20.201 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

**Chapter 29A.24 RCW
FILING FOR OFFICE**

Sections

29A.24.020	Designation of short terms, full terms, and unexpired terms—Filing declarations—Election to both short and full terms.
29A.24.030	Repealed.
29A.24.031	Declaration of candidacy.
29A.24.072	Preservation of declarations of candidacy.
29A.24.075	Qualifications for filing, appearance on ballot.
29A.24.101	Filing fee petition—Form.
29A.24.120	Repealed.
29A.24.311	Write-in voting—Candidates, declaration.
29A.24.320	Write-in candidates—Notice to auditors, ballot counters.

29A.24.020 Designation of short terms, full terms, and unexpired terms—Filing declarations—Election to both short and full terms. If at the same election there are short terms or full terms and unexpired terms of office to be filled, the filing officer shall distinguish them and designate the short term, the full term, and the unexpired term, as such, or by use of the words "short term," "unexpired two year term," or "four year term," as the case may be.

When both a short term and a full term for the same position are scheduled to be voted upon, or when a short term is created after the close of the filing period, a single declaration of candidacy accompanied by a single filing fee shall be construed as a filing for both the short term and the full term and the name of such candidate shall appear upon the ballot for the position sought with the designation "short term and full term." The candidate elected to both such terms shall be sworn into and assume office for the short term as soon as the election returns have been certified and shall again be sworn into office for the full term. [2013 c 11 § 30; 2003 c 111 § 602. Prior: 1990 c 59 § 92; 1975-'76 2nd ex.s. c 120 § 4; 1965 c 9 § 29.21.140; prior: (i) 1927 c 155 § 1, part; 1925 ex.s. c 68 § 1, part; 1921 c 116 § 1, part; 1919 c 85 § 1, part; 1911 c 101 § 1, part; 1909 c 82 § 11, part; 1907 c 209 § 38, part; RRS § 5212, part. (ii) 1933 c 85 § 1, part; RRS § 5213-1, part. Formerly RCW 29.15.140, 29.21.140.]

Term of person elected to fill vacancy: RCW 42.12.030.

Vacancies in public office, how filled: RCW 42.12.010.

Additional notes found at www.leg.wa.gov

29A.24.030 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.24.031 Declaration of candidacy. A candidate who desires to have his or her name printed on the ballot for election to an office other than president of the United States, vice president of the United States, or an office for which ownership of property is a prerequisite to voting shall complete and file a declaration of candidacy. The secretary of state shall adopt, by rule, a declaration of candidacy form for the office of precinct committee officer and a separate standard form for candidates for all other offices filing under this chapter. Included on the standard form shall be:

(1) A place for the candidate to declare that he or she is a registered voter within the jurisdiction of the office for which he or she is filing, and the address at which he or she is registered;

(2) A place for the candidate to indicate the position for which he or she is filing;

(3) A place for the candidate to state a party preference, if the office is a partisan office;

(4) A place for the candidate to indicate the amount of the filing fee accompanying the declaration of candidacy or for the candidate to indicate that he or she is filing a filing fee petition in lieu of the filing fee under RCW 29A.24.091;

(5) A place for the candidate to sign the declaration of candidacy, stating that the information provided on the form is true and swearing or affirming that he or she will support the Constitution and laws of the United States and the Constitution and laws of the state of Washington.

In the case of a declaration of candidacy filed electronically, submission of the form constitutes agreement that the information provided with the filing is true, that he or she will support the Constitutions and laws of the United States and the state of Washington, and that he or she agrees to electronic payment of the filing fee established in RCW 29A.24.091.

The secretary of state may require any other information on the form he or she deems appropriate to facilitate the filing process. [2013 c 11 § 31; 2004 c 271 § 158.]

29A.24.072 Preservation of declarations of candidacy. The secretary of state and each county auditor shall preserve all declarations of candidacy filed in their respective offices for six months. All declarations of candidacy must be open to public inspection. [2003 c 111 § 501; 1965 c 9 § 29.27.090. Prior: 1921 c 178 § 1, part; 1915 c 11 § 1, part; 1907 c 130 § 1, part; 1889 p 402 § 7, part; Code 1881 § 3067, part; 1865 p 30 § 1, part; RRS § 5171, part. Formerly RCW 29A.20.010, 29.27.090.]

29A.24.075 Qualifications for filing, appearance on ballot. (1) A person filing a declaration of candidacy for an office shall, at the time of filing, be a registered voter and possess the qualifications specified by law for persons who may be elected to the office.

(2) Excluding the office of precinct committee officer or a temporary elected position such as a charter review board member or freeholder, no person may file for more than one office.

(3) The name of a candidate for an office shall not appear on a ballot for that office unless, except for judge of the superior court and as provided in RCW 3.50.057, the candidate is, at the time the candidate's declaration of candidacy is filed, properly registered to vote in the geographic area represented by the office. For the purposes of this section, each geographic area in which registered voters may cast ballots for an office is represented by that office. If a person elected to an office must be nominated from a district or similar division of the geographic area represented by the office, the name of a candidate for the office shall not appear on a primary ballot for that office unless the candidate is, at the time the candidate's declaration of candidacy is filed, properly registered to vote in that district or division. The officer with whom declarations of candidacy must be filed under this title shall review each such declaration filed regarding compliance with this subsection.

(4) The requirements of voter registration and residence within the geographic area of a district do not apply to candidates for congressional office. Qualifications for the United

States congress are specified in the United States Constitution. [2013 c 11 § 25; 2004 c 271 § 153. Formerly RCW 29A.20.021.]

29A.24.101 Filing fee petition—Form. (1) The filing fee petition authorized by RCW 29A.24.091 must be printed on sheets of uniform color and size, must include a place for each individual to sign and print his or her name and the address, city, and county at which he or she is registered to vote, and must contain no more than twenty numbered lines.

(2) The filing fee petition must be in substantially the following form:

The warning prescribed by RCW 29A.72.140; followed by:

We, the undersigned registered voters of (the state of Washington or the political subdivision for which the nomination is made), hereby petition that the name of (candidate's name) be printed on the official primary ballot for the office of (insert name of office).

[2013 c 11 § 32; 2006 c 206 § 4; 2004 c 271 § 114.]

29A.24.120 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.24.311 Write-in voting—Candidates, declaration. (1) Any person who desires to be a write-in candidate and have such votes counted at a primary or election may file a declaration of candidacy with the officer designated in RCW 29A.24.070 not later than the day ballots must be mailed according to RCW 29A.40.070. Declarations of candidacy for write-in candidates must be accompanied by a filing fee in the same manner as required of other candidates filing for the office as provided in RCW 29A.24.091.

(2) Votes cast for write-in candidates who have filed such declarations of candidacy need only specify the name of the candidate in the appropriate location on the ballot in order to be counted. Write-in votes cast for any other candidate, in order to be counted, must designate the office sought and position number, in the manner in which the write-in is done does not make the office or position clear.

(3) No person may file as a write-in candidate where:

(a) At a general election, the person attempting to file either filed as a write-in candidate for the same office at the preceding primary or the person's name appeared on the ballot for the same office at the preceding primary;

(b) The person attempting to file as a write-in candidate has already filed a valid write-in declaration for that primary or election;

(c) The name of the person attempting to file already appears on the ballot as a candidate for another office, unless the other office is precinct committee officer or a temporary elected position, such as charter review board member or freeholder;

(d) The office filed for is committee precinct officer.

(4) The declaration of candidacy shall be similar to that required by RCW 29A.24.031. No write-in candidate filing under this section may be included in any voter's pamphlet produced under chapter 29A.32 RCW unless that candidate qualifies to have his or her name printed on the general elec-

tion ballot. The legislative authority of any jurisdiction producing a local voter's pamphlet under chapter 29A.32 RCW may provide, by ordinance, for the inclusion of write-in candidates in such pamphlets. [2013 c 11 § 91; 2012 c 89 § 2; 2011 c 349 § 13; 2004 c 271 § 117.]

Intent—Finding—2012 c 89: "The United States district court, western district of Washington, ruled that Washington's method of electing political party precinct committee officers is unconstitutional based on the associational rights of political parties. The court stated that Washington may decide to implement elections for precinct committee officer in a manner not yet conceived but ultimately satisfactory to the political parties. Washington may even implement these elections in a way that severely burdens the political parties' associational rights but does so in a manner narrowly tailored to serve a compelling governmental interest. The major political parties stated in court that they might be satisfied of party membership if a voter affirms affiliation with the particular party. Toward this end, the legislature has worked closely with the major political parties to develop a system of electing precinct committee officers that the parties support, that will protect the secrecy of the ballot, and will not increase burdens placed on local election officials. Therefore, it is the intent of the legislature to remedy the unconstitutional method of selecting precinct committee officers by implementing a provision requiring voters to affirm an affiliation with the appropriate party in order to vote in a race for precinct committee officer in that party. The legislature finds that the office of precinct committee officer itself is both a constitutionally recognized and authorized office with certain duties outlined in state law and the state Constitution." [2012 c 89 § 1.]

Effective date—2012 c 89: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 29, 2012]." [2012 c 89 § 7.]

Effective date—2011 c 349: See note following RCW 29A.04.255.

29A.24.320 Write-in candidates—Notice to auditors, ballot counters. The secretary of state shall notify each county auditor of any declarations filed with the secretary under RCW 29A.24.311 for offices appearing on the ballot in that county. The county auditor shall ensure that those persons charged with counting the ballots for a primary or election are notified of all valid write-in candidates before the tabulation of those ballots. [2013 c 11 § 33; 2003 c 111 § 623. Prior: 1988 c 181 § 2. Formerly RCW 29.04.190.]

Chapter 29A.28 RCW VACANCIES

Sections

29A.28.011	Repealed.
29A.28.021	Repealed.
29A.28.041	Congress—Special election.
29A.28.050	Congress—Notices of special primary and election.
29A.28.061	Congress—General, primary election laws to apply—Time deadlines, modifications.
29A.28.071	Recodified as RCW 29A.80.031.

29A.28.011 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.28.021 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.28.041 Congress—Special election. (1) Whenever a vacancy occurs in the United States house of representatives or the United States senate from this state, the governor shall order a special election to fill the vacancy.

(2) Within ten days of such vacancy occurring, he or she shall issue a writ of election fixing a date for the primary at least seventy days after issuance of the writ, and fixing a date

for the election at least seventy days after the date of the primary. If the vacancy is in the office of United States representative, the writ of election shall specify the congressional district that is vacant.

(3) If the vacancy occurs less than eight months before a general election and before the close of the filing period for that general election, the special primary and special vacancy election must be held in concert with the state primary and general election in that year.

(4) If the vacancy occurs on or after the first day for filing under RCW 29A.24.050 and on or before the close of the filing period, a special filing period of three normal business days shall be fixed and notice thereof given to all media, including press, radio, and television within the area in which the vacancy election is to be held, to the end that, insofar as possible, all interested persons will be aware of such filing period.

(5) If the vacancy occurs later than the close of the filing period, a special primary and vacancy election to fill the position shall be held after the next general election but, in any event, no later than the ninetieth day following the general election. [2013 c 11 § 34; 2011 c 349 § 14; 2006 c 344 § 12; 2004 c 271 § 118.]

Effective date—2011 c 349: See note following RCW 29A.04.255.

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

29A.28.050 Congress—Notices of special primary and election. After calling a special primary and special vacancy election to fill a vacancy in the United States house of representatives or the United States senate from this state, the governor shall immediately notify the secretary of state who shall, in turn, immediately notify the county auditor of each county wholly or partly within which the vacancy exists.

Each county auditor shall publish notices of the special primary and the special vacancy election at least once in any legal newspaper published in the county, as provided by RCW 29A.52.355. [2013 c 11 § 35; 2003 c 111 § 705; 1985 c 45 § 5; 1973 2nd ex.s. c 36 § 5; 1965 c 9 § 29.68.100. Prior: 1909 ex.s. c 25 § 2, part; RRS § 3800, part. Formerly RCW 29.68.100.]

Legislative intent—1985 c 45: See note following RCW 29A.04.420.

29A.28.061 Congress—General, primary election laws to apply—Time deadlines, modifications. The general election laws and laws relating to partisan primaries shall apply to the special primaries and vacancy elections provided for in chapter 29A.28 RCW to the extent that they are not inconsistent with the provisions of these sections. Statutory time deadlines relating to availability of ballots, certification, canvassing, and related procedures that cannot be met in a timely fashion may be modified for the purposes of a specific primary or vacancy election under this chapter by the secretary of state through emergency rules adopted under RCW 29A.04.611. [2013 c 11 § 36; 2011 c 10 § 28; 2004 c 271 § 119.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

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29A.28.071 Recodified as RCW 29A.80.031. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 29A.32 RCW VOTERS' PAMPHLETS

Sections

29A.32.031	Contents.
29A.32.036	Repealed.
29A.32.050	Repealed.
29A.32.100	Arguments—Public inspection.
29A.32.210	Authorization—Contents—Format.

29A.32.031 Contents. The voters' pamphlet published or distributed under RCW 29A.32.010 must contain:

(1) Information about each measure for an advisory vote of the people and each ballot measure initiated by or referred to the voters for their approval or rejection as required by RCW 29A.32.070;

(2) In even-numbered years, statements, if submitted, from candidates for the office of president and vice president of the United States, United States senator, United States representative, governor, lieutenant governor, secretary of state, state treasurer, state auditor, attorney general, commissioner of public lands, superintendent of public instruction, insurance commissioner, state senator, state representative, justice of the supreme court, judge of the court of appeals, or judge of the superior court. Candidates may also submit campaign contact information and a photograph not more than five years old in a format that the secretary of state determines to be suitable for reproduction in the voters' pamphlet;

(3) In odd-numbered years, if any office voted upon statewide appears on the ballot due to a vacancy, then statements and photographs for candidates for any vacant office listed in subsection (2) of this section must appear;

(4) Contact information for the public disclosure commission established under RCW 42.17A.100, including the following statement: "For a list of the people and organizations that donated to state and local candidates and ballot measure campaigns, visit www.pdc.wa.gov." The statement must be placed in a prominent position, such as on the cover or on the first two pages of the voters' pamphlet. The secretary of state may substitute such language as is necessary for accuracy and clarity and consistent with the intent of this section;

(5) Contact information for major political parties;

(6) A brief statement explaining the deletion and addition of language for proposed measures under RCW 29A.32.080; and

(7) Any additional information pertaining to elections as may be required by law or in the judgment of the secretary of state is deemed informative to the voters. [2013 c 283 § 2; 2011 c 60 § 13; 2009 c 415 § 2; 2008 c 1 § 12 (Initiative Measure No. 960, approved November 6, 2007); 2004 c 271 § 121.]

Findings—Intent—2013 c 283: "(1) The legislature finds that the voters of the state of Washington have overwhelmingly affirmed the public's right to know about the financing of political activity. Recognizing that Initiative 276, which created the public disclosure commission and serves as the foundation of Washington's disclosure and campaign finance laws, was approved with over seventy-two percent of voters in support, the legislature also finds that maintaining the tradition of transparency in campaigns and

political activities in the state of Washington is a top priority for citizens throughout Washington state.

(2) Therefore, it is the intent of the legislature to increase transparency and ensure that voters be provided easy access to accurate information about the sources of money supporting or opposing candidates and ballot measures by printing the public disclosure commission's web site on voters' pamphlets and ballots for each primary and general election." [2013 c 283 § 1.]

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

Findings—Intent—Construction—Severability—Subheadings and part headings not law—Short title—Effective date—2008 c 1 (Initiative Measure No. 960): See notes following RCW 43.135.031.

29A.32.036 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.32.050 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.32.100 Arguments—Public inspection. (1) An argument or statement submitted to the secretary of state for publication in the voters' pamphlet is not available for public inspection or copying until:

(a) In the case of candidate statements, (i) all statements by all candidates who have filed for a particular office have been received, except those who informed the secretary that they will not submit statements, or (ii) the deadline for submission of statements has elapsed;

(b) In the case of arguments supporting or opposing a measure, (i) the arguments on both sides have been received, unless a committee was not appointed for one side, or (ii) the deadline for submission of arguments has elapsed; and

(c) In the case of rebuttal arguments, (i) the rebuttals on both sides have been received, unless a committee was not appointed for one side, or (ii) the deadline for submission of arguments has elapsed.

(2) Nothing in this section prohibits the secretary from releasing information under RCW 29A.32.090. [2013 c 11 § 37; 2003 c 111 § 810. Prior: 1999 c 260 § 9. Formerly RCW 29.81.290.]

29A.32.210 Authorization—Contents—Format. At least ninety days before any primary or general election, or at least forty days before any special election held under RCW 29A.04.321 or 29A.04.330, the legislative authority of any county or first-class or code city may adopt an ordinance authorizing the publication and distribution of a local voters' pamphlet. The pamphlet shall provide information on all measures within that jurisdiction and may, if specified in the ordinance, include information on candidates within that jurisdiction. If both a county and a first-class or code city within that county authorize a local voters' pamphlet for the same election, the pamphlet shall be produced jointly by the county and the first-class or code city. If no agreement can be reached between the county and first-class or code city, the county and first-class or code city may each produce a pamphlet. Any ordinance adopted authorizing a local voters' pamphlet may be for a specific primary, special election, or general election or for any future primaries or elections. The format of any local voters' pamphlet shall, whenever applicable, comply with the provisions of this chapter regarding the publication of the state candidates' and voters' pamphlets. [2013 c 11 § 38; 2003 c 111 § 813; 1984 c 106 § 3. Formerly RCW 29.81A.010.]

Chapter 29A.36 RCW BALLOTS AND OTHER VOTING FORMS

Sections

29A.36.010	Certifying primary candidates.
29A.36.040	Constitutional questions—Notice of ballot title and summary.
29A.36.050	Repealed.
29A.36.060	Constitutional questions—Ballot title—Appeal.
29A.36.101	Names on primary ballot.
29A.36.104	Repealed.
29A.36.106	Repealed.
29A.36.121	Order of positions or offices.
29A.36.131	Order of candidates on ballots.
29A.36.161	Arrangement of instructions, measures, offices—Order of candidates.
29A.36.170	Top two candidates qualified for general election—Exception (<i>as amended by 2013 c 11</i>).
29A.36.170	Top two candidates qualified for general election (<i>as amended by 2013 c 143</i>).
29A.36.171	Repealed.
29A.36.191	Repealed.
29A.36.201	Names qualified to appear on election ballot.

29A.36.010 Certifying primary candidates. Not later than the Tuesday following the regular filing period, the secretary of state shall certify to each county auditor a list of the candidates who have filed declarations of candidacy in his or her office for the primary. For each office, the certificate shall include the name of each candidate, his or her address, and his or her party preference, if any, provided on filed declarations. [2013 c 11 § 39; 2011 c 349 § 15. Prior: 2005 c 2 § 12 (Initiative Measure No. 872, approved November 2, 2004); 2003 c 111 § 901; prior: 1990 c 59 § 8; 1965 ex.s. c 103 § 4; 1965 c 9 § 29.27.020; prior: 1949 c 161 § 10, part; 1947 c 234 § 2, part; 1935 c 26 § 1, part; 1921 c 178 § 4, part; 1907 c 209 § 8, part; Rem. Supp. 1949 § 5185, part. Formerly RCW 29.27.020.]

Reviser's note: The constitutionality of Initiative Measure No. 872 was upheld in *Washington State Grange v. Washington State Republican Party, et al.*, 552 U.S. . . . (2008).

Effective date—2011 c 349: See note following RCW 29A.04.255.

Short title—Intent—Contingent effective date—2005 c 2 (Initiative Measure No. 872): See notes following RCW 29A.52.112.

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.013.

29A.36.040 Constitutional questions—Notice of ballot title and summary. Upon the filing of a ballot title under RCW 29A.36.020, the secretary of state shall provide notice of the exact language of the ballot title and summary to the chief clerk of the house of representatives, the secretary of the senate, and the prime sponsor of measure. [2013 c 11 § 92; 2003 c 111 § 904. Prior: 2000 c 197 § 9; 1993 c 256 § 11; 1965 c 9 § 29.27.065; prior: 1953 c 242 § 3. Formerly RCW 29.27.065.]

Additional notes found at www.leg.wa.gov

29A.36.050 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.36.060 Constitutional questions—Ballot title—Appeal. If any persons are dissatisfied with the ballot title for a proposed constitution or constitutional amendment, they may at any time within ten days from the time of the filing of the ballot title and summary, not including Saturdays, Sundays, or legal holidays, appeal to the superior court of Thurston county by petition setting forth the measure, the ballot

title objected to, their objections to it, and praying for amendment of the ballot title. The time of the filing of the ballot title, as used in this section for establishing the time for appeal, is the time the ballot title is first filed with the secretary of state.

A copy of the petition on appeal together with a notice that an appeal has been taken must be served upon the secretary of state, the attorney general, the chief clerk of the house of representatives, and the secretary of the senate. Upon the filing of the petition on appeal, the court shall immediately, or at the time to which a hearing may be adjourned by consent of the appellants, examine the proposed measure, the ballot title filed, and the objections to it and may hear arguments on it, and shall as soon as possible render its decision and certify to and file with the secretary of state a ballot title that it determines will meet the requirements of this chapter. The decision of the superior court is final, and the ballot title so certified will be the established ballot title. The appeal must be heard without cost to either party. [2013 c 11 § 40; 2003 c 111 § 906. Prior: 2000 c 197 § 11. Formerly RCW 29.27.0655.]

Additional notes found at www.leg.wa.gov

29A.36.101 Names on primary ballot. Except for the candidates for president and vice president, or for a partisan or nonpartisan office for which no primary is required, the names of all candidates who, under this title, filed a declaration of candidacy must appear on the appropriate ballot at the primary throughout the jurisdiction for which they filed. [2013 c 11 § 41; 2004 c 271 § 125.]

29A.36.104 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.36.106 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.36.121 Order of positions or offices. (1) The positions or offices on a primary consolidated ballot shall be arranged in substantially the following order: United States senator; United States representative; governor; lieutenant governor; secretary of state; state treasurer; state auditor; attorney general; commissioner of public lands; superintendent of public instruction; insurance commissioner; state senator; state representative; county officers; justices of the supreme court; judges of the court of appeals; judges of the superior court; and judges of the district court. For all other jurisdictions on the primary ballot, the offices in each jurisdiction shall be grouped together and be in the order of the position numbers assigned to those offices, if any.

(2) The order of the positions or offices on a general election ballot shall be substantially the same as on a primary ballot except that state ballot issues must be placed before all offices. The offices of president and vice president of the United States shall precede all other offices on a presidential election ballot. The positions on a ballot to be assigned to ballot measures regarding local units of government shall be established by the secretary of state by rule. [2013 c 11 § 42; 2004 c 271 § 129.]

29A.36.131 Order of candidates on ballots. After the close of business on the last day for candidates to file for office, the filing officer shall determine by lot the order in which the names of those candidates will appear on all ballots. The determination shall be done publicly and may be witnessed by the media and by any candidate. If no primary is required, the names shall appear on the general election ballot in the order determined by lot. [2013 c 11 § 43; 2011 c 10 § 32; 2004 c 271 § 130.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

29A.36.161 Arrangement of instructions, measures, offices—Order of candidates. (1) On the top of each ballot must be printed:

(a) Clear and concise instructions directing the voter how to mark the ballot, including write-in votes; and

(b) The following statement: "For a list of the people and organizations that donated to state and local candidates and ballot measure campaigns, visit www.pdc.wa.gov." The secretary of state may substitute such language as is necessary for accuracy and clarity and consistent with the intent of this section. Alternately, at the discretion of the county auditor or local election official, the statement required by this subsection (1)(b) may be printed in a prominent position on the ballot envelope and in the materials that accompany the ballot.

(2) The ballot must have a clear delineation between the ballot instructions and the first ballot measure or office through the use of white space, illustration, shading, color, symbol, font size, or bold type. The secretary of state shall establish standards for ballot design and layout consistent with this section and RCW 29A.04.611.

(3) The questions of adopting constitutional amendments or any other state measure authorized by law to be submitted to the voters at that election must appear after the instructions and before any offices.

(4) In a year that president and vice president appear on the general election ballot, the names of candidates for president and vice president for each political party must be grouped together with a single response position for a voter to indicate his or her choice.

The major political party that received the highest number of votes from the electors of this state for the office of president of the United States at the last presidential election must appear first. Other major political parties must follow according to the votes cast for their nominees for president at the last presidential election. Independent candidates and minor parties must follow major parties and be listed in the order of their qualification with the secretary of state. [2013 c 283 § 3; 2013 c 11 § 44; 2011 c 10 § 33; 2010 c 32 § 1; 2004 c 271 § 132.]

Reviser's note: This section was amended by 2013 c 11 § 44 and by 2013 c 283 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—Intent—2013 c 283: See note following RCW 29A.32.031.

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

29A.36.170 Top two candidates qualified for general election—Exception (as amended by 2013 c 11). (1) For any office for which a pri-

mary was held, only the names of the top two candidates will appear on the general election ballot; the name of the candidate who received the greatest number of votes will appear first and the candidate who received the next greatest number of votes will appear second. No candidate's name may be printed on the subsequent general election ballot unless he or she receives at least one percent of the total votes cast for that office at the preceding primary, if a primary was conducted. On the ballot at the general election for an office for which no primary was held, the names of the candidates shall be listed in the order determined under RCW ~~((29A.36.130))~~ 29A.36.131.

(2) For the office of justice of the supreme court, judge of the court of appeals, judge of the superior court, ~~judge of the district court,~~ or state superintendent of public instruction, if a candidate in a contested primary receives a majority of all the votes cast for that office or position, only the name of that candidate may be printed for that position on the ballot at the general election. [2013 c 11 § 45. Prior: 2005 c 2 § 6 (Initiative Measure No. 872, approved November 2, 2004); (2004 c 271 § 193 repealed by the legislature); 2003 c 111 § 917; prior: 1992 c 181 § 2; 1990 c 59 § 95. Formerly RCW 29.30.085.]

Reviser's note: The constitutionality of Initiative Measure No. 872 was upheld in *Washington State Grange v. Washington State Republican Party, et al.*, 552 U.S. . . . (2008).

29A.36.170 Top two candidates qualified for general election (as amended by 2013 c 143). ~~((+))~~ For any office for which a primary was held, only the names of the top two candidates will appear on the general election ballot; the name of the candidate who received the greatest number of votes will appear first and the candidate who received the next greatest number of votes will appear second. No candidate's name may be printed on the subsequent general election ballot unless he or she receives at least one percent of the total votes cast for that office at the preceding primary, if a primary was conducted. On the ballot at the general election for an office for which no primary was held, the names of the candidates shall be listed in the order determined ~~((under))~~ pursuant to RCW ~~((29A.36.130))~~ 29A.36.131.

~~((2) For the office of justice of the supreme court, judge of the court of appeals, judge of the superior court, or state superintendent of public instruction, if a candidate in a contested primary receives a majority of all the votes cast for that office or position, only the name of that candidate may be printed for that position on the ballot at the general election.)~~ [2013 c 143 § 1. Prior: 2005 c 2 § 6 (Initiative Measure No. 872, approved November 2, 2004); (2004 c 271 § 193 repealed by the legislature); 2003 c 111 § 917; prior: 1992 c 181 § 2; 1990 c 59 § 95. Formerly RCW 29.30.085.]

Reviser's note: (1) RCW 29A.36.170 was amended twice during the 2013 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

(2) The constitutionality of Initiative Measure No. 872 was upheld in *Washington State Grange v. Washington State Republican Party, et al.*, 552 U.S. . . . (2008).

Short title—Intent—Contingent effective date—2005 c 2 (Initiative Measure No. 872): See notes following RCW 29A.52.112.

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.007.

Additional notes found at www.leg.wa.gov

29A.36.171 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.36.191 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.36.201 Names qualified to appear on election ballot. The names of candidates certified by the secretary of state or the county canvassing board as qualified to appear on the general election shall be printed on the general election ballot.

If a primary for an office was held, no name of any candidate shall be placed upon the ballot at a general or special election unless it appears upon the certificate of either (1) the secretary of state, or (2) the county canvassing board.

Excluding the office of precinct committee officer or a temporary elected position such as a charter review board member or freeholder, a candidate's name shall not appear on a ballot more than once. [2013 c 11 § 46; 2004 c 271 § 171.]

Chapter 29A.40 RCW ELECTIONS BY MAIL (Formerly: Absentee voting)

Sections

- 29A.40.010 Ballots by mail.
- 29A.40.070 Date ballots mailed—Replacement ballots.
- 29A.40.091 Envelopes, declaration, and instructions—Voter's oath—Overseas and service voters—Return of ballots.

29A.40.010 Ballots by mail. Each active registered voter of the state, overseas voter, and service voter shall automatically be issued a mail ballot for each general election, special election, or primary. Overseas voters and service voters are authorized to cast the same ballots, including those for special elections, as a registered voter of the state would receive under this chapter. Each active registered voter shall continue to receive a ballot by mail until the death or disqualification of the voter, cancellation of the voter's registration, or placing the voter on inactive status. [2013 c 11 § 47; 2011 c 10 § 35; 2009 c 369 § 36; 2003 c 111 § 1001. Prior: 2001 c 241 § 1; 1991 c 81 § 29; 1987 c 346 § 9; 1986 c 167 § 14; 1985 c 273 § 1; 1984 c 27 § 1; 1977 ex.s. c 361 § 76; 1974 ex.s. c 35 § 1; 1971 ex.s. c 202 § 37; 1965 c 9 § 29.36.010; prior: 1963 ex.s. c 23 § 1; 1955 c 167 § 2; prior: (i) 1950 ex.s. c 8 § 1; 1943 c 72 § 1; 1933 ex.s. c 41 § 1; 1923 c 58 § 1; 1921 c 143 § 1; 1917 c 159 § 1; 1915 c 189 § 1; Rem. Supp. 1943 § 5280. (ii) 1933 ex.s. c 41 § 2, part; 1923 c 58 § 2, part; 1921 c 143 § 2, part; 1917 c 159 § 2, part; 1915 c 189 § 2, part; RRS § 5281, part. Formerly RCW 29.36.210, 29.36.010.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Legislative intent—1987 c 346: "By this act the legislature intends to combine and unify the laws and procedures governing absentee voting. These amendments are intended: (1) To clarify and incorporate into a single chapter of the Revised Code of Washington the preexisting statutes under which electors of this state qualify for absentee ballots under state law, federal law, or a combination of both state and federal law, and (2) to insure uniformity in the application, issuance, receipt, and canvassing of these absentee ballots. Nothing in this act is intended to impose any new requirement on the ability of the registered voters or electors of this state to qualify for, receive, or cast absentee ballots in any primary or election." [1987 c 346 § 1.]

Additional notes found at www.leg.wa.gov

29A.40.070 Date ballots mailed—Replacement ballots. (1) Except where a recount or litigation is pending, the county auditor must mail ballots to each voter at least eighteen days before each primary or election, and as soon as possible for all subsequent registration changes.

(2) Except where a recount or litigation is pending, the county auditor must mail ballots to each service and overseas voter at least thirty days before each special election, and at least forty-five days before each primary or general election, or any special election that involves federal office. A request for a ballot made by an overseas or service voter after that day must be processed immediately.

(3) A registered voter may obtain a replacement ballot if the ballot is destroyed, spoiled, lost, or not received by the voter. The voter may obtain the ballot by telephone request, by mail, electronically, or in person. The county auditor shall keep a record of each request for a replacement ballot.

(4) Each county auditor shall certify to the office of the secretary of state the dates the ballots were mailed, or the reason and date the ballots will be mailed if the ballots were not mailed timely.

(5) Failure to mail ballots as prescribed in this section does not by itself provide a basis for an election contest or other legal challenge to the results of a primary, general election, or special election. [2013 c 11 § 48. Prior: 2011 c 349 § 16; 2011 c 10 § 38; 2006 c 344 § 13; 2004 c 266 § 13; prior: 2003 c 162 § 2; 2003 c 111 § 1007; prior: 1987 c 54 § 1; 1977 ex.s. c 361 § 56; 1965 ex.s. c 103 § 5; 1965 c 9 § 29.30.075; prior: 1949 c 161 § 10, part; 1947 c 234 § 2, part; 1935 c 26 § 1, part; 1921 c 178 § 4, part; 1907 c 209 § 8, part; Rem. Supp. 1949 § 5185, part. Formerly RCW 29.36.270, 29.30.075.]

Effective date—2011 c 349: See note following RCW 29A.04.255.

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

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

Effective date—2004 c 266: See note following RCW 29A.04.575.

Policy—2003 c 162: "It is the policy of the state of Washington that individuals voting absentee and mail ballots receive their ballots in a timely and consistent manner before each election. Since many voters in Washington state have come to rely upon absentee and mail voting, mailing the ballots in a timely manner is critical in order to maximize participation by every eligible voter." [2003 c 162 § 1.]

Additional notes found at www.leg.wa.gov

29A.40.091 Envelopes, declaration, and instructions—Voter's oath—Overseas and service voters—Return of ballots. (1) The county auditor shall send each voter a ballot, a security envelope in which to conceal the ballot after voting, a larger envelope in which to return the security envelope, a declaration that the voter must sign, and instructions on how to obtain information about the election, how to mark the ballot, and how to return the ballot to the county auditor.

(2) The voter must swear under penalty of perjury that he or she meets the qualifications to vote, and has not voted in any other jurisdiction at this election. The declaration must clearly inform the voter that it is illegal to vote if he or she is not a United States citizen; it is illegal to vote if he or she has been convicted of a felony and has not had his or her voting rights restored; and it is illegal to cast a ballot or sign a ballot declaration on behalf of another voter. The ballot materials must provide space for the voter to sign the declaration, indicate the date on which the ballot was voted, and include a telephone number.

(3) For overseas and service voters, the signed declaration constitutes the equivalent of a voter registration. Return envelopes for overseas and service voters must enable the ballot to be returned postage free if mailed through the United States postal service, United States armed forces postal service, or the postal service of a United States foreign embassy under 39 U.S.C. 3406.

(4) The voter must be instructed to either return the ballot to the county auditor no later than 8:00 p.m. the day of the election or primary, or mail the ballot to the county auditor with a postmark no later than the day of the election or primary. Service and overseas voters must be provided with instructions and a privacy sheet for returning the ballot and signed declaration by fax or e-mail. A voted ballot and signed declaration returned by fax or e-mail must be received by 8:00 p.m. on the day of the election or primary. [2013 c 11 § 49. Prior: 2011 c 349 § 17; 2011 c 348 § 3; 2011 c 182 § 1; 2011 c 10 § 39; 2010 c 125 § 1; 2009 c 369 § 39; 2005 c 246 § 21; 2004 c 271 § 135.]

Effective date—2011 c 349: See note following RCW 29A.04.255.

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Effective date—2005 c 246: See note following RCW 10.64.140.

Chapter 29A.52 RCW PRIMARIES AND ELECTIONS

Sections

29A.52.010	Repealed.
29A.52.011	Repealed.
29A.52.106	Repealed.
29A.52.111	Repealed.
29A.52.112	Top two candidates—Party or independent preference.
29A.52.116	Repealed.
29A.52.130	Repealed.
29A.52.141	Repealed.
29A.52.151	Repealed.
29A.52.210	Local primaries.
29A.52.220	No nonpartisan office primary permitted—Procedure—No primary for the office of commissioner of park and recreation district, office of cemetery district commissioner—Names of candidates.
29A.52.321	Certification of candidates.
29A.52.355	Notice of election—Prior to mail-in registration deadline.

29A.52.010 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.52.011 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.52.106 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.52.111 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.52.112 Top two candidates—Party or independent preference. (1) A primary is a first stage in the public process by which voters elect candidates to public office.

(2) Whenever candidates for a partisan office are to be elected, the general election must be preceded by a primary conducted under this chapter. Based upon votes cast at the primary, the top two candidates will be certified as qualified to appear on the general election ballot, unless only one candidate qualifies as provided in *RCW 29A.36.170.

(3) For partisan office, if a candidate has expressed a party preference on the declaration of candidacy, then that preference will be shown after the name of the candidate on the primary and general election ballots as set forth in rules of the secretary of state. A candidate may choose to express no party preference. Any party preferences are shown for the

information of voters only and may in no way limit the options available to voters. [2013 c 11 § 50; 2005 c 2 § 7 (Initiative Measure No. 872, approved November 2, 2004).]

Reviser's note: *(1) RCW 29A.36.170 was amended by 2013 c 143 § 1, removing the one candidate exception.

(2) The constitutionality of Initiative Measure No. 872 was upheld in *Washington State Grange v. Washington State Republican Party, et al.*, 552 U.S. . . . (2008).

Short title—2005 c 2 (Initiative Measure No. 872): "This act may be known and cited as the People's Choice Initiative of 2004." [2005 c 2 § 1 (Initiative Measure No. 872, approved November 2, 2004).]

Intent—2005 c 2 (Initiative Measure No. 872): "The Washington Constitution and laws protect each voter's right to vote for any candidate for any office. The Washington State Supreme Court has upheld the blanket primary as protecting compelling state interests "allowing each voter to keep party identification, if any, secret; allowing the broadest possible participation in the primary election; and giving each voter a free choice among all candidates in the primary." *Heavey v. Chapman*, 93 Wn.2d 700, 705, 611 P.2d 1256 (1980). The Ninth Circuit Court of Appeals has threatened this system through a decision, that, if not overturned by the United States Supreme Court, may require change. In the event of a final court judgment invalidating the blanket primary, this People's Choice Initiative will become effective to implement a system that best protects the rights of voters to make such choices, increases voter participation, and advances compelling interests of the state of Washington." [2005 c 2 § 2 (Initiative Measure No. 872, approved November 2, 2004).]

Contingent effective date—2005 c 2 (Initiative Measure No. 872): "This act takes effect only if the Ninth Circuit Court of Appeals' decision in *Democratic Party of Washington State v. Reed*, 343 F.3d 1198 (9th Cir. 2003) holding the blanket primary election system in Washington state invalid becomes final and a Final Judgment is entered to that effect." [2005 c 2 § 18 (Initiative Measure No. 872, approved November 2, 2004).]

Reviser's note: On February 28, 2004, the United States Supreme Court refused to take the case on appeal; therefore the Ninth Circuit's decision stands.

29A.52.116 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.52.130 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.52.141 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.52.151 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.52.210 Local primaries. All city and town primaries shall be nonpartisan. Primaries for special purpose districts, except those districts that require ownership of property within the district as a prerequisite to voting, shall be nonpartisan. City, town, and district primaries shall be held as provided in RCW 29A.04.311.

The purpose of this section is to establish the holding of a primary, subject to the exemptions in RCW 29A.52.220, as a uniform procedural requirement to the holding of city, town, and district elections. These provisions supersede any and all other statutes, whether general or special in nature, having different election requirements. [2013 c 11 § 51; 2003 c 111 § 1305. Prior: 1990 c 59 § 89; 1977 c 53 § 3; 1975-'76 2nd ex.s. c 120 § 1; 1965 c 123 § 7; 1965 c 9 § 29.21.010; prior: 1951 c 257 § 7; 1949 c 161 § 3; Rem. Supp. 1949 § 5179-1. Formerly RCW 29.21.010.]

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.013.

Additional notes found at www.leg.wa.gov

29A.52.220 No nonpartisan office primary permitted—Procedure—No primary for the office of commissioner of park and recreation district, office of cemetery district commissioner—Names of candidates. (1) No primary may be held for any single position in any nonpartisan office if, after the last day allowed for candidates to withdraw, there are no more than two candidates filed for the position. The county auditor shall as soon as possible notify all the candidates so affected that the office for which they filed will not appear on the primary ballot.

(2) No primary may be held for the office of commissioner of a park and recreation district or for the office of cemetery district commissioner.

(3) Names of candidates for offices that do not appear on the primary ballot shall be printed upon the general election ballot in the manner specified by RCW 29A.36.131. [2013 c 195 § 1; 2005 c 153 § 10; 2003 c 111 § 1306. Prior: 1998 c 19 § 1; 1996 c 324 § 1; 1990 c 59 § 90; 1975-'76 2nd ex.s. c 120 § 2; 1965 c 9 § 29.21.015; prior: 1955 c 101 § 2; 1955 c 4 § 1. Formerly RCW 29.21.015.]

Effective date—2013 c 195: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 10, 2013]." [2013 c 195 § 3.]

Captions not law—Severability—2005 c 153: See RCW 29A.53.901 and 29A.53.902.

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.013.

Additional notes found at www.leg.wa.gov

29A.52.321 Certification of candidates. No later than the day following the certification of the returns of any primary, the secretary of state shall certify to the appropriate county auditors the names of all candidates qualified to appear on the general election ballot. [2013 c 11 § 52; 2004 c 271 § 146.]

29A.52.355 Notice of election—Prior to mail-in registration deadline. (1) Notice for any state, county, district, or municipal primary or election, whether special or general, must be given by the county auditor between five and fifteen days prior to the deadline for mail-in registrations. The notice must be published in one or more newspapers of general circulation and must contain, at a minimum, the last date to register online or through the mail, the last date to transfer or update an existing registration, the last date to register in person for first-time voters, information on where a person can register, the type of election, the date of the election, how a voter can obtain a ballot, a list of all jurisdictions involved in the election, including positions and short titles for ballot measures appearing on the ballot, and the times and dates of any public meetings associated with the election. The notice shall also include where additional information regarding the election may be obtained. The notice of a primary held in an even-numbered year must indicate that the office of precinct committee officer is on the ballot. This is the only notice required for a state, county, district, or municipal primary or special or general election.

(2) If the county or city chooses to mail a local voters' pamphlet as described in RCW 29A.32.210 to each resi-

dence, the notice required in this section need only include the last date to register online or through the mail, the last date to transfer or update an existing registration, the last date to register in person for first-time voters, information on where a person can register, and the times and dates of any public meetings associated with the election. [2013 c 11 § 53; 2011 c 10 § 45.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Chapter 29A.53 RCW INSTANT RUNOFF VOTING PILOT PROJECT

Sections

29A.53.010 through 29A.53.090 Repealed.
29A.53.900 through 29A.53.902 Repealed.

29A.53.010 through 29A.53.090 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.53.900 through 29A.53.902 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 29A.56 RCW SPECIAL CIRCUMSTANCES ELECTIONS

Sections

29A.56.040 Procedures—Ballot form and arrangement.
29A.56.210 Fixing date for recall election—Notice.
29A.56.320 Nomination—Pledge by electors—What names on ballots—How counted.
29A.56.350 Compensation.
29A.56.360 Slate of presidential electors.
29A.56.490 Election of delegates—Ascertaining result.

MINOR PARTY AND INDEPENDENT CANDIDATE PRESIDENTIAL NOMINATIONS

29A.56.600 Convention.
29A.56.610 Nomination by convention—Dates.
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29A.56.630 Nominating petition—Requirements.
29A.56.640 Certificate of nomination—Requisites.
29A.56.650 Multiple certificates of nomination.
29A.56.660 Presidential electors—Selection at convention.
29A.56.670 Certificate of nomination—Checking signatures—Appeal of determination.

29A.56.040 Procedures—Ballot form and arrangement. (1) Except where necessary to accommodate the national or state rules of a major political party or where this chapter specifically provides otherwise, the presidential primary must be conducted in substantially the same manner as a state primary under this title.

(2) The arrangement and form of presidential primary ballots must be established by administrative rule adopted under RCW 29A.04.620. Only the candidates who have qualified under RCW 29A.56.030 may appear on the ballots.

(3) Each party's ballot or portion of the ballot must list alphabetically the names of all candidates for the office of president. The ballot must clearly indicate the political party of each candidate. Each ballot must include a blank space to allow the voter to write in the name of any other candidate.

(4) A presidential primary ballot with votes for more than one candidate is void, and notice to this effect, stated in

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clear, simple language and printed in large type, must appear on the face of each presidential primary ballot or on or about each voting device. [2013 c 11 § 54; 2007 c 385 § 1; 2003 c 111 § 1404. Prior: 1995 1st sp.s. c 20 § 2. Formerly RCW 29.19.045.]

Additional notes found at www.leg.wa.gov

29A.56.210 Fixing date for recall election—Notice. If, at the conclusion of the verification and canvass, it is found that a petition for recall bears the required number of signatures of certified legal voters, the officer with whom the petition is filed shall promptly certify the petitions as sufficient and fix a date for the special election to determine whether or not the officer charged shall be recalled and discharged from office. The special election shall be held not less than forty-five nor more than ninety days from the certification and, whenever possible, on one of the dates provided in RCW 29A.04.330, but no recall election may be held between the date of the primary and the date of the general election in any calendar year. Notice shall be given in the manner as required by law for special elections in the state or in the political subdivision, as the case may be. [2013 c 11 § 55; 2003 c 111 § 1417. Prior: 1984 c 170 § 8; 1977 ex.s. c 361 § 108; 1971 ex.s. c 205 § 5; 1965 c 9 § 29.82.100; prior: 1913 c 146 § 9, part; RRS § 5358, part. Formerly RCW 29.82.100.]

Additional notes found at www.leg.wa.gov

29A.56.320 Nomination—Pledge by electors—What names on ballots—How counted. In the year in which a presidential election is held, each major political party and each minor political party or independent candidate convention that nominates candidates for president and vice president of the United States shall nominate presidential electors for this state. The party or convention shall file with the secretary of state a certificate signed by the presiding officer of the convention at which the presidential electors were chosen, listing the names and addresses of the presidential electors. Each presidential elector shall execute and file with the secretary of state a pledge that, as an elector, he or she will vote for the candidates nominated by that party. The names of presidential electors shall not appear on the ballots. The votes cast for candidates for president and vice president of each political party shall be counted for the candidates for presidential electors of that political party; however, if the interstate compact entitled the "agreement among the states to elect the president by national popular vote," as set forth in RCW 29A.56.300, governs the appointment of the presidential electors for a presidential election as provided in clause 9 of Article III of that compact, then the final appointment of presidential electors for that presidential election shall be in accordance with that compact. [2013 c 11 § 56; 2009 c 264 § 3; 2003 c 111 § 1425. Prior: 1990 c 59 § 69; 1977 ex.s. c 238 § 1; 1965 c 9 § 29.71.020; prior: 1935 c 20 § 1; RRS § 5138-1. Formerly RCW 29.71.020.]

Intent—2009 c 264: See note following RCW 29A.56.300.

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.013.

29A.56.350 Compensation. Every presidential elector who attends at the time and place appointed, and gives his or

her vote for president and vice president, is entitled to receive from this state a subsistence allowance and travel expenses pursuant to RCW 43.03.050 and 43.03.060 for each day's attendance at the meeting of the college of electors. [2013 c 38 § 1; 2003 c 111 § 1428; 1965 c 9 § 29.71.050. Prior: 1891 c 148 § 4; RRS § 5141. Formerly RCW 29.71.050.]

29A.56.360 Slate of presidential electors. In a year in which the president and vice president of the United States are to be elected, the secretary of state shall include in the certification prepared under RCW 29A.52.321 the names of all candidates for president and vice president who, no later than the third Tuesday of August, have certified a slate of electors to the secretary of state under RCW 29A.56.320 and have been nominated either (1) by a major political party, as certified by the appropriate authority under party rules, or (2) by a minor party or as independent candidates. Major or minor political parties or independent presidential candidates may substitute a different candidate for vice president for the one whose name appears on the party's certification or nominating petition at any time before seventy-five days before the general election, by certifying the change to the secretary of state. Substitutions must not be permitted to delay the printing of either ballots or a voters' pamphlet. Substitutions are valid only if submitted under oath and signed by the same individual who originally certified the nomination, or his or her documented successor, and only if the substitute candidate consents in writing. [2013 c 11 § 57; 2003 c 111 § 1429. Prior: 2001 c 30 § 1. Formerly RCW 29.27.140.]

29A.56.490 Election of delegates—Ascertaining result. The election officials shall count and determine the number of votes cast for each individual; and shall also count and determine the aggregate number of votes cast for all candidates whose names appear under each of the respective headings. Where more than the required number have been voted for, the ballot must be rejected. The vote must be canvassed in each county by the county canvassing board, and certificate of results must be transmitted to the secretary of state. Upon receiving the certificate, the secretary of state may require precinct returns from any county to be forwarded for the secretary's examination.

Where a district embraces precincts of more than one county, the secretary of state shall combine the votes from all the precincts included in each district. The delegates elected in each district will be the number of candidates corresponding to the number of state representatives from the district, who receive the highest number of votes in the group (either "for" or "against") that received an aggregate number of votes for all candidates in the group greater than the aggregate number of votes for all the candidates in the other group. The secretary of state shall issue certificates of election to the delegates so elected. [2013 c 11 § 58; 2011 c 10 § 46; 2003 c 111 § 1438; 1965 c 9 § 29.74.100. Prior: 1933 c 181 § 6; RRS § 5249-6. Formerly RCW 29.74.100.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

MINOR PARTY AND INDEPENDENT CANDIDATE PRESIDENTIAL NOMINATIONS

29A.56.600 Convention. A "convention" for the purposes of this chapter, is an organized assemblage of registered voters representing an independent candidate or candidates or a new or minor political party, organization, or principle. [2013 c 11 § 26; 2004 c 271 § 188. Formerly RCW 29A.20.111.]

29A.56.610 Nomination by convention—Dates. Nominations of candidates for president and vice president of the United States, other than by a major political party, may be made at a convention conducted not earlier than the first Saturday in May and not later than the fourth Saturday in July in the year that president and vice president appear on the general election ballot. A minor political party may hold more than one convention but in no case shall any such party nominate more than one candidate for president or more than one candidate for vice president. To be valid, a convention must be attended by at least one hundred registered voters, but a minor party or independent candidate holding multiple conventions may add together the number of signatures of different individuals from each convention in order to obtain and submit to the secretary of state the signatures of at least one thousand registered voters of the state of Washington. [2013 c 11 § 27; 2006 c 344 § 4; 2004 c 271 § 110. Formerly RCW 29A.20.121.]

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

29A.56.620 Convention—Notice. Each minor party or independent candidate must publish a notice in a newspaper of general circulation within the county in which the party or the candidate intends to hold a convention. The notice must appear at least ten days before the convention is to be held, and shall state the date, time, and place of the convention. Additionally, it shall include the mailing address of the person or organization sponsoring the convention. [2004 c 271 § 189. Formerly RCW 29A.20.131.]

29A.56.630 Nominating petition—Requirements. A nominating petition submitted under this chapter shall clearly identify the name of the minor party or independent candidate convention as it appears on the certificate of nomination as required by *RCW 29A.20.161(3). The petition shall also contain a statement that the person signing the petition is a registered voter of the state of Washington and shall have a space for the voter to sign his or her name and to print his or her name and address. No person may sign more than one nominating petition under this chapter for an office for an election. [2004 c 271 § 112. Formerly RCW 29A.20.151.]

***Reviser's note:** RCW 29A.20.161 was recodified as RCW 29A.56.640 pursuant to 2013 c 11 § 93.

29A.56.640 Certificate of nomination—Requisites. A certificate evidencing nominations made at a convention must:

- (1) Be in writing;
- (2) Contain the name of each person nominated, his or her residence, the office for which he or she is named, and a

sworn statement from both nominees giving their consent to the nomination;

(3) Identify the minor political party or the independent candidate on whose behalf the convention was held;

(4) Be verified by the oath of the presiding officer and secretary;

(5) Be accompanied by a nominating petition or petitions bearing the signatures and addresses of at least one thousand registered voters of the state of Washington;

(6) Contain proof of publication of the notice of calling the convention; and

(7) Be submitted to the secretary of state not later than the first Friday of August. [2013 c 11 § 28; 2004 c 271 § 154. Formerly RCW 29A.20.161.]

29A.56.650 Multiple certificates of nomination. (1) If two or more valid certificates of nomination are filed purporting to nominate different candidates for the same position using the same party name, the filing officer must give effect to both certificates. If conflicting claims to the party name are not resolved either by mutual agreement or by a judicial determination of the right to the name, the candidates must be treated as independent candidates. Disputes over the right to the name must not be permitted to delay the printing of either ballots or a voters' pamphlet. Other candidates nominated by the same conventions may continue to use the partisan affiliation unless a court of competent jurisdiction directs otherwise.

(2) A person affected may petition the superior court of the county in which the filing officer is located for a judicial determination of the right to the name of a minor political party, either before or after documents are filed with the filing officer. The court shall resolve the conflict between competing claims to the use of the same party name according to the following principles: (a) The prior established public use of the name during previous elections by a party composed of or led by the same individuals or individuals in documented succession; (b) prior established public use of the name earlier in the same election cycle; (c) the nomination of a more complete slate of candidates for a number of offices or in a number of different regions of the state; (d) documented affiliation with a national or statewide party organization with an established use of the name; (e) the first date of filing of a certificate of nomination; and (f) such other indicia of an established right to use of the name as the court may deem relevant. If more than one filing officer is involved, and one of them is the secretary of state, the petition must be filed in the superior court for Thurston county. Upon resolving the conflict between competing claims, the court may also address any ballot designation for the candidate who does not prevail. [2004 c 271 § 155. Formerly RCW 29A.20.171.]

29A.56.660 Presidential electors—Selection at convention. A minor political party or independent candidate convention nominating candidates for the offices of president and vice president of the United States shall, not later than ten days after the adjournment of the convention, submit a list of presidential electors to the office of the secretary of state. The list shall contain the names and the mailing addresses of the persons selected and shall be verified by the presiding

officer of the convention. [2004 c 271 § 156. Formerly RCW 29A.20.181.]

29A.56.670 Certificate of nomination—Checking signatures—Appeal of determination. Upon the receipt of the certificate of nomination, the secretary of state shall check the certificate and canvass the signatures on the accompanying nominating petitions to determine if the requirements of RCW 29A.56.640 have been met. Once the determination has been made, the secretary of state shall notify the presiding officer of the convention and any other persons requesting the notification, of his or her decision regarding the sufficiency of the certificate or the nominating petitions. Any appeal regarding the secretary's determination must be filed with the superior court of Thurston county not later than five days from the date the determination is made, and shall be heard and finally disposed of by the court within five days of the filing. Nominating petitions shall not be available for public inspection or copying. [2013 c 11 § 29; 2004 c 271 § 157. Formerly RCW 29A.20.191.]

Chapter 29A.60 RCW CANVASSING

Sections

29A.60.010	Conduct of elections—Canvass.
29A.60.060	Results after close of voting.
29A.60.110	Ballot containers, sealing, opening.
29A.60.160	Ballots—Processing, canvassing.
29A.60.165	Unsigned ballot declarations.
29A.60.240	Secretary of state—Primary returns—State offices, etc.
29A.60.250	Secretary of state—Final returns—Scope.
29A.60.270	Local officers, beginning of terms—Organization of district boards of directors.
29A.60.280	Local elected officials, commencement of term of office—Purpose.

29A.60.010 Conduct of elections—Canvass. All elections, whether special or general, held under RCW 29A.04.321 and 29A.04.330 must be conducted by the county auditor as ex officio county supervisor of elections and, except as provided in RCW 29A.60.240, the returns canvassed by the county canvassing board. [2013 c 11 § 59; 2003 c 111 § 1501; 1965 c 123 § 4; 1965 c 9 § 29.13.040. Prior: 1963 c 200 § 6; 1955 c 55 § 3; 1951 c 257 § 4; 1951 c 101 § 4; 1949 c 161 § 5; Rem. Supp. 1949 § 5153-1. Formerly RCW 29.13.040.]

29A.60.060 Results after close of voting. After the close of voting at 8:00 p.m., the county auditor must directly load the results from any direct recording electronic memory pack into the central accumulator. [2013 c 11 § 60; 2011 c 10 § 49; 2003 c 111 § 1506. Prior: 1999 c 158 § 12. Formerly RCW 29.54.097.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

29A.60.110 Ballot containers, sealing, opening. Immediately after their tabulation, all ballots counted at a ballot counting center must be sealed in containers that identify the primary or election and be retained for at least sixty days or according to federal law, whichever is longer.

In the presence of major party observers who are available, ballots may be removed from the sealed containers at

the elections department and consolidated into one sealed container for storage purposes. The containers may only be opened by the canvassing board as part of the canvass, to conduct recounts, to conduct a random check under RCW 29A.60.170, or by order of the superior court in a contest or election dispute. If the canvassing board opens a ballot container, it shall make a full record of the additional tabulation or examination made of the ballots. This record must be added to any other record of the canvassing process in that county. [2013 c 11 § 61; 2011 c 10 § 50; 2003 c 111 § 1511; 1999 c 158 § 14; 1990 c 59 § 59. Formerly RCW 29.54.075.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.013.

29A.60.160 Ballots—Processing, canvassing. (1) The county auditor, as delegated by the county canvassing board, shall process ballots and canvass the votes cast at that primary or election on a daily basis in counties with a population of seventy-five thousand or more, or at least every third day for counties with a population of less than seventy-five thousand, if the county auditor is in possession of more than five hundred ballots that have yet to be canvassed.

(2) Saturdays, Sundays, and legal holidays are not counted for purposes of this section.

(3) In order to protect the secrecy of a ballot, the county auditor may use discretion to decide when to process ballots and canvass the votes.

(4) Tabulation results must be made available to the public immediately upon completion of the canvass. [2013 c 11 § 62; 2011 c 10 § 53; (2011 c 10 § 52 expired July 1, 2013); 2007 c 373 § 2; (2007 c 373 § 1 expired July 1, 2013). Prior: 2005 c 243 § 15; (2005 c 153 § 11 expired July 1, 2013); 2003 c 111 § 1516; 1999 c 259 § 4; 1995 c 139 § 2; 1987 c 54 § 2; 1965 c 9 § 29.62.020; prior: 1957 c 195 § 15; prior: 1919 c 163 § 21, part; Code 1881 § 3095, part; 1868 p 20 § 1, part; 1865 p 39 § 6, part; RRS § 5340, part. Formerly RCW 29.62.020.]

Effective date—2011 c 10 §§ 53 and 58: "Sections 53 and 58 of this act take effect July 1, 2013." [2011 c 10 § 88.]

Expiration date—2011 c 10 §§ 52 and 57: "Sections 52 and 57 of this act expire July 1, 2013." [2011 c 10 § 89.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Effective date—2007 c 373 § 2: "Section 2 of this act takes effect July 1, 2013." [2007 c 373 § 5.]

Expiration date—2007 c 373 § 1: "Section 1 of this act expires July 1, 2013." [2007 c 373 § 4.]

Expiration date—2005 c 153 §§ 11 and 12: "Sections 11 and 12 of this act expire July 1, 2013." [2005 c 153 § 14.]

Absentee ballots, canvassing: RCW 29A.40.110.

29A.60.165 Unsigned ballot declarations. (1) If the voter neglects to sign the ballot declaration, the auditor shall notify the voter by first-class mail and advise the voter of the correct procedures for completing the unsigned declaration. If the ballot is received within three business days of the final meeting of the canvassing board, or the voter has been notified by first-class mail and has not responded at least three business days before the final meeting of the canvassing

board, then the auditor shall attempt to notify the voter by telephone, using the voter registration record information.

(2)(a) If the handwriting of the signature on a ballot declaration is not the same as the handwriting of the signature on the registration file, the auditor shall notify the voter by first-class mail, enclosing a copy of the declaration, and advise the voter of the correct procedures for updating his or her signature on the voter registration file. If the ballot is received within three business days of the final meeting of the canvassing board, or the voter has been notified by first-class mail and has not responded at least three business days before the final meeting of the canvassing board, then the auditor shall attempt to notify the voter by telephone, using the voter registration record information.

(b) If the signature on a ballot declaration is not the same as the signature on the registration file because the name is different, the ballot may be counted as long as the handwriting is clearly the same. The auditor shall send the voter a change-of-name form under RCW 29A.08.440 and direct the voter to complete the form.

(c) If the signature on a ballot declaration is not the same as the signature on the registration file because the voter used initials or a common nickname, the ballot may be counted as long as the surname and handwriting are clearly the same.

(3) A voter may not cure a missing or mismatched signature for purposes of counting the ballot in a recount.

(4) A record must be kept of all ballots with missing and mismatched signatures. The record must contain the date on which the voter was contacted or the notice was mailed, as well as the date on which the voter submitted updated information. That record is a public record under chapter 42.56 RCW and may be disclosed to interested parties on written request. [2013 c 11 § 63; 2011 c 10 § 54. Prior: 2006 c 209 § 4; 2006 c 208 § 1; 2005 c 243 § 8.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Effective date—2006 c 209: See RCW 42.56.903.

29A.60.240 Secretary of state—Primary returns—State offices, etc. The secretary of state shall, as soon as possible but in any event not later than seventeen days following the primary, canvass and certify the returns of all primary elections as to candidates for statewide offices, United States senators and representatives in Congress, and all legislative and judicial candidates whose district extends beyond the limits of a single county. [2013 c 11 § 64; 2011 c 349 § 22; 2003 c 111 § 1524; 1977 ex.s. c 361 § 97; 1965 c 9 § 29.62.100. Prior: 1961 c 130 § 11; prior: 1907 c 209 § 24, part; RRS § 5201, part. Formerly RCW 29.62.100.]

Effective date—2011 c 349: See note following RCW 29A.04.255.

Additional notes found at www.leg.wa.gov

29A.60.250 Secretary of state—Final returns—Scope. As soon as the returns have been received from all the counties of the state, but not later than the thirtieth day after the election, the secretary of state shall canvass and certify the returns of the general election as to candidates for statewide offices, the United States senate, congress, and all legislative and judicial candidates whose districts extend beyond the limits of a single county. The secretary of state shall transmit a copy of the certification to the governor, president

of the senate, and speaker of the house of representatives. [2013 c 11 § 65; 2005 c 243 § 18; 2003 c 111 § 1525; 1965 c 9 § 29.62.120. Prior: Code 1881 § 3100, part; No RRS. Formerly RCW 29.62.120.]

29A.60.270 Local officers, beginning of terms—Organization of district boards of directors. The term of every city, town, and district officer elected to office on the first Tuesday following the first Monday in November of the odd-numbered years begins in accordance with *RCW 29A.20.040. However, a person elected to less than a full term shall assume office as soon as the election returns have been certified and he or she is qualified in accordance with RCW 29A.04.133.

Each board of directors of every district shall be organized at the first meeting held after one or more newly elected directors take office. [2003 c 111 § 503; 1979 ex.s. c 126 § 14; 1965 c 123 § 6; 1965 c 9 § 29.13.050. Prior: 1963 c 200 § 8; 1959 c 86 § 1; prior: 1951 c 257 § 6. (i) 1949 c 161 § 9; Rem. Supp. 1949 § 5146-1. (ii) 1949 c 163 § 1; 1921 c 61 § 4; Rem. Supp. 1949 § 5146. Formerly RCW 29A.20.030, 29.13.050.]

*Reviser's note: RCW 29A.20.040 was recodified as RCW 29A.60.280 pursuant to 2013 c 11 § 93.

Purpose—1979 ex.s. c 126: See RCW 29A.60.280(1).

29A.60.280 Local elected officials, commencement of term of office—Purpose. (1) The legislature finds that certain laws are in conflict governing the assumption of office of various local officials. The purpose of this section is to provide a common date for the assumption of office for all the elected officials of counties, cities, towns, and special purpose districts other than school districts where the ownership of property is not a prerequisite of voting. A person elected to the office of school director begins his or her term of office at the first official meeting of the board of directors after certification of the election results. It is also the purpose of this section to remove these conflicts and delete old statutory language concerning such elections which is no longer necessary.

(2) For elective offices of counties, cities, towns, and special purpose districts other than school districts where the ownership of property is not a prerequisite of voting, the term of incumbents ends and the term of successors begins after the successor is elected and qualified, and the term commences immediately after December 31st following the election, except as follows:

(a) Where the term of office varies from this standard according to statute; and

(b) If the election results have not been certified prior to January 1st after the election, in which event the time of commencement for the new term occurs when the successor becomes qualified in accordance with RCW 29A.04.133.

(3) For elective offices governed by this section, the oath of office must be taken as the last step of qualification as defined in RCW 29A.04.133 but may be taken either:

(a) Up to ten days prior to the scheduled date of assuming office; or

(b) At the last regular meeting of the governing body of the applicable county, city, town, or special district held before the winner is to assume office. [2003 c 111 § 504;

1999 c 298 § 3; 1980 c 35 § 7; 1979 ex.s. c 126 § 1. Formerly RCW 29A.20.040, 29.04.170.]

Additional notes found at www.leg.wa.gov

Chapter 29A.64 RCW RECOUNTS

Sections

29A.64.021	Mandatory.
29A.64.030	Deposit of fees—Notice—Public proceeding.
29A.64.050	Partial recount requiring complete recount.
29A.64.061	Amended abstracts.
29A.64.090	Statewide measures—When mandatory—Cost at state expense.

29A.64.021 Mandatory. (1) If the official canvass of all of the returns for any office at any primary or election reveals that the difference in the number of votes cast for a candidate apparently qualified for the general election ballot or elected to any office, and the number of votes cast for the closest apparently defeated opponent is less than two thousand votes and also less than one-half of one percent of the total number of votes cast for both candidates, the county canvassing board shall conduct a recount of all votes cast on that position.

(a) Whenever such a difference occurs in the number of votes cast for candidates for a position the declaration of candidacy for which was filed with the secretary of state, the secretary of state shall, within three business days of the day that the returns of the primary or election are first certified by the canvassing boards of those counties, direct those boards to recount all votes cast on the position.

(b)(i) For statewide elections, if the difference in the number of votes cast for the apparent winner and the closest apparently defeated opponent is less than one thousand votes and also less than one-fourth of one percent of the total number of votes cast for both candidates, the votes shall be recounted manually or as provided in subsection (3) of this section.

(ii) For elections not included in (b)(i) of this subsection, if the difference in the number of votes cast for the apparent winner and the closest apparently defeated opponent is less than one hundred fifty votes and also less than one-fourth of one percent of the total number of votes cast for both candidates, the votes shall be recounted manually or as provided in subsection (3) of this section.

(2) A mandatory recount shall be conducted in the manner provided by RCW 29A.64.030, 29A.64.041, and 29A.64.061. No cost of a mandatory recount may be charged to any candidate.

(3) The apparent winner and closest apparently defeated opponent for an office for which a manual recount is required under subsection (1)(b) of this section may select an alternative method of conducting the recount. To select such an alternative, the two candidates shall agree to the alternative in a signed, written statement filed with the election official for the office. The recount shall be conducted using the alternative method if: It is suited to the balloting system that was used for casting the votes for the office; it involves the use of a vote tallying system that is approved for use in this state by the secretary of state; and the vote tallying system is readily available in each county required to conduct the recount. If

more than one balloting system was used in casting votes for the office, an alternative to a manual recount may be selected for each system. [2013 c 11 § 66; 2005 c 243 § 19; 2004 c 271 § 178.]

29A.64.030 Deposit of fees—Notice—Public proceeding. An application for a recount shall state the office or ballot measure for which a recount is requested, and whether the request is for all precincts or only a portion of the precincts in that jurisdiction. The person filing an application for a manual recount shall, at the same time, deposit with the county canvassing board or secretary of state, in cash or by certified check, a sum equal to twenty-five cents for each ballot cast in the jurisdiction or portion of the jurisdiction for which the recount is requested as security for the payment of any costs of conducting the recount. If the application is for a machine recount, the deposit must be equal to fifteen cents for each ballot. These charges shall be determined by the county canvassing board or boards under RCW 29A.64.081.

The county canvassing board shall determine the date, time, and place or places at which the recount will be conducted. Not less than one day before the date of the recount, the county auditor shall notify the applicant or affected parties and, if the recount involves an office, to any person for whom votes were cast for that office of the date, time, and place of the recount. Each person entitled to receive notice of the recount may attend, witness the recount, and be accompanied by counsel.

Proceedings of the canvassing board are public under chapter 42.30 RCW. Subject to reasonable and equitable guidelines adopted by the canvassing board, all interested persons may attend and witness a recount. [2013 c 11 § 67; 2011 c 349 § 24; 2005 c 243 § 20; 2003 c 111 § 1603. Prior: 2001 c 225 § 5; 1991 c 81 § 36; 1987 c 54 § 5; 1977 ex.s. c 361 § 99; 1965 c 9 § 29.64.020; prior: 1961 c 50 § 2; 1955 c 215 § 2. Formerly RCW 29.64.020.]

Effective date—2011 c 349: See note following RCW 29A.04.255.

Additional notes found at www.leg.wa.gov

29A.64.050 Partial recount requiring complete recount. When a partial recount of votes cast for an office or issue changes the result of the election, the canvassing board or the secretary of state, if the office or issue is being recounted at his or her direction, shall order a complete recount of all ballots cast for the office or issue for the jurisdiction in question.

This recount will be conducted in a manner consistent with RCW 29A.64.021. [2013 c 11 § 68; 2003 c 111 § 1605. Prior: 2001 c 225 § 7. Formerly RCW 29.64.035.]

29A.64.061 Amended abstracts. (1) Upon completion of the canvass of a recount, the canvassing board shall prepare and certify an amended abstract showing the votes cast in each precinct for which the recount was conducted. Copies of the amended abstracts must be transmitted to the same officers who received the abstract on which the recount was based.

(2) If the office or issue for which the recount was conducted was filed with the county auditor, the canvassing board shall file the amended abstract with the original results of that election or primary.

(3) If the office or issue for which a recount was conducted was filed with the secretary of state, the secretary of state shall canvass the amended abstracts and shall file an amended abstract with the original results of that election. The secretary of state may require that the amended abstracts be certified by each canvassing board on a uniform date.

(4) An amended abstract certified under this section supersedes any prior abstract of the results for the same offices or issues at the same primary or election. [2013 c 11 § 69; 2005 c 243 § 21; 2004 c 271 § 180.]

29A.64.090 Statewide measures—When mandatory—Cost at state expense. When the official canvass of returns of any election reveals that the difference in the number of votes cast for the approval of a statewide measure and the number of votes cast for the rejection of such measure is less than two thousand votes and also less than one-half of one percent of the total number of votes cast on such measure, the secretary of state shall direct that a recount of all votes cast on such measure be made on such measure, in the manner provided by RCW 29A.64.041 and 29A.64.061, and the cost of such recount will be at state expense. [2013 c 11 § 70; 2003 c 111 § 1609. Prior: 2001 c 225 § 11; 1973 c 82 § 1. Formerly RCW 29.64.080.]

Chapter 29A.68 RCW CONTESTING AN ELECTION

Sections

29A.68.011 Prevention and correction of election frauds and errors.
29A.68.020 Commencement by registered voter—Causes for.

29A.68.011 Prevention and correction of election frauds and errors. Any justice of the supreme court, judge of the court of appeals, or judge of the superior court in the proper county shall, by order, require any person charged with error, wrongful act, or neglect to forthwith correct the error, desist from the wrongful act, or perform the duty and to do as the court orders or to show cause forthwith why the error should not be corrected, the wrongful act desisted from, or the duty or order not performed, whenever it is made to appear to such justice or judge by affidavit of an elector that:

- (1) An error or omission has occurred or is about to occur in printing the name of any candidate on official ballots; or
- (2) An error other than as provided in subsections (1) and (3) of this section has been committed or is about to be committed in printing the ballots; or
- (3) The name of any person has been or is about to be wrongfully placed upon the ballots; or
- (4) A wrongful act other than as provided for in subsections (1) and (3) of this section has been performed or is about to be performed by any election officer; or
- (5) Any neglect of duty on the part of an election officer other than as provided for in subsections (1) and (3) of this section has occurred or is about to occur; or
- (6) An error or omission has occurred or is about to occur in the official certification of the election.

An affidavit of an elector under subsections (1) and (3) of this section when relating to a primary election must be filed with the appropriate court no later than two days following the closing of the filing period for such office and shall be

heard and finally disposed of by the court not later than five days after the filing thereof. An affidavit of an elector under subsections (1) and (3) of this section when relating to a general election must be filed with the appropriate court no later than three days following the official certification of the primary election returns, or official certification of candidates qualified to appear on the general election ballot, whichever is later, and shall be heard and finally disposed of by the court not later than five days after the filing thereof. An affidavit of an elector under subsection (6) of this section shall be filed with the appropriate court no later than ten days following the official certification of the election as provided in RCW 29A.60.190, 29A.60.240, or 29A.60.250 or, in the case of a recount, ten days after the official certification of the amended abstract as provided in RCW 29A.64.061. [2013 c 11 § 71; 2011 c 349 § 25; 2007 c 374 § 3; 2005 c 243 § 22; 2004 c 271 § 182.]

Effective date—2011 c 349: See note following RCW 29A.04.255.

29A.68.020 Commencement by registered voter—

Causes for. Any of the following causes may be asserted by a registered voter to challenge the right to assume office of a candidate declared elected to that office:

(1) For misconduct on the part of any election officer involved therein;

(2) Because the person whose right is being contested was not, at the time the person was declared elected, eligible to that office;

(3) Because the person whose right is being contested was, previous to the election, convicted of a felony by a court of competent jurisdiction, the conviction not having been reversed nor the person's civil rights restored after the conviction;

(4) Because the person whose right is being contested gave a bribe or reward to a voter or to an election officer for the purpose of procuring the election, or offered to do so;

(5) On account of illegal votes.

(a) Illegal votes include but are not limited to the following:

(i) More than one vote cast by a single voter;

(ii) A vote cast by a person disqualified under Article VI, section 3 of the state Constitution.

(b) Illegal votes do not include votes cast by improperly registered voters who were not properly challenged under RCW 29A.08.810 and 29A.08.820.

All election contests must proceed under RCW 29A.68.011. [2013 c 11 § 72; 2011 c 10 § 64; 2007 c 374 § 4; 2003 c 111 § 1702; 1983 1st ex.s. c 30 § 6; 1977 ex.s. c 361 § 101; 1965 c 9 § 29.65.010. Prior: 1959 c 329 § 26; prior: (i) Code 1881 § 3105; 1865 p 42 § 1; RRS § 5366. (ii) Code 1881 § 3109; 1865 p 43 § 5; RRS § 5370. Formerly RCW 29.65.010.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Civil rights

loss of: State Constitution Art. 6 § 3, RCW 29A.08.520.

restoration of: RCW 9.92.066, 9.94A.637, 9.94A.885, 9.95.260, chapter 9.96 RCW.

Additional notes found at www.leg.wa.gov

Chapter 29A.72 RCW

STATE INITIATIVE AND REFERENDUM

Sections

29A.72.080 Ballot title and summary—Appeal to superior court.

29A.72.130 Referendum petitions—Form.

29A.72.250 Initiatives and referenda to the people—Certificates of sufficiency.

29A.72.290 Printing ballot titles and short descriptions on ballots—Separate headings.

29A.72.080 Ballot title and summary—Appeal to superior court. Any persons, including the attorney general or either or both houses of the legislature, dissatisfied with the ballot title or summary for a state initiative or referendum may, within five days from the filing of the ballot title in the office of the secretary of state, appeal to the superior court of Thurston county by petition setting forth the measure, the ballot title or summary, and their objections to the ballot title or summary and requesting amendment of the ballot title or summary by the court. Saturdays, Sundays, and legal holidays are not counted in calculating the time limits contained in this section.

A copy of the petition on appeal together with a notice that an appeal has been taken shall be served upon the secretary of state, upon the attorney general, and upon the person proposing the measure if the appeal is initiated by someone other than that person. Upon the filing of the petition on appeal or at the time to which the hearing may be adjourned by consent of the appellant, the court shall accord first priority to examining the proposed measure, the ballot title or summary, and the objections to that ballot title or summary, may hear arguments, and shall, within five days, render its decision and file with the secretary of state a certified copy of such ballot title or summary as it determines will meet the requirements of RCW 29A.72.060. The decision of the superior court shall be final. Such appeal shall be heard without costs to either party. [2013 c 11 § 73; 2003 c 111 § 1809. Prior: 2000 c 197 § 4; 1982 c 116 § 6; 1965 c 9 § 29.79.060; prior: 1913 c 138 § 3, part; RRS § 5399, part. Formerly RCW 29.79.060.]

Additional notes found at www.leg.wa.gov

29A.72.130 Referendum petitions—Form. Petitions ordering that acts or parts of acts passed by the legislature be referred to the people at the next ensuing general election, or special election ordered by the legislature, must be substantially in the following form:

The warning prescribed by RCW 29A.72.140; followed by:

PETITION FOR REFERENDUM

To the Honorable, Secretary of State of the State of Washington:

We, the undersigned citizens and legal voters of the State of Washington, respectfully order and direct that Referendum Measure No., filed to revoke a (or part or parts of a) bill that (concise statement required by RCW 29A.72.050) and that was passed by the legislature of the State of Washington at the last regular (special) session of said legislature, shall be referred to the people of the state for their approval or rejection at the regular (special) election to be

held on the . . . day of November, (year); and each of us for himself or herself says: I have personally signed this petition; I am a legal voter of the State of Washington, in the city (or town) and county written after my name, my residence address is correctly stated, and I have knowingly signed this petition only once.

The following declaration must be printed on the reverse side of the petition:

I, . . . , swear or affirm under penalty of law that I circulated this sheet of the foregoing petition, and that, to the best of my knowledge, every person who signed this sheet of the foregoing petition knowingly and without any compensation or promise of compensation willingly signed his or her true name and that the information provided therewith is true and correct. I further acknowledge that under chapter 29A.84 RCW, forgery of signatures on this petition constitutes a class C felony, and that offering any consideration or gratuity to any person to induce them to sign a petition is a gross misdemeanor, such violations being punishable by fine or imprisonment or both.

RCW 9A.46.020 applies to any conduct constituting harassment against a petition signature gatherer. This penalty does not preclude the victim from seeking any other remedy otherwise available under law.

The petition must include a place for each petitioner to sign and print his or her name, and the address, city, and county at which he or she is registered to vote. [2013 c 11 § 74; 2005 c 239 § 3; 2003 c 111 § 1814; 1993 c 256 § 10; 1982 c 116 § 11; 1965 c 9 § 29.79.110. Prior: 1913 c 138 § 7, part; RRS § 5403, part. Formerly RCW 29.79.110.]

Effective date—2005 c 239: See note following RCW 29A.72.110.

Additional notes found at www.leg.wa.gov

29A.72.250 Initiatives and referenda to the people—Certificates of sufficiency. If a referendum or initiative petition for submission of a measure to the people is found sufficient, the secretary of state shall at the time and in the manner that he or she certifies to the county auditors of the various counties the names of candidates for state and district officers certify to each county auditor the serial numbers and ballot titles of the several initiative and referendum measures and serial numbers and short descriptions of measures submitted for an advisory vote of the people to be voted upon at the next ensuing general election or special election ordered by the legislature. [2013 c 11 § 75; 2008 c 1 § 10 (Initiative Measure No. 960, approved November 6, 2007); 2003 c 111 § 1825; 1965 c 9 § 29.79.230. Prior: 1913 c 138 § 19; RRS § 5415. Formerly RCW 29.79.230.]

Findings—Intent—Construction—Severability—Subheadings and part headings not law—Short title—Effective date—2008 c 1 (Initiative Measure No. 960): See notes following RCW 43.135.031.

29A.72.290 Printing ballot titles and short descriptions on ballots—Separate headings. The county auditor of each county shall print on the official ballots for the election at which initiative and referendum measures and measures for an advisory vote of the people are to be submitted to the people for their approval or rejection, the serial numbers and ballot titles certified by the secretary of state and the serial numbers and short descriptions of measures for an advisory

vote of the people. They must appear under separate headings in the order of the serial numbers as follows:

- (1) Initiatives to the people;
- (2) Referendum measures;
- (3) Referendum bills;
- (4) Initiatives to the legislature;
- (5) Initiatives to the legislature and legislative alternatives;
- (6) Advisory votes;
- (7) Proposed constitutional amendments. [2013 c 11 § 76; 2008 c 1 § 11 (Initiative Measure No. 960, approved November 6, 2007); 2003 c 111 § 1829; 1965 c 9 § 29.79.300. Prior: 1913 c 138 § 23; RRS § 5419. Formerly RCW 29.79.300.]

Findings—Intent—Construction—Severability—Subheadings and part headings not law—Short title—Effective date—2008 c 1 (Initiative Measure No. 960): See notes following RCW 43.135.031.

**Chapter 29A.76 RCW
REDISTRICTING**

Sections

- 29A.76.020 Boundary information.
- 29A.76.030 Recodified as RCW 29A.16.070.

29A.76.020 Boundary information. The legislative authority of each county and each city, town, and special purpose district which lies within the county shall provide the county auditor accurate information describing its geographical boundaries and the boundaries of its director, council, or commissioner districts and shall ensure that the information provided to the auditor is kept current. [2013 c 11 § 77; 2003 c 111 § 1902. Prior: 1991 c 178 § 2. Formerly RCW 29.15.026, 29.04.220.]

29A.76.030 Recodified as RCW 29A.16.070. See Supplementary Table of Disposition of Former RCW Sections, this volume.

**Chapter 29A.80 RCW
POLITICAL PARTIES**

Sections

- 29A.80.011 Repealed.
- 29A.80.020 State committee.
- 29A.80.031 Precinct committee officer.

29A.80.011 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.80.020 State committee. The state committee of each major political party consists of one committeeman and one committeewoman from each county elected by the county central committee at its organization meeting. It must have a chair and vice chair of opposite sexes. This committee shall meet during January of each odd-numbered year for the purpose of organization at a time and place designated by a notice mailed at least one week before the date of the meeting to all new state committeemen and committeewomen by the authorized officers of the retiring committee. At its organizational meeting it shall elect its chair and vice chair, and such

officers as its bylaws may provide, and adopt bylaws, rules, and regulations. It may:

(1) Call conventions at such time and place and under such circumstances and for such purposes as the call to convention designates. The manner, number, and procedure for selection of state convention delegates is subject to the committee's rules and regulations duly adopted;

(2) Provide for the election of delegates to national conventions;

(3) Provide for the nomination of presidential electors; and

(4) Perform all functions inherent in such an organization.

Notwithstanding any provision of this chapter, the committee may not adopt rules governing the conduct of the actual proceedings at a party state convention. [2013 c 11 § 79; 2003 c 111 § 2002; 1987 c 295 § 11; 1972 ex.s. c 45 § 1; 1965 c 9 § 29.42.020. Prior: 1961 c 130 § 3; prior: 1943 c 178 § 1, part; 1939 c 48 § 1, part; 1927 c 200 § 1, part; 1925 ex.s. c 158 § 1, part; 1909 c 82 § 6, part; 1907 c 209 § 22, part; Rem. Supp. 1943 § 5198, part. Formerly RCW 29.42.020.]

29A.80.031 Precinct committee officer. If a vacancy occurs in the office of precinct committee officer by reason of death, resignation, or disqualification of the incumbent, or because of failure to elect, the respective county chair of the county central committee shall fill the vacancy by appointment. However, in a legislative district having a majority of its precincts in a county with a population of one million or more, the appointment may be made only upon the recommendation of the legislative district chair. The person so appointed must have the same qualifications as candidates when filing for election to the office for that precinct. When a vacancy in the office of precinct committee officer exists because of failure to elect at a state primary, the vacancy may not be filled until after the organization meeting of the county central committee and the new county chair has been selected as provided by RCW 29A.80.030. [2004 c 271 § 120. Formerly RCW 29A.28.071.]

Chapter 29A.84 RCW CRIMES AND PENALTIES

Sections

- 29A.84.210 Violations by officers.
- 29A.84.261 Petitions—Improperly signing.
- 29A.84.510 Acts prohibited in voting center—Prohibited practices.
- 29A.84.520 Electioneering at voting center or ballot drop location by election officers forbidden.
- 29A.84.711 Documents regarding nomination, election, candidacy—Frauds and falsehoods.

29A.84.210 Violations by officers. Every officer who willfully violates any of the provisions of chapter 29A.72 RCW or RCW 29A.32.010 through 29A.32.121, for the violation of which no penalty is herein prescribed, or who willfully fails to comply with the provisions of chapter 29A.72 RCW or RCW 29A.32.010 through 29A.32.121, is guilty of a gross misdemeanor punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021. [2013 c 11 § 80; 2003 c 111 § 2109; 1993 c 256 § 3; 1965 c 9

§ 29.79.480. Prior: 1913 c 138 § 32, part; RRS § 5428, part. Formerly RCW 29.79.480.]

Additional notes found at www.leg.wa.gov

29A.84.261 Petitions—Improperly signing. The following apply to persons signing filing fee petitions prescribed by RCW 29A.24.101:

(1) A person who signs a petition with any other than his or her name shall be guilty of a misdemeanor.

(2) A person shall be guilty of a misdemeanor if the person knowingly: Signs more than one petition for any single candidacy of any single candidate; signs the petition when he or she is not a legal voter; or makes a false statement as to his or her residence. [2013 c 11 § 81; 2004 c 271 § 184.]

29A.84.510 Acts prohibited in voting center—Prohibited practices. (1) During the voting period that begins eighteen days before and ends the day of a special election, general election, or primary, no person may:

(a) Within a voting center:

(i) Suggest or persuade or attempt to suggest or persuade any voter to vote for or against any candidate or ballot measure;

(ii) Circulate cards or handbills of any kind;

(iii) Solicit signatures to any kind of petition; or

(iv) Engage in any practice which interferes with the freedom of voters to exercise their franchise or disrupts the administration of the voting center;

(b) Obstruct the doors or entries to a building in which a voting center or ballot drop location is located or prevent free access to and from any voting center or ballot drop location.

(2) Any sheriff, deputy sheriff, or municipal law enforcement officer shall stop the prohibited activity, and may arrest any person engaging in the prohibited activity.

(3) Any violation of this section is a gross misdemeanor, punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021, and the person convicted may be ordered to pay the costs of prosecution. [2013 c 11 § 82; 2011 c 10 § 69; 2003 c 111 § 2121. Prior: 1991 c 81 § 20; 1990 c 59 § 75; 1984 c 35 § 1; 1983 1st ex.s. c 33 § 1; 1965 c 9 § 29.51.020; prior: (i) 1947 c 35 § 1, part; 1889 p 412 § 33, part; Rem. Supp. 1947 § 5298, part. (ii) 1895 c 156 § 7, part; 1889 p 409 § 22, part; Code 1881 § 3079, part; 1865 p 34 § 4, part; RRS § 5279, part. Formerly RCW 29.51.020]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.013.

Additional notes found at www.leg.wa.gov

29A.84.520 Electioneering at voting center or ballot drop location by election officers forbidden. Any election officer who does any electioneering at a voting center or ballot drop location during the voting period that begins eighteen days before and ends the day of a special election, general election, or primary is guilty of a misdemeanor, and upon conviction must be fined in any sum not exceeding one hundred dollars and pay the costs of prosecution. [2013 c 11 § 83; 2011 c 10 § 70; 2003 c 111 § 2122; 1965 c 9 § 29.51.030. Prior: 1947 c 35 § 1, part; 1889 p 412 § 33, part; Rem. Supp. 1947 § 5298, part. Formerly RCW 29.51.030.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

29A.84.711 Documents regarding nomination, election, candidacy—Frauds and falsehoods. Every person who:

(1) Knowingly and falsely issues a certificate of nomination or election; or

(2) Knowingly provides false information on a minor party or independent candidate certificate of nomination is guilty of a class C felony punishable under RCW 9A.20.021. [2013 c 11 § 84; 2004 c 271 § 186.]

Chapter 29A.88 RCW NUCLEAR WASTE SITE— ELECTION FOR DISAPPROVAL

Sections

- 29A.88.020 High-level repository—Selection of site in state—Special election for disapproval.
29A.88.040 Special election—Notification of auditors—Application of election laws.

29A.88.020 High-level repository—Selection of site in state—Special election for disapproval. (1) Within seven days after any recommendation by the president of the United States of a site in the state of Washington to be a high-level nuclear waste repository under 42 U.S.C. Sec. 10136, the governor shall set the date for a special statewide election to vote on disapproval of the selection of such site. The special election shall be held not less than forty-five nor more than ninety days after the date of the recommendation of the president of the United States.

(2) If either the governor or the legislature submits a notice of disapproval to the United States Congress within twenty-one days of the date of the recommendation by the president of the United States, then the governor is authorized to cancel the special election pursuant to subsection (1) of this section. [2013 c 11 § 85; 2003 c 111 § 2202; 1986 ex.s. c 1 § 4. Formerly RCW 29.91.020.]

29A.88.040 Special election—Notification of auditors—Application of election laws. The secretary of state shall promptly notify the county auditors of the date of the special election and certify to them the text of the ballot title for this special election. The general election laws shall apply to the election required by RCW 29A.88.020 to the extent that they are not inconsistent with this chapter. Statutory deadlines relating to certification, canvassing, and the voters' pamphlet may be modified for the election held pursuant to RCW 29A.88.020 by the secretary of state through emergency rules adopted under RCW 29A.04.611. [2013 c 11 § 86; 2003 c 111 § 2204. Prior: 1986 ex.s. c 1 § 6. Formerly RCW 29.91.040.]

Title 30

BANKS AND TRUST COMPANIES

Chapters

- 30.04** General provisions.
30.08 Organization and powers.

- 30.38** Interstate banking.
30.46 Supervisory direction—Conservatorship.

Chapter 30.04 RCW GENERAL PROVISIONS

Sections

- 30.04.010 Definitions.
30.04.070 Costs of examination, filing, and other service fees—Nondirect expenses.
30.04.111 Limit on loans and extensions of credit to one person—Exceptions—Definitions—Rules—Nonconforming loans and extensions of credit.
30.04.215 Engaging in other business activities.
30.04.217 Additional powers of a bank—Powers and authorities of savings bank—Definition—Restrictions.
30.04.240 Trust business to be kept separate—Authorized deposit of securities.
30.04.260 Legal services, advertising of—Penalty.
30.04.280 Compliance enjoined—Banking, trust business, branches—Director's authority—Rules.

30.04.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this title.

(1) "Adequately capitalized," "critically undercapitalized," "significantly undercapitalized," "undercapitalized," and "well-capitalized," respectively, have meanings consistent with the definitions these same terms have under the prompt corrective action provisions of the federal deposit insurance act, 12 U.S.C. Sec. 1831o, and applicable enabling rules of the federal deposit insurance corporation.

(2) "Bank," unless a different meaning appears from the context, means any corporation organized under the laws of this state engaged in banking, other than a trust company, savings association, or a mutual savings bank.

(3) "Bank holding company" means a bank holding company under authority of the federal bank holding company act.

(4) "Banking" includes the soliciting, receiving or accepting of money or its equivalent on deposit as a regular business.

(5) "Branch" means any established office of deposit, domestic or otherwise, maintained by any bank or trust company other than its head office. "Branch" does not mean a machine permitting customers to leave funds in storage or communicate with bank employees who are not located at the site of the machine, unless employees of the bank at the site of the machine take deposits on a regular basis. An office or facility of an entity other than the bank shall not be deemed to be established by the bank, regardless of any affiliation, accommodation arrangement, or other relationship between the other entity and the bank.

(6) "Department" means the Washington state department of financial institutions.

(7) "Director" means the director of the department.

(8) "Financial holding company" means a financial services holding company under authority of the federal bank holding company act.

(9) "Foreign bank" and "foreign banker" includes:

(a) Every corporation not organized under the laws of the territory or state of Washington doing a banking business, except a national bank;

(b) Every unincorporated company, partnership or association of two or more individuals organized under the laws of another state or country, doing a banking business;

(c) Every other unincorporated company, partnership or association of two or more individuals, doing a banking business, if the members thereof owning a majority interest therein or entitled to more than one-half of the net assets thereof are not residents of this state; or

(d) Every nonresident of this state doing a banking business in his or her own name and right only.

(10) "Holding company" means a bank holding company or financial holding company of a bank organized under chapter 30.08 RCW or converted to a state bank under chapter 30.49 RCW, or a holding company of a trust company authorized to do business under this title.

(11) "Law firm" means a partnership, professional limited liability corporation, professional limited liability partnership, or similar entity whose partners, members, or shareholders are exclusively attorneys-at-law.

(12) "Person" means an individual or an entity including, but not limited to, a sole proprietorship, firm, association, general partnership or joint venture, limited liability company, limited liability partnership, trust, or corporation, or the plural thereof, whether resident, nonresident, citizen, or not.

(13) The term "trust business" shall include the business of doing any or all of the things specified in RCW 30.08.150 (2), (3), (4), (5), (6), (7), (8), (9), (10) and (11).

(14) "Trust company," unless a different meaning appears from the context, means any corporation or limited liability company, other than a bank, savings bank, or savings association, organized and chartered as a trust company under this title for the purpose of engaging in trust business. [2013 c 76 § 1; 2010 c 88 § 3; 1997 c 101 § 3; 1996 c 2 § 2; 1994 c 92 § 7; 1959 c 106 § 1; 1955 c 33 § 30.04.010. Prior: 1933 c 42 § 2; 1917 c 80 § 14; RRS § 3221.]

Effective date—2010 c 88: See RCW 32.50.900.

Additional notes found at www.leg.wa.gov

30.04.070 Costs of examination, filing, and other service fees—Nondirect expenses. (1) In order to cover the costs of the operation of the department's division of banks and to establish and maintain a reasonable reserve for the division of banks, the department may charge and collect the costs of examination, filing and other service fees, and semi-annual charges for recoupment of nondirect expenses related to the examination of financial institutions regulated by the department, as provided for in this section.

(2) The director shall collect from each bank, savings bank, trust company, savings association, holding company under this title, holding company under Title 32 RCW, business development company under chapter 31.24 RCW, agricultural lender under chapter 31.35 RCW, and small business lender under chapter 31.40 RCW:

(a) For each examination of its condition the estimated actual cost of such examination; and

(b) For services in relation to required filings, applications, requests for waiver, investigations, approvals, determinations, certifications, agreements, actions, directives, and orders made by or to the director.

(3) In addition to collecting the estimated actual cost of examination and other fees authorized by subsection (2) of

this section, the director may collect a semiannual charge for recoupment of nondirect expenses related to the examination of a bank or trust company under this title, a savings bank under Title 32 RCW, and a savings association under Title 33 RCW, based upon the assets of the bank, savings bank, or savings association, or assets under management of the trust company, which shall be computed upon the asset value reflected in the institution's most recent report of condition. The rate must be the same for banks, savings banks, and savings associations, and there may be a separate rate for trust companies that must be the same for all trust companies.

(4) Every bank or trust company, savings bank, savings association, holding company, business development company, state agricultural lender, or state small business lender shall also pay to the secretary of state for filing any instrument the same fees as are required of general corporations for filing corresponding instruments, and also the same license fees as are required of general corporations.

(5) The director shall establish, set, and adjust by rule the amount of all fees and charges authorized by subsections (2) and (3) of this section. [2013 c 76 § 2; 2010 c 88 § 8; 1994 c 92 § 10; 1955 c 33 § 30.04.070. Prior: 1929 c 73 § 1; 1923 c 172 § 16; 1921 c 73 § 1; 1917 c 80 § 8; RRS § 3215.]

Effective date—2010 c 88: See RCW 32.50.900.

30.04.111 Limit on loans and extensions of credit to one person—Exceptions—Definitions—Rules—Nonconforming loans and extensions of credit. (1) The total loans and extensions of credit by a bank or trust company to a person outstanding at any one time shall not exceed twenty percent of the capital and surplus of such bank or trust company. A loan or extension of credit made by a bank or trust company does not violate this section if the loan or extension of credit would qualify for an exception to the lending limit for a national bank under rules adopted by the United States office of the comptroller of the currency, or successor federal agency with authority over national banks and federal savings associations.

(2) For the purposes of this section, the terms "borrower," "capital and surplus," "derivative transaction," "loans and extensions of credit," and "person" shall have the same meaning as those terms are defined in section 32.2 of Title 12 of the United States code of federal regulations, 12 C.F.R. Sec. 32.2, except that "loans and extensions of credit" also includes repurchase agreements, reverse repurchase agreements, securities lending transactions, or securities borrowing transactions between a bank and a borrower if the federal deposit insurance corporation requires such treatment for a state insured bank or the board of governors of the federal reserve system requires such treatment for member state banks.

(3) The director may prescribe rules to administer and carry out the purposes of this section, including without limitation rules (a) to define or further define terms used in this section, (b) to establish limits or requirements other than those specified in this section for particular classes or categories of loans and extensions of credit, (c) to determine when a loan putatively made to a person shall, for purposes of this section, be attributed to another person, (d) to set standards for computation of time in relation to determining limits on loans and extensions of credit, and (e) to implement and

incorporate other changes in limits on loans and extensions of credit necessary to conform to federal statute and rule required or otherwise authorized by this section. In adopting the rules, the director shall be guided by rulings of the United States comptroller of the currency, or successor federal banking regulator, that govern limits on loans and extensions of credit applicable to national banks and federal savings associations. In lieu of the adoption by the department of a rule applicable to specific types of transactions, a bank, unless otherwise approved by the director, shall conform to all applicable rulings of the comptroller of the currency, or successor federal banking regulator, which (i) relate to national banks and federal savings associations, (ii) govern such specific types of transactions or circumstances, and (iii) are consistent with this section and the department's adopted rules.

(4)(a) A loan or extension of credit that was within the limit on loans and extensions of credit when made is not a violation but will be treated as nonconforming if the loan or extension of credit is no longer in conformity with the bank's or trust company's limit on loans and extensions of credit because:

(i) The bank's or trust company's capital has declined, borrowers have subsequently merged or formed a common enterprise, lenders have merged, or the limit on loans and extensions of credit or capital rules have changed; or

(ii) Collateral securing the loan or extension of credit, in order to satisfy the requirements of an exception to the limit, has declined in value.

(b) A bank or trust company shall make reasonable efforts to bring a loan or extension of credit that is nonconforming under (a)(i) of this subsection into conformity with the bank's or trust company's limit on loans and extensions of credit unless to do so would be inconsistent with safe and sound banking practices.

(c) A bank or trust company must bring a loan or extension of credit that is nonconforming under (a)(ii) of this subsection into conformity with the bank's limit on loans and extensions of credit within thirty calendar days, except when judicial proceedings, regulatory actions, or other extraordinary circumstances beyond the bank's or trust company's control prevent the bank or trust company from taking action.

(d) Notwithstanding any provision of this subsection (4), the director may by rule or interpretation prescribe standards for treatment of nonconforming extensions of credit that are derivatives transactions, repurchase agreements, reverse repurchase agreements, securities lending transactions, or securities borrowing transactions, and may, if required for state insured banks or member state banks, rely upon rules or interpretations of the federal deposit insurance corporation or the board of governors of the federal reserve system, as applicable.

(5) Notwithstanding any provision of this section to the contrary, in the event that a bank's capital declines sufficiently to seriously impair the bank's ability to effectively operate in its marketplace or serve the needs of its customers or the community in which it is located, the director may, upon written application and in the exercise of the director's discretion, grant the bank temporary permission to fund loans and extensions of credit in excess of the bank's limit on loans and extensions of credit under this section. In the exercise of discretion, the director may further specify conditions for

granting such emergency exception and may limit emergency lending authority under this section to particular types or classes of loans and extensions of credit.

(6) Notwithstanding any provision of this section to the contrary, the director, in the exercise of discretion, may grant an exception to the limit on loans and extensions of credit otherwise required by this section, based on extenuating facts and circumstances. In deciding whether to grant an exception under this subsection, the director shall consider:

(a) The proposed transaction for which the exception is sought;

(b) How the requested exception would affect the capital adequacy and safety and soundness of the requesting bank if the exception is not granted or, if the exception is granted, if the proposed borrower should ultimately default;

(c) How the requested exception would affect the loan portfolio diversification of the requesting bank;

(d) The competency of management to handle the proposed transaction and any resulting safety and soundness issues;

(e) The marketability and value of the proposed collateral; and

(f) The extenuating facts and circumstances that warrant an exception in light of the purpose of limit on loans and extensions of credit set forth in this section. [2013 c 76 § 3; 2010 c 88 § 10; 1995 c 344 § 1; 1994 c 92 § 12; 1986 c 279 § 3.]

Effective date—2010 c 88: See RCW 32.50.900.

30.04.215 Engaging in other business activities. (1) Notwithstanding any other provisions of law, in addition to all powers enumerated by this title, and those necessarily implied therefrom, a bank or trust company may engage in other business activities that have been determined by the board of governors of the federal reserve system or by the United States Congress to be closely related to the business of banking, as of July 28, 2013.

(2) A bank or trust company that desires to perform an activity that is not expressly authorized by subsection (1) of this section shall first apply to the director for authorization to conduct such activity. Within thirty days of the receipt of this application, the director shall determine whether the activity is closely related to the business of banking, whether the public convenience and advantage will be promoted, whether the activity is apt to create an unsafe and unsound practice by the bank or trust company and whether the applicant is capable of performing such an activity. If the director finds the activity to be closely related to the business of banking and the bank or trust company is otherwise qualified, he or she shall immediately inform the applicant that the activity is authorized. If the director determines that such activity is not closely related to the business of banking or that the bank or trust company is not otherwise qualified, he or she shall promptly inform the applicant in writing. The applicant shall have the right to appeal from an unfavorable determination in accordance with the procedures of the Administrative Procedure Act, chapter 34.05 RCW. In determining whether a particular activity is closely related to the business of banking, the director shall be guided by the rulings of the board of governors of the federal reserve system and the comptroller of the currency in making determinations in connection with the

powers exercisable by bank holding companies, and the activities performed by other commercial banks or their holding companies.

(3) Notwithstanding any restrictions, limitations, and requirements of law, in addition to all powers, express or implied, that a bank has under the laws of this state, a bank shall have the powers and authorities conferred as of July 28, 1985, or as of any subsequent date not later than July 28, 2013, upon any federally chartered bank doing business in this state. A bank may exercise the powers and authorities conferred on a federally chartered bank after July 28, 2013, only if the director finds that the exercise of such powers and authorities:

(a) Serves the convenience and advantage of depositors, borrowers, or the general public; and

(b) Maintains the fairness of competition and parity between state-chartered banks and federally chartered banks.

(4) Notwithstanding any other provisions of law, a bank has the powers and authorities that an out-of-state state bank operating a branch in Washington has if the director finds that the exercise of such powers and authorities serves the convenience and advantage of depositors and borrowers, or the general public, and maintains the fairness of competition and parity between state-chartered banks and out-of-state state banks.

(5) As used in this section, "powers and authorities" include without limitation powers and authorities in corporate governance and operational matters.

(6) The restrictions, limitations, and requirements applicable to specific powers and authorities of federally chartered banks and out-of-state state banks, as applicable, shall apply to banks exercising those powers and authorities permitted under this section but only insofar as the restrictions, limitations, and requirements relate to exercising the powers and authorities granted banks solely under this section.

(7) The director may require a bank to provide notice to the director prior to implementation of a plan to develop, improve, or continue holding real estate, including capitalized and operating leases, acquired through any means in full or partial satisfaction of a debt previously contracted, under circumstances which a national bank would be required to provide notice to the comptroller of the currency prior to implementation of such a plan. The director may adopt rules or issue orders, directives, standards, policies, memoranda, or other official communications to specify guidance with regard to the exercise of the powers and authorities to expend such funds as are needed to enable a bank or trust company to recover its total investment to the fullest extent authorized for a national bank under the national bank act, 12 U.S.C. Sec. 29.

(8) Any activity which may be performed by a bank or trust company, except the taking of deposits, may be performed by (a) a corporation or (b) another entity approved by the director, which in either case is owned in whole or in part by the bank or trust company. [2013 c 76 § 4; 2010 c 88 § 12; 2003 c 24 § 2. Prior: 1995 c 344 § 2; 1995 c 134 § 2; prior: 1994 c 256 § 37; 1994 c 92 § 20; 1986 c 279 § 10; 1983 c 157 § 8; 1969 c 136 § 7.]

Effective date—2010 c 88: See RCW 32.50.900.

Findings—Construction—1994 c 256: See RCW 43.320.007.

Additional notes found at www.leg.wa.gov

30.04.217 Additional powers of a bank—Powers and authorities of savings bank—Definition—Restrictions.

(1) Notwithstanding any other provisions of law, in addition to all powers, express or implied, that a bank has under the laws of this state, a bank shall have the powers and authorities conferred upon a savings bank under Title 32 RCW.

(2) As used in this section, "powers and authorities" include without limitation powers and authorities in corporate governance and operational matters.

(3) The restrictions, limitations, and requirements applicable to specific powers and authorities of savings banks shall apply to banks exercising those powers and authorities permitted under this section but only insofar as the restrictions, limitations, and requirements relate to exercising the powers and authorities granted banks solely under this section. [2013 c 76 § 5; 2010 c 88 § 13; 2003 c 24 § 1.]

Effective date—2010 c 88: See RCW 32.50.900.

30.04.240 Trust business to be kept separate—Authorized deposit of securities.

(1) A person authorized under this title to engage in a trust business shall maintain in its office a trust department in which it shall keep books and accounts of its trust business, separate and apart from its other business. Such books and accounts shall specify the cash, securities and other properties, real and personal, held in each trust, and such securities and properties shall be at all times segregated from all other securities and properties except as otherwise provided in this section.

(2) Any person connected with a bank or trust company who shall, contrary to this section or any other provision of law, commingle any funds or securities of any kind held by such corporation in trust, for safekeeping or as agent for another, with the funds or assets of the corporation is guilty of a class B felony punishable according to chapter 9A.20 RCW.

(3) Notwithstanding any other provisions of law, any fiduciary holding securities in its fiduciary capacity or any state bank, national bank, or trust company holding securities as fiduciary or as custodian for a fiduciary is authorized to deposit or arrange for the deposit of such securities: (a) In a clearing corporation (as defined in Article 8 of the Uniform Commercial Code, chapter 62A.8 RCW); (b) within another state bank, national bank, or trust company having trust power whether located inside or outside of this state; or (c) within itself. When such securities are so deposited, certificates representing securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of such clearing corporation or state bank, national bank, or trust company holding the securities as the depository, with any other such securities deposited in such clearing corporation or depository by any person, regardless of the ownership of such securities, and certificates of small denomination may be merged into one or more certificates of larger denomination. The records of such fiduciary and the records of such state bank, national bank, or trust company as a fiduciary or as custodian for a fiduciary shall at all times show the name of the party for whose account the securities are so deposited. Ownership of, and other interests in, such securities may be transferred by bookkeeping entries on the books

of such clearing corporation, state bank, national bank, or trust company without physical delivery or alteration of certificates representing such securities. A state bank, national bank, or trust company so depositing securities pursuant to this section shall be subject to such rules and regulations as, in the case of state chartered banks and trust companies, the director and, in the case of national banking associations, the comptroller of the currency may from time to time issue. A state bank, national bank, or trust company acting as custodian for a fiduciary shall, on demand by the fiduciary, certify in writing to the fiduciary the securities so deposited by such state bank, national bank, or trust company in such clearing corporation or state bank, national bank, or trust company acting as such depository for the account of such fiduciary. A fiduciary shall, on demand by any party to a judicial proceeding for the settlement of such fiduciary's account or on demand by the attorney for such party, certify in writing to such party the securities deposited by such fiduciary in such clearing corporation or state bank, national bank, or trust company acting as such depository for its account as such fiduciary.

This subsection shall apply to any fiduciary holding securities in its fiduciary capacity, and to any state bank, national bank, or trust company holding securities as a custodian, managing agent, or custodian for a fiduciary, acting on March 14, 1973 or who thereafter may act regardless of the date of the agreement, instrument, or court order by which it is appointed and regardless of whether or not such fiduciary, custodian, managing agent, or custodian for a fiduciary owns capital stock of such clearing corporation. [2013 c 76 § 6; 2003 c 53 § 184; 1994 c 92 § 25; 1979 c 45 § 1; 1973 c 99 § 1; 1955 c 33 § 30.04.240. Prior: 1919 c 209 § 16; 1917 c 80 § 49; RRS § 3256.]

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

30.04.260 Legal services, advertising of—Penalty.

(1) No person, other than an attorney-at-law or law firm as permitted by other law, which advertises that it will furnish legal advice, construct or prepare wills, or do other legal work for its customers, shall be permitted to act as executor, administrator, or guardian; and such person whose officers or agents shall solicit legal business shall be ineligible for a period of one year thereafter to be appointed executor, administrator, or guardian in any of the courts of this state.

(2) Any person authorized under this title to engage in a trust business, which advertises that it will furnish legal advice, construct or prepare wills, or do other legal work for its customers, and any officer, agent, or employee of such person who shall solicit legal business is guilty of a gross misdemeanor. [2013 c 76 § 7; 2003 c 53 § 185; 1974 ex.s. c 117 § 43; 1955 c 33 § 30.04.260. Prior: 1929 c 72 § 4, part; 1923 c 115 § 6, part; 1921 c 94 § 1, part; 1917 c 80 § 24, part; RRS § 3231, part.]

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

Additional notes found at www.leg.wa.gov

30.04.280 Compliance enjoined—Banking, trust business, branches—Director's authority—Rules. (1)(a) No person shall engage in banking except in compliance with

and subject to the provisions of this title, unless it is a national bank or except insofar as it may be authorized so to do by the laws of this state relating to savings banks or savings and loan associations.

(b) A person shall not engage in a trust business except in compliance with and subject to the provisions of this title. This subsection (1)(b) does not apply to: (i) An individual, sole proprietor, general partnership, or joint venture composed of individuals; (ii) a person conducting business as an attorney-at-law or law firm; or (iii) a court-appointed guardian, conservator, trustee, or receiver.

(c) A bank shall not engage in a trust business except as authorized under this title.

(d) A bank or trust company shall not establish any branch except in accordance with the provisions of this title.

(e) Except as authorized by federal law or by another law of this state, a nondepository trust company incorporated under the laws of another state shall not be permitted to engage in a trust business in this state on more favorable terms and conditions than the terms and conditions on which trust companies incorporated under this chapter and savings banks engaged in trust business under RCW 32.08.140, 32.08.142, 32.08.210, and 32.08.215 are permitted to engage in trust business in such other state.

(2) Notwithstanding any other provision of this section, the director may by rule or order prohibit any person from engaging in a trust business in this state contrary to the requirements of this title if the conduct of the trust business in this state by such person harms or is likely to harm the general public, or if it adversely affects the business of trust companies operating in this state. The director may issue a temporary cease and desist order against such person in the manner provided for in RCW 30.04.455 if the general public or trust companies are likely to be substantially injured by delay in issuing a cease and desist order. An order or rule made by the director pursuant to this subsection may require that any applicable person obtain a trust company charter under this title as a condition of continuing to engage in a trust business in this state, subject to meeting all qualifications for grant of a trust company charter under this title. This subsection does not apply to a person conducting business as an attorney-at-law or law firm or to a court-appointed guardian, conservator, trustee, or receiver. [2013 c 76 § 8; 1998 c 45 § 1; 1996 c 2 § 4; 1955 c 33 § 30.04.280. Prior: 1933 c 42 § 3, part; 1919 c 209 § 7, part; 1917 c 80 § 15, part; RRS § 3222, part.]

Additional notes found at www.leg.wa.gov

Chapter 30.08 RCW

ORGANIZATION AND POWERS

Sections

- 30.08.095 Repealed.
- 30.08.140 Corporate powers of banks. (*Contingent expiration date.*)
- 30.08.140 Corporate powers of banks. (*Contingent effective date.*)
- 30.08.155 Powers and authorities of trust companies—Federally chartered trust companies—Out-of-state state trust companies—Findings of director.

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

30.08.140 Corporate powers of banks. (*Contingent expiration date.*) Upon the issuance of a certificate of authority to a bank, the persons named in the articles of incorporation and their successors shall thereupon become a corporation and shall have power:

(1) To adopt and use a corporate seal;
 (2) To have perpetual succession;
 (3) To make contracts;
 (4) To sue and be sued, the same as a natural person;
 (5) To elect directors who, subject to the provisions of the corporation's bylaws, shall have power to appoint such officers as may be necessary or convenient, to define their powers and duties and to dismiss them at pleasure, and who shall also have general supervision and control of the affairs of such corporation;

(6) To make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for the administration and regulation of its affairs;

(7) To invest and reinvest its funds in marketable obligations evidencing the indebtedness of any person, copartnership, association, or corporation in the form of bonds, notes, or debentures commonly known as investment securities except as may by regulation be limited by the director;

(8) To discount and negotiate promissory notes, drafts, bills of exchange and other evidences of debt, to receive deposits of money and commercial paper, to lend money secured or unsecured, to issue all forms of letters of credit, to buy and sell bullion, coins and bills of exchange;

(9) To take and receive as bailee for hire upon terms and conditions to be prescribed by the corporation, for safekeeping and storage, jewelry, plate, money, specie, bullion, stocks, bonds, mortgages, securities and valuable paper of any kind and other valuable personal property, and to rent vaults, safes, boxes and other receptacles for safekeeping and storage of personal property;

(10) If the bank be located in a city of not more than five thousand inhabitants, to act as insurance agent. A bank exercising this power may continue to act as an insurance agent notwithstanding a change of the population of the city in which it is located;

(11) To accept drafts or bills of exchange drawn upon it having not more than six months sight to run, which grow out of transactions involving the importation or exportation of goods; or which grow out of transactions involving the domestic shipment of goods, providing shipping documents conveying or securing title are attached at the time of acceptance; or which are secured at the time of acceptance by a warehouse receipt or other such document conveying or securing title to readily marketable staples. No bank shall accept, either in a foreign or a domestic transaction, for any one person, company, firm or corporation, to an amount equal at any one time in the aggregate to more than ten percent of its paid up and unimpaired capital stock and surplus unless the bank is secured by attached documents or by some other actual security growing out of the same transaction as the acceptance; and no bank shall accept such bills to an amount equal at any time in the aggregate to more than one-half of its paid up and unimpaired capital stock and surplus: PROVIDED, HOWEVER, That the director, under such general regulations applicable to all banks irrespective of the amount of capital or surplus, as the director may prescribe

may authorize any bank to accept such bills to an amount not exceeding at any time in the aggregate one hundred percent of its paid up and unimpaired capital stock and surplus: PROVIDED, FURTHER, That the aggregate of acceptances growing out of domestic transactions shall in no event exceed fifty percent of such capital stock and surplus;

(12) To accept drafts or bills of exchange drawn upon it, having not more than three months sight to run, drawn under regulations to be prescribed by the director by banks or bankers in foreign countries or dependencies or insular possessions of the United States for the purpose of furnishing dollar exchange as required by the usages of trade in the respective countries, dependencies or insular possessions. Such drafts or bills may be acquired by banks in such amounts and subject to such regulations, restrictions and limitations as may be provided by the director: PROVIDED, HOWEVER, That no bank shall accept such drafts or bills of exchange referred to in this subdivision for any one bank to an amount exceeding in the aggregate ten percent of the paid up and unimpaired capital and surplus of the accepting bank unless the draft or bill of exchange is accompanied by documents conveying or securing title or by some other adequate security, and that no such drafts or bills of exchange shall be accepted by any bank in an amount exceeding at any time the aggregate of one-half of its paid up and unimpaired capital and surplus: PROVIDED FURTHER, That compliance by any bank which is a member of the federal reserve system of the United States with the rules, regulations and limitations adopted by the federal reserve board thereof with respect to the acceptance of drafts or bills of exchange by members of such federal reserve system shall be a sufficient compliance with the requirements of this subdivision or paragraph relating to rules, regulations and limitations prescribed by the director;

(13) To have and exercise all powers necessary or convenient to effect its purposes;

(14) To serve as custodian of an individual retirement account and pension and profit sharing plans qualified under internal revenue code section 401(a), the assets of which are invested in deposits of the bank or trust company or are invested, pursuant to directions from the customer owning the account, in securities traded on a national securities market: PROVIDED, That the bank or trust company shall accept no investment responsibilities over the account unless it is granted trust powers by the director;

(15) To be a limited partner in a limited partnership that engages in only such activities as are authorized for the bank. [2013 c 76 § 9; 1996 c 2 § 5; 1994 c 92 § 58; 1986 c 279 § 29; 1957 c 248 § 3; 1955 c 33 § 30.08.140. Prior: 1931 c 127 § 1; 1919 c 209 § 8; 1917 c 80 § 23; RRS § 3230.]

Contingent expiration date—2013 c 76 §§ 9 and 24: "Sections 9 and 24 of this act expire when the contingency under section 33 of this act has occurred." [2013 c 76 § 34.]

Additional notes found at www.leg.wa.gov

30.08.140 Corporate powers of banks. (*Contingent effective date.*) Upon the issuance of a certificate of authority to a bank, the persons named in the articles of incorporation and their successors shall thereupon become a corporation and shall have power:

- (1) To adopt and use a corporate seal;
 (2) To have perpetual succession;

(3) To make contracts;

(4) To sue and be sued, the same as a natural person;

(5) To elect directors who, subject to the provisions of the corporation's bylaws, shall have power to appoint such officers as may be necessary or convenient, to define their powers and duties and to dismiss them at pleasure, and who shall also have general supervision and control of the affairs of such corporation;

(6) To make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for the administration and regulation of its affairs;

(7) To invest and reinvest its funds in marketable obligations evidencing the indebtedness of any person, copartnership, association, or corporation in the form of bonds, notes, or debentures commonly known as investment securities except as may by regulation be limited by the director;

(8) To discount and negotiate promissory notes, drafts, bills of exchange and other evidences of debt, to receive deposits of money and commercial paper, to lend money secured or unsecured, to issue all forms of letters of credit, to buy and sell bullion, coins and bills of exchange;

(9) To take and receive as bailee for hire upon terms and conditions to be prescribed by the corporation, for safekeeping and storage, jewelry, plate, money, specie, bullion, stocks, bonds, mortgages, securities and valuable paper of any kind and other valuable personal property, and to rent vaults, safes, boxes and other receptacles for safekeeping and storage of personal property;

(10) If the bank be located in a city of not more than five thousand inhabitants, to act as insurance agent. A bank exercising this power may continue to act as an insurance agent notwithstanding a change of the population of the city in which it is located;

(11) To accept drafts or bills of exchange drawn upon it having not more than six months sight to run, which grow out of transactions involving the importation or exportation of goods; or which grow out of transactions involving the domestic shipment of goods, providing shipping documents conveying or securing title are attached at the time of acceptance; or which are secured at the time of acceptance by a warehouse receipt or other such document conveying or securing title to readily marketable staples. No bank shall accept, either in a foreign or a domestic transaction, for any one person, company, firm or corporation, to an amount equal at any one time in the aggregate to more than ten percent of its paid up and unimpaired capital stock and surplus unless the bank is secured by attached documents or by some other actual security growing out of the same transaction as the acceptance; and no bank shall accept such bills to an amount equal at any time in the aggregate to more than one-half of its paid up and unimpaired capital stock and surplus: PROVIDED, HOWEVER, That the director, under such general regulations applicable to all banks irrespective of the amount of capital or surplus, as the director may prescribe may authorize any bank to accept such bills to an amount not exceeding at any time in the aggregate one hundred percent of its paid up and unimpaired capital stock and surplus: PROVIDED, FURTHER, That the aggregate of acceptances growing out of domestic transactions shall in no event exceed fifty percent of such capital stock and surplus;

(12) To accept drafts or bills of exchange drawn upon it, having not more than three months sight to run, drawn under regulations to be prescribed by the director by banks or bankers in foreign countries or dependencies or insular possessions of the United States for the purpose of furnishing dollar exchange as required by the usages of trade in the respective countries, dependencies or insular possessions. Such drafts or bills may be acquired by banks in such amounts and subject to such regulations, restrictions and limitations as may be provided by the director: PROVIDED, HOWEVER, That no bank shall accept such drafts or bills of exchange referred to in this subdivision for any one bank to an amount exceeding in the aggregate ten percent of the paid up and unimpaired capital and surplus of the accepting bank unless the draft or bill of exchange is accompanied by documents conveying or securing title or by some other adequate security, and that no such drafts or bills of exchange shall be accepted by any bank in an amount exceeding at any time the aggregate of one-half of its paid up and unimpaired capital and surplus: PROVIDED FURTHER, That compliance by any bank which is a member of the federal reserve system of the United States with the rules, regulations and limitations adopted by the federal reserve board thereof with respect to the acceptance of drafts or bills of exchange by members of such federal reserve system shall be a sufficient compliance with the requirements of this subdivision or paragraph relating to rules, regulations and limitations prescribed by the director;

(13) To have and exercise all powers necessary or convenient to effect its purposes;

(14) To serve as custodian of an individual retirement account and pension and profit sharing plans qualified under internal revenue code section 401(a), the assets of which are invested in deposits of the bank or trust company or are invested, pursuant to directions from the customer owning the account, in securities traded on a national securities market: PROVIDED, That the bank or trust company shall accept no investment responsibilities over the account unless it is granted trust powers by the director;

(15) To be a limited partner in a limited partnership that engages in only such activities as are authorized for the bank;

(16) To conduct a promotional contest of chance as authorized in RCW 9.46.0356(1)(b), as long as the conditions of RCW 9.46.0356(5) and 30.22.260 are complied with to the satisfaction of the director. [2013 c 76 § 10; 2011 c 303 § 7; 1996 c 2 § 5; 1994 c 92 § 58; 1986 c 279 § 29; 1957 c 248 § 3; 1955 c 33 § 30.08.140. Prior: 1931 c 127 § 1; 1919 c 209 § 8; 1917 c 80 § 23; RRS § 3230.]

Contingent effective date—2013 c 76 §§ 10 and 25; 2011 c 303 §§ 7 and 8: "Sections 7 and 8, chapter 303, Laws of 2011 and sections 10 and 25, chapter 76, Laws of 2013 take effect when the director of the department of financial institutions finds that a federal regulatory agency has, through federal law, regulation, or official regulatory interpretation, interpreted federal law to permit banks operating under the authority of Title 30 or 32 RCW to conduct a promotional contest of chance as defined in RCW 30.22.040. If the contingency occurs, the director shall notify the chief clerk of the house of representatives, the secretary of the senate, and the office of the code reviser." [2013 c 76 § 33; 2011 c 303 § 9.]

Findings—Intent—2011 c 303: See note following RCW 9.46.0356.

Additional notes found at www.leg.wa.gov

30.08.155 Powers and authorities of trust companies—Federally chartered trust companies—Out-of-state

state trust companies—Findings of director. (1) Notwithstanding any restrictions, limitations, and requirements of law, in addition to all powers, express or implied, that a trust company has under the laws of this state, a trust company shall have the powers and authorities conferred as of June 11, 1998, upon a federally chartered trust company doing business in this state. A trust company may exercise the powers and authorities conferred on a federally chartered trust company after this date only if the director finds that the exercise of such powers and authorities:

(a) Serves the convenience and advantage of trustors and beneficiaries, or the general public; and

(b) Maintains the fairness of competition and parity between state-chartered trust companies and federally chartered trust companies.

(2) Notwithstanding any other provisions of law, a trust company has the powers and authorities that an out-of-state trust company conducting trust business in Washington has if the director finds that the exercise of such powers and authorities serves the convenience and advantage of trustors and beneficiaries, or the general public, and maintains the fairness of competition and parity between state-chartered trust companies and out-of-state state trust companies.

(3) As used in this section, "powers and authorities" include without limitation powers and authorities in corporate governance and operational matters.

(4) The restrictions, limitations, and requirements applicable to specific powers and authorities of federally chartered trust companies and out-of-state state trust companies, as applicable, shall apply to trust companies exercising those powers or authorities permitted under this section but only insofar as the restrictions, limitations, and requirements relate to exercising the powers or authorities granted trust companies solely under this section. [2013 c 76 § 11; 1998 c 45 § 2.]

Chapter 30.38 RCW INTERSTATE BANKING

Sections

- 30.38.010 Out-of-state bank may engage in banking in this state—Conditions—Director's approval of interstate combination.
30.38.015 Out-of-state bank without a branch in this state—Options—Director's approval required, conditions.

30.38.010 Out-of-state bank may engage in banking in this state—Conditions—Director's approval of interstate combination. (1) An out-of-state bank may engage in banking in this state without violating RCW 30.04.280 only if the conditions and filing requirements of this chapter are met and the bank was lawfully engaged in banking in this state on July 22, 2010, or the bank's in-state banking activities:

(a) Resulted from an interstate combination pursuant to RCW 30.49.125 or 32.32.500;

(b) Resulted from a relocation of a head office of a state bank pursuant to 12 U.S.C. Sec. 30 and RCW 30.04.215(3);

(c) Resulted from a relocation of a main office of a national bank pursuant to 12 U.S.C. Sec. 30;

(d) Resulted from the establishment of a branch of a savings bank in compliance with RCW 32.04.030(6); or

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(e) Resulted from interstate branching under RCW 30.38.015.

Nothing in this section affects the authorities of alien banks as defined by RCW 30.42.020 to engage in banking within this state.

(2) The director, consistent with 12 U.S.C. Sec. 1831u(b)(2)(D), may approve an interstate combination if the standard on which the approval is based does not discriminate against out-of-state banks, out-of-state bank holding companies, or subsidiaries of those banks or holding companies. [2013 c 76 § 12; 2005 c 348 § 2; 1996 c 2 § 11.]

Effective date—2005 c 348: See note following RCW 30.38.005.

30.38.015 Out-of-state bank without a branch in this state—Options—Director's approval required, conditions.

(1) An out-of-state bank that does not have a branch in Washington may, under this chapter, establish and maintain:

(a) A de novo branch in this state; or

(b) A branch in this state through the acquisition of a branch.

(2) An out-of-state bank desiring to establish and maintain a de novo branch or to acquire a branch in this state shall provide written application of the proposed transaction to the director, accompanied by the fee prescribed by the director, not later than three days after the date of filing with the responsible federal bank supervisory agency for approval to establish or acquire the branch.

(3) Subject to the conditions of this chapter, the director shall approve an application under subsection (2) of this section if the out-of-state bank would be permitted to establish or acquire a branch in Washington state if it were a bank chartered in Washington state. [2013 c 76 § 13; 2005 c 348 § 3.]

Effective date—2005 c 348: See note following RCW 30.38.005.

Chapter 30.46 RCW

SUPERVISORY DIRECTION—CONSERVATORSHIP

Sections

- 30.46.020 Grounds for determining need for supervisory direction—Abatement of determination—Supervisory direction, procedure—Conservator, immunity.
30.46.030 Supervisory direction—Appointment of representative to supervise—Restrictions on operations.
30.46.040 Conservator—Appointment—Grounds—Powers, duties, and functions.
30.46.050 Costs as charge against bank's or trust company's assets.
30.46.060 Request for review of action—Stay of action—Orders subject to review.
30.46.070 Suits against bank, trust company, or conservator, where brought—Suits by conservator.
30.46.080 Duration of conservator's term—Rehabilitated banks or trust companies—Management.
30.46.090 Authority of director.

30.46.020 Grounds for determining need for supervisory direction—Abatement of determination—Supervisory direction, procedure—Conservator, immunity. (1) If upon examination or at any other time it appears to the director that any bank or trust company is in an unsafe condition and its condition is such as to render the continuance of its business hazardous to the public or to its depositors and creditors, or if such bank or trust company appears to have exceeded its powers or has failed to comply with the law, or if such bank or trust company gives its consent, then the

director shall upon his or her determination (a) notify the bank or trust company of his or her determination, and (b) furnish to the bank or trust company a written list of the director requirements to abate his or her determination, and (c) if the director makes further determination to directly supervise, notify the bank or trust company that it is under the supervisory direction of the director and that the director is invoking the provisions of this chapter. If placed under supervisory direction the bank or trust company shall comply with the lawful requirements of the director within such time as provided in the notice of the director, subject however, to the provisions of this chapter. If the bank or trust company fails to comply within such time the director may appoint a conservator as hereafter provided.

(2) A person appointed as conservator by the director pursuant to this chapter is immune from criminal, civil, and administrative liability for any act done in good faith in the performance of the duties of conservator. [2013 c 76 § 14; 1994 c 92 § 134; 1975 1st ex.s. c 87 § 2.]

30.46.030 Supervisory direction—Appointment of representative to supervise—Restrictions on operations. During the period of supervisory direction the director may appoint a representative to supervise such bank or trust company and may provide that the bank or trust company may not do any of the following during the period of supervisory direction, without the prior approval of the director or the appointed representative:

- (1) Dispose of, convey, or encumber any of the assets, excluding trust assets under management;
- (2) Withdraw any of its bank accounts;
- (3) Lend any of its funds;
- (4) Invest any of its funds;
- (5) Transfer any of its property; or
- (6) Incur any debt, obligation, or liability. [2013 c 76 § 15; 1994 c 92 § 135; 1975 1st ex.s. c 87 § 3.]

30.46.040 Conservator—Appointment—Grounds—Powers, duties, and functions. After the period of supervisory direction specified by the director for compliance, if he or she determines that such bank or trust company has failed to comply with the lawful requirements imposed, upon due notice and hearing or by consent of the bank, the director may appoint a conservator, who shall immediately take charge of such bank or trust company and all of its property, books, records, and effects. The conservator shall conduct the business of the bank or trust company and take such steps toward the removal of the causes and conditions which have necessitated such order, as the director may direct. During the pendency of the conservatorship the conservator shall make such reports to the director from time to time as may be required by the director, and shall be empowered to take all necessary measures to preserve, protect, and recover any assets or property of such bank or trust company, including claims or causes of actions belonging to or which may be asserted by such bank, and to deal with the same in his or her own name as conservator, and shall be empowered to file, prosecute, and defend any suit and suits which have been filed or which may thereafter be filed by or against such bank or trust company which are deemed by the conservator to be necessary to protect all of the interested parties for a property affected

thereby. The director, or any newly appointed assistant, may be appointed to serve as conservator. If the director, however, is satisfied that such bank or trust company is not in condition to continue business in the interest of its customers under the conservator as above provided, the director may proceed with appropriate remedies provided by other provisions of this title. [2013 c 76 § 16; 1994 c 92 § 136; 1975 1st ex.s. c 87 § 4.]

30.46.050 Costs as charge against bank's or trust company's assets. All costs incident to supervisory direction and the conservatorship shall be fixed and determined by the director and shall be a charge against the assets of the bank or trust company, excluding trust assets under management, to be allowed and paid as the director may determine. [2013 c 76 § 17; 1994 c 92 § 137; 1975 1st ex.s. c 87 § 5.]

30.46.060 Request for review of action—Stay of action—Orders subject to review. During the period of the supervisory direction and during the period of conservatorship, the bank or trust company may request the director to review an action taken or proposed to be taken by the representative or conservator; specifying wherein the action complained of is believed not to be in the best interest of the bank or trust company, and such request shall stay the action specified pending review of such action by the director. Any order entered by the director appointing a representative and providing that the bank or trust company shall not do certain acts as provided in RCW 30.46.030 and 30.46.040, any order entered by the director appointing a conservator, and any order by the director following the review of an action of the representative or conservator as herein above provided shall be subject to review in accordance with the administrative procedure act of the state of Washington. [2013 c 76 § 18; 1994 c 92 § 138; 1975 1st ex.s. c 87 § 6.]

30.46.070 Suits against bank, trust company, or conservator, where brought—Suits by conservator. Any suit filed against a bank or its conservator or a trust company or its conservator, after the entrance of an order by the director placing such bank or trust company in conservatorship and while such order is in effect, shall be brought in the superior court of Thurston county and not elsewhere. The conservator appointed hereunder for such bank or trust company may file suit in any superior court or other court of competent jurisdiction against any person for the purpose of preserving, protecting, or recovering any asset or property of such bank or trust company including claims or causes of action belonging to or which may be asserted by such bank. [2013 c 76 § 19; 1994 c 92 § 139; 1975 1st ex.s. c 87 § 7.]

30.46.080 Duration of conservator's term—Rehabilitated banks or trust companies—Management. The conservator shall serve for such time as is necessary to accomplish the purposes of the conservatorship as intended by this chapter. If rehabilitated, the rehabilitated bank or trust company shall be returned to management or new managements under such conditions as are reasonable and necessary to prevent recurrence of the condition which occasioned the conservatorship. [2013 c 76 § 20; 1975 1st ex.s. c 87 § 8.]

30.46.090 Authority of director. If the director determines to act under authority of this chapter, the sequence of his or her acts and proceedings shall be as set forth in this chapter. However, it is the purpose and substance of this chapter to authorize administrative discretion—to allow the director administrative discretion in the event of unsound banking or trust company operations—and in furtherance of that purpose the director is hereby authorized to proceed with regulation either under this chapter or under any other applicable provisions of law or under this chapter in connection with other law, either as such law is now existing or is hereinafter enacted, and it is so provided. [2013 c 76 § 21; 1994 c 92 § 140; 1975 1st ex.s. c 87 § 9.]

Title 31

MISCELLANEOUS LOAN AGENCIES

Chapters

31.04 Consumer loan act.

31.12 Washington state credit union act.

Chapter 31.04 RCW

CONSUMER LOAN ACT

(Formerly: Industrial loan companies)

Sections

31.04.015	Definitions.
31.04.025	Application of chapter.
31.04.027	Violations of chapter.
31.04.035	License required—When violation occurs.
31.04.093	Licensing—Applications—Regulation of licensees—Director's duties and authority—Fines—Orders.
31.04.102	Loans secured, or not secured, by lien on real property—Licensee's obligations—Disclosure of fees and costs to borrower—Time limits.
31.04.105	Licensee—Powers—Restrictions.
31.04.155	Licensee—Recordkeeping—Director's access—Report requirement—Failure to report.
31.04.221	Mortgage loan originator—License required—Unique identifier required.
31.04.290	Residential mortgage loan servicer—Requirements—Written detailed information.
31.04.293	Residential mortgage loan modification services—Written disclosure summary—Limitation on fees—Rules.
31.04.297	Third-party residential mortgage loan modification services providers—Duties—Restrictions.

31.04.015 Definitions. The definitions set forth in this section apply throughout this chapter unless the context clearly requires a different meaning.

(1) "Add-on method" means the method of precomputing interest payable on a loan whereby the interest to be earned is added to the principal balance and the total plus any charges allowed under this chapter is stated as the loan amount, without further provision for the payment of interest except for failure to pay according to loan terms. The director may adopt by rule a more detailed explanation of the meaning and use of this method.

(2) "Applicant" means a person applying for a license under this chapter.

(3) "Borrower" means any person who consults with or retains a licensee or person subject to this chapter in an effort to obtain, or who seeks information about obtaining a loan, regardless of whether that person actually obtains such a loan. "Borrower" includes a person who consults with or retains a licensee or person subject to this chapter in an effort

to obtain, or who seeks information about obtaining a residential mortgage loan modification, regardless of whether that person actually obtains a residential mortgage loan modification.

(4) "Depository institution" has the same meaning as in section 3 of the federal deposit insurance act on July 26, 2009, and includes credit unions.

(5) "Director" means the director of financial institutions.

(6) "Federal banking agencies" means the board of governors of the federal reserve system, comptroller of the currency, director of the office of thrift supervision, national credit union administration, and federal deposit insurance corporation.

(7) "Individual servicing a mortgage loan" means a person on behalf of a lender or servicer licensed by this state, who collects or receives payments including payments of principal, interest, escrow amounts, and other amounts due, on existing obligations due and owing to the licensed lender or servicer for a residential mortgage loan when the borrower is in default, or in reasonably foreseeable likelihood of default, working with the borrower and the licensed lender or servicer, collects data and makes decisions necessary to modify either temporarily or permanently certain terms of those obligations, or otherwise finalizing collection through the foreclosure process.

(8) "Insurance" means life insurance, disability insurance, property insurance, involuntary unemployment insurance, and such other insurance as may be authorized by the insurance commissioner.

(9) "License" means a single license issued under the authority of this chapter with respect to a single place of business.

(10) "Licensee" means a person to whom one or more licenses have been issued.

(11) "Loan" means a sum of money lent at interest or for a fee or other charge and includes both open-end and closed-end loan transactions.

(12) "Loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed, or exempt from licensing, under this chapter.

(13) "Making a loan" means advancing, offering to advance, or making a commitment to advance funds to a borrower for a loan.

(14) "Mortgage broker" means the same as defined in RCW 19.146.010, except that for purposes of this chapter, a licensee or person subject to this chapter cannot receive compensation as both a consumer loan licensee making the loan and as a consumer loan licensee acting as the mortgage broker in the same loan transaction.

(15)(a) "Mortgage loan originator" means an individual who for compensation or gain (i) takes a residential mortgage loan application, or (ii) offers or negotiates terms of a residential mortgage loan. "Mortgage loan originator" does not include any individual who performs purely administrative or clerical tasks; and does not include a person or entity solely involved in extensions of credit relating to timeshare plans, as that term is defined in section 101(53D) of Title 11, United States Code. For the purposes of this definition, administra-

tive or clerical tasks means the receipt, collection, and distribution of information common for the processing of a loan in the mortgage industry and communication with a consumer to obtain information necessary for the processing of a residential mortgage loan.

(b) "Mortgage loan originator" also includes an individual who for compensation or gain performs residential mortgage loan modification services or holds himself or herself out as being able to perform residential mortgage loan modification services.

(c) "Mortgage loan originator" does not include a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable state law, unless the person or entity is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such a lender, mortgage broker, or other mortgage loan originator. For the purposes of chapter 120, Laws of 2009, the term "real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including:

(i) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;

(ii) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(iii) Negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property, other than in connection with providing financing with respect to such a transaction;

(iv) Engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and

(v) Offering to engage in any activity, or act in any capacity, described in (c)(i) through (iv) of this subsection.

(d) This subsection does not apply to employees of a housing counseling agency approved by the United States department of housing and urban development unless the employees of a housing counseling agency are required under federal law to be individually licensed as mortgage loan originators.

(16) "Nationwide multistate licensing system" means a licensing system developed and maintained by the conference of state bank supervisors and the American association of residential mortgage regulators for the licensing and registration of mortgage loan originators and other licensing types.

(17) "Officer" means an official appointed by the company for the purpose of making business decisions or corporate decisions.

(18) "Person" includes individuals, partnerships, associations, limited liability companies, limited liability partnerships, trusts, corporations, and all other legal entities.

(19) "Principal" means any person who controls, directly or indirectly through one or more intermediaries, alone or in concert with others, a ten percent or greater interest in a partnership; company; association or corporation; or a limited liability company, and the owner of a sole proprietorship.

(20) "Registered mortgage loan originator" means any individual who meets the definition of mortgage loan originator and is an employee of a depository institution; a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency; or an institution

regulated by the farm credit administration and is registered with, and maintains a unique identifier through, the nationwide multistate licensing system.

(21) "Residential mortgage loan" means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling, as defined in section 103(v) of the truth in lending act, or residential real estate upon which is constructed or intended to be constructed a dwelling.

(22) "Residential mortgage loan modification" means a change in one or more of a residential mortgage loan's terms or conditions. Changes to a residential mortgage loan's terms or conditions include but are not limited to forbearances; repayment plans; changes in interest rates, loan terms, or loan types; capitalizations of arrearages; or principal reductions.

(23) "Residential mortgage loan modification services" includes negotiating, attempting to negotiate, arranging, attempting to arrange, or otherwise offering to perform a residential mortgage loan modification for compensation or gain. "Residential mortgage loan modification services" also includes the collection of data for submission to an entity performing mortgage loan modification services.

(24) "S.A.F.E. act" means the secure and fair enforcement for mortgage licensing act of 2008, Title V of the housing and economic recovery act of 2008 ("HERA"), P.L. 110-289, effective July 30, 2008.

(25) "Senior officer" means an officer of a licensee at the vice president level or above.

(26) "Service or servicing a loan" means on behalf of the lender or investor of a residential mortgage loan: (a) Collecting or receiving payments on existing obligations due and owing to the lender or investor, including payments of principal, interest, escrow amounts, and other amounts due; (b) collecting fees due to the servicer; (c) working with the borrower and the licensed lender or servicer to collect data and make decisions necessary to modify certain terms of those obligations either temporarily or permanently; (d) otherwise finalizing collection through the foreclosure process; or (e) servicing a reverse mortgage loan.

(27) "Service or servicing a reverse mortgage loan" means, pursuant to an agreement with the owner of a reverse mortgage loan: Calculating, collecting, or receiving payments of interest or other amounts due; administering advances to the borrower; and providing account statements to the borrower or lender.

(28) "Simple interest method" means the method of computing interest payable on a loan by applying the annual percentage interest rate or its periodic equivalent to the unpaid balances of the principal of the loan outstanding for the time outstanding.

(a) On a nonresidential loan each payment is applied first to any unpaid penalties, fees, or charges, then to accumulated interest, and the remainder of the payment applied to the unpaid balance of the principal until paid in full. In using such method, interest shall not be payable in advance nor compounded. The prohibition on compounding interest does not apply to reverse mortgage loans made in accordance with the Washington state reverse mortgage act. The director may adopt by rule a more detailed explanation of the meaning and use of this method.

(b) On a residential mortgage loan payments are applied as determined in the security instrument.

(29) "Third-party residential mortgage loan modification services" means residential mortgage loan modification services offered or performed by any person other than the owner or servicer of the loan.

(30) "Third-party service provider" means any person other than the licensee or a mortgage broker who provides goods or services to the licensee or borrower in connection with the preparation of the borrower's loan and includes, but is not limited to, credit reporting agencies, real estate brokers or salespersons, title insurance companies and agents, appraisers, structural and pest inspectors, or escrow companies.

(31) "Unique identifier" means a number or other identifier assigned by protocols established by the nationwide multistate licensing system. [2013 c 29 § 1; 2010 c 35 § 1. Prior: 2009 c 149 § 12; 2009 c 120 § 2; 2001 c 81 § 1; 1994 c 92 § 161; 1991 c 208 § 2.]

Findings—Declarations—2009 c 120: "The legislature finds and declares that accessibility to credit is vital to the citizens of this state. The legislature declares that it is essential for the protection of citizens of this state and the stability of the state's economy that standards for licensing and regulation of the business practices of lenders be imposed. The legislature further finds that the activities of lenders and mortgage loan originators and the origination or offering of financing for residential real property have a direct, valuable, and immediate impact upon this state's consumers, this state's economy, the neighborhoods and communities of this state, and the housing and real estate industry. The legislature therefore declares that this act is necessary to encourage responsible lending in all credit transactions, to protect borrowers, and to preserve access to credit in the residential real estate lending market." [2009 c 120 § 1.]

31.04.025 Application of chapter. (1) Each loan made to a resident of this state by a licensee, or persons subject to this chapter, is subject to the authority and restrictions of this chapter.

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

(a) Any person doing business under, and as permitted by, any law of this state or of the United States relating to banks, savings banks, trust companies, savings and loan or building and loan associations, or credit unions;

(b) Entities making loans under chapter 19.60 RCW (pawnbroking);

(c) Entities conducting transactions under chapter 63.14 RCW (retail installment sales of goods and services), unless credit is extended to purchase merchandise certificates, coupons, open or closed loop stored value, or other similar items issued and redeemable by a retail seller other than the retail seller extending the credit;

(d) Entities making loans under chapter 31.45 RCW (check cashers and sellers);

(e) Any person making a loan primarily for business, commercial, or agricultural purposes unless the loan is secured by a lien on the borrower's primary residence;

(f) Any person making loans made to government or government agencies or instrumentalities or making loans to organizations as defined in the federal truth in lending act;

(g) Entities making loans under chapter 43.185 RCW (housing trust fund);

(h) Entities making loans under programs of the United States department of agriculture, department of housing and urban development, or other federal government program

that provides funding or access to funding for single-family housing developments or grants to low-income individuals for the purchase or repair of single-family housing;

(i) Nonprofit housing organizations making loans, or loans made, under housing programs that are funded in whole or in part by federal or state programs if the primary purpose of the programs is to assist low-income borrowers with purchasing or repairing housing or the development of housing for low-income Washington state residents;

(j) Entities making loans which are not residential mortgage loans under a credit card plan;

(k) Individuals employed by a licensed residential loan servicing company, unless so required by federal law or regulation; and

(l) Entities licensed under chapter 18.44 RCW that process payments on seller-financed loans secured by liens on real or personal property.

(3) The director may, at his or her discretion, waive applicability of the consumer loan company licensing provisions of this chapter to other persons, not including individuals subject to the S.A.F.E. act, making or servicing loans when the director determines it necessary to facilitate commerce and protect consumers. The director may adopt rules interpreting this section.

(4) The burden of proving the application for an exemption or exception from a definition, or a preemption of a provision of this chapter, is upon the person claiming the exemption, exception, or preemption. [2013 c 64 § 2; 2013 c 29 § 2; 2012 c 17 § 1. Prior: 2011 c 191 § 1; prior: 2009 c 311 § 1; 2009 c 120 § 3; 2008 c 78 § 1; 2001 c 81 § 2; 1991 c 208 § 4.]

Reviser's note: This section was amended by 2013 c 29 § 2 and by 2013 c 64 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—Declaration—2009 c 120: See note following RCW 31.04.015.

Severability—2008 c 78: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2008 c 78 § 5.]

31.04.027 Violations of chapter. It is a violation of this chapter for a licensee, its officers, directors, employees, or independent contractors, or any other person subject to this chapter to:

(1) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead any borrower, to defraud or mislead any lender, or to defraud or mislead any person;

(2) Directly or indirectly engage in any unfair or deceptive practice toward any person;

(3) Directly or indirectly obtain property by fraud or misrepresentation;

(4) Solicit or enter into a contract with a borrower that provides in substance that the consumer loan company may earn a fee or commission through the consumer loan company's best efforts to obtain a loan even though no loan is actually obtained for the borrower;

(5) Solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting;

(6) Fail to make disclosures to loan applicants as required by RCW 31.04.102 and any other applicable state or federal law;

(7) Make, in any manner, any false or deceptive statement or representation with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan or engage in bait and switch advertising;

(8) Negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any reports filed with the department by a licensee or in connection with any investigation conducted by the department;

(9) Make any payment, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property;

(10) Accept from any borrower at or near the time a loan is made and in advance of any default an execution of, or induce any borrower to execute, any instrument of conveyance, not including a mortgage or deed of trust, to the lender of any ownership interest in the borrower's primary residence that is the security for the borrower's loan;

(11) Obtain at the time of closing a release of future damages for usury or other damages or penalties provided by law or a waiver of the provisions of this chapter;

(12) Advertise any rate of interest without conspicuously disclosing the annual percentage rate implied by that rate of interest;

(13) Violate any applicable state or federal law relating to the activities governed by this chapter; or

(14) Make loans from any unlicensed location. [2013 c 29 § 3; 2012 c 17 § 2; 2011 c 191 § 2; 2001 c 81 § 3.]

31.04.035 License required—When violation occurs.

(1) No person may make secured or unsecured loans of money or things in action, or extend credit, or service or modify the terms or conditions of residential mortgage loans, without first obtaining and maintaining a license in accordance with this chapter, except those exempt under RCW 31.04.025.

(2) If a transaction violates subsection (1) of this section, any:

(a) Nonthird-party fees charged in connection with the origination of the residential mortgage loan must be refunded to the borrower, excluding interest charges; and

(b) Fees or interest charged in the making of a nonresidential loan must be refunded to the borrower. [2013 c 29 § 4; 2010 c 35 § 2; 2009 c 120 § 4; 2008 c 78 § 2; 1991 c 208 § 3.]

Findings—Declaration—2009 c 120: See note following RCW 31.04.015.

Severability—2008 c 78: See note following RCW 31.04.025.

31.04.093 Licensing—Applications—Regulation of licensees—Director's duties and authority—Fines—Orders.

(1) The director shall enforce all laws and rules relating to the licensing and regulation of licensees and persons subject to this chapter.

(2) The director may deny applications for licenses for:

(a) Failure of the applicant to demonstrate within its application for a license that it meets the requirements for licensing in RCW 31.04.045 and 31.04.055;

(b) Violation of an order issued by the director under this chapter or another chapter administered by the director, including but not limited to cease and desist orders and temporary cease and desist orders;

(c) Revocation or suspension of a license to conduct lending or residential mortgage loan servicing, or to provide settlement services associated with lending or residential mortgage loan servicing, by this state, another state, or by the federal government within five years of the date of submittal of a complete application for a license; or

(d) Filing an incomplete application when that incomplete application has been filed with the department for sixty or more days, provided that the director has given notice to the licensee that the application is incomplete, informed the applicant why the application is incomplete, and allowed at least twenty days for the applicant to complete the application.

(3) The director may suspend or revoke a license issued under this chapter if the director finds that:

(a) The licensee has failed to pay any fee due the state of Washington, has failed to maintain in effect the bond or permitted substitute required under this chapter, or has failed to comply with any specific order or demand of the director lawfully made and directed to the licensee in accordance with this chapter;

(b) The licensee, either knowingly or without the exercise of due care, has violated any provision of this chapter or any rule adopted under this chapter; or

(c) A fact or condition exists that, if it had existed at the time of the original application for the license, clearly would have allowed the director to deny the application for the original license. The director may revoke or suspend only the particular license with respect to which grounds for revocation or suspension may occur or exist unless the director finds that the grounds for revocation or suspension are of general application to all offices or to more than one office operated by the licensee, in which case, the director may revoke or suspend all of the licenses issued to the licensee.

(4) The director may impose fines of up to one hundred dollars per day, per violation, upon the licensee, its employee or loan originator, or other person subject to this chapter for:

(a) Any violation of this chapter; or

(b) Failure to comply with any order or subpoena issued by the director under this chapter.

(5) The director may issue an order directing the licensee, its employee or loan originator, or other person subject to this chapter to:

(a) Cease and desist from conducting business in a manner that is injurious to the public or violates any provision of this chapter;

(b) Take such affirmative action as is necessary to comply with this chapter; or

(c) Make a refund or restitution to a borrower or other person who is damaged as a result of a violation of this chapter.

(6) The director may issue an order removing from office or prohibiting from participation in the affairs of any lic-

ensee, or both, any officer, principal, employee or loan originator, or any person subject to this chapter for:

(a) False statements or omission of material information from an application for a license that, if known, would have allowed the director to deny the original application for a license;

(b) Conviction of a gross misdemeanor involving dishonesty or financial misconduct or a felony;

(c) Suspension or revocation of a license to engage in lending or residential mortgage loan servicing, or perform a settlement service related to lending or residential mortgage loan servicing, in this state or another state;

(d) Failure to comply with any order or subpoena issued under this chapter;

(e) A violation of RCW 31.04.027, 31.04.102, 31.04.155, or 31.04.221; or

(f) Failure to obtain a license for activity that requires a license.

(7) Except to the extent prohibited by another statute, the director may engage in informal settlement of complaints or enforcement actions including, but not limited to, payment to the department for purposes of financial literacy and education programs authorized under RCW 43.320.150. If any person subject to this chapter makes a payment to the department under this section, the person may not advertise such payment.

(8) Whenever the director determines that the public is likely to be substantially injured by delay in issuing a cease and desist order, the director may immediately issue a temporary cease and desist order. The order may direct the licensee to discontinue any violation of this chapter, to take such affirmative action as is necessary to comply with this chapter, and may include a summary suspension of the licensee's license and may order the licensee to immediately cease the conduct of business under this chapter. The order shall become effective at the time specified in the order. Every temporary cease and desist order shall include a provision that a hearing will be held upon request to determine whether the order will become permanent. Such hearing shall be held within fourteen days of receipt of a request for a hearing unless otherwise specified in chapter 34.05 RCW.

(9) A licensee may surrender a license by delivering to the director written notice of surrender, but the surrender does not affect the licensee's civil or criminal liability, if any, for acts committed before the surrender, including any administrative action initiated by the director to suspend or revoke a license, impose fines, compel the payment of restitution to borrowers or other persons, or exercise any other authority under this chapter.

(10) The revocation, suspension, or surrender of a license does not impair or affect the obligation of a preexisting lawful contract between the licensee and a borrower.

(11) Every license issued under this chapter remains in force and effect until it has been surrendered, revoked, or suspended in accordance with this chapter. However, the director may on his or her own initiative reinstate suspended licenses or issue new licenses to a licensee whose license or licenses have been revoked if the director finds that the licensee meets all the requirements of this chapter.

(12) A license issued under this chapter expires upon the licensee's failure to comply with the annual assessment

requirements in RCW 31.04.085, and the rules. The department must provide notice of the expiration to the address of record provided by the licensee. On the 15th day after the department provides notice, if the assessment remains unpaid, the license expires. The licensee must receive notice prior to expiration and have the opportunity to stop the expiration as set forth in rule. [2013 c 29 § 5; 2012 c 17 § 4; 2010 c 35 § 6; 2001 c 81 § 8; 1994 c 92 § 166; 1991 c 208 § 10.]

31.04.102 Loans secured, or not secured, by lien on real property—Licensee's obligations—Disclosure of fees and costs to borrower—Time limits. (1) For all loans made by a licensee that are not secured by a lien on real property, the licensee must make disclosures in compliance with the truth in lending act, 15 U.S.C. Sec. 1601 and regulation Z, 12 C.F.R. Part 226, and all other applicable federal laws and regulations.

(2) For all loans made by a licensee that are secured by a lien on real property, the licensee shall provide to each borrower within three business days following receipt of a loan application a written disclosure containing an itemized estimation and explanation of all fees and costs that the borrower is required to pay in connection with obtaining a loan from the licensee. A good faith estimate of a fee or cost shall be provided if the exact amount of the fee or cost is not available when the disclosure is provided. Disclosure in a form which complies with the requirements of the truth in lending act, 15 U.S.C. Sec. 1601 and regulation Z, 12 C.F.R. Part 226, the real estate settlement procedures act and regulation X, 24 C.F.R. Sec. 3500, and all other applicable federal laws and regulations, as now or hereafter amended, shall be deemed to constitute compliance with this disclosure requirement. Each licensee shall comply with all other applicable federal and state laws and regulations.

(3) In addition, for all loans made by the licensee that are secured by a lien on real property, the licensee must provide to the borrower an estimate of the annual percentage rate on the loan and a disclosure of whether or not the loan contains a prepayment penalty within three days of receipt of a loan application. The annual percentage rate must be calculated in compliance with the truth in lending act, 15 U.S.C. Sec. 1601 and regulation Z, 12 C.F.R. Part 226. If a licensee provides the borrower with a disclosure in compliance with the requirements of the truth in lending act within three business days of receipt of a loan application, then the licensee has complied with this subsection. If the director determines that the federal government has required a disclosure that substantially meets the objectives of this subsection, then the director may make a determination by rule that compliance with this federal disclosure requirement constitutes compliance with this subsection.

(4) In addition for all consumer loans made by the licensee that are secured by a lien on real property, the licensee must comply with RCW 19.144.020. [2013 c 29 § 6; 2009 c 120 § 6; 2002 c 346 § 1; 2001 c 81 § 9.]

Findings—Declaration—2009 c 120: See note following RCW 31.04.015.

31.04.105 Licensee—Powers—Restrictions. Every licensee may:

(1) Lend money at a rate that does not exceed twenty-five percent per annum as determined by the simple interest method of calculating interest owed;

(2) In connection with the making of a loan, charge the borrower a nonrefundable, prepaid, loan origination fee not to exceed four percent of the first twenty thousand dollars and two percent thereafter of the principal amount of the loan advanced to or for the direct benefit of the borrower, which fee may be included in the principal balance of the loan;

(3) Agree with the borrower for the payment of fees to third parties other than the licensee who provide goods or services to the licensee in connection with the preparation of the borrower's loan, including, but not limited to, credit reporting agencies, title companies, appraisers, structural and pest inspectors, and escrow companies, when such fees are actually paid by the licensee to a third party for such services or purposes and may include such fees in the amount of the loan. However, no charge may be collected unless a loan is made, except for reasonable fees properly incurred in connection with the appraisal of property by a qualified, independent, professional, third-party appraiser selected by the borrower and approved by the lender or in the absence of borrower selection, selected by the lender;

(4) In connection with the making of a loan secured by real estate, when the borrower actually obtains a loan, agree with the borrower to pay a fee to a mortgage broker that is not owned by the licensee or under common ownership with the licensee and that performed services in connection with the origination of the loan. A licensee may not receive compensation as a mortgage broker in connection with any loan made by the licensee;

(5) Collect at the time of the loan closing up to but not exceeding forty-five days of prepaid interest;

(6) Charge and collect a penalty of not more than ten percent of any installment payment delinquent ten days or more;

(7) Collect from the debtor reasonable attorneys' fees, actual expenses, and costs incurred in connection with the collection of a delinquent debt, a repossession, or a foreclosure when a debt is referred for collection to an attorney who is not a salaried employee of the licensee;

(8) Make open-end loans as provided in this chapter;

(9) Charge and collect a fee for dishonored checks in an amount approved by the director; and

(10) In accordance with Title 48 RCW, sell insurance covering real and personal property, covering the life or disability or both of the borrower, and covering the involuntary unemployment of the borrower. [2013 c 29 § 7; 2009 c 120 § 7; 2001 c 81 § 10; 1998 c 28 § 1; 1994 c 92 § 167; 1993 c 190 § 1; 1991 c 208 § 11.]

Findings—Declaration—2009 c 120: See note following RCW 31.04.015.

31.04.155 Licensee—Recordkeeping—Director's access—Report requirement—Failure to report. The licensee shall keep and use in the business such books, accounts, records, papers, documents, files, and other information as will enable the director to determine whether the licensee is complying with this chapter and with the rules adopted by the director under this chapter. The director shall have free access to such books, accounts, records, papers, documents, files, and other information wherever located.

Every licensee shall preserve the books, accounts, records, papers, documents, files, and other information relevant to a loan for at least three years after making the final entry on any loan. No licensee or person subject to examination or investigation under this chapter shall withhold, abstract, remove, mutilate, destroy, or secrete any books, accounts, records, papers, documents, files, or other information.

Each licensee shall, on or before the first day of March of each year, file a report with the director giving such relevant information as the director may reasonably require concerning the business and operations of each licensed place of business conducted during the preceding calendar year. The report must be made under oath and must be in the form prescribed by the director, who shall make and publish annually an analysis and recapitulation of the reports. Every licensee that fails to file a report that is required to be filed by this chapter within the time required under this chapter is subject to a penalty of fifty dollars per day for each day's delay. The attorney general may bring a civil action in the name of the state for recovery of any such penalty. [2013 c 29 § 8; 2001 c 81 § 12; 1994 c 92 § 170; 1991 c 208 § 16.]

31.04.221 Mortgage loan originator—License required—Unique identifier required. An individual defined as a mortgage loan originator shall not engage in the business of a mortgage loan originator without first obtaining and maintaining annually a license under this chapter. Each licensed mortgage loan originator must register with and maintain a valid unique identifier issued by the nationwide multistate licensing system. [2013 c 29 § 9; 2009 c 120 § 10.]

Findings—Declaration—2009 c 120: See note following RCW 31.04.015.

31.04.290 Residential mortgage loan servicer—Requirements—Written detailed information. (1) A residential mortgage loan servicer must comply with the following requirements:

(a) The requirements of chapter 19.148 RCW;

(b) Any fee that is assessed by a servicer must be assessed within forty-five days of the date on which the fee was incurred and must be explained clearly and conspicuously in a statement mailed to the borrower at the borrower's last known address no more than thirty days after assessing the fee;

(c) All amounts received by a servicer on a residential mortgage loan at the address where the borrower has been instructed to make payments must be accepted and credited, or treated as credited, within one business day of the date received, provided that the borrower has provided sufficient information to credit the account. If a servicer uses the scheduled method of accounting, any regularly scheduled payment made prior to the scheduled due date must be credited no later than the due date. If any payment is received and not credited, or treated as credited, the borrower must be notified of the disposition of the payment within ten business days by mail at the borrower's last known address. The notification must identify the reason the payment was not credited or treated as credited to the account, as well as any actions the borrower must take to make the residential mortgage loan current;

(d) Any servicer that exercises the authority to collect escrow amounts on a residential mortgage loan held for the borrower for payment of insurance, taxes, and other charges with respect to the property shall collect and make all such payments from the escrow account and ensure that no late penalties are assessed or other negative consequences result for the borrower;

(e) The servicer shall make reasonable attempts to comply with a borrower's request for information about the residential mortgage loan account and to respond to any dispute initiated by the borrower about the loan account. The servicer:

(i) Must maintain written or electronic records of each written request for information regarding a dispute or error involving the borrower's account until the residential mortgage loan is paid in full, sold, or otherwise satisfied; and

(ii) Must provide a written statement to the borrower within fifteen business days of receipt of a written request from the borrower. The borrower's request must include the name and account number, if any, of the borrower, a statement that the account is or may be in error, and sufficient detail regarding the information sought by the borrower to permit the servicer to comply. At a minimum, the servicer's response to the borrower's request must include the following information:

(A) Whether the account is current or, if the account is not current, an explanation of the default and the date the account went into default;

(B) The current balance due on the residential mortgage loan, including the principal due, the amount of funds, if any, held in a suspense account, the amount of the escrow balance known to the servicer, if any, and whether there are any escrow deficiencies or shortages known to the servicer;

(C) The identity, address, and other relevant information about the current holder, owner, or assignee of the residential mortgage loan; and

(D) The telephone number and mailing address of a servicer representative with the information and authority to answer questions and resolve disputes; and

(f) Promptly correct any errors and refund any fees assessed to the borrower resulting from the servicer's error.

(2) In addition to the statement in subsection (1)(e)(ii) of this section, a borrower may request more detailed information from a servicer, and the servicer must provide the information within fifteen business days of receipt of a written request from the borrower. The request must include the name and account number, if any, of the borrower, a statement that the account is or may be in error, and provide sufficient detail to the servicer regarding information sought by the borrower. If requested by the borrower this statement must include:

(a) A copy of the original note, or if unavailable, an affidavit of lost note; and

(b) A statement that identifies and itemizes all fees and charges assessed under the loan transaction and provides a full payment history identifying in a clear and conspicuous manner all of the debits, credits, application of and disbursement of all payments received from or for the benefit of the borrower, and other activity on the residential mortgage loan including escrow account activity and suspense account activity, if any. The period of the account history shall cover

at a minimum the two-year period prior to the date of the receipt of the request for information. If the servicer has not serviced the residential mortgage loan for the entire two-year time period the servicer shall provide the information going back to the date on which the servicer began servicing the home loan, and identify the previous servicer, if known. If the servicer claims that any delinquent or outstanding sums are owed on the home loan prior to the two-year period or the period during which the servicer has serviced the residential mortgage loan, the servicer shall provide an account history beginning with the month that the servicer claims any outstanding sums are owed on the residential mortgage loan up to the date of the request for the information. The borrower may request annually one statement free of charge. [2013 c 29 § 10; 2010 c 35 § 9.]

31.04.293 Residential mortgage loan modification services—Written disclosure summary—Limitation on fees—Rules. (1) In addition to any other requirements under federal or state law, an advance fee may not be collected for residential mortgage loan modification services.

(2) A written disclosure summary of all material terms of the services to be provided must be provided to the borrower.

(3) The department shall adopt by rule a model written disclosure summary, and any other rules necessary to implement this section. This may include, but is not limited to, usual and customary fees for residential mortgage loan modification services. [2013 c 29 § 11; 2010 c 35 § 10.]

31.04.297 Third-party residential mortgage loan modification services providers—Duties—Restrictions.

(1) In addition to complying with federal law and all requirements for loan originators under this chapter, third-party residential mortgage loan modification services providers must:

(a) Provide a written disclosure summary as described in RCW 31.04.293;

(b) Not receive advance fees;

(c) Not charge total fees in excess of usual and customary charges, or total fees that are not reasonable in light of the service provided; and

(d) Immediately inform the borrower in writing if the owner of the loan requires additional information from the borrower, or if it becomes apparent that a residential mortgage loan modification is not possible.

(2) As a condition for providing a loan modification or loan modification services, third-party residential mortgage loan modification services providers and individuals servicing a residential mortgage loan must not require or encourage a borrower to:

(a) Sign a waiver of his or her legal defenses, counterclaims, and other legal rights against the servicer for future acts;

(b) Sign a waiver of his or her right to contest a future foreclosure;

(c) Waive his or her right to receive notice before the owner or servicer of the loan initiates foreclosure proceedings;

(d) Agree to pay charges not enumerated in any agreement between the borrower and the lender, servicer, or owner of the loan; or

(e) Cease communication with the lender, investor, or loan servicer.

(3) Failure to comply with subsection (1) of this section is a violation of RCW 19.144.080. [2013 c 29 § 12; 2010 c 35 § 11.]

Chapter 31.12 RCW

WASHINGTON STATE CREDIT UNION ACT

Sections

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31.12.005 Definitions. Unless the context clearly requires otherwise, as used in this chapter:

(1) "Board" means the board of directors of a credit union.

(2) "Board officer" means an officer of the board elected under RCW 31.12.265(1).

(3) "Branch" of a credit union, out-of-state credit union, or foreign credit union means any facility that meets all of the following criteria:

(a) The facility is a staffed physical facility;

(b) The facility is owned or leased in whole or part by the credit union or its credit union service organization; and

(c) Deposits and withdrawals may be made, or shares purchased, through staff at the facility.

(4) "Capital" means a credit union's reserves, undivided earnings, and allowance for loan and lease losses, and other items that may be included under RCW 31.12.413 or by rule or order of the director.

(5) "Credit union" means a credit union organized and operating under this chapter.

(6) "Credit union service organization" means an organization that a credit union has invested in pursuant to RCW 31.12.436(1)(h), or a credit union service organization invested in by an out-of-state, federal, or foreign credit union.

(7) "Department" means the department of financial institutions.

(8) "Director" means the director of financial institutions.

(9) "Federal credit union" means a credit union organized and operating under the laws of the United States.

(10) "Financial institution" means any commercial bank, trust company, savings bank, or savings and loan association, whether state or federally chartered, and any credit union, out-of-state credit union, or federal credit union.

(11) "Foreign credit union" means a credit union organized and operating under the laws of another country or other foreign jurisdiction.

(12) "Insolvency" means:

(a) If, under United States generally accepted accounting principles, the recorded value of the credit union's assets are less than its obligations to its share account holders, depositors, creditors, and others; or

(b) If it is likely that the credit union will be unable to pay its obligations or meet its share account holders' and depositors' demands in the normal course of business.

(13) "Loan" means any loan, overdraft line of credit, extension of credit, or lease, in whole or in part.

(14) "Material violation of law" means:

(a) If the credit union or person has violated a material provision of:

(i) Law;

(ii) Any cease and desist order issued by the director;

(iii) Any condition imposed in writing by the director in connection with the approval of any application or other request of the credit union; or

(iv) Any supervisory agreement, or any other written agreement entered into with the director;

(b) If the credit union or person has concealed any of the credit union's books, papers, records, or assets, or refused to submit the credit union's books, papers, records, or affairs for inspection to any examiner of the state or, as appropriate, to any examiner of the national credit union administration; or

(c) If a member of a credit union board of directors or supervisory committee, or an officer of a credit union, has breached his or her fiduciary duty to the credit union.

(15) "Membership share" means an initial share that a credit union may require a person to purchase in order to establish and maintain membership in a credit union.

(16) "Net worth" means a credit union's capital, less the allowance for loan and lease losses.

(17) "Operating officer" means an employee of a credit union designated as an officer pursuant to RCW 31.12.265(2).

(18) "Organization" means a corporation, partnership, association, limited liability company, trust, or other organization or entity.

(19) "Out-of-state credit union" means a credit union organized and operating under the laws of another state or United States territory or possession.

(20) "Person" means an organization or a natural person including, but not limited to, a sole proprietorship.

(21) "Principally" or "primarily" means more than one-half.

(22) "Senior operating officer" includes:

(a) An operating officer who is a vice president or above; and

(b) Any employee who has policy-making authority.

(23) "Significantly undercapitalized" means a net worth to total assets ratio of less than four percent.

(24) "Small credit union" means a credit union with up to ten million dollars in total assets.

(25) "Unsafe or unsound condition" means, but is not limited to:

(a) If the credit union is insolvent;

(b) If the credit union has incurred or is likely to incur losses that will deplete all or substantially all of its net worth;

(c) If the credit union is in imminent danger of losing its share and deposit insurance or guarantee; or

(d) If the credit union is significantly undercapitalized.

(26) "Unsafe or unsound practice" means any action, or lack of action, which is contrary to generally accepted standards of prudent operation, the likely consequences of which, if continued, would be abnormal risk of loss or danger to a credit union, its members, or an organization insuring or guaranteeing its shares and deposits. [2013 c 34 § 1; 2010 c 87 § 1; 2001 c 83 § 1; 1997 c 397 § 2. Prior: 1994 c 256 § 68; 1994 c 92 § 175; 1984 c 31 § 2.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

31.12.195 Special membership meetings. (1) A special membership meeting of a credit union may be called by a majority of the board, a majority vote of the supervisory committee, or upon written application of at least ten percent or two thousand of the members of a credit union, whichever is less.

(2) A request for a special membership meeting of a credit union shall be in writing and shall state specifically the purpose or purposes for which the meeting is called. At this meeting, only those agenda items detailed in the written request may be considered. If the special membership meeting is being called for the removal of one or more directors, the request shall state the name of the director or directors whose removal is sought.

(3) Upon receipt of a request for a special membership meeting, the secretary of the credit union shall designate the time and place at which the special membership meeting will be held. The designated place of the meeting must be a reasonable location within the county in which the principal place of business of the credit union is located, unless provided otherwise by the bylaws. The designated time of the membership meeting must be no later than ninety days after the request is received by the secretary.

The secretary shall give notice of the meeting at least thirty days before the special membership meeting, or within such other reasonable time period as may be provided by the bylaws. The notice must include the purpose or purposes for which the meeting is called, and, if the special membership meeting is being called for the removal of one or more directors, the notice must state the name of the director or directors whose removal is sought.

(4) Except as provided in this subsection, the chairperson of the board shall preside over special membership meetings. If the purpose of the special meeting includes the proposed removal of the chairperson, the next highest ranking board officer whose removal is not sought shall preside over the special meeting. If the removal of all board officers is sought, the chairperson of the supervisory committee shall preside over the special meeting.

(5) Special membership meetings shall be conducted according to the rules of procedure approved by the board. [2013 c 34 § 2; 1997 c 397 § 13. Prior: 1994 c 256 § 77; 1994 c 92 § 188; 1987 c 338 § 3; 1984 c 31 § 21.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

31.12.225 Board of directors—Election of directors—Terms—Vacancies—Meetings—Rules. (1) The business and affairs of a credit union shall be managed by a board of not less than five and not greater than fifteen directors.

(2) The directors must be elected at the credit union's annual membership meeting. They shall hold their offices until their successors are qualified and elected or appointed.

(3) Directors shall be elected to terms of between one and three years, as provided in the bylaws. If the terms are longer than one year, the directors must be divided into classes, and an equal number of directors, as nearly as possible, must be elected each year.

(4) Any vacancy on the board must be filled by an interim director appointed by the board, unless the interim director would serve a term of fewer than ninety days. Interim directors appointed to fill vacancies created by expansion of the board will serve until the next annual meeting of members. Other interim directors will serve out the unexpired term of the former director, unless provided otherwise in the credit union's bylaws.

(5) The board will have at least six regular meetings each year, with at least one of these meetings held in each calendar quarter. The director may require the board to meet more frequently than six times per year if the director finds it necessary in order to address matters noted in any examination. The director may adopt rules to interpret this section. [2013 c 34 § 3; 2001 c 83 § 6; 1997 c 397 § 14; 1984 c 31 § 24.]

31.12.235 Directors—Qualifications—Operating officers and employees may serve. (1) A director must be a natural person and a member of the credit union. If a director ceases to be a member of the credit union, the director shall no longer serve as a director.

(2)(a) If a director is absent from more than one-fourth of the regular board meetings in any twelve-month period in a term without being reasonably excused by the board, the director shall no longer serve as a director for the period remaining in the term.

(b) The board secretary shall promptly notify the director that he or she shall no longer serve as a director. Failure to provide notice does not affect the termination of the director's service under (a) of this subsection.

(3) A director must meet any qualification requirements set forth in the credit union's bylaws. If a director fails to meet these requirements, the director shall no longer serve as a director.

(4) The operating officers and employees of the credit union may serve as directors of the credit union, but only as permitted by the credit union's bylaws. In no event may the operating officers and employees of the credit union constitute a majority of the board. [2013 c 34 § 4; 2001 c 83 § 7; 1997 c 397 § 15; 1994 c 256 § 78; 1984 c 31 § 25.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

31.12.285 Suspension of members of board or supervisory committee by board—For cause. The board may, for cause, suspend a member of the board or a member of the supervisory committee until a special membership meeting, called for that purpose, is held under RCW 31.12.195. The membership meeting must be held within sixty days after the suspension. The members attending the meeting shall vote whether to remove a suspended party. For purposes of this section, "cause" includes demonstrated financial irresponsibility, a breach of fiduciary duty to the credit union, or activities which, in the judgment of the board, threaten the safety

and soundness of the credit union. [2013 c 34 § 5; 1997 c 397 § 21; 1984 c 31 § 30.]

31.12.365 Directors and supervisory committee members—Compensation—Reimbursement—Rules. (1) A credit union may pay to its directors and supervisory committee members reasonable compensation for their service as directors and supervisory committee members. A credit union may also provide to its directors and supervisory committee members:

- (a) Gifts of minimal value;
- (b) Insurance coverage or incidental services, available to employees generally; and
- (c) Reimbursement for reasonable expenses incurred on behalf of themselves and their spouses in the performance of the directors' and supervisory committee members' duties.

(2) The director may adopt rules to interpret this section. [2013 c 34 § 6; 2001 c 83 § 12; 1997 c 397 § 25; 1984 c 31 § 38.]

31.12.426 Loans—Secured or unsecured loans. (1) A credit union may make secured and unsecured loans to its members under policies established by the board, subject to the loans to one borrower limits provided for in RCW 31.12.428. Each loan must be evidenced by records adequate to support enforcement or collection of the loan and any review of the loan by the director. Loans must be in compliance with rules adopted by the director.

(2) Loans to directors, supervisory committee members, and credit committee members may not be made under more favorable terms and conditions than those made to members generally.

(3) A credit union may obligate itself to purchase loans in accordance with RCW 31.12.436(1)(a), if the credit union's underwriting policies would have permitted it to originate the loans. [2013 c 34 § 7; 2001 c 83 § 17; 1997 c 397 § 34. Prior: 1994 c 256 § 84; 1994 c 92 § 195; 1987 c 338 § 6; 1984 c 31 § 42. Formerly RCW 31.12.406.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

31.12.436 Investment of funds—When investment later becomes impermissible. (1) A credit union may invest its funds in any of the following, as long as the investments are deemed prudent by the board:

(a) Loans held by credit unions, out-of-state credit unions, or federal credit unions; loans to members held by other lenders; and loans to nonmembers held by other lenders, with the approval of the director;

(b) Bonds, securities, or other investments that are fully guaranteed as to principal and interest by the United States government, and general obligations of this state and its political subdivisions;

(c) Obligations issued by corporations designated under 31 U.S.C. Sec. 9101, or obligations, participations or other instruments issued and guaranteed by the federal national mortgage association, federal home loan mortgage corporation, government national mortgage association, or other government-sponsored enterprise;

(d) Participations or obligations which have been subjected by one or more government agencies to a trust or trusts

for which an executive department, agency, or instrumentality of the United States has been named to act as trustee;

(e) Share or deposit accounts of other financial institutions, the accounts of which are federally insured or insured or guaranteed by another insurer or guarantor approved by the director. The shares and deposits made by a credit union under this subsection (1)(e) may exceed the insurance or guarantee limits established by the organization insuring or guaranteeing the institution into which the shares or deposits are made;

(f) Common trust or mutual funds whose investment portfolios consist of securities issued or guaranteed by the federal government or an agency of the government;

(g) Up to five percent of the capital of the credit union, in debt or equity issued by an organization owned by the Washington credit union league;

(h) Shares, stocks, loans, or other obligations of organizations whose primary purpose is to strengthen, advance, or provide services to the credit union industry or credit union members. A credit union may in the aggregate invest an amount not to exceed one percent of its assets in organizations under this subsection (1)(h). In addition, a credit union may in the aggregate lend an amount not to exceed one percent of its assets to organizations under this subsection (1)(h). These limits do not apply to investments in, and loans to, an organization:

(i) That is wholly owned by one or more credit unions or federal or out-of-state credit unions; and

(ii) Whose activities are limited exclusively to those authorized by this chapter for a credit union;

(i) Loans to credit unions, out-of-state credit unions, or federal credit unions. The aggregate of loans issued under this subsection (1)(i) is limited to twenty-five percent of the total shares and deposits of the lending credit union;

(j) Key person insurance policies, the proceeds of which inure exclusively to the benefit of the credit union;

(k) A registered investment company or collective investment fund, as long as the prospectus of the company or fund restricts the investment portfolio to investments and investment transactions that are permissible for credit unions; or

(l) Other investments approved by the director upon written application.

(2) If a credit union has lawfully made an investment that later becomes impermissible because of a change in circumstances or law, and the director finds that this investment will have an adverse effect on the safety and soundness of the credit union, then the director may require that the credit union develop a reasonable plan for the divestiture of the investment. [2013 c 34 § 8; 2001 c 83 § 19; 1997 c 397 § 36. Prior: 1994 c 256 § 86; 1994 c 92 § 197; 1987 c 338 § 7; 1984 c 31 § 44. Formerly RCW 31.12.425.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

31.12.438 Investment in real property or leasehold interests—Limitations—Future expansion—Rules. (1) A credit union may invest in real property or leasehold interests primarily for its own use or the use of a credit union service organization in conducting business, including, but not limited to, structures and fixtures attached to real property, subject to the following limitations:

(a) The credit union's net worth equals at least five percent of the total of its share and deposit accounts;

(b) The board approves the investment; and

(c) The aggregate of all such investments does not exceed seven and one-half percent of the total of its share and deposit accounts.

(2) If the real property or leasehold interest is acquired for future expansion, the credit union must partially occupy the premises within three years after the credit union makes the investment, if the premises are improved at the time of acquisition, or within six years after the credit union makes the investment, if the premises are unimproved at the time of acquisition.

(3) The director may, upon written application, waive any of the limitations listed in subsection (1) or (2) of this section, and the director may adopt rules to interpret this section. [2013 c 34 § 9; 2001 c 83 § 20; 1997 c 397 § 37. Prior: 1994 c 256 § 87; 1994 c 92 § 198; 1984 c 31 § 45. Formerly RCW 31.12.435.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

31.12.461 Mergers. (1) For purposes of this section, the merging credit union is the credit union whose charter ceases to exist upon merger with the continuing credit union. The continuing credit union is the credit union whose charter continues upon merger with the merging credit union.

(2) A credit union may be merged with another credit union with the approval of the director and in accordance with requirements the director may prescribe. The merger must be approved by a majority vote of the board of each credit union and a two-thirds majority vote of those members of the merging credit union voting on the merger at a membership meeting. The requirement of approval by the members of the merging credit union may be waived by the director if the merging credit union is in imminent danger of insolvency.

(3) The property, rights, and interests of the merging credit union transfer to and vest in the continuing credit union without deed, endorsement, or instrument of transfer, although instruments of transfer may be used if their use is deemed appropriate. The debts and obligations of the merging credit union that are known or reasonably should be known are assumed by the continuing credit union. The continuing credit union shall cause to be published notice of merger once a week for three consecutive weeks in a newspaper of general circulation in the county in which the principal place of business of the merging credit union is located. The notice of merger must also inform creditors of the merging credit union how to make a claim on the continuing credit union, and that if a claim is not made upon the continuing credit union within thirty days of the last date of publication, creditors' claims that are not known by the continuing credit union may be barred. Except for claims filed as requested by the notice, or debts or obligations that are known or reasonably should be known by the continuing credit union, the debts and obligations of the merging credit union are discharged. Upon merger, the charter of the merging credit union ceases to exist.

(4) Mergers are effective after the thirty-day notice period to creditors and all regulatory waiting periods have expired, and upon filing of the credit union's articles of

merger by the secretary of state, or a later date stated in the articles, which in no event may be later than ninety days after the articles are filed. [2013 c 34 § 10; 2001 c 83 § 21; 1997 c 397 § 40. Prior: 1994 c 256 § 91; 1994 c 92 § 220; 1987 c 338 § 8; 1984 c 31 § 71. Formerly RCW 31.12.695.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

31.12.630 Authority of director to call special meeting of board. The director may request a special meeting of the board of a credit union if the director believes that a special meeting is necessary for the welfare of the credit union or the purposes of this chapter. The director's request for a special board meeting must be made in writing to the secretary of the board. On receipt of such a request, the secretary shall designate a time and place for the special board meeting, which shall be held within thirty days after receipt of the request. The director may require the attendance of all of the directors at the special board meeting, and an absence unexcused by the director constitutes a violation of this chapter. [2013 c 34 § 11; 1997 c 397 § 58; 1994 c 92 § 216; 1984 c 31 § 67. Formerly RCW 31.12.655.]

Title 32

MUTUAL SAVINGS BANKS

Chapters

32.04 General provisions.

32.08 Organization and powers.

32.50 Supervisory direction by the director of financial institutions.

Chapter 32.04 RCW GENERAL PROVISIONS

Sections

32.04.012 Limits on loans and extensions of credit.

32.04.030 Branches—Director's approval—Conditions—Definition.

32.04.012 Limits on loans and extensions of credit. Notwithstanding any other provisions of this title, a savings bank is subject to the same limits on loans and extensions of credit, and exceptions thereto, as set forth in RCW 30.04.111. [2013 c 76 § 23.]

32.04.030 Branches—Director's approval—Conditions—Definition. (1) A savings bank may not, without the written approval of the director, establish and operate branches in any place.

(2) A savings bank headquartered in this state desiring to establish a branch shall file a written application with the director, who shall approve or disapprove the application.

(3) The director's approval shall be conditioned on a finding that the savings bank has a satisfactory record of compliance with applicable laws and has a satisfactory financial condition. In making such findings, the director may rely on an application in the form filed with the federal deposit insurance corporation pursuant to 12 U.S.C. Sec. 1828(d). If the application for a branch is not approved, the savings bank shall have the right to appeal in the same manner and within the same time as provided by RCW 32.08.050 and 32.08.060.

The savings bank when delivering the application to the director shall transmit to the director a check in an amount established by rule to cover the expense of the investigation. A savings bank headquartered in this state shall not move its headquarters or any branch more than two miles from its existing location without prior approval of the director. On or before the date on which it opens any office at which it will transact business in any state, territory, province, or other jurisdiction, a savings bank shall give written notice to the director of the location of this office. No such notice shall become effective until it has been delivered to the director.

(4) The board of trustees of a savings bank, after notice to the director, may discontinue the operation of a branch. The savings bank shall keep the director informed in the matter and shall notify the director of the date operation of the branch is discontinued.

(5) A savings bank that is headquartered in this state and is operating branches in another state, territory, province, or other jurisdiction may provide copies of state examination reports and reports of condition of the savings bank to the regulator having oversight responsibility with regard to its operations in that other jurisdiction, including the regulator of savings associations in the event such a savings bank is transacting savings and loan business pursuant to RCW 32.08.142 in that other jurisdiction.

(6) No savings bank headquartered in another state may establish, or acquire pursuant to RCW 32.32.500, and operate branches as a savings bank or foreign savings association in any place within this state unless:

(a) The savings bank has filed with the director an agreement to comply with the requirements of RCW 30.38.040 for periodic reports by the savings bank or by the appropriate state superintendent or equivalent regulator of the savings bank under the laws of the state in which the savings bank is incorporated, unless the laws expressly require the provision of all the reports to the director;

(b) The savings bank has filed with the director (i) a duly executed instrument in writing, by its terms of indefinite duration and irrevocable, appointing the director and his or her successors its true and lawful attorney, upon whom all process in any action or proceeding against it in a cause of action arising out of business transacted by such savings bank in this state, may be served with the same force and effect as if it were a domestic corporation and had been lawfully served with process within the state, and (ii) a written certificate of designation, which may be changed from time to time by the filing of a new certificate of designation, specifying the name and address of the officer, agent, or other person to whom such process shall be forwarded by the director;

(c) The savings bank has supplied the director with such information as he or she shall require by rule, not to exceed the information on which the director may rely in approving a branch application pursuant to this section by a savings bank headquartered in this state; and

(d) The out-of-state savings bank would be permitted to establish or acquire and maintain branches in Washington state if it were chartered as a savings bank under this title. [2013 c 76 § 22; 2005 c 348 § 4; 1996 c 2 § 21. Prior: 1994 c 256 § 93; 1994 c 92 § 294; 1985 c 56 § 2; 1955 c 80 § 1; 1955 c 13 § 32.04.030; prior: 1933 c 143 § 1; 1925 ex.s. c 86 § 10; 1915 c 175 § 15; RRS § 3344.]

Effective date—2005 c 348: See note following RCW 30.38.005.

Findings—Construction—1994 c 256: See RCW 43.320.007.

Additional notes found at www.leg.wa.gov

**Chapter 32.08 RCW
ORGANIZATION AND POWERS**

Sections

32.08.140	Powers of bank. (<i>Contingent expiration date.</i>)
32.08.140	Powers of bank. (<i>Contingent effective date.</i>)
32.08.142	Additional powers of savings bank—Powers of federal mutual savings bank—Definition—Restrictions.
32.08.146	Repealed.
32.08.153	Additional powers of savings bank—Powers and authorities of national banks on July 28, 1985, or a subsequent date not later than July 28, 2013—Definition—Restrictions.
32.08.155	Repealed.
32.08.1551	Repealed.

32.08.140 Powers of bank. (*Contingent expiration date.*) Every savings bank incorporated under this title shall have, subject to the restrictions and limitations contained in this title, the following powers:

(1) To receive deposits of money, to invest the same in the property and securities prescribed in this title, to declare dividends in the manner prescribed in this title, and to exercise by its board of trustees or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business of a savings bank;

(2) To issue transferable certificates showing the amounts contributed by any incorporator or trustee to the guaranty fund of such bank, or for the purpose of paying its expenses. Every such certificate shall show that it does not constitute a liability of the savings bank, except as otherwise provided in this title;

(3) To purchase, hold and convey real property as prescribed in RCW 32.20.280;

(4) To pay depositors as hereinafter provided, and when requested, pay them by drafts upon deposits to the credit of the savings bank in any city in the United States, and to charge current rates of exchange for such drafts;

(5) To borrow money in pursuance of a resolution adopted by a vote of a majority of its board of trustees duly entered upon its minutes whereon shall be recorded by ayes and noes the vote of each trustee, for the purpose of repaying depositors, and to pledge or hypothecate securities as collateral for loans so obtained. Immediate written notice shall be given to the director of all amounts so borrowed, and of all assets so pledged or hypothecated;

(6) Subject to such regulations and restrictions as the director finds to be necessary and proper, to borrow money in pursuance of a resolution, policy, or other governing document adopted by its board of trustees, for purposes other than that of repaying depositors and to pledge or hypothecate its assets as collateral for any such loans, provided that no amount shall at any time be borrowed by a savings bank pursuant to this subsection (6), if such amount, together with the amount then remaining unpaid upon prior borrowings by such savings bank pursuant to this subsection (6), exceeds thirty percent of the assets of the savings bank.

The sale of securities or loans by a bank subject to an agreement to repurchase the securities or loans shall not be considered a borrowing. Borrowings from federal, state, or

municipal governments or agencies or instrumentalities thereof shall not be subject to the limits of this subsection;

(7) To collect or protest promissory notes or bills of exchange owned by such bank or held by it as collateral, and remit the proceeds of the collections by drafts upon deposits to the credit of the savings bank in any city in the United States, and to charge the usual rates or fees for such collection and remittance for such protest;

(8) To sell gold or silver received in payment of interest or principal of obligations owned by the savings bank or from depositors in the ordinary course of business;

(9) To act as insurance agent for the purpose of writing fire insurance on property in which the bank has an insurable interest, the property to be located in the city in which the bank is situated and in the immediate contiguous suburbs, notwithstanding anything in any other statute to the contrary;

(10) To let vaults, safes, boxes or other receptacles for the safekeeping or storage of personal property, subject to laws and regulations applicable to, and with the powers possessed by, safe deposit companies;

(11) To elect or appoint in such manner as it may determine all necessary or proper officers, agents, boards, and committees, to fix their compensation, subject to the provisions of this title, and to define their powers and duties, and to remove them at will;

(12) To make and amend bylaws consistent with law for the management of its property and the conduct of its business;

(13) To wind up and liquidate its business in accordance with this title;

(14) To adopt and use a common seal and to alter the same at pleasure;

(15) To exercise the powers and authorities conferred by RCW 30.04.215;

(16) To exercise the powers and authorities that may be carried on by a subsidiary of the savings bank that has been determined to be a prudent investment pursuant to RCW 32.20.380;

(17) To do all other acts authorized by this title;

(18) To exercise the powers and authorities that may be exercised by an insured state bank in compliance with 12 U.S.C. Sec. 1831a. [2013 c 76 § 24; 1999 c 14 § 17; 1996 c 2 § 23; 1994 c 92 § 319; 1981 c 86 § 2; 1977 ex.s. c 104 § 1; 1963 c 176 § 2; 1957 c 80 § 2; 1955 c 13 § 32.08.140. Prior: 1927 c 184 § 1; 1925 ex.s. c 86 § 1; 1915 c 175 § 10; RRS § 3322.]

Contingent expiration date—2013 c 76 §§ 9 and 24: See note following RCW 30.08.140.

Additional notes found at www.leg.wa.gov

32.08.140 Powers of bank. (Contingent effective date.) Every savings bank incorporated under this title shall have, subject to the restrictions and limitations contained in this title, the following powers:

(1) To receive deposits of money, to invest the same in the property and securities prescribed in this title, to declare dividends in the manner prescribed in this title, and to exercise by its board of trustees or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business of a savings bank;

(2) To issue transferable certificates showing the amounts contributed by any incorporator or trustee to the guaranty fund of such bank, or for the purpose of paying its expenses. Every such certificate shall show that it does not constitute a liability of the savings bank, except as otherwise provided in this title;

(3) To purchase, hold and convey real property as prescribed in RCW 32.20.280;

(4) To pay depositors as hereinafter provided, and when requested, pay them by drafts upon deposits to the credit of the savings bank in any city in the United States, and to charge current rates of exchange for such drafts;

(5) To borrow money in pursuance of a resolution adopted by a vote of a majority of its board of trustees duly entered upon its minutes whereon shall be recorded by ayes and noes the vote of each trustee, for the purpose of repaying depositors, and to pledge or hypothecate securities as collateral for loans so obtained. Immediate written notice shall be given to the director of all amounts so borrowed, and of all assets so pledged or hypothecated;

(6) Subject to such regulations and restrictions as the director finds to be necessary and proper, to borrow money in pursuance of a resolution, policy, or other governing document adopted by its board of trustees, for purposes other than that of repaying depositors and to pledge or hypothecate its assets as collateral for any such loans, provided that no amount shall at any time be borrowed by a savings bank pursuant to this subsection (6), if such amount, together with the amount then remaining unpaid upon prior borrowings by such savings bank pursuant to this subsection (6), exceeds thirty percent of the assets of the savings bank.

The sale of securities or loans by a bank subject to an agreement to repurchase the securities or loans shall not be considered a borrowing. Borrowings from federal, state, or municipal governments or agencies or instrumentalities thereof shall not be subject to the limits of this subsection;

(7) To collect or protest promissory notes or bills of exchange owned by such bank or held by it as collateral, and remit the proceeds of the collections by drafts upon deposits to the credit of the savings bank in any city in the United States, and to charge the usual rates or fees for such collection and remittance for such protest;

(8) To sell gold or silver received in payment of interest or principal of obligations owned by the savings bank or from depositors in the ordinary course of business;

(9) To act as insurance agent for the purpose of writing fire insurance on property in which the bank has an insurable interest, the property to be located in the city in which the bank is situated and in the immediate contiguous suburbs, notwithstanding anything in any other statute to the contrary;

(10) To let vaults, safes, boxes or other receptacles for the safekeeping or storage of personal property, subject to laws and regulations applicable to, and with the powers possessed by, safe deposit companies;

(11) To elect or appoint in such manner as it may determine all necessary or proper officers, agents, boards, and committees, to fix their compensation, subject to the provisions of this title, and to define their powers and duties, and to remove them at will;

(12) To make and amend bylaws consistent with law for the management of its property and the conduct of its business;

(13) To wind up and liquidate its business in accordance with this title;

(14) To adopt and use a common seal and to alter the same at pleasure;

(15) To exercise the powers and authorities conferred by RCW 30.04.215;

(16) To exercise the powers and authorities that may be carried on by a subsidiary of the savings bank that has been determined to be a prudent investment pursuant to RCW 32.20.380;

(17) To do all other acts authorized by this title;

(18) To exercise the powers and authorities that may be exercised by an insured state bank in compliance with 12 U.S.C. Sec. 1831a;

(19) To conduct a promotional contest of chance as authorized in RCW 9.46.0356(l)(b), as long as the conditions of RCW 9.46.0356(5) and 30.22.260 are complied with to the satisfaction of the director. [2013 c 76 § 25; 2011 c 303 § 8; 1999 c 14 § 17; 1996 c 2 § 23; 1994 c 92 § 319; 1981 c 86 § 2; 1977 ex.s. c 104 § 1; 1963 c 176 § 2; 1957 c 80 § 2; 1955 c 13 § 32.08.140. Prior: 1927 c 184 § 1; 1925 ex.s. c 86 § 1; 1915 c 175 § 10; RRS § 3322.]

Contingent effective date—2013 c 76 §§ 10 and 25; 2011 c 303 §§ 7 and 8: See note following RCW 30.08.140.

Findings—Intent—2011 c 303: See note following RCW 9.46.0356.

Additional notes found at www.leg.wa.gov

32.08.142 Additional powers of savings bank—Powers of federal mutual savings bank—Definition—Restrictions.

(1) Notwithstanding any restrictions, limitations, and requirements of law, in addition to all powers, express or implied, that a savings bank has under the laws of this state, a savings bank shall have the powers and authorities that any federal mutual savings bank had on July 28, 1985, or as of a subsequent date not later than July 28, 2013. As used in this section, "powers and authorities" include without limitation powers and authorities in corporate governance matters.

(2) A savings bank may exercise the powers and authorities granted, after July 28, 2013, to federal mutual savings banks or their successors under federal law only if the director finds that the exercise of such powers and authorities:

(a) Serves the convenience and advantage of depositors and borrowers, or the general public; and

(b) Maintains the fairness of competition and parity between state-chartered savings banks and federal savings banks or their successors under federal law.

(3) Notwithstanding any other provision of law, a savings bank has the powers and authorities that an out-of-state state savings bank or savings association operating a branch in Washington has if the director finds that the exercise of such powers and authorities serves the convenience and advantage of depositors and borrowers, or the general public, and maintains the fairness of competition and parity between savings banks and out-of-state state savings banks and savings associations.

(4) For the purposes of this section, "powers and authorities" include without limitation powers and authorities in corporate governance matters.

(5) The restrictions, limitations, and requirements applicable to specific powers and authorities of federal mutual savings banks or out-of-state state savings banks or savings associations, as applicable, shall apply to savings banks exercising those powers and authorities permitted under this section but only insofar as the restrictions, limitations, and requirements relate to exercising the powers and authorities granted savings banks solely under this section. [2013 c 76 § 26; 2003 c 24 § 7; 1999 c 14 § 18; 1996 c 2 § 24; 1994 c 256 § 98; 1985 c 56 § 3; 1981 c 86 § 10.]

Severability—2003 c 24: See RCW 30.04.901.

Findings—Construction—1994 c 256: See RCW 43.320.007.

Additional notes found at www.leg.wa.gov

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

32.08.153 Additional powers of savings bank—Powers and authorities of national banks on July 28, 1985, or a subsequent date not later than July 28, 2013—Definition—Restrictions.

(1) Notwithstanding any restrictions, limitations, and requirements of law, in addition to all powers, express or implied, that a savings bank has under the laws of this state, a savings bank shall have the powers and authorities that any national bank had on July 28, 1985, or as of any subsequent date not later than July 28, 2013.

(2) Notwithstanding any restrictions, limitations, and requirements of law, in addition to all powers, express or implied, that a savings bank has under the laws of this state, a savings bank has the powers and authorities conferred upon a national bank after July 28, 2013, only if the director finds that the exercise of such powers and authorities:

(a) Serves the convenience and advantage of depositors and borrowers, or the general public; and

(b) Maintains the fairness of competition and parity between savings banks and national banks.

(3) For the purposes of this section, "powers and authorities" include without limitation powers and authorities in corporate governance and operational matters.

(4) The restrictions, limitations, and requirements applicable to specific powers and authorities of national banks apply to savings banks exercising those powers and authorities permitted under this section but only insofar as the restrictions, limitations, and requirements relate to exercising the powers or authorities granted savings banks solely under this section. The director may require such a savings bank to provide notice prior to implementation of a plan to develop, improve, or continue holding an individual parcel of real estate, including capitalized and operating leases, acquired through any means in full or partial satisfaction of a debt previously contracted, under circumstances in which a national bank would be required to provide notice to the comptroller of the currency prior to implementation of such a plan. The director may adopt rules, orders, directives, standards, policies, memoranda, or other communications to specify guidance with regard to the exercise of the powers and authorities to expend such funds as are needed to enable such a savings bank to recover its total investment, to the fullest extent authorized for a national bank under the national bank act, 12 U.S.C. Sec. 29. [2013 c 76 § 27; 2010 c 88 § 49; 2003 c 24 § 4.]

Effective date—2010 c 88: See RCW 32.50.900.

Severability—2003 c 24: See RCW 30.04.901.

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

32.08.1551 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 32.50 RCW

SUPERVISORY DIRECTION BY THE DIRECTOR OF FINANCIAL INSTITUTIONS

Sections

32.50.030 Failure of savings bank to comply—Appointment of conservator—Powers and duties of conservator, immunity.

32.50.030 Failure of savings bank to comply—Appointment of conservator—Powers and duties of conservator, immunity. (1) After the period of supervisory direction specified by the director for compliance, if he or she determines that such savings bank has failed to comply with the lawful requirements imposed, upon due notice and hearing by the department or by consent of the savings bank, the director may appoint a conservator, who shall immediately take charge of such savings bank and all of its property, books, records, and effects. The conservator shall conduct the business of the savings bank and take such steps toward the removal of the causes and conditions which have necessitated such order, as the director may direct. During the pendency of the conservatorship the conservator shall make such reports to the director from time to time as may be required by the director, and shall be empowered to take all necessary measures to preserve, protect, and recover any assets or property of such savings bank, including claims or causes of actions belonging to or which may be asserted by such bank, and to deal with the same in his or her own name as conservator, and shall be empowered to file, prosecute, and defend any suit and suits which have been filed or which may thereafter be filed by or against such savings bank which are deemed by the conservator to be necessary to protect all of the interested parties for a property affected thereby. The director, or any newly appointed assistant, may be appointed to serve as conservator. If the director, however, is satisfied that such savings bank is not in condition to continue business in the interest of its depositors or creditors under the conservator under this section, the director may proceed with appropriate remedies provided by other provisions of this title.

(2) A person appointed as conservator by the director pursuant to this chapter is immune from criminal, civil, and administrative liability for any act done in good faith in the performance of the duties of conservator. [2013 c 76 § 28; 2010 c 88 § 68.]

Title 33

SAVINGS AND LOAN ASSOCIATIONS

Chapters

33.12 Powers and restrictions.

[2013 RCW Supp—page 390]

33.24 Loans and investments.

33.32 Foreign associations.

Chapter 33.12 RCW

POWERS AND RESTRICTIONS

Sections

33.12.012 Additional powers of an association—Powers conferred upon federal savings and loan association as of December 31, 1993, or a subsequent date not later than July 28, 2013—Powers of an out-of-state state savings association.

33.12.012 Additional powers of an association—Powers conferred upon federal savings and loan association as of December 31, 1993, or a subsequent date not later than July 28, 2013—Powers of an out-of-state state savings association. (1) Notwithstanding any other provision of law, in addition to all powers and authorities, express or implied, that an association has under this title, an association may exercise any of the powers and authorities that a federal savings and loan association had on December 31, 1993, or as of a subsequent date not later than July 28, 2013. As used in this section, "powers and authorities" include without limitation powers and authorities in corporate governance and operational matters.

(2) Notwithstanding any other provisions of law, a savings association has the powers and authorities that an out-of-state state savings association operating a branch in Washington has if the director finds that the exercise of such powers and authorities serves the convenience and advantage of depositors and borrowers, or the general public, and maintains the fairness of competition and parity between savings associations and out-of-state state savings associations.

(3) The restrictions, limitations and requirements applicable to specific powers and authorities of federal savings and loan associations or out-of-state state savings associations, as applicable, shall apply to savings associations exercising those powers and authorities permitted under this section but only insofar as the restrictions, limitations, and requirements relate to exercising the powers and authorities granted savings associations solely by this section. [2013 c 76 § 29; 1994 c 256 § 119; 1982 c 3 § 23; 1981 c 87 § 1.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

Additional notes found at www.leg.wa.gov

Chapter 33.24 RCW

LOANS AND INVESTMENTS

Sections

33.24.010 Authority to invest—Limits on loans and extensions of credit.

33.24.010 Authority to invest—Limits on loans and extensions of credit. (1) An association may invest its funds only as provided in this chapter.

(2) An association is subject to the same limits on loans and extensions of credit, and exceptions thereto, as set forth in RCW 30.04.111. [2013 c 76 § 30; 1994 c 92 § 445; 1982 c 3 § 45; 1979 c 113 § 6; 1963 c 246 § 7; 1953 c 71 § 6; 1947 c 257 § 5; 1945 c 235 § 58; Rem. Supp. 1947 § 3717-177. Prior: 1939 c 98 § 11; 1933 c 183 §§ 39, 52, 56, 58; 1925

ex.s. c 144 § 5; 1913 c 110 §§ 8, 9; 1903 c 116 § 2; 1890 p 56 §§ 4, 30.]

Additional notes found at www.leg.wa.gov

Chapter 33.32 RCW FOREIGN ASSOCIATIONS

Sections

33.32.060 Restrictions on out-of-state savings and loan associations.

33.32.060 Restrictions on out-of-state savings and loan associations. Subject to other provisions of this chapter, an out-of-state savings and loan association shall be permitted to establish a branch or acquire branches in this state if the out-of-state savings and loan association would be permitted to establish or acquire a branch in Washington state if it were a savings bank chartered under Title 32 RCW or a savings association chartered under this title. [2013 c 76 § 31; 1945 c 235 § 85; Rem. Supp. 1945 § 3717-204. Prior: 1933 c 183 § 88; 1890 p 56 § 13.]

Title 34 ADMINISTRATIVE LAW

Chapters

34.05 Administrative procedure act.

34.12 Office of administrative hearings.

Chapter 34.05 RCW ADMINISTRATIVE PROCEDURE ACT

Sections

34.05.010 Definitions.
34.05.271 Department of fish and wildlife—Significant agency action—Identification of sources of information used.
34.05.272 Department of ecology—Significant agency action—Identification of sources of information used.
34.05.425 Presiding officers—Disqualification, substitution.
34.05.434 Notice of hearing.
34.05.461 Entry of orders.

34.05.010 Definitions. The definitions set forth in this section shall apply throughout this chapter, unless the context clearly requires otherwise.

(1) "Adjudicative proceeding" means a proceeding before an agency in which an opportunity for hearing before that agency is required by statute or constitutional right before or after the entry of an order by the agency. Adjudicative proceedings also include all cases of licensing and rate making in which an application for a license or rate change is denied except as limited by RCW 66.08.150, or a license is revoked, suspended, or modified, or in which the granting of an application is contested by a person having standing to contest under the law.

(2) "Agency" means any state board, commission, department, institution of higher education, or officer, authorized by law to make rules or to conduct adjudicative proceedings, except those in the legislative or judicial branches, the governor, or the attorney general except to the extent otherwise required by law and any local governmental entity that

may request the appointment of an administrative law judge under chapter 42.41 RCW.

(3) "Agency action" means licensing, the implementation or enforcement of a statute, the adoption or application of an agency rule or order, the imposition of sanctions, or the granting or withholding of benefits.

Agency action does not include an agency decision regarding (a) contracting or procurement of goods, services, public works, and the purchase, lease, or acquisition by any other means, including eminent domain, of real estate, as well as all activities necessarily related to those functions, or (b) determinations as to the sufficiency of a showing of interest filed in support of a representation petition, or mediation or conciliation of labor disputes or arbitration of labor disputes under a collective bargaining law or similar statute, or (c) any sale, lease, contract, or other proprietary decision in the management of public lands or real property interests, or (d) the granting of a license, franchise, or permission for the use of trademarks, symbols, and similar property owned or controlled by the agency.

(4) "Agency head" means the individual or body of individuals in whom the ultimate legal authority of the agency is vested by any provision of law. If the agency head is a body of individuals, a majority of those individuals constitutes the agency head.

(5) "Entry" of an order means the signing of the order by all persons who are to sign the order, as an official act indicating that the order is to be effective.

(6) "Filing" of a document that is required to be filed with an agency means delivery of the document to a place designated by the agency by rule for receipt of official documents, or in the absence of such designation, at the office of the agency head.

(7) "Institutions of higher education" are the University of Washington, Washington State University, Central Washington University, Eastern Washington University, Western Washington University, The Evergreen State College, the various community colleges, and the governing boards of each of the above, and the various colleges, divisions, departments, or offices authorized by the governing board of the institution involved to act for the institution, all of which are sometimes referred to in this chapter as "institutions."

(8) "Interpretive statement" means a written expression of the opinion of an agency, entitled an interpretive statement by the agency head or its designee, as to the meaning of a statute or other provision of law, of a court decision, or of an agency order.

(9)(a) "License" means a franchise, permit, certification, approval, registration, charter, or similar form of authorization required by law, but does not include (i) a license required solely for revenue purposes, or (ii) a certification of an exclusive bargaining representative, or similar status, under a collective bargaining law or similar statute, or (iii) a license, franchise, or permission for use of trademarks, symbols, and similar property owned or controlled by the agency.

(b) "Licensing" includes the agency process respecting the issuance, denial, revocation, suspension, or modification of a license.

(10) "Mail" or "send," for purposes of any notice relating to rule making or policy or interpretive statements, means regular mail or electronic distribution, as provided in RCW

34.05.260. "Electronic distribution" or "electronically" means distribution by electronic mail or facsimile mail.

(11)(a) "Order," without further qualification, means a written statement of particular applicability that finally determines the legal rights, duties, privileges, immunities, or other legal interests of a specific person or persons.

(b) "Order of adoption" means the official written statement by which an agency adopts, amends, or repeals a rule.

(12) "Party to agency proceedings," or "party" in a context so indicating, means:

(a) A person to whom the agency action is specifically directed; or

(b) A person named as a party to the agency proceeding or allowed to intervene or participate as a party in the agency proceeding.

(13) "Party to judicial review or civil enforcement proceedings," or "party" in a context so indicating, means:

(a) A person who files a petition for a judicial review or civil enforcement proceeding; or

(b) A person named as a party in a judicial review or civil enforcement proceeding, or allowed to participate as a party in a judicial review or civil enforcement proceeding.

(14) "Person" means any individual, partnership, corporation, association, governmental subdivision or unit thereof, or public or private organization or entity of any character, and includes another agency.

(15) "Policy statement" means a written description of the current approach of an agency, entitled a policy statement by the agency head or its designee, to implementation of a statute or other provision of law, of a court decision, or of an agency order, including where appropriate the agency's current practice, procedure, or method of action based upon that approach.

(16) "Rule" means any agency order, directive, or regulation of general applicability (a) the violation of which subjects a person to a penalty or administrative sanction; (b) which establishes, alters, or revokes any procedure, practice, or requirement relating to agency hearings; (c) which establishes, alters, or revokes any qualification or requirement relating to the enjoyment of benefits or privileges conferred by law; (d) which establishes, alters, or revokes any qualifications or standards for the issuance, suspension, or revocation of licenses to pursue any commercial activity, trade, or profession; or (e) which establishes, alters, or revokes any mandatory standards for any product or material which must be met before distribution or sale. The term includes the amendment or repeal of a prior rule, but does not include (i) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public, (ii) declaratory rulings issued pursuant to RCW 34.05.240, (iii) traffic restrictions for motor vehicles, bicyclists, and pedestrians established by the secretary of transportation or his or her designee where notice of such restrictions is given by official traffic control devices, or (iv) rules of institutions of higher education involving standards of admission, academic advancement, academic credit, graduation and the granting of degrees, employment relationships, or fiscal processes.

(17) "Rules review committee" or "committee" means the joint administrative rules review committee created pur-

suant to RCW 34.05.610 for the purpose of selectively reviewing existing and proposed rules of state agencies.

(18) "Rule making" means the process for formulation and adoption of a rule.

(19) "Service," except as otherwise provided in this chapter, means posting in the United States mail, properly addressed, postage prepaid, or personal or electronic service. Service by mail is complete upon deposit in the United States mail. Agencies may, by rule, authorize service by electronic transmission, or by commercial parcel delivery company. [2013 c 110 § 3; 2011 c 336 § 762; 1997 c 126 § 2; 1992 c 44 § 10; 1989 c 175 § 1; 1988 c 288 § 101; 1982 c 10 § 5. Prior: 1981 c 324 § 2; 1981 c 183 § 1; 1967 c 237 § 1; 1959 c 234 § 1. Formerly RCW 34.04.010.]

Additional notes found at www.leg.wa.gov

34.05.271 Department of fish and wildlife—Significant agency action—Identification of sources of information used.

(1) Before taking a significant agency action, the department of fish and wildlife must identify the sources of information reviewed and relied upon by the agency in the course of preparing to take significant agency action. Peer-reviewed literature, if applicable, must be identified, as well as any scientific literature or other sources of information used. The department of fish and wildlife shall make available on the agency's web site the index of records required under RCW 42.56.070(6) that are relied upon, or invoked, in support of a proposal for significant agency action.

(2)(a) For the purposes of this section, "significant agency action" means an act of the department of fish and wildlife that:

(i) Results in the development of a significant legislative rule as defined in RCW 34.05.328;

(ii) Results in the development of technical guidance, technical assessments, or technical documents that are used to directly support implementation of a state rule or state statute; or

(iii) Results in the development of fish and wildlife recovery plans.

(b) "Significant agency action" does not include rule making by the department of fish and wildlife associated with fishing and hunting rules.

(3) This section is not intended to affect agency action regarding individual permitting, compliance and enforcement decisions, or guidance provided by an agency to a local government on a case-by-case basis. [2013 c 68 § 2.]

Finding—Intent—2013 c 68: "(1) The legislature finds that it is critically important that scientific information used to inform public policy be of the highest quality and integrity. Furthermore, the legislature recognizes that a public benefit is derived from greater transparency as to what scientific information, data, or records are being used to inform public policy or relied upon in agency decision making.

(2) Therefore, in order to help ensure that agencies routinely use scientifically credible information in conducting their policy-making functions, it is the intent of the legislature to have those sources of scientific information reviewed and relied upon by agencies be identified in a clear and transparent way." [2013 c 68 § 1.]

34.05.272 Department of ecology—Significant agency action—Identification of sources of information used.

(1) This section applies only to the water quality and shorelands and environmental assistance programs within the department of ecology.

(2) Before taking a significant agency action, the department of ecology must identify the sources of information reviewed and relied upon by the agency in the course of preparing to take significant agency action. Peer-reviewed literature, if applicable, must be identified, as well as any scientific literature or other sources of information used. The department of ecology shall make available on the agency's web site the index of records required under RCW 42.56.070(6) that are relied upon, or invoked, in support of a proposal for significant agency action.

(3) For the purposes of this section, "significant agency action" means an act of the department of ecology that:

(a) Results in the development of a significant legislative rule as defined in RCW 34.05.328; or

(b) Results in the development of technical guidance, technical assessments, or technical documents that are used to directly support implementation of a state rule or state statute.

(4) This section is not intended to affect agency action regarding individual permitting, compliance and enforcement decisions, or guidance provided by an agency to a local government on a case-by-case basis. [2013 c 69 § 2.]

Finding—Intent—2013 c 69: "(1) The legislature finds that it is critically important that scientific information used to inform public policy be of the highest quality and integrity. Furthermore, the legislature recognizes that a public benefit is derived from greater transparency as to what scientific information, data, or records are being used to inform public policy or relied upon in agency decision making.

(2) Therefore, in order to help ensure that agencies routinely use scientifically credible information in conducting their policy-making functions, it is the intent of the legislature to have those sources of scientific information reviewed and relied upon by agencies be identified in a clear and transparent way." [2013 c 69 § 1.]

34.05.425 Presiding officers—Disqualification, substitution. (1) Except as provided in subsection (2) of this section, in the discretion of the agency head, the presiding officer in an administrative hearing shall be:

(a) The agency head or one or more members of the agency head;

(b) If the agency has statutory authority to do so, a person other than the agency head or an administrative law judge designated by the agency head to make the final decision and enter the final order;

(c) One or more administrative law judges assigned by the office of administrative hearings in accordance with chapter 34.12 RCW; or

(d) A person or persons designated by the secretary of health pursuant to RCW 43.70.740.

(2) An agency expressly exempted under RCW 34.12.020(4) or other statute from the provisions of chapter 34.12 RCW or an institution of higher education shall designate a presiding officer as provided by rules adopted by the agency.

(3) Any individual serving or designated to serve alone or with others as presiding officer is subject to disqualification for bias, prejudice, interest, or any other cause provided in this chapter or for which a judge is disqualified.

(4) Any party may petition for the disqualification of an individual promptly after receipt of notice indicating that the individual will preside or, if later, promptly upon discovering facts establishing grounds for disqualification.

(5) The individual whose disqualification is requested shall determine whether to grant the petition, stating facts and reasons for the determination.

(6) When the presiding officer is an administrative law judge, the provisions of this section regarding disqualification for cause are in addition to the motion of prejudice available under RCW 34.12.050.

(7) If a substitute is required for an individual who becomes unavailable as a result of disqualification or any other reason, the substitute must be appointed by the appropriate appointing authority.

(8) Any action taken by a duly appointed substitute for an unavailable individual is as effective as if taken by the unavailable individual. [2013 c 109 § 4; 1989 c 175 § 14; 1988 c 288 § 406.]

Additional notes found at www.leg.wa.gov

34.05.434 Notice of hearing. (1) The agency or the office of administrative hearings shall set the time and place of the hearing and give not less than seven days advance written notice to all parties and to all persons who have filed written petitions to intervene in the matter.

(2) The notice shall include:

(a) Unless otherwise ordered by the presiding officer, the names and mailing addresses of all parties to whom notice is being given and, if known, the names and addresses of their representatives;

(b) If the agency intends to appear, the mailing address and telephone number of the office designated to represent the agency in the proceeding;

(c) The official file or other reference number and the name of the proceeding;

(d) The name, official title, mailing address, and telephone number of the presiding officer, if known;

(e) A statement of the time, place and nature of the proceeding;

(f) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(g) A reference to the particular sections of the statutes and rules involved;

(h) A short and plain statement of the matters asserted by the agency; and

(i) A statement that a party who fails to attend or participate in a hearing or other stage of an adjudicative proceeding may be held in default in accordance with this chapter.

(3) If the agency is unable to state the matters required by subsection (2)(h) of this section at the time the notice is served, the initial notice may be limited to a statement of the issues involved. If the proceeding is initiated by a person other than the agency, the initial notice may be limited to the inclusion of a copy of the initiating document. Thereafter, upon request, a more definite and detailed statement shall be furnished.

(4) The notice may include any other matters considered desirable by the agency.

(5) The notice may be served on a party via electronic distribution, with a party's agreement. [2013 c 110 § 1; 1988 c 288 § 409; 1980 c 31 § 1; 1967 c 237 § 9; 1959 c 234 § 9. Formerly RCW 34.04.090.]

34.05.461 Entry of orders. (1) Except as provided in subsection (2) of this section:

(a) If the presiding officer is the agency head or one or more members of the agency head, the presiding officer may enter an initial order if further review is available within the agency, or a final order if further review is not available;

(b) If the presiding officer is a person designated by the agency to make the final decision and enter the final order, the presiding officer shall enter a final order; and

(c) If the presiding officer is one or more administrative law judges, the presiding officer shall enter an initial order.

(2) With respect to agencies exempt from chapter 34.12 RCW or an institution of higher education, the presiding officer shall transmit a full and complete record of the proceedings, including such comments upon demeanor of witnesses as the presiding officer deems relevant, to each agency official who is to enter a final or initial order after considering the record and evidence so transmitted.

(3) Initial and final orders shall include a statement of findings and conclusions, and the reasons and basis therefor, on all the material issues of fact, law, or discretion presented on the record, including the remedy or sanction and, if applicable, the action taken on a petition for a stay of effectiveness. Any findings based substantially on credibility of evidence or demeanor of witnesses shall be so identified. Findings set forth in language that is essentially a repetition or paraphrase of the relevant provision of law shall be accompanied by a concise and explicit statement of the underlying evidence of record to support the findings. The order shall also include a statement of the available procedures and time limits for seeking reconsideration or other administrative relief. An initial order shall include a statement of any circumstances under which the initial order, without further notice, may become a final order.

(4) Findings of fact shall be based exclusively on the evidence of record in the adjudicative proceeding and on matters officially noticed in that proceeding. Findings shall be based on the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. Findings may be based on such evidence even if it would be inadmissible in a civil trial. However, the presiding officer shall not base a finding exclusively on such inadmissible evidence unless the presiding officer determines that doing so would not unduly abridge the parties' opportunities to confront witnesses and rebut evidence. The basis for this determination shall appear in the order.

(5) Where it bears on the issues presented, the agency's experience, technical competency, and specialized knowledge may be used in the evaluation of evidence.

(6) If a person serving or designated to serve as presiding officer becomes unavailable for any reason before entry of the order, a substitute presiding officer shall be appointed as provided in RCW 34.05.425. The substitute presiding officer shall use any existing record and may conduct any further proceedings appropriate in the interests of justice.

(7) The presiding officer may allow the parties a designated time after conclusion of the hearing for the submission of memos, briefs, or proposed findings.

(8)(a) Except as otherwise provided in (b) of this subsection, initial or final orders shall be served in writing within ninety days after conclusion of the hearing or after submission

of memos, briefs, or proposed findings in accordance with subsection (7) of this section unless this period is waived or extended for good cause shown. The initial or final order may be served on a party via electronic distribution, with a party's agreement.

(b) This subsection does not apply to the final order of the shorelines hearings board on appeal under RCW 90.58.180(3).

(9) The presiding officer shall cause copies of the order to be served on each party and the agency. [2013 c 110 § 2; 1995 c 347 § 312; 1989 c 175 § 19; 1988 c 288 § 418.]

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

Additional notes found at www.leg.wa.gov

Chapter 34.12 RCW

OFFICE OF ADMINISTRATIVE HEARINGS

Sections

34.12.040 Hearings conducted by administrative law judges—Criteria for assignment.

34.12.040 Hearings conducted by administrative law judges—Criteria for assignment. Except pursuant to RCW 43.70.740, whenever a state agency conducts a hearing which is not presided over by officials of the agency who are to render the final decision, the hearing shall be conducted by an administrative law judge assigned under this chapter. In assigning administrative law judges, the chief administrative law judge shall wherever practical (1) use personnel having expertise in the field or subject matter of the hearing, and (2) assign administrative law judges primarily to the hearings of particular agencies on a long-term basis. [2013 c 109 § 5; 1981 c 67 § 4.]

Additional notes found at www.leg.wa.gov

Title 35

CITIES AND TOWNS

Chapters

35.13 Annexation of unincorporated areas.

35.17 Commission form of government.

35.20 Municipal courts—Cities over four hundred thousand.

35.21 Miscellaneous provisions.

35.39 Fiscal—Investment of funds.

35.49 Local improvements—Collection of assessments.

35.50 Local improvements—Foreclosure of assessments.

35.91 Municipal water and sewer facilities act.

Chapter 35.13 RCW

ANNEXATION OF UNINCORPORATED AREAS

Sections

35.13.238 Annexation of territory served by fire districts, interlocal agreement process—Annexation of fire districts, transfer of employees.

35.13.238 Annexation of territory served by fire districts, interlocal agreement process—Annexation of fire

districts, transfer of employees. (1)(a) An annexation by a city or town that is proposing to annex territory served by one or more fire protection districts may be accomplished by ordinance after entering into an interlocal agreement as provided in chapter 39.34 RCW with the county and the fire protection district or districts that have jurisdiction over the territory proposed for annexation.

(b) A city or town proposing to annex territory shall initiate the interlocal agreement process by sending notice to the fire protection district representative and county representative stating the city's or town's interest to enter into an interlocal agreement negotiation process. The parties have forty-five days to respond in the affirmative or negative. A negative response must state the reasons the parties do not wish to participate in an interlocal agreement negotiation. A failure to respond within the forty-five day period is deemed an affirmative response and the interlocal agreement negotiation process may proceed. The interlocal agreement process may not proceed if any negative responses are received within the forty-five day period.

(c) The interlocal agreement must describe the boundaries of the territory proposed for annexation and must be consistent with the boundaries identified in an ordinance describing the boundaries of the territory proposed for annexation and setting a date for a public hearing on the ordinance. If the boundaries of the territory proposed for annexation are agreed to by all parties, a notice of intention must be filed with the boundary review board created under RCW 36.93.030. However, the jurisdiction of the board may not be invoked as described in RCW 36.93.100 for annexations that are the subject of such agreement.

(2) An interlocal annexation agreement under this section must include the following:

(a) A statement of the goals of the agreement. Goals must include, but are not limited to:

(i) The transfer of revenues and assets between the fire protection districts and the city or town;

(ii) A consideration and discussion of the impact to the level of service of annexation on the unincorporated area, and an agreement that the impact on the ability of fire protection and emergency medical services within the incorporated area must not be negatively impacted at least through the budget cycle in which the annexation occurs;

(iii) A discussion with fire protection districts regarding the division of assets and its impact to citizens inside and outside the newly annexed area;

(iv) Community involvement, including an agreed upon schedule of public meetings in the area or areas proposed for annexation;

(v) Revenue sharing, if any;

(vi) Debt distribution;

(vii) Capital facilities obligations of the city, county, and fire protection districts;

(viii) An overall schedule or plan on the timing of any annexations covered under this agreement; and

(ix) A description of which of the annexing cities' development regulations will apply and be enforced in the area.

(b) The subject areas and policies and procedures the parties agree to undertake in annexations. Subject areas may include, but are not limited to:

(i) Roads and traffic impact mitigation;

(ii) Surface and storm water management;

(iii) Coordination and timing of comprehensive plan and development regulation updates;

(iv) Outstanding bonds and special or improvement district assessments;

(v) Annexation procedures;

(vi) Distribution of debt and revenue sharing for annexation proposals, code enforcement, and inspection services;

(vii) Financial and administrative services; and

(viii) Consultation with other service providers, including water-sewer districts, if applicable.

(c) A term of at least five years, which may be extended by mutual agreement of the city or town, the county, and the fire protection district.

(3) If the fire protection district, annexing city or town, and county reach an agreement on the enumerated goals, or if only the annexing city or town and county reach an agreement on the enumerated goals, the city or town may adopt an annexation ordinance, but the annexation ordinance provided for in this section is subject to referendum for forty-five days after its passage, provided that no referendum shall be allowed for an annexation under this section if the fire protection district, annexing city or town, and the county reach agreement on an annexation for which a city or town has initiated the interlocal agreement process by sending notice to the fire protection district representative and county representative prior to July 28, 2013. Upon the filing of a timely and sufficient referendum petition with the legislative body of the city or town, signed by qualified electors in a number not less than ten percent of the votes cast in the last general state election in the area to be annexed, the question of annexation must be submitted to the voters of the area in a general election if one is to be held within ninety days or at a special election called for that purpose according to RCW 29A.04.330. Notice of the election must be given as provided in RCW 35.13.080, and the election must be conducted as provided in the general election laws under Title 29A RCW. The annexation must be deemed approved by the voters unless a majority of the votes cast on the proposition are in opposition to the annexation.

After the expiration of the forty-fifth day from, but excluding, the date of passage of the annexation ordinance, if a timely and sufficient referendum petition has not been filed, the area annexed becomes a part of the city or town upon the date fixed in the ordinance of annexation.

(4) If any portion of a fire protection district is proposed for annexation to or incorporation into a city or town, both the fire protection district and the city or town shall jointly inform the employees of the fire protection district about hires, separations, terminations, and any other changes in employment that are a direct consequence of annexation or incorporation at the earliest reasonable opportunity.

(5) The needed employees shall be taken in order of seniority and the remaining employees who transfer as provided in this section and RCW 35.10.360 and 35.10.370 shall head the list for employment in the civil service system in order of their seniority, to the end that they shall be the first to be reemployed in the city or town fire department when appropriate positions become available. Employees who are not immediately hired by the city or town shall be placed on a reemployment list for a period not to exceed thirty-six

months unless a longer period is authorized by an agreement reached between the collective bargaining representatives of the employees of the annexing and annexed fire agencies and the annexing and annexed fire agencies.

(6)(a) Upon transfer, an employee is entitled to the employee rights, benefits, and privileges to which he or she would have been entitled as an employee of the fire protection district, including rights to:

(i) Compensation at least equal to the level of compensation at the time of transfer, unless the employee's rank and duties have been reduced as a result of the transfer. If the transferring employee is placed in a position with reduced rank and duties, the employee's compensation may be adjusted, but the adjustment may not result in a decrease of greater than fifty percent of the difference between the employee's compensation before the transfer and the compensation level for the position that the employee is transferred to;

(ii) Retirement, vacation, sick leave, and any other accrued benefit;

(iii) Promotion and service time accrual; and

(iv) The length or terms of probationary periods, including no requirement for an additional probationary period if one had been completed before the transfer date.

(b) (a) of this subsection does not apply if upon transfer an agreement for different terms of transfer is reached between the collective bargaining representatives of the transferring employees and the participating fire protection jurisdictions.

(7) If upon transfer, the transferring employee receives the rights, benefits, and privileges established under subsection (6)(a)(i) through (iv) of this section, those rights, benefits, and privileges are subject to collective bargaining at the end of the current bargaining period for the jurisdiction to which the employee has transferred.

(8) Such bargaining must take into account the years of service the transferring employee accumulated before the transfer and must be treated as if those years of service occurred in the jurisdiction to which the employee has transferred. [2013 2nd sp.s. c 27 § 3; 2009 c 60 § 7.]

Effective date—2013 2nd sp.s. c 27: See note following RCW 35A.14.295.

Chapter 35.17 RCW

COMMISSION FORM OF GOVERNMENT

Sections

35.17.020 Elections—Terms of commissioners—Vacancies.

35.17.020 Elections—Terms of commissioners—Vacancies. (1) All regular elections in cities organized under the statutory commission form of government shall be held quadrennially in the odd-numbered years on the dates provided in RCW 29A.04.330. However, after commissioners are elected at the next general election occurring in 1995 or 1997, regular elections in cities organized under a statutory commission form of government shall be held biennially at municipal general elections.

(2) The commissioners shall be nominated and elected at large. Their terms shall be for four years and until their successors are elected and qualified and assume office in accor-

dance with RCW 29A.60.280. However, at the next regular election of a city organized under a statutory commission form of government, the terms of office of commissioners shall occur with the person who is elected as a commissioner receiving the least number of votes being elected to a two-year term of office and the other two persons who are elected being elected to four-year terms of office. Thereafter, commissioners shall be elected to four-year terms of office.

(3) Vacancies on a commission shall occur and shall be filled as provided in chapter 42.12 RCW. [2013 c 11 § 87. Prior: 1994 c 223 § 10; 1994 c 119 § 1; 1979 ex.s. c 126 § 17; 1965 c 7 § 35.17.020; prior: 1963 c 200 § 12; 1959 c 86 § 2; 1955 c 55 § 9; prior: (i) 1911 c 116 § 5; RRS § 9094. (ii) 1943 c 25 § 1, part; 1911 c 116 § 3, part; Rem. Supp. 1943 § 9092, part.]

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

Chapter 35.20 RCW

MUNICIPAL COURTS— CITIES OVER FOUR HUNDRED THOUSAND

Sections

35.20.255 Deferral or suspension of sentences—Probation—Maximum term—Transfer to another state.

35.20.255 Deferral or suspension of sentences—Probation—Maximum term—Transfer to another state. (1) Except as provided in subsection (3) of this section, judges of the municipal court, in their discretion, shall have the power in all criminal proceedings within their jurisdiction including violations of city ordinances, to defer imposition of any sentence, suspend all or part of any sentence including installment payment of fines, fix the terms of any such deferral or suspension, and provide for such probation as in their opinion is reasonable and necessary under the circumstances of the case, but in no case shall it extend for more than five years from the date of conviction for a defendant to be sentenced for a domestic violence offense or under RCW 46.61.5055 and two years from the date of conviction for all other offenses. A defendant who has been sentenced, or whose sentence has been deferred, and who then fails to appear for any hearing to address the defendant's compliance with the terms of probation when ordered to do so by the court, shall have the term of probation tolled until such time as the defendant makes his or her presence known to the court on the record. However, the jurisdiction period in this section does not apply to the enforcement of orders issued under RCW 46.20.720. Any time before entering an order terminating probation, the court may modify or revoke its order suspending or deferring the imposition or execution of the sentence. For the purposes of this subsection, "domestic violence offense" means a crime listed in RCW 10.99.020 that is not a felony offense.

(2)(a) If a defendant whose sentence has been deferred requests permission to travel or transfer to another state, the director of probation services or a designee thereof shall determine whether such request is subject to RCW 9.94A.745, the interstate compact for adult offender supervision. If such request is subject to the compact, the director or designee shall:

(i) Notify the department of corrections of the defendant's request;

(ii) Provide the department of corrections with the supporting documentation it requests for processing an application for transfer;

(iii) Notify the defendant of the fee due to the department of corrections for processing an application under the compact;

(iv) Cease supervision of the defendant while another state supervises the defendant pursuant to the compact;

(v) Resume supervision if the defendant returns to this state before the period of deferral expires.

(b) The defendant shall receive credit for time served while being supervised by another state.

(c) If the probationer is returned to the state at the request of the receiving state under rules of the interstate compact for adult offender supervision, the department of corrections is responsible for the cost of returning the probationer.

(d) The state of Washington, the department of corrections and its employees, and any city and its employees are not liable for civil damages resulting from any act or omission authorized or required under this section unless the act or omission constitutes gross negligence.

(3) Judges of the municipal court shall not defer sentence for an offense sentenced under RCW 46.61.5055. [2013 2nd sp.s. c 35 § 7; 2010 c 274 § 407; 2005 c 400 § 5; 2001 c 94 § 3; 1999 c 56 § 3; 1983 c 156 § 8; 1969 ex.s. c 147 § 9.]

Intent—2010 c 274: See note following RCW 10.31.100.

Application—Effective date—2005 c 400: See notes following RCW 9.94A.74504.

Chapter 35.21 RCW

MISCELLANEOUS PROVISIONS

Sections

35.21.333	Chief of police or marshal—Eligibility requirements.
35.21.392	Contractors—Authority of city to verify registration and report violations.
35.21.408	Transfer of ownership of a city or town-owned vessel—Review of vessel's physical condition.
35.21.409	Transfer of ownership of a city or town-owned vessel—Further requirements.
35.21.930	Community assistance referral and education services program.

35.21.333 Chief of police or marshal—Eligibility requirements. (1) A person seeking appointment to the office of chief of police or marshal, of a city or town, including a code city, with a population in excess of one thousand, is ineligible unless that person:

(a) Is a citizen of the United States of America;

(b) Has obtained a high school diploma or high school equivalency certificate as provided in RCW 28B.50.536;

(c) Has not been convicted under the laws of this state, another state, or the United States of a felony;

(d) Has not been convicted of a gross misdemeanor or any crime involving moral turpitude within five years of the date of application;

(e) Has received at least a general discharge under honorable conditions from any branch of the armed services for any military service if the person was in the military service;

(f) Has completed at least two years of regular, uninterrupted, full-time commissioned law enforcement employ-

ment involving enforcement responsibilities with a government law enforcement agency; and

(g) The person has been certified as a regular and commissioned enforcement officer through compliance with this state's basic training requirement or equivalency.

(2) A person seeking appointment to the office of chief of police or marshal, of a city or town, including a code city, with a population of one thousand or less, is ineligible unless that person conforms with the requirements of subsection (1) (a) through (e) of this section. A person so appointed as chief of police or marshal must successfully complete the state's basic training requirement or equivalency within nine months after such appointment, unless an extension has been granted by the criminal justice training commission.

(3) A person seeking appointment to the office of chief of police or marshal shall provide a sworn statement under penalty of perjury to the appointing authority stating that the person meets the requirements of this section. [2013 c 39 § 17; 1987 c 339 § 4.]

Intent—1987 c 339: "The intent of this act is to require certain qualifications for candidates for the office of chief of police or marshal, which position in whole or in part oversees law enforcement personnel or activities for a city or town.

The legislature finds that over the past century the field of law enforcement has become increasingly complex and many new techniques and resources have evolved both socially and technically. In addition the ever-changing requirements of law, both constitutional and statutory provisions protecting the individual and imposing responsibilities and legal liabilities of law enforcement officers and the government of which they represent, require an increased level of training and experience in the field of law enforcement.

The legislature, therefore finds that minimum requirements are reasonable and necessary to seek and hold the offices or office of chief of police or marshal, and that such requirements are in the public interest." [1987 c 339 § 3.]

Additional notes found at www.leg.wa.gov

35.21.392 Contractors—Authority of city to verify registration and report violations. A city that issues a business license to a person required to be registered under chapter 18.27 RCW may verify that the person is registered under chapter 18.27 RCW and report violations to the department of labor and industries. The department of revenue must conduct the verification for cities that participate in the business licensing system. [2013 c 144 § 36; 2011 c 298 § 22; 2009 c 432 § 2.]

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

Report—2009 c 432: See RCW 18.27.800.

35.21.408 Transfer of ownership of a city or town-owned vessel—Review of vessel's physical condition. (1) Prior to transferring ownership of a city or town-owned vessel, the city or town shall conduct a thorough review of the physical condition of the vessel, the vessel's operating capability, and any containers and other materials that are not fixed to the vessel.

(2) If the city or town determines the vessel is in a state of advanced deterioration or poses a reasonably imminent threat to human health or safety, including a threat of environmental contamination, the city or town may: (a) Not transfer the vessel until the conditions identified under this subsection have been corrected; or (b) permanently dispose

of the vessel by landfill, deconstruction, or other related method.

(3) Vessels taken into custody under chapter 79.100 RCW are not subject to this section or RCW 35.21.409. [2013 c 291 § 15.]

35.21.409 Transfer of ownership of a city or town-owned vessel—Further requirements. (1) Following the inspection required under RCW 35.21.408 and prior to transferring ownership of a city or town-owned vessel, a city or town shall obtain the following from the transferee:

(a) The purposes for which the transferee intends to use the vessel; and

(b) Information demonstrating the prospective owner's intent to obtain legal moorage following the transfer, in the manner determined by the city or town.

(2)(a) The city or town shall remove any containers or other materials that are not fixed to the vessel and contain hazardous substances, as defined under RCW 70.105D.020.

(b) However, the city or town may transfer a vessel with:

(i) Those containers or materials described under (a) of this subsection where the transferee demonstrates to the city or town's satisfaction that the container's or material's presence is consistent with the anticipated use of the vessel; and

(ii) A reasonable amount of fuel as determined by the city or town, based on factors including the vessel's size, condition, and anticipated use of the vessel, including initial destination following transfer.

(c) The city or town may consult with the department of ecology in carrying out the requirements of this subsection.

(3) Prior to sale, and unless the vessel has a title or valid marine document, the city or town is required to apply for a certificate of title for the vessel under RCW 88.02.510 and register the vessel under RCW 88.02.550. [2013 c 291 § 16.]

35.21.930 Community assistance referral and education services program. (1) Any fire department may develop a community assistance referral and education services program to provide community outreach and assistance to residents of its district in order to advance injury and illness prevention within its community. The program should identify members of the community who use the 911 system for low acuity assistance calls (calls that are nonemergency or nonurgent) and connect them to their primary care providers, other health care professionals, low-cost medication programs, and other social services. The program may also provide a fire department-based, nonemergency contact in order to provide an alternative resource to the 911 system. The program may hire health care professionals as needed.

(2) A participating fire department may seek grant opportunities and private gifts in order to support its community assistance referral and education services program.

(3) In developing a community assistance referral and education services program, a fire department may consult with the health care personnel shortage task force to identify health care professionals capable of working in a nontraditional setting and providing assistance, referral, and education services.

(4) Community assistance referral and education services programs implemented under this section must, at least annually, measure any reduction of repeated use of the 911

emergency system and any reduction in avoidable emergency room trips attributable to implementation of the program. Results of findings under this subsection must be reportable to the legislature or other local governments upon request. Findings should include estimated amounts of medicaid dollars that would have been spent on emergency room visits had the program not been in existence.

(5) For purposes of this section, "fire department" includes city and town fire departments, fire protection districts organized under Title 52 RCW, and regional fire [protection service] authorities organized under chapter 52.26 RCW. [2013 c 247 § 1.]

Chapter 35.39 RCW FISCAL—INVESTMENT OF FUNDS

Sections

35.39.060 Investment of pension funds.

35.39.060 Investment of pension funds. Any city or town now or hereafter operating an employees' pension system with the approval of the board otherwise responsible for management of its respective funds may invest, reinvest, manage, contract, sell, or exchange investments acquired. Investments shall be made in accordance with investment policy duly established and published by the board. In discharging its duties under this section, the board shall act with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; shall diversify the investments of the employees' pension system so as to minimize the risk of large losses; and shall act in accordance with the documents and instruments governing the employees' pension system, insofar as such documents and instruments are consistent with the provisions of this title. [2013 c 23 § 62; 2009 c 549 § 2076; 1982 c 166 § 1.]

Additional notes found at www.leg.wa.gov

Chapter 35.49 RCW LOCAL IMPROVEMENTS— COLLECTION OF ASSESSMENTS

Sections

35.49.160 Tax title property—Disposition of proceeds upon resale.

35.49.160 Tax title property—Disposition of proceeds upon resale. Whenever property struck off to or bid in by a county at a sale for general taxes is subsequently sold by the county, the proceeds of the sale must be applied as follows:

(1) First, to reimburse the county for the costs of foreclosure and sale as defined in RCW 36.35.110;

(2) Any remaining proceeds must next be applied to pay any amounts deferred under chapter 84.37 or 84.38 RCW on the property, including accrued interest, and outstanding at the time the county acquired the property by tax deed;

(3) Any remaining proceeds must next be applied to discharge in full the lien or liens for general taxes for which the property was sold;

(4) Any remaining proceeds must be paid to the city or town to discharge all local improvement assessment liens against the property; and

(5) Any surplus proceeds must be distributed among the proper county funds. [2013 c 221 § 1; 1965 c 7 § 35.49.160. Prior: 1929 c 143 § 1, part; 1925 ex.s. c 170 § 1, part; 1911 c 98 § 40, part; RRS § 9393, part.]

Chapter 35.50 RCW
LOCAL IMPROVEMENTS—
FORECLOSURE OF ASSESSMENTS

Sections

35.50.260 Procedure—Trial and judgment—Notice of sale.

35.50.260 Procedure—Trial and judgment—Notice of sale. In foreclosing local improvement assessments the action shall be tried to the court without a jury. If the parties interested in any particular lot, tract, or parcel default, the court may enter judgment of foreclosure and sale as to such parties and lots, tracts, or parcels and the action may proceed as to the remaining defendants and lots, tracts, or parcels. Judgment and order of sale may be entered as to any one or more separate lots, tracts, or parcels involved in the action and the court shall retain jurisdiction to others.

The judgment shall specify separately the amount of the installments with interest, penalty, and all reasonable administrative costs, including, but not limited to, the title searches, chargeable to each lot, tract, or parcel. The judgment shall have the effect of a separate judgment as to each lot, tract, or parcel described in the judgment, and any appeal shall not invalidate or delay the judgment except as to the property concerning which the appeal is taken. In the judgment the court shall order the lots, tracts, or parcels therein described sold by the city or town treasurer or by the county sheriff and an order of sale shall issue pursuant thereto for the enforcement of the judgment.

In all other respects, the trial, judgment, and appeals to the supreme court or the court of appeals shall be governed by the statutes governing the foreclosure of mortgages on real property.

Prior to the sale of the property, if the property is shown on the property tax rolls under unknown owner or if the property contains a residential structure having an assessed value of two thousand dollars or more, the treasurer shall order or conduct a title search of the property to determine the record title holders and all persons claiming a mortgage, deed of trust, or mechanic's, laborer's, material supplier's, or vendor's lien on the property.

At least thirty days prior to the sale of the property, a copy of the notice of sale shall be mailed by certified and regular mail to all defendants in the foreclosure action as to that parcel, lot, or tract and, if the owner is unknown or the property contains a residential structure having an assessed value of two thousand dollars or more, a copy of the notice of sale shall be mailed by regular and certified mail to any additional record title holders and persons claiming a mortgage, deed of trust, or mechanic's, laborer's, material supplier's, or vendor's lien on the property.

In all other respects, the procedure for sale shall be conducted in the same manner as property tax sales described in

RCW 84.64.080. [2013 c 23 § 63; 1997 c 393 § 3; 1983 c 303 § 21; 1982 c 91 § 7; 1971 c 81 § 93; 1965 c 7 § 35.50.260. Prior: 1933 c 9 § 2, part; RRS § 9386-1, part.]

Foreclosure of real estate mortgages and personal property liens: Chapter 61.12 RCW.

Foreclosure of special assessments by water-sewer districts—Attorneys' fees: RCW 57.16.150.

Additional notes found at www.leg.wa.gov

Chapter 35.91 RCW
MUNICIPAL WATER AND SEWER FACILITIES ACT

Sections

35.91.015 Definitions. (*Effective July 1, 2014.*)35.91.020 Contracts with owners of real estate for water or sewer facilities—Requirements—Financing—Reimbursement of costs. (*Effective July 1, 2014.*)

35.91.015 Definitions. (*Effective July 1, 2014.*) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Latecomer fee" means a charge collected by a municipality, whether separately stated or as part of a connection fee for providing access to a municipal system, against a real property owner who connects to or uses a water or sewer facility subject to a contract created under RCW 35.91.020.

(2) "Municipality" means the governing body of any county, city, town, or drainage district.

(3) "Water or sewer facilities" means storm, sanitary, or combination sewers, pumping stations, and disposal plants, water mains, hydrants, reservoirs, or appurtenances. [2013 c 243 § 2.]

Effective date—2013 c 243 §§ 2 and 3: "Sections 2 and 3 of this act take effect July 1, 2014." [2013 c 243 § 5.]

35.91.020 Contracts with owners of real estate for water or sewer facilities—Requirements—Financing—Reimbursement of costs. (*Effective July 1, 2014.*) (1)(a) At the owner's request, a municipality must contract with the owner of real estate for the construction or improvement of water or sewer facilities that the owner elects to install solely at the owner's expense. The owner must submit a request for a contract to the municipality prior to approval of the water or sewer facility by the municipality. The owner's request may only require a contract under this subsection (1)(a) in locations where a municipality's ordinances require the facilities to be improved or constructed as a prerequisite to further property development. Water or sewer facilities improved or constructed in accordance with this subsection (1)(a) must be located within the municipality's corporate limits or, except as provided otherwise by this subsection (1)(a), within ten miles of the municipality's corporate limits. Water or sewer facilities improved or constructed in accordance with this subsection (1)(a) may not be located outside of the county that is party to the contract. The contract must be filed and recorded with the county auditor and must contain conditions required by the municipality in accordance with its adopted policies and standards. Unless the municipality provides written notice to the owner of its intent to request a comprehensive plan approval, the owner must request a comprehensive plan approval for a water or sewer facility, if required,

and connection of the water or sewer facility to the municipal system must be conditioned upon:

- (i) Construction of the water or sewer facility according to plans and specifications approved by the municipality;
- (ii) Inspection and approval of the water or sewer facility by the municipality;
- (iii) Transfer to the municipality of the water or sewer facility, without cost to the municipality, upon acceptance by the municipality of the water or sewer facility;
- (iv) Full compliance with the owner's obligations under the contract and with the municipality's rules and regulations;
- (v) Provision of sufficient security to the municipality to ensure completion of the water or sewer facility and other performance under the contract;
- (vi) Payment by the owner to the municipality of all of the municipality's costs associated with the water or sewer facility including, but not limited to, engineering, legal, and administrative costs; and
- (vii) Verification and approval of all contracts and costs related to the water or sewer facility.

(b) If authorized by ordinance or contract, a municipality may participate in financing water or sewer facilities development projects authorized and improved or constructed in accordance with (a) of this subsection. Unless otherwise provided by ordinance or contract, municipalities that participate in the financing of water or sewer facilities improved or constructed in accordance with (a) of this subsection:

- (i) Have the same rights to reimbursement as owners of real estate who make contributions as authorized under this section; and
- (ii) Are entitled to a pro rata share of the reimbursement based on the respective contribution of the owner and the municipality.

(2) A contract entered into under this section must also provide, in accordance with the requirements of this section, for the pro rata reimbursement to the owner or the owner's assigns for twenty years, or for a longer period if extended in accordance with subsection (4) of this section. The reimbursements must be: (a) Within the period of time that the contract is effective; (b) for a portion of the costs of the water or sewer facilities improved or constructed in accordance with the contract; and (c) from latecomer fees received by the municipality from property owners who subsequently connect to or use the water or sewer facilities, but who did not contribute to the original cost of the facilities.

(3) Except as provided otherwise by this section, a municipality seeking reimbursement from an owner of real estate under this section is limited to the dollar amount authorized in accordance with subsection (7) of this section. This does not prevent the municipality from collecting amounts for services or infrastructure that are additional expenditures not subject to the ordinance, contract, or agreement, nor does it prevent the collection of fees that are reasonable and proportionate to the total expenses incurred by the municipality in complying with this section.

(4)(a) The contract may provide for an extension of the twenty-year reimbursement period for a time not to exceed the duration of any moratorium, phasing ordinance, concurrency designation, or other governmental action that prevents making applications for, or the approval of, any new develop-

ment within the benefit area for a period of six months or more.

(b) Upon the extension of the reimbursement period pursuant to (a) of this subsection, the contract must specify the duration of the contract extension and must be filed and recorded with the county auditor. Property owners who are subject to the reimbursement obligations under subsection (1) of this section shall be notified by the contracting municipality of the extension filed under this subsection.

(5) The requirement for a municipality to contract with an owner of real estate for the construction or improvement of water or sewer facilities under this section is only applicable if the facilities are consistent with all applicable comprehensive plans and development regulations of the municipalities through which the facilities will be constructed or will serve.

(6) Each contract must include a provision requiring that every two years from the date the contract is executed a property owner entitled to reimbursement under this section provide the municipality with information regarding the current contract name, address, and telephone number of the person, company, or partnership that originally entered into the contract. If the property owner fails to comply with the notification requirements of this subsection within sixty days of the specified time, then the contracting municipality may collect any reimbursement funds owed to the property owner under the contract. The funds collected under this subsection must be deposited in the capital fund of the municipality.

(7) To the extent it may require in the performance of the contract, the municipality may install the water or sewer facilities in and along the county streets in the area to be served as hereinabove provided, subject to reasonable requirements as to the manner of occupancy of the streets as the county may by resolution provide. The provisions of the contract may not be effective as to any owner of real estate not a party thereto unless the contract has been recorded in the office of the county auditor of the county in which the real estate of the owner is located prior to the time the owner taps into or connects to the water or sewer facilities.

(8) Within one hundred twenty days of the completion of a water or sewer facility, the owners of the real estate must submit the total cost of the water or sewer facility to the applicable municipality. This information must be used by the municipality as the basis for determining reimbursements by future users who benefit from the water or sewer facility, but who did not contribute to the original cost of the water or sewer facility.

(9) Nothing in this section is intended to create a private right of action for damages against a municipality for failing to comply with the requirements of this section. A municipality, its officials, employees, or agents may not be held liable for failure to collect a latecomer fee unless the failure was willful or intentional. Failure of a municipality to comply with the requirements of this section does not relieve a municipality of any future requirement to comply with this section. [2013 c 243 § 3. Prior: 2009 c 344 § 1; 2009 c 230 § 1; 2006 c 88 § 2; 1999 c 153 § 38; 1981 c 313 § 11; 1967 c 113 § 1; 1965 c 7 § 35.91.020; prior: 1959 c 261 § 2.]

Effective date—2013 c 243 § 2 and 3: See note following RCW 35.91.015.

Additional notes found at www.leg.wa.gov

Title 35A
OPTIONAL MUNICIPAL CODE

Chapters

- 35A.14** **Annexation by code cities.**
35A.21 **Provisions affecting all code cities.**
35A.37 **Funds, special purpose.**
35A.42 **Public officers and agencies, meetings, duties and powers.**
35A.81 **Public transportation.**
35A.84 **Taxation—Property.**

Chapter 35A.14 RCW
ANNEXATION BY CODE CITIES

Sections

- 35A.14.295 Annexation of unincorporated island of territory within code city—Resolution—Notice of hearing.
 35A.14.480 Annexation of territory served by fire districts—Interlocal agreement process.

35A.14.295 Annexation of unincorporated island of territory within code city—Resolution—Notice of hearing. (1) The legislative body of a code city may resolve to annex territory to the city if there is within the city, unincorporated territory:

(a) Containing less than one hundred seventy-five acres and having all of the boundaries of such area contiguous to the code city; or

(b) Of any size containing residential property owners and having at least eighty percent of the boundaries of such area contiguous to the city. Territory annexed under this subsection (1)(b) must be within the same county and within the same urban growth area designated under RCW 36.70A.110, and the city must plan under chapter 36.70A RCW.

(2) The resolution shall describe the boundaries of the area to be annexed, state the number of voters residing therein as nearly as may be, and set a date for a public hearing on such resolution for annexation. Notice of the hearing shall be given by publication of the resolution at least once a week for two weeks prior to the date of the hearing, in one or more newspapers of general circulation within the code city and one or more newspapers of general circulation within the area to be annexed.

(3) For purposes of subsection (1)(b) of this section, territory bounded by a river, lake, or other body of water is considered contiguous to a city that is also bounded by the same river, lake, or other body of water. [2013 2nd sp.s. c 27 § 1; 2013 c 333 § 1; 1997 c 429 § 36; 1967 ex.s. c 119 § 35A.14.295.]

Effective date—2013 2nd sp.s. c 27: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 28, 2013." [2013 2nd sp.s. c 27 § 4.]

Additional notes found at www.leg.wa.gov

35A.14.480 Annexation of territory served by fire districts—Interlocal agreement process. (1)(a) An annexation by a code city proposing to annex territory served by one or more fire protection districts may be accomplished by ordinance after entering into an interlocal agreement as provided in chapter 39.34 RCW with the county and the fire pro-

tection district or districts that have jurisdiction over the territory proposed for annexation.

(b) A code city proposing to annex territory shall initiate the interlocal agreement process by sending notice to the fire protection district representative and county representative stating the code city's interest to enter into an interlocal agreement negotiation process. The parties have forty-five days to respond in the affirmative or negative. A negative response must state the reasons the parties do not wish to participate in an interlocal agreement negotiation. A failure to respond within the forty-five day period is deemed an affirmative response and the interlocal agreement negotiation process may proceed. The interlocal agreement process may not proceed if any negative responses are received within the forty-five day period.

(c) The interlocal agreement must describe the boundaries of the territory proposed for annexation and must be consistent with the boundaries identified in an ordinance describing the boundaries of the territory proposed for annexation and setting a date for a public hearing on the ordinance. If the boundaries of the territory proposed for annexation are agreed to by all parties, a notice of intention must be filed with the boundary review board created under RCW 36.93.030. However, the jurisdiction of the board may not be invoked as described in RCW 36.93.100 for annexations that are the subject of such agreement.

(2) An interlocal annexation agreement under this section must include the following:

(a) A statement of the goals of the agreement. Goals must include, but are not limited to:

(i) The transfer of revenues and assets between the fire protection district and the code city;

(ii) A consideration and discussion of the impact to the level of service of annexation on the unincorporated area, and an agreement that the impact on the ability of fire protection and emergency medical services within the incorporated area must not be negatively impacted at least through the budget cycle in which the annexation occurs;

(iii) A discussion with fire protection districts regarding the division of assets and its impact to citizens inside and outside the newly annexed area;

(iv) Community involvement, including an agreed upon schedule of public meetings in the area or areas proposed for annexation;

(v) Revenue sharing, if any;

(vi) Debt distribution;

(vii) Capital facilities obligations of the code city, county, and fire protection districts;

(viii) An overall schedule or plan on the timing of any annexations covered under this agreement; and

(ix) A description of which of the annexing code cities' development regulations will apply and be enforced in the area.

(b) The subject areas and policies and procedures the parties agree to undertake in annexations. Subject areas may include, but are not limited to:

(i) Roads and traffic impact mitigation;

(ii) Surface and storm water management;

(iii) Coordination and timing of comprehensive plan and development regulation updates;

(iv) Outstanding bonds and special or improvement district assessments;

(v) Annexation procedures;

(vi) Distribution of debt and revenue sharing for annexation proposals, code enforcement, and inspection services;

(vii) Financial and administrative services; and

(viii) Consultation with other service providers, including water-sewer districts, if applicable.

(c) A term of at least five years, which may be extended by mutual agreement of the code city, the county, and the fire protection district.

(3) If the fire protection district, annexing code city, and county reach an agreement on the enumerated goals, or if only the annexing code city and county reach an agreement on the enumerated goals, the code city may adopt an annexation ordinance, but the annexation ordinance provided for in this section is subject to referendum for forty-five days after its passage, provided that no referendum shall be allowed for an annexation under this section if the fire protection district, annexing code city, and the county reach agreement on an annexation for which a code city has initiated the interlocal agreement process by sending notice to the fire protection district representative and county representative prior to July 28, 2013. Upon the filing of a timely and sufficient referendum petition with the legislative body of the code city, signed by qualified electors in a number not less than ten percent of the votes cast in the last general state election in the area to be annexed, the question of annexation must be submitted to the voters of the area in a general election if one is to be held within ninety days or at a special election called for that purpose according to RCW 29A.04.330. Notice of the election must be given as provided in RCW 35A.14.070, and the election must be conducted as provided in the general election laws under Title 29A RCW. The annexation must be deemed approved by the voters unless a majority of the votes cast on the proposition are in opposition to the annexation.

After the expiration of the forty-fifth day from, but excluding, the date of passage of the annexation ordinance, if a timely and sufficient referendum petition has not been filed, the area annexed becomes a part of the code city upon the date fixed in the ordinance of annexation. [2013 2nd sp.s. c 27 § 2; 2009 c 60 § 9.]

Effective date—2013 2nd sp.s. c 27: See note following RCW 35A.14.295.

Chapter 35A.21 RCW

PROVISIONS AFFECTING ALL CODE CITIES

Sections

- 35A.21.322 Transfer of ownership of a code city-owned vessel—Review of vessel's physical condition.
- 35A.21.324 Transfer of ownership of a code city-owned vessel—Further requirements.
- 35A.21.340 Contractors—Authority of city to verify registration and report violations.

35A.21.322 Transfer of ownership of a code city-owned vessel—Review of vessel's physical condition. (1) Prior to transferring ownership of a code city-owned vessel, the code city shall conduct a thorough review of the physical condition of the vessel, the vessel's operating capability, and

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any containers and other materials that are not fixed to the vessel.

(2) If the code city determines that the vessel is in a state of advanced deterioration or poses a reasonably imminent threat to human health or safety, including a threat of environmental contamination, the code city may: (a) Not transfer the vessel until the conditions identified under this subsection have been corrected; or (b) permanently dispose of the vessel by landfill, deconstruction, or other related method.

(3) Vessels taken into custody under chapter 79.100 RCW are not subject to this section or RCW 35A.21.324. [2013 c 291 § 17.]

35A.21.324 Transfer of ownership of a code city-owned vessel—Further requirements. (1) Following the inspection required under RCW 35A.21.322 and prior to transferring ownership of a code city-owned vessel, a code city shall obtain the following from the transferee:

(a) The purposes for which the transferee intends to use the vessel; and

(b) Information demonstrating the prospective owner's intent to obtain legal moorage following the transfer, in the manner determined by the code city.

(2)(a) The code city shall remove any containers or other materials that are not fixed to the vessel and contain hazardous substances, as defined under RCW 70.105D.020.

(b) However, the code city may transfer a vessel with:

(i) Those containers or materials described under (a) of this subsection where the transferee demonstrates to the code city's satisfaction that the container's or material's presence is consistent with the anticipated use of the vessel; and

(ii) A reasonable amount of fuel as determined by the code city, based on factors including the vessel's size, condition, and anticipated use of the vessel, including initial destination following transfer.

(c) The code city may consult with the department of ecology in carrying out the requirements of this subsection.

(3) Prior to sale, and unless the vessel has a title or valid marine document, the code city is required to apply for a certificate of title for the vessel under RCW 88.02.510 and register the vessel under RCW 88.02.550. [2013 c 291 § 18.]

35A.21.340 Contractors—Authority of city to verify registration and report violations. A city that issues a business license to a person required to be registered under chapter 18.27 RCW may verify that the person is registered under chapter 18.27 RCW and report violations to the department of labor and industries. The department of revenue must conduct the verification for cities that participate in the business licensing system. [2013 c 144 § 37; 2011 c 298 § 23; 2009 c 432 § 3.]

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

Report—2009 c 432: See RCW 18.27.800.

Chapter 35A.37 RCW

FUNDS, SPECIAL PURPOSE

Sections

- 35A.37.010 Segregating and accounting.

35A.37.010 Segregating and accounting. Code cities shall establish such funds for the segregation, budgeting, expenditure, and accounting for moneys received for special purposes as are required by general law applicable to such cities' activities and the officers thereof shall pay into, expend from, and account for such moneys in the manner provided therefor including, but not limited to, the requirements of the following:

- (1) Accounting funds as required by RCW 35.37.010;
- (2) Annexation and consolidation fund as required by chapters 35.10 and 35.13 RCW;
- (3) Assessment fund as required by RCW 8.12.480;
- (4) Equipment rental fund as authorized by RCW 35.21.088;
- (5) Current expense fund as required by RCW 35.37.010, usually referred to as the general fund;
- (6) Local improvement guaranty fund as required by RCW 35.54.010;
- (7) An indebtedness and sinking fund, together with separate funds for utilities and institutions as required by RCW 35.37.020;
- (8) Local improvement district fund and revolving fund as required by RCW 35.45.130 and 35.48.010;
- (9) City street fund as required by chapter 35.76 RCW and RCW 47.24.040;
- (10) Firefighters' relief and pension fund as required by chapters 41.16 and 41.18 RCW;
- (11) Police relief and pension fund as required by RCW 41.20.130 and 63.32.030;
- (12) First-class cities' employees retirement and pension system as authorized by chapter 41.28 RCW;
- (13) Applicable rules of the state auditor. [2013 c 23 § 64; 1995 c 301 § 60; 1983 c 3 § 62; 1967 ex.s. c 119 § 35A.37.010.]

Chapter 35A.42 RCW

PUBLIC OFFICERS AND AGENCIES, MEETINGS, DUTIES AND POWERS

Sections

35A.42.040 City clerks and controllers.

35A.42.040 City clerks and controllers. In addition to any specific enumeration of duties of city clerks in a code city's charter or ordinances, and without limiting the generality of RCW 35A.21.030 of this title, the clerks of all code cities shall perform the following duties in the manner prescribed, to wit: (1) Certification of city streets as part of the highway system in accordance with the provisions of RCW 47.24.010; (2) perform the functions of a member of a firefighters' pension board as provided by RCW 41.16.020; (3) keep a record of ordinances of the city and provide copies thereof as authorized by RCW 5.44.080; (4) serve as applicable the trustees of any police relief and pension board as authorized by RCW 41.20.010; and (5) serve as secretary-treasurer of volunteer firefighters' relief and pension boards as provided in RCW 41.24.060. [2013 c 23 § 65; 1991 c 81 § 39; 1967 ex.s. c 119 § 35A.42.040.]

Additional notes found at www.leg.wa.gov

Chapter 35A.81 RCW PUBLIC TRANSPORTATION

Sections

35A.81.010 Application of general law. (*Effective July 1, 2015.*)

35A.81.010 Application of general law. (*Effective July 1, 2015.*) Motor vehicles owned and operated by any code city are exempt from the provisions of chapter 81.80 RCW, except where specifically otherwise provided. Urban passenger transportation systems must receive a refund of the amount of the motor vehicle fuel tax paid on each gallon of motor vehicle fuel used in such systems to the extent authorized by chapter 82.38 RCW. Notwithstanding any provision of the law to the contrary, every urban passenger transportation system as defined in RCW 82.38.080 are exempt from the provisions of chapter 82.38 RCW which requires the payment of use fuel taxes. [2013 c 225 § 603; 1983 c 3 § 73; 1967 ex.s. c 119 § 35A.81.010.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Chapter 35A.84 RCW TAXATION—PROPERTY

Sections

35A.84.010 Procedure and rules relating to ad valorem taxes.

35A.84.010 Procedure and rules relating to ad valorem taxes. The taxation of property in code cities shall be governed by general provisions of the law including, but not limited to, the provisions of: (1) Chapter 84.09 RCW, relating to the time for establishment of official boundaries of taxing districts on the first day of March of each year; (2) chapter 84.12 RCW relating to the assessment and taxation of public utilities; (3) chapter 84.16 RCW, relating to the apportionment of taxation on private car companies; (4) chapter 84.20 RCW, relating to the taxation of easements of public utilities; (5) *chapter 84.24 RCW, relating to the reassessment of property; (6) chapter 84.36 RCW, relating to property subject to taxation and exemption therefrom; (7) chapter 84.40 RCW relating to the listing of property for assessment; (8) chapter 84.41 RCW, relating to reevaluation of property; (9) chapter 84.44 RCW, relating to the taxable situs of personalty; (10) chapter 84.48 RCW, relating to the equalization of assessments; (11) chapter 84.52 RCW, relating to the levy of taxes, both regular and excess; (12) chapter 84.56 RCW, relating to the collection of taxes; (13) chapter 84.60 RCW, relating to the lien of taxes and the priority thereof; (14) chapter 84.69 RCW, relating to refunds and claims therefor against the code city; and (15) RCW 41.16.060, relating to taxation for firefighters' pension fund. [2013 c 23 § 66; 1967 ex.s. c 119 § 35A.84.010.]

***Reviser's note:** Chapter 84.24 RCW was repealed by 1994 c 124 § 42.

Title 36 COUNTIES

Chapters

- 36.18 Fees of county officers.**
36.28A Association of sheriffs and police chiefs.

36.32	County commissioners.
36.35	Tax title lands.
36.39	Assistance and relief.
36.70A	Growth management—Planning by selected counties and cities.
36.95	Television reception improvement districts.
36.110	Jail industries program.

Chapter 36.18 RCW
FEES OF COUNTY OFFICERS

Sections

36.18.018	Fees to state court, administrative office of the courts—Appellate review fee and surcharge—Variable fee for copies and reports.
36.18.020	Clerk's fees, surcharges.

36.18.018 Fees to state court, administrative office of the courts—Appellate review fee and surcharge—Variable fee for copies and reports. (1) State revenue collected by county clerks under subsection (2) of this section must be transmitted to the appropriate state court. The administrative office of the courts shall retain fees collected under subsection (3) of this section.

(2) For appellate review under RAP 5.1(b), two hundred fifty dollars must be charged.

(3) For all copies and reports produced by the administrative office of the courts as permitted under RCW 2.68.020 and supreme court policy, a variable fee must be charged.

(4) Until July 1, 2017, in addition to the fee established under subsection (2) of this section, a surcharge of forty dollars is established for appellate review. The county clerk shall transmit seventy-five percent of this surcharge to the state treasurer for deposit in the judicial stabilization trust account and twenty-five percent must be retained by the county. [2013 2nd sp.s. c 7 § 2; 2012 c 199 § 2; 2011 1st sp.s. c 44 § 3; 2009 c 572 § 3; 2005 c 282 § 43; 1995 c 292 § 15.]

Effective date—2013 2nd sp.s. c 7: See note following RCW 3.62.060.

Effective date—2011 1st sp.s. c 44: See note following RCW 3.62.020.

Effective date—2009 c 572: See note following RCW 43.79.505.

36.18.020 Clerk's fees, surcharges. (1) Revenue collected under this section is subject to division with the state under RCW 36.18.025 and with the county or regional law library fund under RCW 27.24.070, except as provided in subsection (5) of this section.

(2) Clerks of superior courts shall collect the following fees for their official services:

(a) In addition to any other fee required by law, the party filing the first or initial document in any civil action, including, but not limited to an action for restitution, adoption, or change of name, and any party filing a counterclaim, cross-claim, or third-party claim in any such civil action, shall pay, at the time the document is filed, a fee of two hundred dollars except, in an unlawful detainer action under chapter 59.18 or 59.20 RCW for which the plaintiff shall pay a case initiating filing fee of forty-five dollars, or in proceedings filed under RCW 28A.225.030 alleging a violation of the compulsory attendance laws where the petitioner shall not pay a filing fee. The forty-five dollar filing fee under this subsection for an unlawful detainer action shall not include an order to show

cause or any other order or judgment except a default order or default judgment in an unlawful detainer action.

(b) Any party, except a defendant in a criminal case, filing the first or initial document on an appeal from a court of limited jurisdiction or any party on any civil appeal, shall pay, when the document is filed, a fee of two hundred dollars.

(c) For filing of a petition for judicial review as required under RCW 34.05.514 a filing fee of two hundred dollars.

(d) For filing of a petition for unlawful harassment under RCW 10.14.040 a filing fee of fifty-three dollars.

(e) For filing the notice of debt due for the compensation of a crime victim under RCW 7.68.120(2)(a) a fee of two hundred dollars.

(f) In probate proceedings, the party instituting such proceedings, shall pay at the time of filing the first document therein, a fee of two hundred dollars.

(g) For filing any petition to contest a will admitted to probate or a petition to admit a will which has been rejected, or a petition objecting to a written agreement or memorandum as provided in RCW 11.96A.220, there shall be paid a fee of two hundred dollars.

(h) Upon conviction or plea of guilty, upon failure to prosecute an appeal from a court of limited jurisdiction as provided by law, or upon affirmance of a conviction by a court of limited jurisdiction, a defendant in a criminal case shall be liable for a fee of two hundred dollars.

(i) With the exception of demands for jury hereafter made and garnishments hereafter issued, civil actions and probate proceedings filed prior to midnight, July 1, 1972, shall be completed and governed by the fee schedule in effect as of January 1, 1972. However, no fee shall be assessed if an order of dismissal on the clerk's record be filed as provided by rule of the supreme court.

(3) No fee shall be collected when a petition for relinquishment of parental rights is filed pursuant to RCW 26.33.080 or for forms and instructional brochures provided under RCW 26.50.030.

(4) No fee shall be collected when an abstract of judgment is filed by the county clerk of another county for the purposes of collection of legal financial obligations.

(5)(a) Until July 1, 2017, in addition to the fees required to be collected under this section, clerks of the superior courts must collect surcharges as provided in this subsection (5) of which seventy-five percent must be remitted to the state treasurer for deposit in the judicial stabilization trust account and twenty-five percent must be retained by the county.

(b) On filing fees required to be collected under subsection (2)(b) of this section, a surcharge of thirty dollars must be collected.

(c) On all filing fees required to be collected under this section, except for fees required under subsection (2)(b), (d), and (h) of this section, a surcharge of forty dollars must be collected. [2013 2nd sp.s. c 7 § 3; 2012 c 199 § 3; 2011 1st sp.s. c 44 § 5. Prior: 2009 c 572 § 4; 2009 c 479 § 21; 2009 c 417 § 3; prior: 2005 c 457 § 19; 2005 c 374 § 5; 2000 c 9 § 1; 1999 c 42 § 635; 1996 c 211 § 2; prior: 1995 c 312 § 70; 1995 c 292 § 10; 1993 c 435 § 1; 1992 c 54 § 1; 1989 c 342 § 1; prior: 1987 c 382 § 3; 1987 c 202 § 201; 1987 c 56 § 3; prior: 1985 c 24 § 1; 1985 c 7 § 104; 1984 c 263 § 29; 1981 c 330 § 5; 1980 c 70 § 1; 1977 ex.s. c 107 § 1; 1975 c 30 § 1; 1973 c 16 § 1; 1973 c 38 § 1; prior: 1972 ex.s. c 57 § 5; 1972

ex.s. c 20 § 1; 1970 ex.s. c 32 § 1; 1967 c 26 § 9; 1963 c 4 § 36.18.020; prior: 1961 c 304 § 1; 1961 c 41 § 1; 1951 c 51 § 5; 1907 c 56 § 1, part, p 89; 1903 c 151 § 1, part, p 294; 1893 c 130 § 1, part, p 421; Code 1881 § 2086, part, p 355; 1869 p 364 § 1, part; 1863 p 391 § 1, part; 1861 p 34 § 1, part; 1854 p 368 § 1, part; RRS § 497, part.]

Rules of court: Cf. *RAP 14.3, 18.22.*

Effective date—2013 2nd sp.s. c 7: See note following RCW 3.62.060.

Effective date—2011 1st sp.s. c 44: See note following RCW 3.62.020.

Effective date—2009 c 572: See note following RCW 43.79.505.

Effective date—2009 c 479: See note following RCW 2.56.030.

Intent—2005 c 457: See note following RCW 43.08.250.

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

Additional notes found at www.leg.wa.gov

Chapter 36.28A RCW

ASSOCIATION OF SHERIFFS AND POLICE CHIEFS

Sections

- 36.28A.240 Metal theft grant program.
- 36.28A.300 24/7 sobriety program.
- 36.28A.310 24/7 sobriety program pilot project.
- 36.28A.320 24/7 sobriety account.
- 36.28A.330 24/7 sobriety program definitions.
- 36.28A.340 24/7 sobriety program—Counties or cities may participate. *(Effective January 1, 2014.)*
- 36.28A.350 24/7 sobriety program—Bond or pretrial release. *(Effective January 1, 2014.)*
- 36.28A.360 24/7 sobriety program—Washington association of sheriffs and police chiefs may adopt policies and procedures.
- 36.28A.370 24/7 sobriety account—Distribution of funds. *(Effective January 1, 2014.)*
- 36.28A.380 24/7 sobriety program—No waiver or reduction of fees. *(Effective January 1, 2014.)*
- 36.28A.390 24/7 sobriety program—Violation of terms—Penalties. *(Effective January 1, 2014.)*

36.28A.240 Metal theft grant program. (1) When funded, the Washington association of sheriffs and police chiefs shall establish a grant program to assist local law enforcement agencies in the support of special enforcement emphasis targeting metal theft. Grant applications shall be reviewed and awarded through peer review panels. Grant applicants are encouraged to utilize multijurisdictional efforts.

(2) Each grant applicant shall:

- (a) Show a significant metal theft problem in the jurisdiction or jurisdictions receiving the grant;
- (b) Verify that grant awards are sufficient to cover increased investigation, prosecution, and jail costs;
- (c) Design an enforcement program that best suits the specific metal theft problem in the jurisdiction or jurisdictions receiving the grant;
- (d) Demonstrate community coordination focusing on prevention, intervention, and suppression; and
- (e) Collect data on performance.

(3) The cost of administering the grants shall not exceed sixty thousand dollars, or three percent of appropriated funding, whichever is greater.

(4) Grant awards may not be used to supplant preexisting funding sources for special enforcement targeting metal theft. [2013 c 322 § 24.]

36.28A.300 24/7 sobriety program. There is created a 24/7 sobriety program to be administered by the Washington traffic safety commission in conjunction with the Washington association of sheriffs and police chiefs. The program shall coordinate efforts among various local government entities for the purpose of implementing alternatives to incarceration for offenders convicted under RCW 46.61.502 or 46.61.504 with one or more prior convictions under RCW 46.61.502 or 46.61.504. [2013 2nd sp.s. c 35 § 23.]

36.28A.310 24/7 sobriety program pilot project. The Washington association of sheriffs and police chiefs shall conduct a 24/7 sobriety program pilot project.

(1) Pilot project sites shall be established in no more than three counties and two cities. Local jurisdictions outside of the pilot project sites are encouraged to establish a 24/7 sobriety program as soon as practicable.

(2) The Washington association of sheriffs and police chiefs must, to the greatest extent possible, select pilot project sites from diverse geographic areas. The cities selected for participation in the project must not be from within a county selected for the program.

(3) The Washington association of sheriffs and police chiefs shall develop criteria for participation in the 24/7 sobriety program pilot project including, but not limited to:

- (a) Geographic diversity;
- (b) Sufficient volume of eligible participants to provide useable data for the pilot;
- (c) County or city commitment to administration of the program; and
- (d) Capability of the county or city law enforcement agency to effectively accommodate and administer the program.

(4) The Washington association of sheriffs and police chiefs shall provide a study of the 24/7 sobriety program project measuring changes in recidivism and related county or city savings or costs.

(5) The Washington association of sheriffs and police chiefs shall report preliminary findings and final results of the study to the governor and the legislature on an annual basis. It is the intent of the legislature that the 24/7 sobriety program shall achieve the goal of implementation statewide by January 1, 2017. [2013 2nd sp.s. c 35 § 24.]

36.28A.320 24/7 sobriety account. There is hereby established in the state treasury the 24/7 sobriety account. The account shall be maintained and administered by the Washington traffic safety commission to reimburse the state for costs associated with establishing the program and the Washington association of sheriffs and police chiefs for ongoing program administration costs. The Washington traffic safety commission may accept for deposit in the account money from donations, gifts, grants, participation fees, and user fees or payments. Expenditures from the account shall be budgeted through the normal budget process. [2013 2nd sp.s. c 35 § 25.]

36.28A.330 24/7 sobriety program definitions. The definitions in this section apply throughout RCW 36.28A.300 through 36.28A.390 unless the context clearly requires otherwise.

(1) "24/7 electronic alcohol/drug monitoring" means the monitoring by the use of any electronic instrument that is capable of determining and monitoring the presence of alcohol or drugs in a person's body and includes any associated equipment a participant needs in order for the device to properly perform. Monitoring may also include mandatory urine analysis tests as ordered by the court.

(2) "Participant" means a person who has one or more prior convictions for a violation of RCW 46.61.502 or 46.61.504 and who has been ordered by a court to participate in the 24/7 sobriety program.

(3) "Participating agency" means a sheriff's office or a designated entity named by a sheriff that has agreed to participate in the 24/7 sobriety program by enrolling participants, administering one or more of the tests, and submitting reports to the Washington association of sheriffs and police chiefs.

(4) "Participation agreement" means a written document executed by a participant agreeing to participate in the 24/7 sobriety program in a form approved by the Washington association of sheriffs and police chiefs that contains the following information:

- (a) The type, frequency, and time period of testing;
- (b) The location of testing;
- (c) The fees and payment procedures required for testing; and
- (d) The responsibilities and obligations of the participant under the 24/7 sobriety program.

(5) "24/7 sobriety program" means a twenty-four hour and seven day a week sobriety program in which a participant submits to the testing of the participant's blood, breath, urine, or other bodily substances in order to determine the presence of alcohol, marijuana, or any controlled substance in the participant's body. [2013 2nd sp.s. c 35 § 26.]

36.28A.340 24/7 sobriety program—Counties or cities may participate. (Effective January 1, 2014.) Each county or city, through its sheriff or chief, may participate in the 24/7 sobriety program. If a sheriff or chief is unwilling or unable to participate in the 24/7 sobriety program, the sheriff or chief may designate an entity willing to provide the service. [2013 2nd sp.s. c 35 § 27.]

Effective date—2013 2nd sp.s. c 35 §§ 27, 28, and 30-32: "Sections 27, 28, and 30 through 32 of this act take effect January 1, 2014." [2013 2nd sp.s. c 35 § 44.]

36.28A.350 24/7 sobriety program—Bond or pretrial release. (Effective January 1, 2014.) The court may condition any bond or pretrial release upon participation in the 24/7 sobriety program and payment of associated costs and expenses, if available. [2013 2nd sp.s. c 35 § 28.]

Effective date—2013 2nd sp.s. c 35 §§ 27, 28, and 30-32: See note following RCW 36.28A.340.

36.28A.360 24/7 sobriety program—Washington association of sheriffs and police chiefs may adopt policies and procedures. The Washington association of sheriffs and police chiefs may adopt policies and procedures for the administration of the 24/7 sobriety program to:

- (1) Provide for procedures and apparatus for testing;
- (2) Establish fees and costs for participation in the program to be paid by the participants;

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(3) Require the submission of reports and information by law enforcement agencies within this state. [2013 2nd sp.s. c 35 § 29.]

36.28A.370 24/7 sobriety account—Distribution of funds. (Effective January 1, 2014.) (1) Funds in the 24/7 sobriety account shall be distributed as follows:

(a) Any daily user fee, installation fee, deactivation fee, enrollment fee, or monitoring fee collected under the 24/7 sobriety program shall be collected by the sheriff or chief, or an entity designated by the sheriff or chief, and deposited with the county or city treasurer of the proper county or city, the proceeds of which shall be applied and used only to defray the recurring costs of the 24/7 sobriety program including maintaining equipment, funding support services, and ensuring compliance; and

(b) Any participation fee collected in the administration of testing under the 24/7 sobriety program to cover program administration costs incurred by the Washington association of sheriffs and police chiefs shall be collected by the sheriff or chief, or an entity designated by the sheriff or chief, and deposited in the 24/7 sobriety account.

(2) All applicable fees shall be paid by the participant contemporaneously or in advance of the time when the fee becomes due. [2013 2nd sp.s. c 35 § 30.]

Effective date—2013 2nd sp.s. c 35 §§ 27, 28, and 30-32: See note following RCW 36.28A.340.

36.28A.380 24/7 sobriety program—No waiver or reduction of fees. (Effective January 1, 2014.) The court shall not waive or reduce fees or associated costs charged for participation in the 24/7 sobriety program. [2013 2nd sp.s. c 35 § 31.]

Effective date—2013 2nd sp.s. c 35 §§ 27, 28, and 30-32: See note following RCW 36.28A.340.

36.28A.390 24/7 sobriety program—Violation of terms—Penalties. (Effective January 1, 2014.) (1) A participant who violates the terms of participation in the 24/7 sobriety program or does not pay the required fees or associated costs shall:

- (a) Receive a written warning notice for a first violation;
- (b) Serve a term of two days imprisonment for a second violation;
- (c) Serve a term of up to five days imprisonment for a third violation;
- (d) Serve a term of up to ten days imprisonment for a fourth violation; and
- (e) For a fifth violation, the participant shall serve the entire remaining sentence imposed by the court.

(2) A sheriff or chief, or the designee of a sheriff or chief, who has probable cause to believe that a participant has violated the terms of participation in the 24/7 sobriety program or has not paid the required fees or associated costs shall immediately take the participant into custody and cause him or her to be held until an appearance before a judge on the next judicial day. [2013 2nd sp.s. c 35 § 32.]

Effective date—2013 2nd sp.s. c 35 §§ 27, 28, and 30-32: See note following RCW 36.28A.340.

**Chapter 36.32 RCW
COUNTY COMMISSIONERS**

Sections

- 36.32.302 Transfer of ownership of county-owned vessel—Review of vessel’s physical condition.
- 36.32.304 Transfer of ownership of county-owned vessel—Further requirements.

36.32.302 Transfer of ownership of county-owned vessel—Review of vessel’s physical condition. (1) Prior to transferring ownership of a county-owned vessel, the county shall conduct a thorough review of the physical condition of the vessel, the vessel’s operating capability, and any containers and other materials that are not fixed to the vessel.

(2) If the county determines that the vessel is in a state of advanced deterioration or poses a reasonably imminent threat to human health or safety, including a threat of environmental contamination, the county may: (a) Not transfer the vessel until the conditions identified under this subsection have been corrected; or (b) permanently dispose of the vessel by landfill, deconstruction, or other related method.

(3) Vessels taken into custody under chapter 79.100 RCW are not subject to this section or RCW 36.32.304. [2013 c 291 § 19.]

36.32.304 Transfer of ownership of county-owned vessel—Further requirements. (1) Following the inspection required under RCW 36.32.302 and prior to transferring ownership of a county-owned vessel, a county shall obtain the following from the transferee:

- (a) The purposes for which the transferee intends to use the vessel; and
- (b) Information demonstrating the prospective owner’s intent to obtain legal moorage following the transfer, in the manner determined by the county.

(2)(a) The county shall remove any containers or other materials that are not fixed to the vessel and contain hazardous substances, as defined under RCW 70.105D.020.

(b) However, the county may transfer a vessel with:

- (i) Those containers or materials described under (a) of this subsection where the transferee demonstrates to the county’s satisfaction that the container’s or material’s presence is consistent with the anticipated use of the vessel; and
- (ii) A reasonable amount of fuel as determined by the county, based on factors including the vessel’s size, condition, and anticipated use of the vessel including initial destination following transfer.

(c) The county may consult with the department of ecology in carrying out the requirements of this subsection.

(3) Prior to sale, and unless the vessel has a title or valid marine document, the county is required to apply for a certificate of title for the vessel under RCW 88.02.510 and register the vessel under RCW 88.02.550. [2013 c 291 § 20.]

**Chapter 36.35 RCW
TAX TITLE LANDS**

Sections

- 36.35.110 Disposition of proceeds of sales.
- 36.35.140 Rental of tax-title property on month to month tenancy authorized.

- 36.35.190 Quieting title to tax-title property—Redemption before judgment.
- 36.35.220 Quieting title to tax-title property—Appearance fee—Tender of taxes.
- 36.35.250 Quieting title to tax-title property—Special assessments payable out of surplus.

36.35.110 Disposition of proceeds of sales. (1) No claims are allowed against the county from any municipality, school district, road district or other taxing district for taxes levied on property acquired by the county by tax deed under the provisions of this chapter, but all taxes must at the time of deeding the property be thereby canceled. However, the proceeds of any sale of any property acquired by the county by tax deed must first be applied to reimburse the county for the costs of foreclosure and sale. The remainder of the proceeds, if any, must be applied to pay any amounts deferred under chapter 84.37 or 84.38 RCW on the property, including accrued interest, and outstanding at the time the county acquired the property by tax deed. The remainder of the proceeds, if any, must be justly apportioned to the various funds existing at the date of the sale, in the territory in which such property is located, according to the tax levies of the year last in process of collection.

(2) For purposes of this section, "costs of foreclosure and sale" means those costs of foreclosing on the property that, when collected, are subject to RCW 84.56.020(9), and the direct costs incurred by the county in selling the property. [2013 c 221 § 2; 1961 c 15 § 84.64.230. Prior: 1925 ex.s. c 130 § 132; RRS § 11293; prior: 1899 c 141 § 28. Formerly RCW 84.64.230.]

36.35.140 Rental of tax-title property on month to month tenancy authorized. The board of county commissioners of any county may, pending sale of any county property acquired by foreclosure of delinquent taxes or amounts deferred under chapter 84.37 or 84.38 RCW, rent any portion thereof on a tenancy from month to month. From the proceeds of the rentals the board of county commissioners must first pay all expense in management of said property and in repairing, maintaining and insuring the improvements thereon. The balance of said proceeds must first be paid to reimburse the county for the costs of foreclosure and sale as defined in RCW 36.35.110. The remainder of the proceeds, if any, must be paid to the department of revenue in the amount of any taxes deferred under chapter 84.37 or 84.38 RCW on the property, including accrued interest, outstanding at the time the county acquired the property by tax deed, and then to the various taxing units interested in the taxes levied against said property in the same proportion as the current tax levies of the taxing units having levies against said property. [2013 c 221 § 3; 1961 c 15 § 84.64.310. Prior: 1945 c 170 § 1; Rem. Supp. 1945 § 11298-1. Formerly RCW 84.64.310.]

36.35.190 Quieting title to tax-title property—Redemption before judgment. (1) Any person, firm or corporation who or which may have been entitled to redeem the property involved prior to the issuance of the treasurer’s deed to the county, and his or her or its successor in interest, has the right, at any time after the commencement of, and prior to the judgment in the action authorized herein, to redeem such property by paying to the county treasurer:

(a) The amount of any taxes deferred under chapter 84.37 or 84.38 RCW on the property, including accrued interest, outstanding at the time the county acquired the property by tax deed;

(b) The amount of the taxes for which the property was sold to the county, and the amount of any other general taxes which may have accrued prior to the issuance of said treasurer's deed, together with interest on all such taxes from the date of delinquency thereof, respectively, at the rate of twelve percent per annum;

(c) For the benefit of the assessment district concerned the amount of principal, penalty and interest of all special assessments, if any, which have been levied against such property; and

(d) Such proportional part of the costs of the tax or tax deferral foreclosure proceedings and of the action herein authorized as the county treasurer determines.

(2) Upon redemption of any property before judgment as herein provided, the county treasurer must issue to the redemptioner a certificate specifying the amount of the taxes, including amounts deferred under chapters 84.37 and 84.38 RCW, special assessments, penalty, interest and costs charged describing the land and stating that the taxes, including any applicable deferred taxes, special assessments, penalty, interest and costs specified have been fully paid, and the liens thereof discharged. Such certificate must clear the land described therein from any claim of the county based on the treasurer's deed previously issued in the tax or tax deferral foreclosure proceedings. [2013 c 221 § 4; 2009 c 549 § 4076; 1961 c 15 § 84.64.360. Prior: 1925 ex.s. c 171 § 4; RRS § 11308-4. Formerly RCW 84.64.360.]

36.35.220 Quieting title to tax-title property—Appearance fee—Tender of taxes. Any person filing a statement in such action must pay the clerk of the court an appearance fee in the amount required by the county for appearances in civil actions, and is required to tender the amount of all taxes, including any amounts deferred under chapter 84.37 or 84.38 RCW, interest and costs charged against the real property to which he or she lays claim, and no further costs in such action may be required or recovered. [2013 c 221 § 5; 2009 c 549 § 4077; 1961 c 15 § 84.64.390. Prior: 1925 ex.s. c 171 § 7; RRS § 11308-7. Formerly RCW 84.64.390.]

36.35.250 Quieting title to tax-title property—Special assessments payable out of surplus. Nothing in RCW 36.35.160 through 36.35.270 contained may be construed to deprive any city, town, or other unit of local government that imposed special assessments on the property by including the property in a local improvement or special assessment district of its right to reimbursement for special assessments out of any surplus over and above the taxes, including amounts deferred under chapters 84.37 and 84.38 RCW, interest and costs involved. [2013 c 221 § 6; 1998 c 106 § 19; 1961 c 15 § 84.64.420. Prior: 1925 ex.s. c 171 § 10; RRS § 11308-10. Formerly RCW 84.64.420.]

Chapter 36.39 RCW ASSISTANCE AND RELIEF

Sections

36.39.060 Senior citizens programs—Long-term care ombuds programs—Authorization.

36.39.060 Senior citizens programs—Long-term care ombuds programs—Authorization. (1) Counties, cities, and towns are granted the authority, and it is hereby declared to be a public purpose for counties, cities, and towns, to establish and administer senior citizens programs either directly or by creating public corporations or authorities to carry out the programs and to expend their own funds for such purposes, as well as to expend federal, state, or private funds that are made available for such purposes. Such federal funds shall include, but not be limited to, funds provided under the federal older Americans act, as amended (42 U.S.C. Sec. 3001 et seq.).

(2) Counties, cities, and towns may establish and administer long-term care ombuds programs for residents, patients, and clients if such a program is not prohibited by federal or state law. Such local ombuds programs shall be coordinated with the efforts of other long-term care ombuds programs, including the office of the state long-term care ombuds established in RCW 43.190.030, to avoid multiple investigation of complaints. [2013 c 23 § 67; 1983 c 290 § 13; 1979 c 109 § 1.]

Additional notes found at www.leg.wa.gov

Chapter 36.70A RCW GROWTH MANAGEMENT—PLANNING BY SELECTED COUNTIES AND CITIES

Sections

36.70A.200 Siting of essential public facilities—Limitation on liability.

36.70A.300 Final orders.

36.70A.340 Noncompliance and sanctions. (*Effective July 1, 2015.*)

36.70A.200 Siting of essential public facilities—Limitation on liability. (1) The comprehensive plan of each county and city that is planning under RCW 36.70A.040 shall include a process for identifying and siting essential public facilities. Essential public facilities include those facilities that are typically difficult to site, such as airports, state education facilities and state or regional transportation facilities as defined in RCW 47.06.140, regional transit authority facilities as defined in RCW 81.112.020, state and local correctional facilities, solid waste handling facilities, and inpatient facilities including substance abuse facilities, mental health facilities, group homes, and secure community transition facilities as defined in RCW 71.09.020.

(2) Each county and city planning under RCW 36.70A.040 shall, not later than September 1, 2002, establish a process, or amend its existing process, for identifying and siting essential public facilities and adopt or amend its development regulations as necessary to provide for the siting of secure community transition facilities consistent with statutory requirements applicable to these facilities.

(3) Any city or county not planning under RCW 36.70A.040 shall, not later than September 1, 2002, establish a process for siting secure community transition facilities and

adopt or amend its development regulations as necessary to provide for the siting of such facilities consistent with statutory requirements applicable to these facilities.

(4) The office of financial management shall maintain a list of those essential state public facilities that are required or likely to be built within the next six years. The office of financial management may at any time add facilities to the list.

(5) No local comprehensive plan or development regulation may preclude the siting of essential public facilities.

(6) No person may bring a cause of action for civil damages based on the good faith actions of any county or city to provide for the siting of secure community transition facilities in accordance with this section and with the requirements of chapter 12, Laws of 2001 2nd sp. sess. For purposes of this subsection, "person" includes, but is not limited to, any individual, agency as defined in RCW 42.17A.005, corporation, partnership, association, and limited liability entity.

(7) Counties or cities siting facilities pursuant to subsection (2) or (3) of this section shall comply with RCW 71.09.341.

(8) The failure of a county or city to act by the deadlines established in subsections (2) and (3) of this section is not:

(a) A condition that would disqualify the county or city for grants, loans, or pledges under RCW 43.155.070 or 70.146.070;

(b) A consideration for grants or loans provided under RCW 43.17.250(3); or

(c) A basis for any petition under RCW 36.70A.280 or for any private cause of action. [2013 c 275 § 5; 2011 c 60 § 17; 2010 c 62 § 1; 2002 c 68 § 2; 2001 2nd sp.s. c 12 § 205; 1998 c 171 § 3; 1991 sp.s. c 32 § 1.]

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

Purpose—2002 c 68: "The purpose of this act is to:

(1) Enable the legislature to act upon the recommendations of the joint select committee on the equitable distribution of secure community transition facilities established in section 225, chapter 12, Laws of 2001 2nd sp. sess.; and

(2) Harmonize the preemption provisions in RCW 71.09.250 with the preemption provisions applying to future secure community transition facilities to reflect the joint select committee's recommendation that the preemption granted for future secure community transition facilities be the same throughout the state." [2002 c 68 § 1.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

36.70A.300 Final orders. (1) The board shall issue a final order that shall be based exclusively on whether or not a state agency, county, or city is in compliance with the requirements of this chapter, chapter 90.58 RCW as it relates to adoption or amendment of shoreline master programs, or chapter 43.21C RCW as it relates to adoption of plans, development regulations, and amendments thereto, under RCW 36.70A.040 or chapter 90.58 RCW.

(2)(a) Except as provided in (b) of this subsection, the final order shall be issued within one hundred eighty days of receipt of the petition for review, or, if multiple petitions are filed, within one hundred eighty days of receipt of the last petition that is consolidated.

(b) The board may extend the period of time for issuing a decision to enable the parties to settle the dispute if addi-

tional time is necessary to achieve a settlement, and (i) an extension is requested by all parties, or (ii) an extension is requested by the petitioner and respondent and the board determines that a negotiated settlement between the remaining parties could resolve significant issues in dispute. The request must be filed with the board not later than seven days before the date scheduled for the hearing on the merits of the petition. The board may authorize one or more extensions for up to ninety days each, subject to the requirements of this section.

(3) In the final order, the board shall either:

(a) Find that the state agency, county, or city is in compliance with the requirements of this chapter, chapter 90.58 RCW as it relates to the adoption or amendment of shoreline master programs, or chapter 43.21C RCW as it relates to adoption of plans, development regulations, and amendments thereto, under RCW 36.70A.040 or chapter 90.58 RCW; or

(b) Find that the state agency, county, or city is not in compliance with the requirements of this chapter, chapter 90.58 RCW as it relates to the adoption or amendment of shoreline master programs, or chapter 43.21C RCW as it relates to adoption of plans, development regulations, and amendments thereto, under RCW 36.70A.040 or chapter 90.58 RCW, in which case the board shall remand the matter to the affected state agency, county, or city. The board shall specify a reasonable time not in excess of one hundred eighty days, or such longer period as determined by the board in cases of unusual scope or complexity, within which the state agency, county, or city shall comply with the requirements of this chapter. The board may require periodic reports to the board on the progress the jurisdiction is making towards compliance.

(4)(a) Unless the board makes a determination of invalidity under RCW 36.70A.302, a finding of noncompliance and an order of remand shall not affect the validity of comprehensive plans and development regulations during the period of remand.

(b) Unless the board makes a determination of invalidity, state agencies, commissions, and governing boards may not determine a county, city, or town to be ineligible or otherwise penalized in the acceptance of applications or the awarding of state agency grants or loans during the period of remand. This subsection (4)(b) applies only to counties, cities, and towns that have: (i) Delayed the initial effective date of the action subject to the petition before the board until after the board issues a final determination; or (ii) within thirty days of receiving notice of a petition for review by the board, delayed or suspended the effective date of the action subject to the petition before the board until after the board issues a final determination.

(5) Any party aggrieved by a final decision of the hearings board may appeal the decision to superior court as provided in RCW 34.05.514 or 36.01.050 within thirty days of the final order of the board. Unless the board makes a determination of invalidity under RCW 36.70A.302, state agencies, commissions, or governing boards shall not penalize counties, cities, or towns during the pendency of an appeal as provided in RCW 43.17.250. [2013 c 275 § 1; 1997 c 429 § 14; 1995 c 347 § 110; 1991 sp.s. c 32 § 11.]

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

Additional notes found at www.leg.wa.gov

36.70A.340 Noncompliance and sanctions. (*Effective July 1, 2015.*) Upon receipt from the board of a finding that a state agency, county, or city is in noncompliance under RCW 36.70A.330, or as a result of failure to meet the requirements of RCW 36.70A.210, the governor may either:

- (1) Notify and direct the director of the office of financial management to revise allotments in appropriation levels;
- (2) Notify and direct the state treasurer to withhold the portion of revenues to which the county or city is entitled under one or more of the following: The motor vehicle fuel tax, as provided in chapter 82.38 RCW; the transportation improvement account, as provided in RCW 47.26.084; the rural arterial trust account, as provided in RCW 36.79.150; the sales and use tax, as provided in chapter 82.14 RCW; the liquor profit tax, as provided in RCW 66.08.190; and the liquor excise tax, as provided in RCW 82.08.170; or
- (3) File a notice of noncompliance with the secretary of state and the county or city, which temporarily rescinds the county or city's authority to collect the real estate excise tax under RCW 82.46.030 until the governor files a notice rescinding the notice of noncompliance. [2013 c 225 § 604; 2011 c 120 § 2; 1991 sp.s. c 32 § 26.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Chapter 36.95 RCW TELEVISION RECEPTION IMPROVEMENT DISTRICTS

Sections

36.95.100	Tax levied—Maximum—Exemptions.
36.95.130	District board—Powers generally.
36.95.160	District treasurer—Duties—District warrants.
36.95.180	Costs of county officers reimbursed.

36.95.100 Tax levied—Maximum—Exemptions. (1) The tax provided for in RCW 36.95.090 and this section may not exceed sixty dollars per year per television set within the district. No person may be taxed for more than one television set, except that a motel or hotel or any person owning more than five television sets must pay at a rate of one-fifth of the annual tax rate imposed for each of the first five television sets and one-tenth of the annual tax rate imposed for each additional television set.

(2) An owner of a television set within the district is exempt from paying the excise tax on the television set if:

- (a) The owner's television set does not receive at least a class grade B contour signal retransmitted by the television translator station or other similar device operated by the district, as such class is defined under regulations of the Federal Communications Commission as of August 9, 1971;
- (b) The owner is currently subscribing to and receiving the services of a community antenna system (CATV) to which the owner's television set is connected; or
- (c) The owner is currently subscribing to and receiving the services of a satellite carrier, as that term is defined in 17 U.S.C. Sec. 119, as of January 1, 2013.

(3) To qualify for an exemption specified in subsection (2) of this section, an owner of a television set must file a statement with the board claiming the owner's grounds for an exemption. Space for the statement must be provided in tax

notices sent to taxpayers pursuant to RCW 36.95.160. [2013 c 191 § 1; 2009 c 549 § 4158; 1981 c 52 § 2; 1975 c 11 § 1; 1971 ex.s. c 155 § 10.]

36.95.130 District board—Powers generally. In addition to other powers provided for under this chapter, the board has the following powers:

- (1) To perform all acts necessary to assure that the purposes of this chapter will be carried out fairly and efficiently;
- (2) To acquire, build, construct, repair, own, maintain, and operate any necessary stations retransmitting visual and aural signals intended to be received by the general public, relay stations, pick-up stations, or any other electrical or electronic system necessary. However, the board has no power to originate programs;
- (3) To make contracts to compensate any owner of land or other property for the use of such property for the purposes of this chapter;
- (4) To make contracts with the United States, or any state, municipality, or any department or agency of those entities for carrying out the general purposes for which the district is formed;
- (5) To acquire by gift, devise, bequest, lease, or purchase real and personal property, tangible or intangible, including lands, rights-of-way, and easements, necessary or convenient for its purposes;
- (6) To make contracts of any lawful nature (including labor contracts or those for employees' benefits), employ engineers, laboratory personnel, attorneys, other technical or professional assistants, and any other assistants or employees necessary to carry out the provisions of this chapter;
- (7) To contract indebtedness or borrow money and to issue warrants or bonds to be paid from district revenues. The bonds, warrants, or other obligations may be in any form, including bearer or registered as provided in RCW 39.46.030. Moreover, such warrants and bonds may be issued and sold in accordance with chapter 39.46 RCW;
- (8) To prescribe excise tax rates for providing services throughout the area in accordance with the provisions of this chapter;

(9) To assist the county treasurer in sending tax notices to taxpayers pursuant to RCW 36.95.160; and

(10) To apply for, accept, and be the holder of any permit or license issued by or required under federal or state law. [2013 c 191 § 2; 1985 c 76 § 2; 1983 c 167 § 102; 1980 c 100 § 2; 1971 ex.s. c 155 § 13.]

Additional notes found at www.leg.wa.gov

36.95.160 District treasurer—Duties—District warrants. (1) The treasurer of the county in which a district is located is the treasurer of the district.

(2) The county treasurer must collect the excise tax provided for under this chapter and send notice of payment due to persons owing the tax. To reduce costs of services performed by the county treasurer, district board members and employees may assist the treasurer in sending tax notices to taxpayers.

(3) Districts with fewer than twelve hundred persons subject to the excise tax and levying an excise tax of forty dollars or more per television set per year may:

- (a) Send tax notices bimonthly; and

(b) Collect excise tax revenue, which must be forwarded to the county treasurer for deposit in the district account.

(4) All district funds must be deposited with the county treasurer. All district payments must be made by the county treasurer from district funds upon warrants issued by the county auditor, except the sums to be paid out of any bond fund for principal and interest payments on bonds. All warrants must be paid in the order of issuance.

(5) The treasurer must report monthly to the board, in writing, the amount in the district fund or funds. [2013 c 191 § 3; 2009 c 549 § 4161; 1983 c 167 § 103; 1981 c 52 § 4; 1971 ex.s. c 155 § 16.]

Additional notes found at www.leg.wa.gov

36.95.180 Costs of county officers reimbursed. (1) The board must reimburse the county auditor, assessor, and treasurer for the actual costs of services performed by them in behalf of the district.

(2) A district may reduce costs of services performed by the county treasurer by assisting the treasurer in sending tax notices to taxpayers pursuant to RCW 36.95.160. [2013 c 191 § 4; 1971 ex.s. c 155 § 18.]

Chapter 36.110 RCW

JAIL INDUSTRIES PROGRAM

Sections

36.110.130 Free venture industry agreements—Effect of failure.

36.110.140 Education and training.

36.110.130 Free venture industry agreements—Effect of failure. In the event of a failure such as a bankruptcy or dissolution, of a private sector business, industry, or nonprofit organization engaged in a free venture industry agreement, responsibility for obligations under Title 51 RCW must be borne by the city or county responsible for establishment of the free venture industry agreement, as if the city or county had been the employing agency. To ensure that this obligation can be clearly identified and accomplished, and to provide accountability for purposes of the department of labor and industries, a free venture jail industry agreement entered into by a city or county and private sector business, industry, or nonprofit organization should be filed under a separate business license application in accordance with chapter 19.02 RCW, establishing a new and separate account with the department of labor and industries, and not be reported under an existing account for parties to the free venture industry agreement. [2013 c 144 § 38; 1995 c 154 § 3; 1993 c 285 § 13.]

36.110.140 Education and training. To the extent possible, jail industries programs shall be augmented by education and training to improve worker literacy and employability skills. Such education and training may include, but is not limited to, basic adult education, work towards earning a high school equivalency certificate as provided in RCW 28B.50.536, vocational and preemployment work maturity skills training, and apprenticeship classes. [2013 c 39 § 18; 1993 c 285 § 14.]

Title 38

MILITIA AND MILITARY AFFAIRS

Chapters

38.52 Emergency management.

Chapter 38.52 RCW

EMERGENCY MANAGEMENT

Sections

38.52.540 Enhanced 911 account.

38.52.540 Enhanced 911 account. (1) The enhanced 911 account is created in the state treasury. All receipts from the state enhanced 911 excise taxes imposed by RCW 82.14B.030 must be deposited into the account. Moneys in the account must be used only to support the statewide coordination and management of the enhanced 911 system, for the implementation of wireless enhanced 911 statewide, for the modernization of enhanced 911 emergency communications systems statewide, and to help supplement, within available funds, the operational costs of the system, including adequate funding of counties to enable implementation of wireless enhanced 911 service and reimbursement of radio communications service companies for costs incurred in providing wireless enhanced 911 service pursuant to negotiated contracts between the counties or their agents and the radio communications service companies. For the 2013-2015 fiscal biennium, the account may be used for a criminal history system upgrade in the Washington state patrol and for activities and programs in the military department. A county must show just cause, including but not limited to a true and accurate accounting of the funds expended, for any inability to provide reimbursement to radio communications service companies of costs incurred in providing enhanced 911 service.

(2) Funds generated by the enhanced 911 excise tax imposed by RCW 82.14B.030(5) may not be distributed to any county that has not imposed the maximum county enhanced 911 excise tax allowed under RCW 82.14B.030(1). Funds generated by the enhanced 911 excise tax imposed by RCW 82.14B.030(6) may not be distributed to any county that has not imposed the maximum county enhanced 911 excise tax allowed under RCW 82.14B.030(2).

(3) The state enhanced 911 coordinator, with the advice and assistance of the enhanced 911 advisory committee, is authorized to enter into statewide agreements to improve the efficiency of enhanced 911 services for all counties and shall specify by rule the additional purposes for which moneys, if available, may be expended from this account. [2013 2nd sp.s. c 4 § 966; 2012 2nd sp.s. c 7 § 915; 2010 1st sp.s. c 19 § 18. Prior: 2002 c 371 § 905; 2002 c 341 § 4; 2001 c 128 § 2; 1998 c 304 § 14; 1994 c 96 § 7; 1991 c 54 § 6.]

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

Effective date—2012 2nd sp.s. c 7: See note following RCW 2.68.020.

Effective dates—2010 1st sp.s. c 19: See note following RCW 82.14B.010.

Findings—2001 c 128: "The legislature finds that the statewide emergency communications network of enhanced 911 telephone service, which

allows an immediate display of a caller’s identification and location, has served to further the safety, health, and welfare of the state’s citizens, and has saved lives.

The legislature further finds that statewide operation and management of the enhanced 911 system will create efficiencies of operation and permit greater local control of county 911 operations, and further that some counties will continue to need assistance from the state to maintain minimum enhanced 911 service levels." [2001 c 128 § 1.]

Findings—Effective dates—1998 c 304: See notes following RCW 82.14B.020.

Finding—Intent—Effective dates—1994 c 96: See notes following RCW 82.14B.020.

Additional notes found at www.leg.wa.gov

Title 39

PUBLIC CONTRACTS AND INDEBTEDNESS

Chapters

- 39.08 Contractor’s bond.**
- 39.10 Alternative public works contracting procedures.**
- 39.12 Prevailing wages on public works.**
- 39.26 Procurement of goods and services.**
- 39.30 Contracts—Indebtedness limitations—Competitive bidding violations.**
- 39.32 Acquisition of governmental property.**
- 39.102 Local infrastructure financing tool program.**

**Chapter 39.08 RCW
CONTRACTOR’S BOND**

Sections

- 39.08.010 Bond required—Conditions—Retention of contract amount in lieu of bond.
- 39.08.030 Conditions of bond—Notice of claim—Action on bond—Attorneys’ fees (as amended by 2013 c 28). (Effective until June 30, 2016.)
- 39.08.030 Conditions of bond—Notice of claim—Action on bond—Attorneys’ fees (as amended by 2013 c 113). (Effective until June 30, 2016.)
- 39.08.030 Conditions of bond—Notice of claim—Action on bond—Attorneys’ fees. (Effective June 30, 2016.)

39.08.010 Bond required—Conditions—Retention of contract amount in lieu of bond. (1)(a) Whenever any board, council, commission, trustees, or body acting for the state or any county or municipality or any public body must contract with any person or corporation to do any work for the state, county, or municipality, or other public body, city, town, or district, such board, council, commission, trustees, or body must require the person or persons with whom such contract is made to make, execute, and deliver to such board, council, commission, trustees, or body a good and sufficient bond, with a surety company as surety, conditioned that such person or persons must:

- (i) Faithfully perform all the provisions of such contract;
- (ii) Pay all laborers, mechanics, and subcontractors and material suppliers, and all persons who supply such person or persons, or subcontractors, with provisions and supplies for the carrying on of such work; and
- (iii) Pay the taxes, increases, and penalties incurred on the project under Titles 50, 51, and 82 RCW on: (A) Projects referred to in RCW 60.28.011(1)(b); and/or (B) projects for

which the bond is conditioned on the payment of such taxes, increases, and penalties.

(b) The bond, in cases of cities and towns, must be filed with the clerk or comptroller thereof, and any person or persons performing such services or furnishing material to any subcontractor has the same right under the provisions of such bond as if such work, services, or material was furnished to the original contractor.

(2) The provisions of RCW 39.08.010 through 39.08.030 do not apply to any money loaned or advanced to any such contractor, subcontractor, or other person in the performance of any such work.

(3) On contracts of thirty-five thousand dollars or less, at the option of the contractor the respective public entity may, in lieu of the bond, retain fifty percent of the contract amount for a period of thirty days after date of final acceptance, or until receipt of all necessary releases from the department of revenue, the employment security department, and the department of labor and industries and settlement of any liens filed under chapter 60.28 RCW, whichever is later.

(4) For contracts of one hundred thousand dollars or less, the public entity may accept a full payment and performance bond from an individual surety or sureties.

(5) The surety must agree to be bound by the laws of the state of Washington and subjected to the jurisdiction of the state of Washington. [2013 c 113 § 2. Prior: 2007 c 218 § 88; 2007 c 210 § 3; 1989 c 145 § 1; 1982 c 98 § 5; 1975 1st ex.s. c 278 § 23; 1967 c 70 § 2; 1915 c 28 § 1; 1909 c 207 § 1; RRS § 1159; prior: 1897 c 44 § 1; 1888 p 15 § 1.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

State highway construction and maintenance, bond and surety requirements: Chapter 47.28 RCW.

Additional notes found at www.leg.wa.gov

39.08.030 Conditions of bond—Notice of claim—Action on bond—Attorneys’ fees (as amended by 2013 c 28). (Effective until June 30, 2016.) (1) The bond mentioned in RCW 39.08.010 shall be in an amount equal to the full contract price agreed to be paid for such work or improvement, except under subsections (2) and (3) of this section, and shall be to the state of Washington, except as otherwise provided in RCW 39.08.100, and except in cases of cities (~~and~~), towns, and water-sewer districts, in which cases such municipalities may by general ordinance fix and determine the amount of such bond and to whom such bond shall run: PROVIDED, The same shall not be for a less amount than twenty-five percent of the contract price of any such improvement for cities and towns, and not less than the full contract price of any such improvement for water-sewer districts, and may designate that the same shall be payable to such city, town, or water-sewer district and not to the state of Washington, and all such persons mentioned in RCW 39.08.010 shall have a right of action in his, her, or their own name or names on such bond for work done by such laborers or mechanics, and for materials furnished or provisions and goods supplied and furnished in the prosecution of such work, or the making of such improvements: PROVIDED, That such persons shall not have any right of action on such bond for any sum whatever, unless within thirty days from and after the completion of the contract with an acceptance of the work by the affirmative action of the board, council, commission, trustees, officer, or body acting for the state, county or municipality, or other public body, city, town or district, the laborer, mechanic or subcontractor, or material supplier, or person claiming to have supplied materials, provisions or goods for the prosecution of such work, or the making of such improvement, shall present to and file with such board, council, commission, trustees or body acting for the state, county or municipality, or other public body, city, town or district, a notice in writing in substance as follows:

To (here insert the name of the state, county or municipality or other public body, city, town or district):

Notice is hereby given that the undersigned (here insert the name of the laborer, mechanic or subcontractor, or material supplier, or person claiming to have furnished labor, materials or provisions for or upon such contract or work) has a claim in the sum of dollars (here insert the amount) against the bond taken from (here insert the name of the principal and surety or sureties upon such bond) for the work of (here insert a brief mention or description of the work concerning which said bond was taken).

(here to be signed)

Such notice shall be signed by the person or corporation making the claim or giving the notice, and said notice, after being presented and filed, shall be a public record open to inspection by any person, and in any suit or action brought against such surety or sureties by any such person or corporation to recover for any of the items hereinbefore specified, the claimant shall be entitled to recover in addition to all other costs, ~~((attorney's)) attorneys'~~ fees in such sum as the court shall adjudge reasonable: PROVIDED, HOWEVER, That no ~~((attorney's)) attorneys'~~ fees shall be allowed in any suit or action brought or instituted before the expiration of thirty days following the date of filing of the notice hereinbefore mentioned: PROVIDED FURTHER, That any city may avail itself of the provisions of RCW 39.08.010 through 39.08.030, notwithstanding any charter provisions in conflict herewith: AND PROVIDED FURTHER, That any city or town may impose any other or further conditions and obligations in such bond as may be deemed necessary for its proper protection in the fulfillment of the terms of the contract secured thereby, and not in conflict herewith.

(2) Under the job order contracting procedure described in RCW 39.10.420, bonds will be in an amount not less than the dollar value of all open work orders.

(3)(a) On highway construction contracts administered by the department of transportation with an estimated contract price of two hundred fifty million dollars or more, the department may authorize bonds in an amount less than the full contract price of the project. If a bond less than the full contract price is authorized by the department, the bond must be in the form of a performance bond and a separate payment bond. The department shall fix the amount of the performance bond on a contract-by-contract basis to adequately protect one hundred percent of the state's exposure to loss. The amount of the performance bond must not be less than two hundred fifty million dollars. The payment bond must be in an amount fixed by the department but must not be less than the amount of the performance bond. The secretary of transportation must approve each performance bond and payment bond authorized to be less than the full contract price of a project. Before the secretary may approve any bond authorized to be less than the full contract price of a project, the office of financial management shall review and approve the analysis supporting the amount of the bond set by the department to ensure that one hundred percent of the state's exposure to loss is adequately protected. All the requirements of this chapter apply respectively to the individual performance and payment bonds. The performance bond is solely for the protection of the department. The payment bond is solely for the protection of laborers, mechanics, subcontractors, and suppliers mentioned in RCW 39.08.010.

(b) The department shall develop risk assessment guidelines and gain approval of these guidelines from the office of financial management before implementing (a) of this subsection. The guidelines must include a clear process for how the department measures the state's exposure to loss and how the performance bond amount, determined under (a) of this subsection, adequately protects one hundred percent of the state's exposure to loss.

~~((e) The department shall report to the house of representatives and senate transportation committees by December 1, 2012: Each project where the department authorized bonds that were less than the full contract price; the difference between the project amount and the bond requirements; the number of bidders on the project; and other information that documents the effects of the reduced bond amounts on the project.)) [2013 c 28 § 1; 2009 c 473 § 1; 2007 c 218 § 89; 2003 c 301 § 4; 1989 c 58 § 1; 1977 ex.s. c 166 § 4; 1915 c 28 § 2; 1909 c 207 § 3; RRS § 1161. Prior: 1899 c 105 § 1; 1888 p 16 § 3. Formerly RCW 39.08.030 through 39.08.060.]~~

Expiration date—2013 c 28 § 1: "Section 1 of this act expires June 30, 2016." [2013 c 28 § 3.]

39.08.030 Conditions of bond—Notice of claim—Action on bond—Attorneys' fees (as amended by 2013 c 113). (Effective until June 30, 2016.) (1)(a) The bond mentioned in RCW 39.08.010 ~~((shall))~~ must be in an amount equal to the full contract price agreed to be paid for such work or improvement, except under subsections (2) and (3) of this section, and ~~((shall))~~ must be to the state of Washington, except as otherwise provided in

RCW 39.08.100, and except in cases of cities and towns, in which cases such municipalities may by general ordinance fix and determine the amount of such bond and to whom such bond ~~((shall run: PROVIDED,))~~ runs. However, the same ((shall)) may not be for a less amount than twenty-five percent of the contract price of any such improvement, and may designate that the same ~~((shall be))~~ is payable to such city, and not to the state of Washington, and all such persons mentioned in RCW 39.08.010 ~~((shall))~~ have a right of action in his, her, or their own name or names on such bond for work done by such laborers or mechanics, and for materials furnished or provisions and goods supplied and furnished in the prosecution of such work, or the making of such improvements, and the state has a right of action for the collection of taxes, increases, and penalties specified in RCW 39.08.010: PROVIDED, That, except for the state with respect to claims for taxes, increases, and penalties specified in RCW 39.08.010, such persons ~~((shall))~~ do not have any right of action on such bond for any sum whatever, unless within thirty days from and after the completion of the contract with an acceptance of the work by the affirmative action of the board, council, commission, trustees, officer, or body acting for the state, county or municipality, or other public body, city, town or district, the laborer, mechanic or subcontractor, or material supplier, or person claiming to have supplied materials, provisions or goods for the prosecution of such work, or the making of such improvement, ~~((shall))~~ must present to and file with such board, council, commission, trustees or body acting for the state, county or municipality, or other public body, city, town or district, a notice in writing in substance as follows:

To (here insert the name of the state, county or municipality or other public body, city, town or district):

Notice is hereby given that the undersigned (here insert the name of the laborer, mechanic or subcontractor, or material supplier, or person claiming to have furnished labor, materials or provisions for or upon such contract or work) has a claim in the sum of dollars (here insert the amount) against the bond taken from (here insert the name of the principal and surety or sureties upon such bond) for the work of (here insert a brief mention or description of the work concerning which said bond was taken).

(here to be signed)

(b) Such notice ~~((shall))~~ must be signed by the person or corporation making the claim or giving the notice, and ~~((said))~~ the notice, after being presented and filed, ~~((shall be))~~ is a public record open to inspection by any person, and in any suit or action brought against such surety or sureties by any such person or corporation to recover for any of the items ~~((hereinbefore))~~ specified in this section, the claimant ~~((shall be))~~ is entitled to recover in addition to all other costs, attorney's fees in such sum as the court ~~((shall))~~ adjudges reasonable ~~((: PROVIDED, HOWEVER, That no))~~ However, attorney's fees ~~((shall be))~~ are not allowed in any suit or action brought or instituted before the expiration of thirty days following the date of filing of the notice ~~((hereinbefore mentioned: PROVIDED FURTHER, That))~~ as provided in this section. However, any city may avail itself of the provisions of RCW 39.08.010 through 39.08.030, notwithstanding any charter provisions in conflict ~~((herewith: AND PROVIDED FURTHER, That))~~ with this section. Moreover, any city or town may impose any other or further conditions and obligations in such bond as may be deemed necessary for its proper protection in the fulfillment of the terms of the contract secured thereby, and not in conflict ~~((herewith))~~ with this section. The thirty-day notice requirement under this subsection does not apply to claims made by the state for taxes, increases, and penalties specified in RCW 39.08.010.

(2) Under the job order contracting procedure described in RCW 39.10.420, bonds will be in an amount not less than the dollar value of all open work orders.

(3)(a) On highway construction contracts administered by the department of transportation with an estimated contract price of two hundred fifty million dollars or more, the department may authorize bonds in an amount less than the full contract price of the project. If a bond less than the full contract price is authorized by the department, the bond must be in the form of a performance bond and a separate payment bond. The department ~~((shall))~~ must fix the amount of the performance bond on a contract-by-contract basis to adequately protect one hundred percent of the state's exposure to loss. The amount of the performance bond must not be less than two hundred fifty million dollars. The payment bond must be in an amount fixed by the department but must not be less than the amount of the performance bond. The secretary of transportation must approve each performance bond and payment bond authorized to be less than the full contract price of a project. Before the secretary may approve any bond authorized to be less than the full contract price of a project, the office of financial management ~~((shall))~~ must review and approve the analysis supporting the amount of the bond set by the department to ensure that one hundred percent of the state's exposure to loss is ade-

quately protected. All the requirements of this chapter apply respectively to the individual performance and payment bonds. The performance bond is solely for the protection of the department. The payment bond is solely for: (i) The protection of laborers, mechanics, subcontractors, and suppliers mentioned in RCW 39.08.010; and (ii) the state, with respect to the taxes specified in RCW 39.08.010.

(b) The department ((shall)) must develop risk assessment guidelines and gain approval of these guidelines from the office of financial management before implementing (a) of this subsection. The guidelines must include a clear process for how the department measures the state's exposure to loss and how the performance bond amount, determined under (a) of this subsection, adequately protects one hundred percent of the state's exposure to loss.

(c) The department ((shall)) must report to the house of representatives and senate transportation committees by December 1, 2012: Each project where the department authorized bonds that were less than the full contract price; the difference between the project amount and the bond requirements; the number of bidders on the project; and other information that documents the effects of the reduced bond amounts on the project.

(4) Where retainage is not withheld pursuant to RCW 60.28.011(1)(b), upon final acceptance of the public works project, the state, county, municipality, or other public body must within thirty days notify the department of revenue, the employment security department, and the department of labor and industries of the completion of contracts over thirty-five thousand dollars. [2013 c 113 § 3; 2009 c 473 § 1; 2007 c 218 § 89; 2003 c 301 § 4; 1989 c 58 § 1; 1977 ex.s. c 166 § 4; 1915 c 28 § 2; 1909 c 207 § 3; RRS § 1161. Prior: 1899 c 105 § 1; 1888 p 16 § 3. Formerly RCW 39.08.030 through 39.08.060.]

Reviser's note: RCW 39.08.030 was amended twice during the 2013 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Expiration date—2013 c 113 § 3: "Section 3 of this act expires June 30, 2016." [2013 c 113 § 9.]

Expiration date—2009 c 473: "This act expires June 30, 2016." [2009 c 473 § 3.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

Additional notes found at www.leg.wa.gov

39.08.030 Conditions of bond—Notice of claim—Action on bond—Attorneys' fees. (Effective June 30, 2016.) (1)(a) The bond mentioned in RCW 39.08.010 must be in an amount equal to the full contract price agreed to be paid for such work or improvement, except under subsection (2) of this section, and must be to the state of Washington, except as otherwise provided in RCW 39.08.100, and except in cases of cities, towns, and water-sewer districts, in which cases such municipalities may by general ordinance fix and determine the amount of such bond and to whom such bond runs. However, the same may not be for a less amount than twenty-five percent of the contract price of any such improvement for cities and towns, and not less than the full contract price of any such improvement for water-sewer districts, and may designate that the same must be payable to such city, town, or water-sewer district and not to the state of Washington, and all such persons mentioned in RCW 39.08.010 have a right of action in his, her, or their own name or names on such bond for work done by such laborers or mechanics, and for materials furnished or provisions and goods supplied and furnished in the prosecution of such work, or the making of such improvements, and the state has a right of action for the collection of taxes, increases, and penalties specified in RCW 39.08.010: PROVIDED, That, except for the state with respect to claims for taxes, increases, and penalties specified in RCW 39.08.010, such persons do not have any right of action on such bond for any sum whatever, unless within thirty days from and after the completion of the contract with an acceptance of the work by the affirmative action of the board, council, commission, trustees, officer, or body acting for the state, county or municipality, or other public body, city, town or district, the laborer, mechanic or subcontractor, or material supplier, or person claiming to have supplied materials, provisions or goods for the prosecution of such work, or the making of such improvement, must present to and file with such board, council, commission, trustees or body acting for the state, county or municipality, or other public body, city, town or district, a notice in writing in substance as follows:

To (here insert the name of the state, county or municipality or other public body, city, town or district):

Notice is hereby given that the undersigned (here insert the name of the laborer, mechanic or subcontractor, or material supplier, or person claiming to have furnished labor, materials or provisions for or upon such contract or work) has a claim in the sum of dollars (here insert the amount) against the bond taken from (here insert the name of the principal and surety or sureties upon such bond) for the work of (here insert a brief mention or description of the work concerning which said bond was taken).

(here to be signed)

(b) Such notice must be signed by the person or corporation making the claim or giving the notice, and the notice, after being presented and filed, is a public record open to inspection by any person, and in any suit or action brought against such surety or sureties by any such person or corporation to recover for any of the items specified in this section, the claimant is entitled to recover in addition to all other costs, attorneys' fees in such sum as the court adjudges reasonable. However, attorneys' fees are not allowed in any suit or action brought or instituted before the expiration of thirty days following the date of filing of the notice as provided in this section. However, any city may avail itself of the provisions of RCW 39.08.010 through 39.08.030, notwithstanding any charter provisions in conflict with this section. Moreover, any city or town may impose any other or further conditions and obligations in such bond as may be deemed necessary for its proper protection in the fulfillment of the terms of the contract secured thereby, and not in conflict with this section. The thirty-day notice requirement under this subsection does not apply to claims made by the state for taxes, increases, and penalties specified in RCW 39.08.010.

(2) Under the job order contracting procedure described in RCW 39.10.420, bonds will be in an amount not less than the dollar value of all open work orders.

(3) Where retainage is not withheld pursuant to RCW 60.28.011(1)(b), upon final acceptance of the public works project, the state, county, municipality, or other public body must within thirty days notify the department of revenue, the employment security department, and the department of labor and industries of the completion of contracts over thirty-five thousand dollars. [2013 c 113 § 4; 2013 c 28 § 2; 2007 c 218 § 89; 2003 c 301 § 4; 1989 c 58 § 1; 1977 ex.s. c 166 § 4; 1915 c 28 § 2; 1909 c 207 § 3; RRS § 1161. Prior: 1899 c 105 § 1; 1888 p 16 § 3. Formerly RCW 39.08.030 through 39.08.060.]

Reviser's note: This section was amended by 2013 c 28 § 2 and by 2013 c 113 § 4, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2013 c 113 § 4: "Section 4 of this act takes effect June 30, 2016." [2013 c 113 § 10.]

Effective date—2013 c 28 § 2: "Section 2 of this act takes effect June 30, 2016." [2013 c 28 § 4.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

Additional notes found at www.leg.wa.gov

**Chapter 39.10 RCW
ALTERNATIVE PUBLIC WORKS
CONTRACTING PROCEDURES**

Sections

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39.10.500	Repealed.
39.10.510	Repealed.

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

(1) "Alternative public works contracting procedure" means the design-build, general contractor/construction manager, and job order contracting procedures authorized in RCW 39.10.300, 39.10.340, and 39.10.420, respectively.

(2) "Board" means the capital projects advisory review board.

(3) "Certified public body" means a public body certified to use design-build or general contractor/construction manager contracting procedures, or both, under RCW 39.10.270.

(4) "Committee," unless otherwise noted, means the project review committee.

(5) "Design-build procedure" means a contract between a public body and another party in which the party agrees to both design and build the facility, portion of the facility, or other item specified in the contract.

(6) "Disadvantaged business enterprise" means any business entity certified with the office of minority and women's business enterprises under chapter 39.19 RCW.

(7) "General contractor/construction manager" means a firm with which a public body has selected to provide services during the design phase and negotiated a maximum allowable construction cost to act as construction manager and general contractor during the construction phase.

(8) "Job order contract" means a contract in which the contractor agrees to a fixed period, indefinite quantity delivery order contract which provides for the use of negotiated, definitive work orders for public works as defined in RCW 39.04.010.

(9) "Job order contractor" means a registered or licensed contractor awarded a job order contract.

(10) "Maximum allowable construction cost" means the maximum cost of the work to construct the project including a percentage for risk contingency, negotiated support services, and approved change orders.

(11) "Negotiated support services" means items a general contractor would normally manage or perform on a construction project including, but not limited to surveying, hoisting, safety enforcement, provision of toilet facilities, temporary heat, cleanup, and trash removal, and that are negotiated as part of the maximum allowable construction cost.

(12) "Percent fee" means the percentage amount to be earned by the general contractor/construction manager as overhead and profit.

(13) "Public body" means any general or special purpose government in the state of Washington, including but not limited to state agencies, institutions of higher education, counties, cities, towns, ports, school districts, and special purpose districts.

(14) "Public works project" means any work for a public body within the definition of "public work" in RCW 39.04.010.

(15) "Small business entity" means a small business as defined in RCW 39.26.010.

(16) "Total contract cost" means the fixed amount for the detailed specified general conditions work, the negotiated maximum allowable construction cost, and the percent fee on the negotiated maximum allowable construction cost.

(17) "Total project cost" means the cost of the project less financing and land acquisition costs.

(18) "Unit price book" means a book containing specific prices, based on generally accepted industry standards and information, where available, for various items of work to be performed by the job order contractor. The prices may include: All the costs of materials; labor; equipment; overhead, including bonding costs; and profit for performing the items of work. The unit prices for labor must be at the rates in effect at the time the individual work order is issued.

(19) "Work order" means an order issued for a definite scope of work to be performed pursuant to a job order contract. [2013 c 222 § 1. Prior: 2010 1st sp.s. c 36 § 6014; 2007 c 494 § 101; 2005 c 469 § 3; prior: 2003 c 352 § 1; 2003 c 301 § 2; 2003 c 300 § 3; 2001 c 328 § 1; 2000 c 209 § 1; 1997 c 376 § 1; 1994 c 132 § 2. Formerly RCW 39.10.020.]

Sunset Act application: See note following chapter digest.

Effective date—2013 c 222: "Sections 1 through 23 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect June 30, 2013." [2013 c 222 § 26.]

Effective date—2010 1st sp.s. c 36: See note following RCW 43.155.050.

Additional notes found at www.leg.wa.gov

39.10.220 Board—Membership—Vacancies. (1) The board is created in the department of enterprise services to provide an evaluation of public capital projects construction processes, including the impact of contracting methods on project outcomes, and to advise the legislature on policies related to public works delivery methods.

(2) Members of the board are appointed as follows:

(a) Two representatives from construction general contracting; one representative from the architectural profession; one representative from the engineering profession; two representatives from construction specialty subcontracting; two representatives from construction trades labor organizations; one representative from the office of minority and women's business enterprises; one representative from a higher education institution; one representative from the department of enterprise services; one individual representing Washington cities; two representatives from private industry; and one representative of a domestic insurer authorized to write surety bonds for contractors in Washington state, each appointed by the governor. All appointed members must be knowledgeable about public works contracting procedures. If a vacancy occurs, the governor shall fill the vacancy for the unexpired term;

(b) One member representing counties, selected by the Washington state association of counties;

(c) One member representing public ports, selected by the Washington public ports association;

(d) One member representing public hospital districts, selected by the association of Washington public hospital districts;

(e) One member representing school districts, selected by the Washington state school directors' association; and

(f) Two members of the house of representatives, one from each major caucus, appointed by the speaker of the house of representatives, and two members of the senate, one from each major caucus, appointed by the president of the senate. Legislative members are nonvoting.

(3) Members selected under subsection (2)(a) of this section shall serve for terms of four years, with the terms expiring on June 30th on the fourth year of the term.

(4) The board chair is selected from among the appointed members by the majority vote of the voting members.

(5) Legislative members of the board shall be reimbursed for travel expenses in accordance with RCW 44.04.120. Nonlegislative members of the board, project review committee members, and committee chairs shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(6) Vacancies are filled in the same manner as appointed. Members of the board may be removed for malfeasance or misfeasance in office, upon specific written charges by the governor, under chapter 34.05 RCW.

(7) The board shall meet as often as necessary.

(8) Board members are expected to consistently attend board meetings. The chair of the board may ask the governor to remove any member who misses more than two meetings in any calendar year without cause.

(9) The department of enterprise services shall provide staff support as may be required for the proper discharge of the function of the board.

(10) The board may establish committees as it desires and may invite nonmembers of the board to serve as committee members.

(11) The board shall encourage participation from persons and entities not represented on the board. [2013 c 222 § 2; 2007 c 494 § 102; 2005 c 377 § 1. Formerly RCW 39.10.800.]

Sunset Act application: See note following chapter digest.

Effective date—2013 c 222: See note following RCW 39.10.210.

39.10.230 Board—Powers and duties. The board has the following powers and duties:

(1) Develop and recommend to the legislature policies to further enhance the quality, efficiency, and accountability of capital construction projects through the use of traditional and alternative delivery methods in Washington, and make recommendations regarding expansion, continuation, elimination, or modification of the alternative public works contracting methods;

(2) Evaluate the use of existing contracting procedures and the potential future use of other alternative contracting procedures including competitive negotiation contracts;

(3) Submit recommendations to the appropriate committees of the legislature evaluating alternative contracting procedures that are not authorized under this chapter;

(4) Appoint members of committees; and

(5) Develop and administer questionnaires designed to provide quantitative and qualitative data on alternative public

works contracting procedures on which evaluations are based.

The capital projects advisory review board is directed to review current statutes regarding life-cycle cost analysis and energy efficiency as related to the design-build procurement method performed under chapter 39.10 RCW. Capital projects advisory review board shall report to the appropriate committees of the legislature by December 31, 2013, with recommendations for statutory changes that promote energy efficiency and reduce the total cost to construct, operate and maintain public buildings. Recommendation must include provisions for postoccupancy validation of estimated energy efficiency measures, and operating and maintenance cost estimates. Life-cycle estimates of energy use must include estimates of energy consumptions for materials used in construction. [2013 c 222 § 3; 2010 1st sp.s. c 21 § 3; 2009 c 75 § 1; 2007 c 494 § 103; 2005 c 377 § 2. Formerly RCW 39.10.810.]

Sunset Act application: See note following chapter digest.

Effective date—2013 c 222: See note following RCW 39.10.210.

Intent—2010 1st sp.s. c 21: See note following RCW 39.10.200.

39.10.240 Project review committee—Creation—Members. (1) The board shall establish a project review committee to review and approve public works projects using the design-build and general contractor/construction manager contracting procedures authorized in RCW 39.10.300 and 39.10.340 and to certify public bodies as provided in RCW 39.10.270.

(2) The board shall, by a majority vote of the board, appoint persons to the committee who are knowledgeable in the use of the design-build and general contractor/construction manager contracting procedures. Appointments must represent a balance among the industries and public owners on the board listed in RCW 39.10.220.

(a) Each member of the committee shall be appointed for a term of three years. However, for initial appointments, the board shall stagger the appointment of committee members so that the first members are appointed to serve terms of one, two, or three years from the date of appointment. Appointees may be reappointed to serve more than one term.

(b) The committee shall, by a majority vote, elect a chair and vice chair for the committee.

(c) The committee chair may select a person or persons on a temporary basis as a nonvoting member if project specific expertise is needed to assist in a review.

(3) The chair of the committee, in consultation with the vice chair, may appoint one or more panels of at least six committee members to carry out the duties of the committee. Each panel shall have balanced representation of the private and public sector representatives serving on the committee.

(4) Any member of the committee directly or indirectly affiliated with a submittal before the committee must recuse himself or herself from the committee consideration of that submittal.

(5) Any person who sits on the committee or panel is not precluded from subsequently bidding on or participating in projects that have been reviewed by the committee.

(6) The committee shall meet as often as necessary to ensure that certification and approvals are completed in a timely manner. [2013 c 222 § 4; 2007 c 494 § 104.]

Sunset Act application: See note following chapter digest.

Effective date—2013 c 222: See note following RCW 39.10.210.

39.10.250 Project review committee—Duties. The committee shall:

(1) Certify, or renew certification for, public bodies to use design-build or general contractor/construction manager contracting procedures, or both;

(2) Review and approve the use of the design-build or general contractor/construction manager contracting procedures on a project by project basis for public bodies that are not certified under RCW 39.10.270;

(3) Review and approve not more than fifteen projects using the design-build contracting procedure by noncertified public bodies for projects that have a total project cost between two million and ten million dollars. Projects must meet the criteria in RCW 39.10.300(1). Where possible, the committee shall approve projects among multiple public bodies. At least annually, the committee shall report to the board regarding the committee's review procedure of these projects and its recommendations for further use; and

(4) Review and approve not more than two design-build demonstration projects that include procurement of operations and maintenance services for a period longer than three years. [2013 c 222 § 5; 2009 c 75 § 2; 2007 c 494 § 105.]

Sunset Act application: See note following chapter digest.

Effective date—2013 c 222: See note following RCW 39.10.210.

39.10.260 Project review committee—Meetings—Open and public. (1) The committee shall hold regular public meetings to carry out its duties as described in RCW 39.10.250. Committee meetings are subject to chapter 42.30 RCW.

(2) The committee shall publish notice of its public meetings at least twenty days before the meeting in a legal newspaper circulated in the area where the public body seeking certification is located, or where each of the proposed projects under consideration will be constructed. All meeting notices must be posted on the committee's web site.

(3) The meeting notice must identify the public body that is seeking certification or project approval, and where applicable, a description of projects to be considered at the meeting. The notice must indicate when, where, and how the public may present comments regarding the committee's certification of a public body or approval of a project. Information submitted by a public body to be reviewed at the meeting shall be available on the committee's web site at the time the notice is published.

(4) The committee must allow for public comment on the appropriateness of certification of a public body or on the appropriateness of the use of the proposed contracting procedure and the qualifications of a public body to use the contracting procedure. The committee shall receive and record both written and oral comments at the public meeting. [2013 c 222 § 6; 2007 c 494 § 106.]

Sunset Act application: See note following chapter digest.

Effective date—2013 c 222: See note following RCW 39.10.210.

39.10.270 Project review committee—Certification of public bodies. (1) A public body may apply for certification to use the design-build or general contractor/construction

manager contracting procedure, or both. Once certified, a public body may use the contracting procedure for which it is certified on individual projects without seeking committee approval for a period of three years. Public bodies certified to use the design-build procedure are limited to no more than five projects with a total project cost between two and ten million dollars during the certification period. A public body seeking certification must submit to the committee an application in a format and manner as prescribed by the committee. The application must include a description of the public body's qualifications, its capital plan during the certification period, and its intended use of alternative contracting procedures.

(2) A public body seeking certification for the design-build procedure must demonstrate successful management of at least one design-build project within the previous five years. A public body seeking certification for the general contractor/construction manager procedure must demonstrate successful management of at least one general contractor/construction manager project within the previous five years.

(3) To certify a public body, the committee shall determine that the public body:

(a) Has the necessary experience and qualifications to determine which projects are appropriate for using alternative contracting procedures;

(b) Has the necessary experience and qualifications to carry out the alternative contracting procedure including, but not limited to: (i) Project delivery knowledge and experience; (ii) personnel with appropriate construction experience; (iii) a management plan and rationale for its alternative public works projects; (iv) demonstrated success in managing public works projects; (v) the ability to properly manage its capital facilities plan including, but not limited to, appropriate project planning and budgeting experience; and (vi) the ability to meet requirements of this chapter; and

(c) Has resolved any audit findings on previous public works projects in a manner satisfactory to the committee.

(4) The committee shall, if practicable, make its determination at the public meeting during which an application for certification is reviewed. Public comments must be considered before a determination is made. Within ten business days of the public meeting, the committee shall provide a written determination to the public body, and make its determination available to the public on the committee's web site.

(5) The committee may revoke any public body's certification upon a finding, after a public hearing, that its use of design-build or general contractor/construction manager contracting procedures no longer serves the public interest.

(6) The committee may renew the certification of a public body for additional three-year periods. The public body must submit an application for recertification at least three months before the initial certification expires. The application shall include updated information on the public body's experience and current staffing with the procedure it is applying to renew, and any other information requested in advance by the committee. The committee must review the application for recertification at a meeting held before expiration of the applicant's initial certification period. A public body must reapply for certification under the process described in

subsection (1) of this section once the period of recertification expires.

(7) Certified public bodies must submit project data information as required in RCW 39.10.320 and 39.10.350. [2013 c 222 § 7; 2009 c 75 § 3; 2007 c 494 § 107.]

Sunset Act application: See note following chapter digest.

Effective date—2013 c 222: See note following RCW 39.10.210.

39.10.280 Project review committee—Project approval process. (1) A public body not certified under RCW 39.10.270 must apply for approval from the committee to use the design-build or general contractor/construction manager contracting procedure on a project. A public body seeking approval must submit to the committee an application in a format and manner as prescribed by the committee. The application must include a description of the public body's qualifications, a description of the project, and its intended use of alternative contracting procedures.

(2) To approve a proposed project, the committee shall determine that:

(a) The alternative contracting procedure will provide a substantial fiscal benefit or the use of the traditional method of awarding contracts in lump sum to the low responsive bidder is not practical for meeting desired quality standards or delivery schedules;

(b) The proposed project meets the requirements for using the alternative contracting procedure as described in RCW 39.10.300 or 39.10.340;

(c) The public body has the necessary experience or qualified team to carry out the alternative contracting procedure including, but not limited to: (i) Project delivery knowledge and experience; (ii) sufficient personnel with construction experience to administer the contract; (iii) a written management plan that shows clear and logical lines of authority; (iv) the necessary and appropriate funding and time to properly manage the job and complete the project; (v) continuity of project management team, including personnel with experience managing projects of similar scope and size to the project being proposed; and (vi) necessary and appropriate construction budget;

(d) For design-build projects, public body personnel or consultants are knowledgeable in the design-build process and are able to oversee and administer the contract; and

(e) The public body has resolved any audit findings related to previous public works projects in a manner satisfactory to the committee.

(3) The committee shall, if practicable, make its determination at the public meeting during which a submittal is reviewed. Public comments must be considered before a determination is made.

(4) Within ten business days after the public meeting, the committee shall provide a written determination to the public body, and make its determination available to the public on the committee's web site. If the committee fails to make a written determination within ten business days of the public meeting, the request of the public body to use the alternative contracting procedure on the requested project shall be deemed approved.

(5) Failure of the committee to meet within sixty calendar days of a public body's application to use an alternative contracting procedure on a project shall be deemed an

approval of the application. [2013 c 222 § 8; 2007 c 494 § 108.]

Sunset Act application: See note following chapter digest.

Effective date—2013 c 222: See note following RCW 39.10.210.

39.10.300 Design-build procedure—Uses. (1) Subject to the requirements in RCW 39.10.250, 39.10.270, or 39.10.280, public bodies may utilize the design-build procedure for public works projects in which the total project cost is over ten million dollars and where:

(a) The construction activities are highly specialized and a design-build approach is critical in developing the construction methodology; or

(b) The projects selected provide opportunity for greater innovation or efficiencies between the designer and the builder; or

(c) Significant savings in project delivery time would be realized.

(2) Subject to the process in RCW 39.10.270 or 39.10.280, public bodies may use the design-build procedure for parking garages, regardless of cost.

(3) The design-build procedure may be used for the construction or erection of portable facilities as defined in WAC 392-343-018, preengineered metal buildings, or not more than ten prefabricated modular buildings per installation site, regardless of cost and is not subject to approval by the committee.

(4) Except for utility projects and approved demonstration projects, the design-build procedure may not be used to procure operations and maintenance services for a period longer than three years. State agency projects that propose to use the design-build-operate-maintain procedure shall submit cost estimates for the construction portion of the project consistent with the office of financial management's capital budget requirements. Operations and maintenance costs must be shown separately and must not be included as part of the capital budget request.

(5) Subject to the process in RCW 39.10.280, public bodies may use the design-build procedure for public works projects in which the total project cost is between two million and ten million dollars and that meet one of the criteria in subsection (1)(a), (b), or (c) of this section.

(6) Subject to the process in RCW 39.10.280, a public body may seek committee approval for a design-build demonstration project that includes procurement of operations and maintenance services for a period longer than three years. [2013 c 222 § 9; 2009 c 75 § 4; 2007 c 494 § 201. Prior: 2003 c 352 § 2; 2003 c 300 § 4; 2002 c 46 § 1; 2001 c 328 § 2. Formerly RCW 39.10.051.]

Sunset Act application: See note following chapter digest.

Effective date—2013 c 222: See note following RCW 39.10.210.

Additional notes found at www.leg.wa.gov

39.10.320 Design-build procedure—Project management and contracting requirements. (1) A public body utilizing the design-build contracting procedure shall provide:

(a) Reasonable budget contingencies totaling not less than five percent of the anticipated contract value;

(b) Staff or consultants with expertise and prior experience in the management of comparable projects;

(c) Contract documents that include alternative dispute resolution procedures to be attempted prior to the initiation of litigation;

(d) Submission of project information, as required by the board; and

(e) Contract documents that require the contractor, sub-contractors, and designers to submit project information required by the board.

(2) A public body utilizing the design-build contracting procedure may provide incentive payments to contractors for early completion, cost savings, or other goals if such payments are identified in the request for proposals. [2013 c 222 § 10; 2007 c 494 § 203; 1994 c 132 § 7. Formerly RCW 39.10.070.]

Sunset Act application: See note following chapter digest.

Effective date—2013 c 222: See note following RCW 39.10.210.

39.10.330 Design-build contract award process. (1) Contracts for design-build services shall be awarded through a competitive process using public solicitation of proposals for design-build services. The public body shall publish at least once in a legal newspaper of general circulation published in, or as near as possible to, that part of the county in which the public work will be done, a notice of its request for qualifications from proposers for design-build services, and the availability and location of the request for proposal documents. The request for qualifications documents shall include:

(a) A general description of the project that provides sufficient information for proposers to submit qualifications;

(b) The reasons for using the design-build procedure;

(c) A description of the qualifications to be required of the proposer including, but not limited to, submission of the proposer's accident prevention program;

(d) A description of the process the public body will use to evaluate qualifications and finalists' proposals, including evaluation factors and the relative weight of factors and any specific forms to be used by the proposers;

(i) Evaluation factors for request for qualifications shall include, but not be limited to, technical qualifications, such as specialized experience and technical competence; capability to perform; past performance of the proposers' team, including the architect-engineer and construction members; and other appropriate factors. Evaluation factors may also include: (A) The proposer's past performance in utilization of small business entities; and (B) disadvantaged business enterprises. Cost or price-related factors are not permitted in the request for qualifications phase;

(ii) Evaluation factors for finalists' proposals shall include, but not be limited to, the factors listed in (d)(i) of this subsection, as well as technical approach design concept; ability of professional personnel; past performance on similar projects; ability to meet time and budget requirements; ability to provide a performance and payment bond for the project; recent, current, and projected workloads of the firm; location; and cost or price-related factors that may include operating costs. The public body may also consider a proposer's outreach plan to include small business entities and disadvantaged business enterprises as subcontractor and suppliers for the project. Alternatively, if the public body determines that all finalists will be capable of producing a design that ade-

quately meets project requirements, the public body may award the contract to the firm that submits the responsive proposal with the lowest price;

(e) Protest procedures including time limits for filing a protest, which in no event may limit the time to file a protest to fewer than four business days from the date the proposer was notified of the selection decision;

(f) The form of the contract to be awarded;

(g) The honorarium to be paid to finalists submitting responsive proposals and who are not awarded a design-build contract;

(h) The schedule for the procurement process and the project; and

(i) Other information relevant to the project.

(2) The public body shall establish an evaluation committee to evaluate the responses to the request for qualifications based solely on the factors, weighting, and process identified in the request for qualifications and any addenda issued by the public body. Based on the evaluation committee's findings, the public body shall select not more than five responsive and responsible finalists to submit proposals. The public body may, in its sole discretion, reject all proposals and shall provide its reasons for rejection in writing to all proposers.

(3) The public body must notify all proposers of the finalists selected to move to the next phase of the selection process. The process may not proceed to the next phase until two business days after all proposers are notified of the committee's selection decision. At the request of a proposer not selected as a finalist, the public body must provide the requesting proposer with a scoring summary of the evaluation factors for its proposal. Proposers filing a protest on the selection of the finalists must file the protest in accordance with the published protest procedures. The selection process may not advance to the next phase of selection until two business days after the final protest decision is transmitted to the protestor.

(4) Upon selection of the finalists, the public body shall issue a request for proposals to the finalists, which shall provide the following information:

(a) A detailed description of the project including programmatic, performance, and technical requirements and specifications; functional and operational elements; minimum and maximum net and gross areas of any building; and, at the discretion of the public body, preliminary engineering and architectural drawings; and

(b) The target budget for the design-build portion of the project.

(5) The public body shall establish an evaluation committee to evaluate the proposals submitted by the finalists. Design-build contracts shall be awarded using the procedures in (a) or (b) of this subsection. The public body must identify in the request for qualifications which procedure will be used.

(a) The finalists' proposals shall be evaluated and scored based solely on the factors, weighting, and process identified in the initial request for qualifications and in any addenda published by the public body. Public bodies may request best and final proposals from finalists. The public body may initiate negotiations with the firm submitting the highest scored proposal. If the public body is unable to execute a contract with the firm submitting the highest scored proposal, negoti-

ations with that firm may be suspended or terminated and the public body may proceed to negotiate with the next highest scored firm. Public bodies shall continue in accordance with this procedure until a contract agreement is reached or the selection process is terminated.

(b) If the public body determines that all finalists are capable of producing a design that adequately meets project requirements, the public body may award the contract to the firm that submits the responsive proposal with the lowest price.

(6) The public body shall notify all finalists of the selection decision and make a selection summary of the final proposals available to all proposers within two business days of such notification. If the public body receives a timely written protest from a finalist firm, the public body may not execute a contract until two business days after the final protest decision is transmitted to the protestor. The protestor must submit its protest in accordance with the published protest procedures.

(7) The firm awarded the contract shall provide a performance and payment bond for the contracted amount.

(8) The public body shall provide appropriate honorarium payments to finalists submitting responsive proposals that are not awarded a design-build contract. Honorarium payments shall be sufficient to generate meaningful competition among potential proposers on design-build projects. In determining the amount of the honorarium, the public body shall consider the level of effort required to meet the selection criteria. [2013 c 222 § 11; 2009 c 75 § 5; 2007 c 494 § 204.]

Sunset Act application: See note following chapter digest.

Effective date—2013 c 222: See note following RCW 39.10.210.

39.10.340 General contractor/construction manager procedure—Uses. Subject to the process in RCW 39.10.270 or 39.10.280, public bodies may utilize the general contractor/construction manager procedure for public works projects where at least one of the following is met:

(1) Implementation of the project involves complex scheduling, phasing, or coordination;

(2) The project involves construction at an occupied facility which must continue to operate during construction;

(3) The involvement of the general contractor/construction manager during the design stage is critical to the success of the project;

(4) The project encompasses a complex or technical work environment; or

(5) The project requires specialized work on a building that has historic significance. [2013 c 222 § 12; 2007 c 494 § 301. Prior: 2003 c 352 § 3; 2003 c 300 § 5; 2002 c 46 § 2; 2001 c 328 § 3. Formerly RCW 39.10.061.]

Sunset Act application: See note following chapter digest.

Effective date—2013 c 222: See note following RCW 39.10.210.

Additional notes found at www.leg.wa.gov

39.10.360 General contractor/construction manager procedure—Contract award process. (1) Public bodies should select general contractor/construction managers early in the life of public works projects, and in most situations no later than the completion of schematic design.

(2) Contracts for the services of a general contractor/construction manager under this section shall be awarded through a competitive process requiring the public solicitation of proposals for general contractor/construction manager services. The public solicitation of proposals shall include:

(a) A description of the project, including programmatic, performance, and technical requirements and specifications when available;

(b) The reasons for using the general contractor/construction manager procedure;

(c) A description of the qualifications to be required of the firm, including submission of the firm's accident prevention program;

(d) A description of the process the public body will use to evaluate qualifications and proposals, including evaluation factors, the relative weight of factors, and protest procedures including time limits for filing a protest, which in no event may limit the time to file a protest to fewer than four business days from the date the proposer was notified of the selection decision;

(e) The form of the contract, including any contract for preconstruction services, to be awarded;

(f) The estimated maximum allowable construction cost; and

(g) The bid instructions to be used by the general contractor/construction manager finalists.

(3)(a) Evaluation factors for selection of the general contractor/construction manager shall include, but not be limited to:

(i) Ability of the firm's professional personnel;

(ii) The firm's past performance in negotiated and complex projects;

(iii) The firm's ability to meet time and budget requirements;

(iv) The scope of work the firm proposes to self-perform and its ability to perform that work;

(v) The firm's proximity to the project location;

(vi) Recent, current, and projected workloads of the firm; and

(vii) The firm's approach to executing the project.

(b) An agency may also consider the firm's outreach plan to include small business entities and disadvantaged business enterprises, and the firm's past performance in the utilization of such firms as an evaluation factor.

(4) A public body shall establish a committee to evaluate the proposals. After the committee has selected the most qualified finalists, at the time specified by the public body, these finalists shall submit final proposals, including sealed bids for the percent fee on the estimated maximum allowable construction cost and the fixed amount for the general conditions work specified in the request for proposal. The public body shall establish a time and place for the opening of sealed bids for the percent fee on the estimated maximum allowable construction cost and the fixed amount for the general conditions work specified in the request for proposal. At the time and place named, these bids must be publicly opened and read and the public body shall make all previous scoring available to the public. The public body shall select the firm submitting the highest scored final proposal using the evaluation factors and the relative weight of factors published in the public solicitation of proposals. A public body shall not

evaluate or disqualify a proposal based on the terms of a collective bargaining agreement.

(5) The public body shall notify all finalists of the selection decision and make a selection summary of the final proposals available to all proposers within two business days of such notification. If the public body receives a timely written protest from a proposer, the public body may not execute a contract until two business days after the final protest decision is transmitted to the protestor. The protestor must submit its protest in accordance with the published protest procedures.

(6) Public bodies may contract with the selected firm to provide services during the design phase that may include life-cycle cost design considerations, value engineering, scheduling, cost estimating, constructability, alternative construction options for cost savings, and sequencing of work, and to act as the construction manager and general contractor during the construction phase. [2013 c 222 § 13; 2009 c 75 § 6; 2007 c 494 § 303.]

Sunset Act application: See note following chapter digest.

Effective date—2013 c 222: See note following RCW 39.10.210.

39.10.380 General contractor/construction manager procedure—Subcontract bidding procedure. (1) All subcontract work and equipment and material purchases shall be competitively bid with public bid openings. Subcontract bid packages and equipment and materials purchases shall be awarded to the responsible bidder submitting the lowest responsive bid. In preparing subcontract bid packages, the general contractor/construction manager shall not be required to violate or waive terms of a collective bargaining agreement.

(2) All subcontract bid packages in which bidder eligibility was not determined in advance shall include the specific objective criteria that will be used by the general contractor/construction manager and the public body to evaluate bidder responsibility. If the lowest bidder submitting a responsive bid is determined by the general contractor/construction manager and the public body not to be responsible, the general contractor/construction manager and the public body must provide written documentation to that bidder explaining their intent to reject the bidder as not responsible and afford the bidder the opportunity to establish that it is a responsible bidder. Responsibility shall be determined in accordance with criteria listed in the bid documents. Protests concerning bidder responsibility determination by the general contractor/construction manager and the public body shall be in accordance with subsection (4) of this section.

(3) All subcontractors who bid work over three hundred thousand dollars shall post a bid bond. All subcontractors who are awarded a contract over three hundred thousand dollars shall provide a performance and payment bond for the contract amount. All other subcontractors shall provide a performance and payment bond if required by the general contractor/construction manager.

(4) If the general contractor/construction manager receives a written protest from a subcontractor bidder or an equipment or material supplier, the general contractor/construction manager shall not execute a contract for the subcontract bid package or equipment or material purchase order with anyone other than the protesting bidder without first

providing at least two full business days' written notice to all bidders of the intent to execute a contract for the subcontract bid package. The protesting bidder must submit written notice of its protest no later than two full business days following the bid opening. Intermediate Saturdays, Sundays, and legal holidays are not counted.

(5) A low bidder who claims error and fails to enter into a contract is prohibited from bidding on the same project if a second or subsequent call for bids is made for the project.

(6) The general contractor/construction manager may negotiate with the lowest responsible and responsive bidder to negotiate an adjustment to the lowest bid or proposal price based upon agreed changes to the contract plans and specifications under the following conditions:

(a) All responsive bids or proposal prices exceed the available funds;

(b) The apparent low responsive bid or proposal does not exceed the available funds by the greater of one hundred twenty-five thousand dollars or two percent for projects valued over ten million dollars; and

(c) The negotiated adjustment will bring the bid or proposal price within the amount of available funds.

(7) If the negotiation is unsuccessful, the subcontract work or equipment or material purchases must be rebid.

(8) The general contractor/construction manager must provide a written explanation if all bids are rejected. [2013 c 222 § 14; 2007 c 494 § 305.]

Sunset Act application: See note following chapter digest.

Effective date—2013 c 222: See note following RCW 39.10.210.

39.10.385 General contractor/construction manager procedure—Alternative subcontractor selection process. As an alternative to the subcontractor selection process outlined in RCW 39.10.380, a general contractor/construction manager may, with the approval of the public body, select mechanical subcontractors, electrical subcontractors, or both, using the process outlined in this section. This alternative selection process may only be used when the anticipated value of the subcontract will exceed three million dollars. When using the alternative selection process, the general contractor/construction manager should select the subcontractor early in the life of the public works project.

(1) In order to use this alternative selection process, the general contractor/construction manager and the public body must determine that it is in the best interest of the public. In making this determination the general contractor/construction manager and the public body must:

(a) Publish a notice of intent to use this alternative selection process in a legal newspaper published in or as near as possible to that part of the county where the public work will be constructed. Notice must be published at least fourteen calendar days before conducting a public hearing. The notice must include the date, time, and location of the hearing; a statement justifying the basis and need for the alternative selection process; how interested parties may, prior to the hearing, obtain the evaluation criteria and applicable weight given to each criteria that will be used for evaluation; and protest procedures including time limits for filing a protest, which may in no event, limit the time to file a protest to fewer than four business days from the date the proposer was notified of the selection decision;

(b) Conduct a hearing and provide an opportunity for any interested party to submit written and verbal comments regarding the justification for using this selection process, the evaluation criteria, weights for each criteria, and protest procedures;

(c) After the public hearing, consider the written and verbal comments received and determine if using this alternative selection process is in the best interests of the public; and

(d) Issue a written final determination to all interested parties. All protests of the decision to use the alternative selection process must be in writing and submitted to the public body within seven calendar days of the final determination. Any modifications to the criteria, weights, and protest procedures based on comments received during the public hearing process must be included in the final determination.

(2) Contracts for the services of a subcontractor under this section must be awarded through a competitive process requiring a public solicitation of proposals. Notice of the public solicitation of proposals must be provided to the office of minority and women's business enterprises. The public solicitation of proposals must include:

(a) A description of the project, including programmatic, performance, and technical requirements and specifications when available;

(b) The reasons for using the alternative selection process;

(c) A description of the minimum qualifications required of the firm;

(d) A description of the process used to evaluate qualifications and proposals, including evaluation factors and the relative weight of factors;

(e) Protest procedures;

(f) The form of the contract, including any contract for preconstruction services, to be awarded;

(g) The estimated maximum allowable subcontract cost; and

(h) The bid instructions to be used by the finalists.

(3) Evaluation factors for selection of the subcontractor must include, but not be limited to:

(a) Ability of the firm's professional personnel;

(b) The firm's past performance on similar projects;

(c) The firm's ability to meet time and budget requirements;

(d) The scope of work the firm proposes to perform with its own forces and its ability to perform that work;

(e) The firm's plan for outreach to minority and women-owned businesses;

(f) The firm's proximity to the project location;

(g) The firm's capacity to successfully complete the project;

(h) The firm's approach to executing the project;

(i) The firm's approach to safety on the project;

(j) The firm's safety history; and

(k) If the firm is selected as one of the most qualified finalists, the firm's fee and cost proposal.

(4) The general contractor/construction manager shall establish a committee to evaluate the proposals. At least one representative from the public body shall serve on the committee. Final proposals, including sealed bids for the percent fee on the estimated maximum allowable subcontract cost, and the fixed amount for the subcontract general conditions

work specified in the request for proposal, will be requested from the most qualified firms.

(5) The general contractor/construction manager must notify all proposers of the most qualified firms that will move to the next phase of the selection process. The process may not proceed to the next phase until two business days after all proposers are notified of the committee's selection decision. At the request of a proposer, the general contractor/construction manager must provide the requesting proposer with a scoring summary of the evaluation factors for its proposal. Proposers filing a protest on the selection of the most qualified finalists must file the protest with the public body in accordance with the published protest procedures. The selection process may not advance to the next phase of selection until two business days after the final protest decision issued by the public body is transmitted to the protestor.

(6) The general contractor/construction manager and the public body shall select the firm submitting the highest scored final proposal using the evaluation factors and the relative weight of factors identified in the solicitation of proposals. The scoring of the nonprice factors must be made available at the opening of the fee and cost proposals. The general contractor/construction manager shall notify all proposers of the selection decision and make a selection summary of the final proposals, which shall be available to all proposers within two business days of such notification. The general contractor/construction manager may not evaluate or disqualify a proposal based on the terms of a collective bargaining agreement.

(7) If the public body receives a timely written protest from a "most qualified firm," the general contractor/construction manager may not execute a contract for the protested subcontract work until two business days after the final protest decision issued by the public body is transmitted to the protestor. The protestor must submit its protest in accordance with the published protest procedures.

(8) If the general contractor/construction manager is unable to negotiate a satisfactory maximum allowable subcontract cost with the firm selected deemed by public body and the general contractor/construction manager to be fair, reasonable, and within the available funds, negotiations with that firm must be formally terminated and the general contractor/construction manager may negotiate with the next highest scored firm until an agreement is reached or the process is terminated.

(9) With the approval of the public body, the general contractor/construction manager may contract with the selected firm to provide preconstruction services during the design phase that may include life-cycle cost design considerations, value engineering, scheduling, cost estimating, constructability, alternative construction options for cost savings, and sequencing of work; and to act as the mechanical or electrical subcontractor during the construction phase.

(10) The maximum allowable subcontract cost must be used to establish a total subcontract cost for purposes of a performance and payment bond. Total subcontract cost means the fixed amount for the detailed specified general conditions work, the negotiated maximum allowable subcontract cost, and the percent fee on the negotiated maximum allowable subcontract cost. Maximum allowable subcontract cost means the maximum cost to complete the work specified

for the subcontract, including the estimated cost of work to be performed by the subcontractor's own forces, a percentage for risk contingency, negotiated support services, and approved change orders. The maximum allowable subcontract cost must be negotiated between the general contractor/construction manager and the selected firm when the construction documents and specifications are at least ninety percent complete. Final agreement on the maximum allowable subcontract cost is subject to the approval of the public body.

(11) If the work of the mechanical contractor or electrical contractor is completed for less than the maximum allowable subcontract cost, any savings not otherwise negotiated as part of an incentive clause becomes part of the risk contingency included in the general contractor/construction manager's maximum allowable construction cost. If the work of the mechanical contractor or the electrical contractor is completed for more than the maximum allowable subcontract cost, the additional cost is the responsibility of that subcontractor. An independent audit, paid for by the public body, must be conducted to confirm the proper accrual of costs as outlined in the contract.

(12) A mechanical or electrical contractor selected under this section may perform work with its own forces. In the event it elects to subcontract some of its work, it must select a subcontractor utilizing the procedure outlined in RCW 39.10.380. [2013 c 222 § 15; 2010 c 163 § 1.]

Sunset Act application: See note following chapter digest.

Effective date—2013 c 222: See note following RCW 39.10.210.

39.10.390 General contractor/construction manager procedure—Subcontract work. (1) Except as provided in this section, bidding on subcontract work or for the supply of equipment or materials by the general contractor/construction manager or its subsidiaries is prohibited.

(2) The general contractor/construction manager, or its subsidiaries, may bid on subcontract work or for the supply of equipment or materials if:

(a) The work within the subcontract bid package or equipment or materials is customarily performed or supplied by the general contractor/construction manager;

(b) The bid opening is managed by the public body and is in compliance with RCW 39.10.380; and

(c) Notification of the general contractor/construction manager's intention to bid is included in the public solicitation of bids for the bid package or for the equipment or materials.

(3) In no event may the general contractor/construction manager or its subsidiaries assign warranty responsibility or the terms of its contract or purchase order with vendors for equipment or material purchases to subcontract bid package bidders or subcontractors who have been awarded a contract. The value of subcontract work performed and equipment and materials supplied by the general contractor/construction manager may not exceed thirty percent of the negotiated maximum allowable construction cost. Negotiated support services performed by the general contractor/construction manager shall not be considered subcontract work for purposes of this subsection. [2013 c 222 § 16; 2007 c 494 § 306.]

Sunset Act application: See note following chapter digest.

Effective date—2013 c 222: See note following RCW 39.10.210.

39.10.400 General contractor/construction manager procedure—Prebid determination of subcontractor eligibility. (1) If determination of subcontractor eligibility prior to seeking bids is in the best interest of the project and critical to the successful completion of a subcontract bid package, the general contractor/construction manager and the public body may determine subcontractor eligibility to bid. The general contractor/construction manager and the public body must:

(a) Conduct a hearing and provide an opportunity for any interested party to submit written and verbal comments regarding the justification for conducting bidder eligibility, the evaluation criteria, and weights for each criteria and subcriteria;

(b) Publish a notice of intent to evaluate and determine bidder eligibility in a legal newspaper published in or as near as possible to that part of the county where the public work will be constructed at least fourteen calendar days before conducting a public hearing;

(c) Ensure the public hearing notice includes the date, time, and location of the hearing, a statement justifying the basis and need for performing eligibility analysis before bid opening, and how interested parties may, at least five days before the hearing, obtain the specific eligibility criteria and applicable weights given to each criteria and subcriteria that will be used during evaluation;

(d) After the public hearing, consider written and verbal comments received and determine if establishing bidder eligibility in advance of seeking bids is in the best interests of the project and critical to the successful completion of a subcontract bid package; and

(e) Issue a written final determination to all interested parties. All protests of the decision to establish bidder eligibility before issuing a subcontractor bid package must be filed with the superior court within seven calendar days of the final determination. Any modifications to the eligibility criteria and weights shall be based on comments received during the public hearing process and shall be included in the final determination.

(2) Determinations of bidder eligibility shall be in accordance with the evaluation criteria and weights for each criteria established in the final determination and shall be provided to interested persons upon request. Any potential bidder determined not to meet eligibility criteria must be afforded one opportunity to establish its eligibility. Protests concerning bidder eligibility determinations shall be in accordance with subsection (1) of this section. [2013 c 222 § 17; 2007 c 494 § 307.]

Sunset Act application: See note following chapter digest.

Effective date—2013 c 222: See note following RCW 39.10.210.

39.10.420 Job order procedure—Which public bodies may use—Authorized use. (1) The following public bodies of the state of Washington are authorized to award job order contracts and use the job order contracting procedure:

(a) The department of enterprise services;

(b) The state universities, regional universities, and The Evergreen State College;

(c) Sound transit (central Puget Sound regional transit authority);

(d) Every city with a population greater than seventy thousand and any public authority chartered by such city under RCW 35.21.730 through 35.21.755;

(e) Every county with a population greater than four hundred fifty thousand;

(f) Every port district with total revenues greater than fifteen million dollars per year;

(g) Every public utility district with revenues from energy sales greater than twenty-three million dollars per year;

(h) Every school district;

(i) The state ferry system; and

(j) The Washington state department of transportation, for the administration of building improvement, replacement, and renovation projects only.

(2)(a) The department of enterprise services may issue job order contract work orders for Washington state parks department projects.

(b) The department of enterprise services, the University of Washington, and Washington State University may issue job order contract work orders for the state regional universities and The Evergreen State College.

(3) Public bodies may use a job order contract for public works projects when a determination is made that the use of job order contracts will benefit the public by providing an effective means of reducing the total lead-time and cost for the construction of public works projects for repair and renovation required at public facilities through the use of unit price books and work orders by eliminating time-consuming, costly aspects of the traditional public works process, which require separate contracting actions for each small project. [2013 c 222 § 18; 2013 c 186 § 1; 2012 c 102 § 1; 2009 c 75 § 7; 2007 c 494 § 401; 2003 c 301 § 1. Formerly RCW 39.10.130.]

Sunset Act application: See note following chapter digest.

Reviser's note: This section was amended by 2013 c 186 § 1 and by 2013 c 222 § 18, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2013 c 222: See note following RCW 39.10.210.

39.10.440 Job order procedure—Contract requirements. (1) The maximum total dollar amount that may be awarded under a job order contract is four million dollars per year for a maximum of three years. The maximum total dollar amount that may be awarded under a job order contract for counties with a population of more than one million is six million dollars per year for a maximum of three years.

(2) Job order contracts may be executed for an initial contract term of not to exceed two years, with the option of extending or renewing the job order contract for one year. All extensions or renewals must be priced as provided in the request for proposals. The extension or renewal must be mutually agreed to by the public body and the job order contractor.

(3) A public body may have no more than two job order contracts in effect at any one time, with the exception of the department of enterprise services, which may have four job order contracts in effect at any one time.

(4) At least ninety percent of work contained in a job order contract must be subcontracted to entities other than the

job order contractor. The job order contractor must distribute contracts as equitably as possible among qualified and available subcontractors including minority and woman-owned subcontractors to the extent permitted by law.

(5) The job order contractor shall publish notification of intent to perform public works projects at the beginning of each contract year in a statewide publication and in a legal newspaper of general circulation in every county in which the public works projects are anticipated.

(6) Job order contractors shall pay prevailing wages for all work that would otherwise be subject to the requirements of chapter 39.12 RCW. Prevailing wages for all work performed pursuant to each work order must be the rates in effect at the time the individual work order is issued.

(7) If, in the initial contract term, the public body, at no fault of the job order contractor, fails to issue the minimum amount of work orders stated in the public request for proposals, the public body shall pay the contractor an amount equal to the difference between the minimum work order amount and the actual total of the work orders issued multiplied by an appropriate percentage for overhead and profit contained in the contract award coefficient for services as specified in the request for proposals. This is the contractor's sole remedy.

(8) All job order contracts awarded under this section must be signed before July 1, 2021; however the job order contract may be extended or renewed as provided for in this section.

(9) Public bodies may amend job order contracts awarded prior to July 1, 2007, in accordance with this chapter. [2013 c 222 § 19; 2007 c 494 § 403.]

Sunset Act application: See note following chapter digest.

Effective date—2013 c 222: See note following RCW 39.10.210.

39.10.490 Application of chapter. The alternative public works contracting procedures authorized under this chapter are limited to public works contracts signed before July 1, 2021. Methods of public works contracting authorized under this chapter shall remain in full force and effect until completion of contracts signed before July 1, 2021. [2013 c 222 § 20; 2007 c 494 § 501; 2001 c 328 § 5. Prior: 1997 c 376 § 7; 1997 c 220 § 404 (Referendum Bill No. 48, approved June 17, 1997); 1995 3rd sp.s. c 1 § 305; 1994 c 132 § 12. Formerly RCW 39.10.120.]

Sunset Act application: See note following chapter digest.

Effective date—2013 c 222: See note following RCW 39.10.210.

Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220: See RCW 36.102.800 through 36.102.803.

Additional notes found at www.leg.wa.gov

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

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

Chapter 39.12 RCW

PREVAILING WAGES ON PUBLIC WORKS

Sections

39.12.040 Statement of intent to pay prevailing wages, affidavit of wages paid—Alternative procedure.

39.12.040 Statement of intent to pay prevailing wages, affidavit of wages paid—Alternative procedure.

(1)(a) Except as provided in subsection (2) of this section, before payment is made by or on behalf of the state, or any county, municipality, or political subdivision created by its laws, of any sum or sums due on account of a public works contract, it is the duty of the officer or person charged with the custody and disbursement of public funds to require the contractor and each and every subcontractor from the contractor or a subcontractor to submit to such officer a "Statement of Intent to Pay Prevailing Wages". For a contract in excess of ten thousand dollars, the statement of intent to pay prevailing wages must include:

- (i) The contractor's registration certificate number; and
- (ii) The prevailing rate of wage for each classification of workers entitled to prevailing wages under RCW 39.12.020 and the estimated number of workers in each classification.

(b) Each statement of intent to pay prevailing wages must be approved by the industrial statistician of the department of labor and industries before it is submitted to the disbursing officer. Unless otherwise authorized by the department of labor and industries, each voucher claim submitted by a contractor for payment on a project estimate must state that the prevailing wages have been paid in accordance with the prefiled statement or statements of intent to pay prevailing wages on file with the public agency. Following the final acceptance of a public works project, it is the duty of the officer charged with the disbursement of public funds, to require the contractor and each and every subcontractor from the contractor or a subcontractor to submit to such officer an affidavit of wages paid before the funds retained according to the provisions of RCW 60.28.011 are released to the contractor. On a public works project where no retainage is withheld pursuant to RCW 60.28.011(1)(b), the affidavit of wages paid must be submitted to the state, county, municipality, or other public body charged with the duty of disbursing or authorizing disbursement of public funds prior to final acceptance of the public works project. If a subcontractor performing work on a public works project fails to submit an affidavit of wages paid form, the contractor or subcontractor with whom the subcontractor had a contractual relationship for the project may file the forms on behalf of the nonresponsive subcontractor. Affidavit forms may only be filed on behalf of a non-responsive subcontractor who has ceased operations or failed to file as required by this section. The contractor filing the affidavit must accept responsibility for payment of prevailing wages unpaid by the subcontractor on the project pursuant to RCW 39.12.020 and 39.12.065. Intentionally filing a false affidavit on behalf of a subcontractor subjects the filer to the same penalties as are provided in RCW 39.12.050. Each affidavit of wages paid must be certified by the industrial statistician of the department of labor and industries before it is submitted to the disbursing officer.

(2) As an alternate to the procedures provided for in subsection (1) of this section, for public works projects of two

thousand five hundred dollars or less and for projects where the limited public works process under RCW 39.04.155(3) is followed:

(a) An awarding agency may authorize the contractor or subcontractor to submit the statement of intent to pay prevailing wages directly to the officer or person charged with the custody or disbursement of public funds in the awarding agency without approval by the industrial statistician of the department of labor and industries. The awarding agency must retain such statement of intent to pay prevailing wages for a period of not less than three years.

(b) Upon final acceptance of the public works project, the awarding agency must require the contractor or subcontractor to submit an affidavit of wages paid. Upon receipt of the affidavit of wages paid, the awarding agency may pay the contractor or subcontractor in full, including funds that would otherwise be retained according to the provisions of RCW 60.28.011. Within thirty days of receipt of the affidavit of wages paid, the awarding agency must submit the affidavit of wages paid to the industrial statistician of the department of labor and industries for approval.

(c) A statement of intent to pay prevailing wages and an affidavit of wages paid must be on forms approved by the department of labor and industries.

(d) In the event of a wage claim and a finding for the claimant by the department of labor and industries where the awarding agency has used the alternative process provided for in this subsection (2), the awarding agency must pay the wages due directly to the claimant. If the contractor or subcontractor did not pay the wages stated in the affidavit of wages paid, the awarding agency may take action at law to seek reimbursement from the contractor or subcontractor of wages paid to the claimant, and may prohibit the contractor or subcontractor from bidding on any public works contract of the awarding agency for up to one year.

(e) Nothing in this section may be interpreted to allow an awarding agency to subdivide any public works project of more than two thousand five hundred dollars for the purpose of circumventing the procedures required by subsection (1) of this section. [2013 c 113 § 5; 2012 c 129 § 1; 2009 c 219 § 2; 2007 c 210 § 4; 1991 c 15 § 1; 1982 c 130 § 2; 1981 c 46 § 2; 1975-'76 2nd ex.s. c 49 § 1; 1965 ex.s. c 133 § 3; 1945 c 63 § 4; Rem. Supp. 1945 § 10322-23.]

Chapter 39.26 RCW

PROCUREMENT OF GOODS AND SERVICES

Sections

39.26.100 Exemptions.
39.26.200 Authority to debar.

39.26.100 Exemptions. (1) The provisions of this chapter do not apply in any manner to the operation of the state legislature except as requested by the legislature.

(2) The provisions of this chapter do not apply to the contracting for services, equipment, and activities that are necessary to establish, operate, or manage the state data center, including architecture, design, engineering, installation, and operation of the facility, that are approved by the technology services board or the acquisition of proprietary software, equipment, and information technology services necessary

for or part of the provision of services offered by the consolidated technology services agency.

(3) Primary authority for the purchase of specialized equipment, and instructional and research material, for their own use rests with the institutions of higher education as defined in RCW 28B.10.016.

(4) Universities operating hospitals with approval from the director, as the agent for state hospitals as defined in RCW 72.23.010, and for health care programs provided in state correctional institutions as defined in RCW 72.65.010(3) and veterans' institutions as defined in RCW 72.36.010 and 72.36.070, may make purchases for hospital operation by participating in contracts for materials, supplies, and equipment entered into by nonprofit cooperative hospital group purchasing organizations if documented to be more cost-effective.

(5) Primary authority for the purchase of materials, supplies, and equipment, for resale to other than public agencies, rests with the state agency concerned.

(6) The authority for the purchase of insurance and bonds rests with the risk manager under RCW 43.19.769, except for institutions of higher education that choose to exercise independent purchasing authority under RCW 28B.10.029.

(7) The authority to purchase interpreter services and interpreter brokerage services on behalf of limited-English speaking or sensory-impaired applicants and recipients of public assistance rests with the department of social and health services and the health care authority.

(8) The provisions of this chapter do not apply to information technology purchases by state agencies, other than institutions of higher education and agencies of the judicial branch, if (a) the purchase is less than one hundred thousand dollars, (b) the initial purchase is approved by the chief information officer of the state, and (c) the agency director and the chief information officer of the state jointly prepare a public document providing a detailed justification for the expenditure. [2013 2nd sp.s. c 33 § 2; 2012 c 224 § 11.]

39.26.200 Authority to debar. (1)(a) The director shall provide notice to the contractor of the director's intent to debar with the specific reason for the debarment. The department must establish the debarment process by rule.

(b) After reasonable notice to the contractor and reasonable opportunity for that contractor to be heard, the director has the authority to debar a contractor for cause from consideration for award of contracts. The debarment must be for a period of not more than three years.

(2) The director may debar a contractor based on a finding of one or more of the following causes:

(a) Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;

(b) Conviction or a final determination in a civil action under state or federal statutes of fraud, embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, violation of the federal false claims act, 31 U.S.C. Sec. 3729 et seq., or the state medicaid fraud false claims act, chapter 74.66 RCW, or any other offense indicating a lack of business integrity or business honesty

that currently, seriously, and directly affects responsibility as a state contractor;

(c) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;

(d) Two or more violations within the previous five years of the federal labor relations act as determined by the national labor relations board or court of competent jurisdiction;

(e) Violation of contract provisions, as set forth in this subsection, of a character that is regarded by the director to be so serious as to justify debarment action:

(i) Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or

(ii) A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, however the failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor may not be considered to be a basis for debarment;

(f) Violation of ethical standards set forth in RCW 39.26.020; and

(g) Any other cause the director determines to be so serious and compelling as to affect responsibility as a state contractor, including debarment by another governmental entity for any cause listed in regulations.

(3) The director must issue a written decision to debar. The decision must:

(a) State the reasons for the action taken; and

(b) Inform the debarred contractor of the contractor's rights to judicial or administrative review. [2013 2nd sp.s. c 34 § 1; 2012 c 224 § 22.]

Chapter 39.30 RCW

CONTRACTS—INDEBTEDNESS LIMITATIONS— COMPETITIVE BIDDING VIOLATIONS

Sections

39.30.040 Purchases—Competitive bidding—Consideration of tax revenues—Purchase of recycled or reused materials or products—Definitions.

39.30.040 Purchases—Competitive bidding—Consideration of tax revenues—Purchase of recycled or reused materials or products—Definitions. (1) Whenever a unit of local government is required to make purchases from the lowest bidder or from the supplier offering the lowest price for the items desired to be purchased, the unit of local government may, at its option when awarding a purchase contract, take into consideration tax revenue it would receive from purchasing the supplies, materials, or equipment from a supplier located within its boundaries. The unit of local government must award the purchase contract to the lowest bidder after such tax revenue has been considered. However, any local government may allow for preferential purchase of products made from recycled materials or products that may be recycled or reused. Any unit of local government which considers tax revenue it would receive from the imposition of taxes upon a supplier located within its boundaries must also consider tax revenue it would receive from taxes it imposes upon a supplier located outside its boundaries.

(2) A unit of local government may award a contract to a bidder submitting the lowest bid before taxes are applied. The unit of local government must provide notice of its intent to award a contract based on this method prior to bids being submitted. For the purposes of this subsection (2), "taxes" means only those taxes that are included in "tax revenue" as defined in this section.

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

(a) "Tax revenue" means sales taxes that units of local government impose upon the sale of supplies, materials, or equipment from the supplier to units of local government, and business and occupation taxes that units of local government impose upon the supplier that are measured by the gross receipts of the supplier from the sale.

(b) "Unit of local government" means any county, city, town, metropolitan municipal corporation, public transit benefit area, county transportation authority, or other municipal or quasi-municipal corporation authorized to impose sales and use taxes or business and occupation taxes. [2013 c 24 § 1; 1989 c 431 § 58; 1985 c 72 § 1.]

Additional notes found at www.leg.wa.gov

Chapter 39.32 RCW

ACQUISITION OF GOVERNMENTAL PROPERTY

(Formerly: Purchase of federal property)

Sections

39.32.090 Purchases by political subdivisions from or through United States authorized.

39.32.090 Purchases by political subdivisions from or through United States authorized. Whenever authorized by ordinance or resolution of its legislative authority any political subdivision of the state shall have power to purchase supplies, materials, electronic data processing and telecommunication equipment, software, services, and/or equipment from or through the United States government without calling for bids, notwithstanding any law or charter provision to the contrary. [2013 c 132 § 1; 1945 c 88 § 1; Rem. Supp. 1945 § 10322-40. Formerly RCW 39.32.070, part.]

Chapter 39.102 RCW

LOCAL INFRASTRUCTURE FINANCING TOOL PROGRAM

Sections

39.102.020 Definitions. (*Expires June 30, 2044.*)
 39.102.140 Reporting requirements. (*Expires June 30, 2044.*)
 39.102.150 Issuance of general obligation bonds. (*Expires June 30, 2044.*)
 39.102.904 Repealed.
 39.102.905 Expiration date—2013 2nd sp.s. c 21.

39.102.020 Definitions. (*Expires June 30, 2044.*) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Annual state contribution limit" means seven million five hundred thousand dollars statewide per fiscal year.

(2) "Assessed value" means the valuation of taxable real property as placed on the last completed assessment roll.

(3) "Board" means the community economic revitalization board under chapter 43.160 RCW.

(4) "Dedicated" means pledged, set aside, allocated, received, budgeted, or otherwise identified.

(5) "Demonstration project" means one of the following projects:

(a) Bellingham waterfront redevelopment project;

(b) Spokane river district project at Liberty Lake; and

(c) Vancouver riverwest project.

(6) "Department" means the department of revenue.

(7) "Fiscal year" means the twelve-month period beginning July 1st and ending the following June 30th.

(8) "Local excise tax allocation revenue" means an amount of local excise taxes equal to some or all of the sponsoring local government's local excise tax increment, amounts of local excise taxes equal to some or all of any participating local government's excise tax increment as agreed upon in the written agreement under RCW 39.102.080(1), or both, and dedicated to local infrastructure financing.

(9) "Local excise tax increment" means an amount equal to the estimated annual increase in local excise taxes in each calendar year following the approval of the revenue development area by the board from taxable activity within the revenue development area, as set forth in the application provided to the board under RCW 39.102.040, and updated in accordance with RCW 39.102.140(1)(f).

(10) "Local excise taxes" means local revenues derived from the imposition of sales and use taxes authorized in RCW 82.14.030.

(11) "Local government" means any city, town, county, port district, and any federally recognized Indian tribe.

(12) "Local infrastructure financing" means the use of revenues received from local excise tax allocation revenues, local property tax allocation revenues, other revenues from local public sources, and revenues received from the local option sales and use tax authorized in RCW 82.14.475, dedicated to pay either the principal and interest on bonds authorized under RCW 39.102.150 or to pay public improvement costs on a pay-as-you-go basis subject to RCW 39.102.195, or both.

(13) "Local property tax allocation revenue" means those tax revenues derived from the receipt of regular property taxes levied on the property tax allocation revenue value and used for local infrastructure financing.

(14) "Low-income housing" means residential housing for low-income persons or families who lack the means which is necessary to enable them, without financial assistance, to live in decent, safe, and sanitary dwellings, without overcrowding. For the purposes of this subsection, "low income" means income that does not exceed eighty percent of the median family income for the standard metropolitan statistical area in which the revenue development area is located.

(15) "Ordinance" means any appropriate method of taking legislative action by a local government.

(16) "Participating local government" means a local government having a revenue development area within its geographic boundaries that has entered into a written agreement with a sponsoring local government as provided in RCW 39.102.080 to allow the use of all or some of its local excise tax allocation revenues or other revenues from local public sources dedicated for local infrastructure financing.

(17) "Participating taxing district" means a local government having a revenue development area within its geographic boundaries that has entered into a written agreement with a sponsoring local government as provided in RCW 39.102.080 to allow the use of some or all of its local property tax allocation revenues or other revenues from local public sources dedicated for local infrastructure financing.

(18) "Property tax allocation revenue base value" means the assessed value of real property located within a revenue development area less the property tax allocation revenue value.

(19)(a)(i) "Property tax allocation revenue value" means seventy-five percent of any increase in the assessed value of real property in a revenue development area resulting from:

(A) The placement of new construction, improvements to property, or both, on the assessment roll, where the new construction and improvements are initiated after the revenue development area is approved by the board;

(B) The cost of new housing construction, conversion, and rehabilitation improvements, when such cost is treated as new construction for purposes of chapter 84.55 RCW as provided in RCW 84.14.020, and the new housing construction, conversion, and rehabilitation improvements are initiated after the revenue development area is approved by the board;

(C) The cost of rehabilitation of historic property, when such cost is treated as new construction for purposes of chapter 84.55 RCW as provided in RCW 84.26.070, and the rehabilitation is initiated after the revenue development area is approved by the board.

(ii) Increases in the assessed value of real property in a revenue development area resulting from (a)(i)(A) through (C) of this subsection are included in the property tax allocation revenue value in the initial year. These same amounts are also included in the property tax allocation revenue value in subsequent years unless the property becomes exempt from property taxation.

(b) "Property tax allocation revenue value" includes seventy-five percent of any increase in the assessed value of new construction consisting of an entire building in the years following the initial year, unless the building becomes exempt from property taxation.

(c) Except as provided in (b) of this subsection, "property tax allocation revenue value" does not include any increase in the assessed value of real property after the initial year.

(d) There is no property tax allocation revenue value if the assessed value of real property in a revenue development area has not increased as a result of any of the reasons specified in (a)(i)(A) through (C) of this subsection.

(e) For purposes of this subsection, "initial year" means:

(i) For new construction and improvements to property added to the assessment roll, the year during which the new construction and improvements are initially placed on the assessment roll;

(ii) For the cost of new housing construction, conversion, and rehabilitation improvements, when such cost is treated as new construction for purposes of chapter 84.55 RCW, the year when such cost is treated as new construction for purposes of levying taxes for collection in the following year; and

(iii) For the cost of rehabilitation of historic property, when such cost is treated as new construction for purposes of chapter 84.55 RCW, the year when such cost is treated as new construction for purposes of levying taxes for collection in the following year.

(20) "Public improvement costs" means the cost of: (a) Design, planning, acquisition including land acquisition, site preparation including land clearing, construction, reconstruction, rehabilitation, improvement, and installation of public improvements; (b) demolishing, relocating, maintaining, and operating property pending construction of public improvements; (c) the local government's portion of relocating utilities as a result of public improvements; (d) financing public improvements, including interest during construction, legal and other professional services, taxes, insurance, principal and interest costs on general indebtedness issued to finance public improvements, and any necessary reserves for general indebtedness; (e) assessments incurred in revaluing real property for the purpose of determining the property tax allocation revenue base value that are in excess of costs incurred by the assessor in accordance with the revaluation plan under chapter 84.41 RCW, and the costs of apportioning the taxes and complying with this chapter and other applicable law; (f) administrative expenses and feasibility studies reasonably necessary and related to these costs; and (g) any of the above-described costs that may have been incurred before adoption of the ordinance authorizing the public improvements and the use of local infrastructure financing to fund the costs of the public improvements.

(21) "Public improvements" means:

(a) Infrastructure improvements within the revenue development area that include:

(i) Street, bridge, and road construction and maintenance, including highway interchange construction;

(ii) Water and sewer system construction and improvements, including wastewater reuse facilities;

(iii) Sidewalks, traffic controls, and streetlights;

(iv) Parking, terminal, and dock facilities;

(v) Park and ride facilities of a transit authority;

(vi) Park facilities and recreational areas, including trails; and

(vii) Storm water and drainage management systems;

(b) Expenditures for facilities and improvements that support affordable housing as defined in RCW 43.63A.510.

(22) "Real property" has the same meaning as in RCW 84.04.090 and also includes any privately owned improvements located on publicly owned land that are subject to property taxation.

(23) "Regular property taxes" means regular property taxes as defined in RCW 84.04.140, except: (a) Regular property taxes levied by public utility districts specifically for the purpose of making required payments of principal and interest on general indebtedness; (b) regular property taxes levied by the state for the support of the common schools under RCW 84.52.065; and (c) regular property taxes authorized by RCW 84.55.050 that are limited to a specific purpose. "Regular property taxes" do not include excess property tax levies that are exempt from the aggregate limits for junior and senior taxing districts as provided in RCW 84.52.043.

(24) "Relocating a business" means the closing of a business and the reopening of that business, or the opening of a new business that engages in the same activities as the previous business, in a different location within a one-year period, when an individual or entity has an ownership interest in the business at the time of closure and at the time of opening or reopening. "Relocating a business" does not include the closing and reopening of a business in a new location where the business has been acquired and is under entirely new ownership at the new location, or the closing and reopening of a business in a new location as a result of the exercise of the power of eminent domain.

(25) "Revenue development area" means the geographic area adopted by a sponsoring local government and approved by the board, from which local excise and property tax allocation revenues are derived for local infrastructure financing.

(26)(a) "Revenues from local public sources" means:

(i) Amounts of local excise tax allocation revenues and local property tax allocation revenues, dedicated by sponsoring local governments, participating local governments, and participating taxing districts, for local infrastructure financing; and

(ii) Any other local revenues, except as provided in (b) of this subsection, including revenues derived from federal and private sources.

(b) Revenues from local public sources do not include any local funds derived from state grants, state loans, or any other state moneys including any local sales and use taxes credited against the state sales and use taxes imposed under chapter 82.08 or 82.12 RCW.

(27) "Small business" has the same meaning as provided in RCW 19.85.020.

(28) "Sponsoring local government" means a city, town, or county, and for the purpose of this chapter a federally recognized Indian tribe or any combination thereof, that adopts a revenue development area and applies to the board to use local infrastructure financing.

(29) "State contribution" means the lesser of:

(a) One million dollars;

(b) The total amount of local excise tax allocation revenues, local property tax allocation revenues, and other revenues from local public sources, that are dedicated by a sponsoring local government, any participating local governments, and participating taxing districts, in the preceding calendar year to the payment of principal and interest on bonds issued under RCW 39.102.150 or to pay public improvement costs on a pay-as-you-go basis subject to RCW 39.102.195, or both;

(c) The amount of project award granted by the board in the notice of approval to use local infrastructure financing under RCW 39.102.040; or

(d) The highest amount of state excise tax allocation revenues and state property tax allocation revenues for any one calendar year as determined by the sponsoring local government and reported to the board and the department as required by RCW 39.102.140.

(30) "State excise tax allocation revenue" means an amount equal to the annual increase in state excise taxes estimated to be received by the state in each calendar year following the approval of the revenue development area by the board, from taxable activity within the revenue development

area as set forth in the application provided to the board under RCW 39.102.040 and periodically updated and reported as required in RCW 39.102.140(1)(f).

(31) "State excise taxes" means revenues derived from state retail sales and use taxes under RCW 82.08.020(1) and 82.12.020 at the rate provided in RCW 82.08.020(1), less the amount of tax distributions from all local retail sales and use taxes, other than the local sales and use taxes authorized by RCW 82.14.475 for the applicable revenue development area, imposed on the same taxable events that are credited against the state retail sales and use taxes under chapters 82.08 and 82.12 RCW.

(32) "State property tax allocation revenue" means an amount equal to the estimated tax revenues derived from the imposition of property taxes levied by the state for the support of common schools under RCW 84.52.065 on the property tax allocation revenue value, as set forth in the application submitted to the board under RCW 39.102.040 and updated annually in the report required under RCW 39.102.140(1)(f).

(33) "Taxing district" means a government entity that levies or has levied for it regular property taxes upon real property located within a proposed or approved revenue development area. [2013 2nd sp.s. c 21 § 6; 2010 c 164 § 11. Prior: 2009 c 267 § 1; 2008 c 209 § 1; 2007 c 229 § 1; 2006 c 181 § 102.]

Expiration date—2010 c 164 §§ 11 and 12: "Sections 11 and 12 of this act expire June 30, 2039." [2010 c 164 § 13.]

Expiration date—2009 c 267: "This act expires June 30, 2039." [2009 c 267 § 9.]

Expiration date—2008 c 209 § 1: "Section 1 of this act expires June 30, 2039." [2008 c 209 § 2.]

Application—2007 c 229: "This act applies retroactively as well as prospectively." [2007 c 229 § 15.]

Severability—2007 c 229: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2007 c 229 § 16.]

Expiration date—2007 c 229: "This act expires June 30, 2039." [2007 c 229 § 17.]

39.102.140 Reporting requirements. (Expires June 30, 2044.) (1) A sponsoring local government shall provide a report to the board and the department by March 1st of each year. The report shall contain the following information:

(a) The amount of local excise tax allocation revenues, local property tax allocation revenues, other revenues from local public sources, and taxes under RCW 82.14.475 received by the sponsoring local government, cosponsoring local government, or any participating local government during the preceding calendar year that were dedicated to pay the public improvements financed in whole or in part with local infrastructure financing, and a summary of how these revenues were expended;

(b) The names of any businesses locating within the revenue development area as a result of the public improvements undertaken by the sponsoring local government and financed in whole or in part with local infrastructure financing;

(c) The total number of permanent jobs created in the revenue development area as a result of the public improvements undertaken by the sponsoring local government and

financed in whole or in part with local infrastructure financing;

(d) The average wages and benefits received by all employees of businesses locating within the revenue development area as a result of the public improvements undertaken by the sponsoring local government and financed in whole or in part with local infrastructure financing;

(e) That the sponsoring local government is in compliance with RCW 39.102.070; and

(f) Beginning with the reports due March 1, 2010, the following must also be included:

(i) A list of public improvements financed on a pay-as-you-go basis in previous calendar years and by indebtedness issued under this chapter;

(ii) The date when any indebtedness issued under this chapter is expected to be retired;

(iii) At least once every three years, updated estimates of state excise tax allocation revenues, state property tax allocation revenues, and local excise tax increments, as determined by the sponsoring local government, that are estimated to have been received by the state, any participating local government, sponsoring local government, and cosponsoring local government, since the approval of the project award under RCW 39.102.040 by the board; and

(iv) Any other information required by the department or the board to enable the department or the board to fulfill its duties under this chapter and RCW 82.14.475.

(2) The board shall make a report available to the public and the legislature by June 1st of each even-numbered year. The report shall include a list of public improvements undertaken by sponsoring local governments and financed in whole or in part with local infrastructure financing and it shall also include a summary of the information provided to the department by sponsoring local governments under subsection (1) of this section.

(3) The department, upon request, must assist a sponsoring local government in estimating the amount of state excise tax allocation revenues and local excise tax increments required in subsection (1)(f)(iii) of this section. [2013 2nd sp.s. c 21 § 5. Prior: 2009 c 518 § 12; 2009 c 267 § 5; 2007 c 229 § 9; 2006 c 181 § 403.]

Expiration date—2009 c 518 § 12: "Section 12 of this act expires June 30, 2039." [2009 c 518 § 25.]

Expiration date—2009 c 267: See note following RCW 39.102.020.

Application—Severability—Expiration date—2007 c 229: See notes following RCW 39.102.020.

39.102.150 Issuance of general obligation bonds. (Expires June 30, 2044.)

(1) A sponsoring local government that has designated a revenue development area and instead of paying public improvement costs on a pay-as-you-go basis has been authorized the use of local infrastructure financing may incur general indebtedness, including issuing general obligation bonds, to finance the public improvements and retire the indebtedness in whole or in part from local excise tax allocation revenues, local property tax allocation revenues, and sales and use taxes imposed under the authority of RCW 82.14.475 that it receives, subject to the following requirements:

(a)(i) The ordinance adopted by the sponsoring local government and authorizing the use of local infrastructure

financing indicates an intent to incur this indebtedness and the maximum amount of this indebtedness that is contemplated; and

(ii) The sponsoring local government includes this statement of the intent in all notices required by RCW 39.102.100; or

(b) The sponsoring local government adopts a resolution, after opportunity for public comment, that indicates an intent to incur this indebtedness and the maximum amount of this indebtedness that is contemplated.

(2)(a) Except as provided in (b) of this subsection, the general indebtedness incurred under subsection (1) of this section may be payable from other tax revenues, the full faith and credit of the local government, and nontax income, revenues, fees, and rents from the public improvements, as well as contributions, grants, and nontax money available to the local government for payment of costs of the public improvements or associated debt service on the general indebtedness.

(b) A sponsoring local government that issues bonds under this section may not pledge any money received from the state of Washington for the payment of such bonds, other than the local sales and use taxes imposed under the authority of RCW 82.14.475 and collected by the department.

(3) In addition to the requirements in subsection (1) of this section, a sponsoring local government designating a revenue development area and authorizing the use of local infrastructure financing may require the nonpublic participant to provide adequate security to protect the public investment in the public improvement within the revenue development area.

(4) Bonds issued under this section must be authorized by ordinance of the governing body of the sponsoring local government and may be issued in one or more series and must bear such date or dates, be payable upon demand or mature at such time or times, bear interest at such rate or rates, be in such denomination or denominations, be in such form either coupon or registered as provided in RCW 39.46.030, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption with or without premium, be secured in such manner, and have such other characteristics, as may be provided by such ordinance or trust indenture or mortgage issued pursuant thereto.

(5) The sponsoring local government may annually pay into a fund to be established for the benefit of bonds issued under this section a fixed proportion or a fixed amount of any local excise tax allocation revenues and local property tax allocation revenues derived from property or business activity within the revenue development area containing the public improvements funded by the bonds, such payment to continue until all bonds payable from the fund are paid in full. The local government may also annually pay into the fund established in this section a fixed proportion or a fixed amount of any revenues derived from taxes imposed under RCW 82.14.475, such payment to continue until all bonds payable from the fund are paid in full. Revenues derived from taxes imposed under RCW 82.14.475 are subject to the use restriction in RCW 39.102.130.

(6) In case any of the public officials of the sponsoring local government whose signatures appear on any bonds or

any coupons issued under this chapter cease to be such officials before the delivery of such bonds, such signatures, nevertheless, are valid and sufficient for all purposes, the same as if such officials had remained in office until such delivery. Any provision of any law to the contrary notwithstanding, any bonds issued under this chapter are fully negotiable.

(7) Notwithstanding subsections (4) through (6) of this section, bonds issued under this section may be issued and sold in accordance with chapter 39.46 RCW. [2013 2nd sp.s. c 21 § 4; 2009 c 267 § 6; 2007 c 229 § 10; 2006 c 181 § 501.]

Expiration date—2009 c 267: See note following RCW 39.102.020.

Application—Severability—Expiration date—2007 c 229: See notes following RCW 39.102.020.

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

39.102.905 Expiration date—2013 2nd sp.s. c 21. This chapter expires June 30, 2044. [2013 2nd sp.s. c 21 § 1.]

Title 41

PUBLIC EMPLOYMENT, CIVIL SERVICE, AND PENSIONS

Chapters

- 41.04 General provisions.**
- 41.05 State health care authority.**
- 41.06 State civil service law.**
- 41.24 Volunteer firefighters' and reserve officers' relief and pensions.**
- 41.26 Law enforcement officers' and firefighters' retirement system.**
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Chapter 41.04 RCW GENERAL PROVISIONS

Sections

- 41.04.007 "Veteran" defined for certain purposes.
- 41.04.010 Veterans' scoring criteria status in examinations.
- 41.04.015 Public employment—Evidence of educational competence.
- 41.04.130 Extension of provisions of retirement and pension systems by cities of the first class to nonincluded personnel.
- 41.04.230 Payroll deductions authorized.
- 41.04.240 Direct deposit of salaries into financial institutions—Alternate payment methods for employees of institutions of higher education—Conservation district exemption.

41.04.007 "Veteran" defined for certain purposes. "Veteran" includes every person, who at the time he or she seeks the benefits of RCW 46.18.212, 46.18.235, 72.36.030, 41.04.010, 73.04.090, or 43.180.250 has received an honorable discharge or received a discharge for medical reasons with an honorable record, where applicable, and who has served in at least one of the following capacities:

(1) As a member in any branch of the armed forces of the United States, including the national guard and armed forces reserves, and has fulfilled his or her initial military service obligation;

(2) As a member of the women's air forces service pilots;

(3) As a member of the armed forces reserves, national guard, or coast guard, and has been called into federal service by a presidential select reserve call up for at least one hundred eighty cumulative days;

(4) As a civil service crewmember with service aboard a U.S. army transport service or U.S. naval transportation service vessel in oceangoing service from December 7, 1941, through December 31, 1946;

(5) As a member of the Philippine armed forces/scouts during the period of armed conflict from December 7, 1941, through August 15, 1945; or

(6) A United States documented merchant mariner with service aboard an oceangoing vessel operated by the department of defense, or its agents, from both June 25, 1950, through July 27, 1953, in Korean territorial waters and from August 5, 1964, through May 7, 1975, in Vietnam territorial waters, and who received a military commendation. [2013 c 42 § 1; 2010 c 161 § 1105; 2007 c 448 § 1; 2006 c 252 § 2. Prior: 2005 c 251 § 1; 2005 c 216 § 7; 2002 c 292 § 2.]

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

41.04.010 Veterans' scoring criteria status in examinations. In all competitive examinations, unless otherwise provided in this section, to determine the qualifications of applicants for public offices, positions, or employment, either the state, and all of its political subdivisions and all municipal corporations, or private companies or agencies contracted with by the state to give the competitive examinations shall give a scoring criteria status to all veterans as defined in RCW 41.04.007, by adding to the passing mark, grade or rating only, based upon a possible rating of one hundred points as perfect a percentage in accordance with the following:

(1) Ten percent to a veteran who served during a period of war or in an armed conflict as defined in RCW 41.04.005 and does not receive military retirement. The percentage shall be added to the passing mark, grade, or rating of competitive examinations until the veteran's first appointment. The percentage shall not be utilized in promotional examinations;

(2) Five percent to a veteran who did not serve during a period of war or in an armed conflict as defined in RCW 41.04.005 or is receiving military retirement. The percentage shall be added to the passing mark, grade, or rating of competitive examinations until the veteran's first appointment. The percentage shall not be utilized in promotional examinations;

(3) Five percent to a veteran who was called to active military service from employment with the state or any of its political subdivisions or municipal corporations. The percentage shall be added to promotional examinations until the first promotion only;

(4) All veterans' scoring criteria may be claimed upon release from active military service or upon receipt of separation orders indicating an honorable discharge, issued by the respective military department. [2013 c 83 § 1; 2009 c 248 § 1; 2007 c 449 § 1; 2003 c 45 § 1; 2002 c 292 § 4; 2000 c 140 § 1; 1974 ex.s. c 170 § 1; 1969 ex.s. c 269 § 2; 1953 ex.s. c 9 § 1; 1949 c 134 § 1; 1947 c 119 § 1; 1945 c 189 § 1; Rem. Supp. 1949 § 9963-5.]

Veterans and veterans' affairs: Title 73 RCW.

41.04.015 Public employment—Evidence of educational competence. A Washington high school equivalency certificate as awarded by the Washington state superintendent of public instruction or a high school equivalency certificate as provided in RCW 28B.50.536 shall be accepted in lieu of a high school diploma by the state and any local political subdivision when considering applicants for employment or promotion. [2013 c 39 § 19; 1971 c 43 § 1.]

41.04.130 Extension of provisions of retirement and pension systems by cities of the first class to nonincluded personnel. Any city of the first class may, by ordinance, extend, upon conditions deemed proper, the provisions of retirement and pension systems for superannuated and disabled officers and employees to officers and employees with five years of continuous service and acting in capacities in which they would otherwise not be entitled to participation in such systems: PROVIDED, That the following shall be specifically exempted from the provisions of this section.

(1) Members of the police departments who are entitled to the benefits of the police relief and pension fund as established by state law.

(2) Members of the fire department who are entitled to the benefits of the firefighters' relief and pension fund as established by state law. [2013 c 23 § 68; 1945 c 52 § 1; 1941 c 192 § 1; Rem. Supp. 1945 § 9592-129. Formerly codified as RCW 41.28.250.]

41.04.230 Payroll deductions authorized. Any official of the state authorized to disburse funds in payment of salaries and wages of public officers or employees is authorized, upon written request of the officer or employee, to deduct from the salaries or wages of the officers or employees, the amount or amounts of subscription payments, premiums, contributions, or continuation thereof, for payment of the following:

(1) Credit union deductions: PROVIDED, That twenty-five or more employees of a single state agency or a total of one hundred or more state employees of several agencies have authorized such a deduction for payment to the same credit union. An agency may, in its own discretion, establish a minimum participation requirement of fewer than twenty-five employees.

(2) Parking fee deductions: PROVIDED, That payment is made for parking facilities furnished by the agency or by the department of enterprise services. Deductions shall be pretax, to the extent possible, for qualified parking and transit benefits as allowed under the federal internal revenue code.

(3) U.S. savings bond deductions: PROVIDED, That a person within the particular agency shall be appointed to act as trustee. The trustee will receive all contributions; purchase and deliver all bond certificates; and keep such records and furnish such bond or security as will render full accountability for all bond contributions.

(4) Board, lodging or uniform deductions when such board, lodging and uniforms are furnished by the state, or deductions for academic tuitions or fees or scholarship contributions payable to the employing institution.

(5) Dues and other fees deductions: PROVIDED, That the deduction is for payment of membership dues to any professional organization formed primarily for public employees or college and university professors: AND PROVIDED, FURTHER, That twenty-five or more employees of a single state agency, or a total of one hundred or more state employees of several agencies have authorized such a deduction for payment to the same professional organization.

(6) Labor, employee, or retiree organization dues, and voluntary employee contributions to any funds, committees, or subsidiary organizations maintained by labor, employee, or retiree organizations, may be deducted in the event that a payroll deduction is not provided under a collective bargaining agreement under the provisions of chapter 41.80 RCW: PROVIDED, That each labor, employee, or retiree organization chooses only one fund for voluntary employee contributions: PROVIDED, FURTHER, That twenty-five or more officers or employees of a single agency, or a total of one hundred or more officers or employees of several agencies have authorized such a deduction for payment to the same labor, employee, or retiree organization: PROVIDED, FURTHER, That labor, employee, or retiree organizations with five hundred or more members in state government may have payroll deduction for employee benefit programs.

(7) Insurance contributions to the authority for payment of premiums under contracts authorized by the state health care authority. However, enrollment or assignment by the state health care authority to participate in a health care benefit plan, as required by RCW 41.05.065(8), shall authorize a payroll deduction of premium contributions without a written consent under the terms and conditions established by the public employees' benefits board.

(8) Deductions to a bank, savings bank, or savings and loan association if (a) the bank, savings bank, or savings and loan association is authorized to do business in this state; and (b) twenty-five or more employees of a single agency, or fewer, if a lesser number is established by such agency, or a total of one hundred or more state employees of several agencies have authorized a deduction for payment to the same bank, savings bank, or savings and loan association.

Deductions from salaries and wages of public officers and employees other than those enumerated in this section or by other law, may be authorized by the director of financial management for purposes clearly related to state employment or goals and objectives of the agency and for plans authorized by the state health care authority.

(9) Contributions to the Washington state combined fund drive.

The authority to make deductions from the salaries and wages of public officers and employees as provided for in this section shall be in addition to such other authority as may be provided by law: PROVIDED, That the state or any department, division, or separate agency of the state shall not be liable to any insurance carrier or contractor for the failure to make or transmit any such deduction. [2013 c 124 § 1; 2007 c 99 § 1; 2006 c 216 § 1; 2002 c 61 § 5; 1995 1st sp.s. c 6 § 21. Prior: 1993 c 2 § 26 (Initiative Measure No. 134, approved November 3, 1992); 1992 c 192 § 1; 1988 c 107 § 19; 1985 c 271 § 1; 1983 1st ex.s. c 28 § 3; 1980 c 120 § 1; 1979 c 151 § 54; 1973 1st ex.s. c 147 § 5; 1970 ex.s. c 39 § 11; 1969 c 59 § 5.]

Effective date—2006 c 216: "This act takes effect January 1, 2007."
[2006 c 216 § 2.]

Additional notes found at www.leg.wa.gov

41.04.240 Direct deposit of salaries into financial institutions—Alternate payment methods for employees of institutions of higher education—Conservation district exemption. (1) Except with regard to institutions of higher education as defined in RCW 28B.10.016, any official of the state or of any political subdivision, municipal corporation, or quasi-municipal corporation authorized to disburse funds in payment of salaries and wages of employees is authorized upon written request of at least twenty-five employees to pay all or part of such salaries or wages to any financial institution for either: (a) Credit to the employees' accounts in such financial institution; or (b) immediate transfer therefrom to the employees' accounts in any other financial institutions.

(2) In disbursing funds for payment of salaries and wages of employees, institutions of higher education as defined in RCW 28B.10.016 are authorized to require the following payment methods:

(a) For employees who have an account in a financial institution, payment to any financial institution for either: (i) Credit to the employees' accounts in such financial institution; or (ii) immediate transfer therefrom to the employees' accounts in any other financial institutions; and

(b) For employees who do not have an account in a financial institution, payment by alternate methods such as payroll cards.

(3) Nothing in this section shall be construed as authorizing any employer to require the employees to have an account in any particular financial institution or type of financial institution. A single warrant may be drawn in favor of such financial institution, for the total amount due the employees involved, and written directions provided to such financial institution of the amount to be credited to the account of an employee or to be transferred to an account in another financial institution for such employee. The issuance and delivery by the disbursing officer of a warrant in accordance with the procedure set forth herein and proper indorsement thereof by the financial institution shall have the same legal effect as payment directly to the employee.

(4) Conservation districts as established and authorized under chapter 89.08 RCW are exempt from the requirement to obtain a written request of twenty-five employees as required in subsection (1) of this section, and may disburse funds in payment of salaries and wages of employees consistent with this chapter and RCW 89.08.215.

(5) For the purposes of this section "financial institution" means any bank or trust company established in this state pursuant to chapter 2, Title 12, United States Code, or Title 30 RCW, and any credit union established in this state pursuant to chapter 14, Title 12, United States Code, or chapter 31.12 RCW, and any mutual savings bank established in this state pursuant to Title 32 RCW, and any savings and loan association established in this state pursuant to chapter 12, Title 12, United States Code, or Title 33 RCW. [2013 c 164 § 1; 2012 c 230 § 3; 1977 ex.s. c 269 § 1; 1969 c 59 § 6.]

Savings report—2012 c 230: See RCW 28B.10.0291.

Chapter 41.05 RCW

STATE HEALTH CARE AUTHORITY (Formerly: State employees' insurance and health care)

Sections

41.05.140 Payment of claims—Self-insurance—Insurance reserve fund created.

41.05.140 Payment of claims—Self-insurance—Insurance reserve fund created. (1) Except for property and casualty insurance, the authority may self-fund, self-insure, or enter into other methods of providing insurance coverage for insurance programs under its jurisdiction, including the basic health plan as provided in chapter 70.47 RCW. The authority shall contract for payment of claims or other administrative services for programs under its jurisdiction. If a program does not require the prepayment of reserves, the authority shall establish such reserves within a reasonable period of time for the payment of claims as are normally required for that type of insurance under an insured program. The authority shall endeavor to reimburse basic health plan health care providers under this section at rates similar to the average reimbursement rates offered by the statewide benchmark plan determined through the request for proposal process.

(2) Reserves established by the authority for employee and retiree benefit programs shall be held in a separate account in the custody of the state treasurer and shall be known as the public employees' and retirees' insurance reserve fund. The state treasurer may invest the moneys in the reserve fund pursuant to RCW 43.79A.040.

(3) Any savings realized as a result of a program created for employees and retirees under this section shall not be used to increase benefits unless such use is authorized by statute.

(4) Any program created under this section shall be subject to the examination requirements of chapter 48.03 RCW as if the program were a domestic insurer. In conducting an examination, the commissioner shall determine the adequacy of the reserves established for the program.

(5) The authority shall keep full and adequate accounts and records of the assets, obligations, transactions, and affairs of any program created under this section.

(6) The authority shall file a quarterly statement of the financial condition, transactions, and affairs of any program created under this section in a form and manner prescribed by the insurance commissioner. The statement shall contain information as required by the commissioner for the type of insurance being offered under the program. A copy of the annual statement shall be filed with the speaker of the house of representatives and the president of the senate.

(7) The provisions of this section do not apply to the administration of chapter 74.09 RCW. [2013 c 251 § 10; 2012 c 187 § 10; 2011 1st sp.s. c 15 § 59; 2000 c 80 § 5; 2000 c 79 § 44; 1994 c 153 § 10. Prior: 1993 c 492 § 220; 1993 c 386 § 12; 1988 c 107 § 12.]

Residual balance of funds—Effective date—2013 c 251: See notes following RCW 41.06.280.

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Intent—Effective dates—1994 c 153: See notes following RCW 41.05.011.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Intent—1993 c 386: See note following RCW 28A.400.391.

Additional notes found at www.leg.wa.gov

Chapter 41.06 RCW STATE CIVIL SERVICE LAW

Sections

41.06.280 Personnel service fund—Created—Charges to agencies, payment—Use, disbursement.

41.06.280 Personnel service fund—Created—Charges to agencies, payment—Use, disbursement. There is hereby created a fund within the state treasury, designated as the "personnel service fund," to be used by the office of financial management as a revolving fund for the payment of salaries, wages, and operations required for the administration of the provisions of this chapter, applicable provisions of chapter 41.04 RCW, and chapter 41.60 RCW. An amount not to exceed one and one-half percent of the salaries and wages for all positions in the classified service in each of the agencies subject to this chapter, except the institutions of higher education, shall be charged to the operations appropriations of each agency and credited to the personnel service fund as the allotments are approved pursuant to chapter 43.88 RCW. Subject to the above limitations, the amount shall be charged against the allotments pro rata, at a rate to be fixed by the director from time to time which, together with income derived from services rendered under RCW 41.06.080, will provide the office of financial management with funds to meet its anticipated expenditures during the allotment period, including the training requirements in RCW 41.06.500 and 41.06.530. All revenues, net of expenditures, previously derived from services provided by the department of enterprise services under RCW 41.06.080 must be transferred to the enterprise services account.

The director shall fix the terms and charges for services rendered by the office of financial management pursuant to RCW 41.06.080, which amounts shall be credited to the personnel service fund and charged against the proper fund or appropriation of the recipient of such services on a monthly basis. Payment for services so rendered under RCW 41.06.080 shall be made on a monthly basis to the state treasurer and deposited in the personnel service fund.

Moneys from the personnel service fund shall be disbursed by the state treasurer by warrants on vouchers duly authorized by the office of financial management.

During the 2013-2015 fiscal biennium, the legislature may transfer from the personnel service fund to the state general fund such amounts as reflect the excess fund balance of the account. [2013 2nd sp.s. c 4 § 968; 2013 2nd sp.s. c 4 § 967; 2013 c 251 § 1; 2011 1st sp.s. c 43 § 419; 1993 c 379 § 309; 1993 c 281 § 34; 1987 c 248 § 4; 1984 c 7 § 45; 1982 c 167 § 13; 1963 c 215 § 1; 1961 c 1 § 28 (Initiative Measure No. 207, approved November 8, 1960).]

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

Residual balance of funds—2013 c 251: "Any residual balance of funds remaining in the public printing revolving account repealed by section 13 of this act on June 30, 2013, shall be transferred to the enterprise services account. Any residual balance of funds remaining in the Puyallup tribal settlement account repealed by section 13 of this act on June 30, 2013, shall be

transferred to the motor vehicle fund. Any residual balance of funds remaining in any other account abolished in this act on June 30, 2013, shall be transferred by the state treasurer to the state general fund." [2013 c 251 § 17.]

Effective date—2013 c 251: "Except for section 4 of this act, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect June 30, 2013." [2013 c 251 § 18.]

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

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

Legislative findings—Purpose—1987 c 248: See note following RCW 41.04.362.

Additional notes found at www.leg.wa.gov

Chapter 41.24 RCW VOLUNTEER FIREFIGHTERS' AND RESERVE OFFICERS' RELIEF AND PENSIONS (Formerly: Volunteer firefighters' relief and pensions)

Sections

41.24.160 Death benefits.

41.24.160 Death benefits. (1)(a) Whenever a participant dies as the result of injuries received, or sickness contracted in consequence or as the result of the performance of his or her duties, the board of trustees shall order and direct the payment from the principal fund of (i) the sum of two hundred fourteen thousand dollars to his widow or her widower, or if there is no widow or widower, then to his or her dependent child or children, or if there is no dependent child or children, then to his or her dependent parents or either of them, or if there are no dependent parents or parent, then the death benefit shall be paid to the member's estate, and (ii)(A) the sum of one thousand two hundred seventy-five dollars per month to his widow or her widower, with (B) an additional amount of five hundred dollars per month paid to the legal guardian or surviving parent of each birth or legally adopted child, unemancipated or under eighteen years of age, and dependent upon the member for support at the time of his or her death.

(b) Beginning on July 1, 2001, and each July 1st thereafter, the compensation amounts specified in (a)(ii)(A) and (B) of this subsection shall be readjusted to reflect the percentage change in the consumer price index, calculated as follows: The index for the calendar year preceding the year in which the July calculation is made, to be known as "calendar year A," is divided by the index for the calendar year preceding calendar year A, and the resulting ratio is multiplied by the compensation amount in effect on June 30th immediately preceding the July 1st on which the respective calculation is made. For the purposes of this subsection, "index" means the same as the definition in RCW 2.12.037(1).

(2) In the case provided for in this section, the monthly payment provided may be converted in whole or in part into a lump sum payment, not in any case to exceed twenty-five thousand dollars, equal or proportionate, as the case may be, to the actuarial equivalent of the monthly payment in which event the monthly payments shall cease in whole or in part accordingly or proportionately. Such conversion may be made either upon written application to the state board and shall rest in the discretion of the state board; or the state board

is authorized to make, and authority is given it to make, on its own motion, lump sum payments, equal or proportionate, as the case may be, to the value of the annuity then remaining in full satisfaction of claims due to dependents. Within the rule under this subsection the amount and value of the lump sum payment may be agreed upon between the applicant and the state board. [2013 c 100 § 1; 2001 c 134 § 2. Prior: 1999 c 148 § 14; 1999 c 117 § 5; 1998 c 151 § 1; 1996 c 57 § 2; 1989 c 91 § 3; 1986 c 163 § 2; 1981 c 21 § 2; 1975-'76 2nd ex.s. c 76 § 2; 1973 1st ex.s. c 154 § 74; 1965 c 86 § 2; 1961 c 57 § 1; 1957 c 159 § 2; 1953 c 253 § 2; 1951 c 103 § 2; 1945 c 261 § 16; Rem. Supp. 1945 § 9578-30; prior: 1935 c 121 § 6; RRS § 9578-6.]

Additional notes found at www.leg.wa.gov

Chapter 41.26 RCW

LAW ENFORCEMENT OFFICERS' AND FIREFIGHTERS' RETIREMENT SYSTEM

Sections

41.26.110	City and county disability boards authorized—Composition—Terms—Reimbursement for travel expenses—Duties.
41.26.150	Sickness or disability benefits—Medical services.
41.26.470	Earned disability allowance—Cancellation of allowance—Reentry—Receipt of service credit while disabled—Conditions—Disposition upon death of recipient—Disabled in the line of duty—Total disability—Reimbursement for certain payments.
41.26.802	Local public safety enhancement account—Transfers into account.

41.26.110 City and county disability boards authorized—Composition—Terms—Reimbursement for travel expenses—Duties. (1) All claims for disability shall be acted upon and either approved or disapproved by either type of disability board authorized to be created in this section.

(a) Each city having a population of twenty thousand or more shall establish a disability board having jurisdiction over all members employed by those cities and composed of the following five members: Two members of the city legislative body to be appointed by the mayor; one active or retired firefighter employed by or retired from the city to be elected by the firefighters employed by or retired from the city who are subject to the jurisdiction of the board; one active or retired law enforcement officer employed by or retired from the city to be elected by the law enforcement officers employed by or retired from the city who are subject to the jurisdiction of the board; and one member from the public at large who resides within the city to be appointed by the other four members designated in this subsection. Only those active or retired firefighters and law enforcement officers who are subject to the jurisdiction of the board have the right to elect under this section. All firefighters and law enforcement officers employed by or retired from the city are eligible for election. Each of the elected members shall serve a two year term. If there are either no firefighters or law enforcement officers under the jurisdiction of the board eligible to vote, a second eligible employee representative shall be elected by the law enforcement officers or firefighters eligible to vote. The members appointed pursuant to this subsection shall serve for two year terms: PROVIDED, That cities of the first class only, shall retain existing firefighters' pen-

sion boards established pursuant to RCW 41.16.020 and existing boards of trustees of the relief and pension fund of the police department as established pursuant to RCW 41.20.010 which such boards shall have authority to act upon and approve or disapprove claims for disability by firefighters or law enforcement officers as provided under the Washington law enforcement officers' and firefighters' retirement system act.

(b) Each county shall establish a disability board having jurisdiction over all members employed by or retired from an employer within the county and not employed by a city in which a disability board is established. The county disability board so created shall be composed of five members to be chosen as follows: One member of the legislative body of the county to be appointed by the county legislative body; one member of a city or town legislative body located within the county which does not contain a city disability board established pursuant to (a) of this subsection to be chosen by a majority of the mayors of such cities and towns within the county which does not contain a city disability board; one active firefighter or retired firefighter employed by or retired from an employer within the county to be elected by the firefighters employed or retired from an employer within the county who are not employed by or retired from a city in which a disability board is established and who are subject to the jurisdiction of that board; one law enforcement officer or retired law enforcement officer employed by or retired from an employer within the county to be elected by the law enforcement officers employed in or retired from an employer within the county who are not employed by or retired from a city in which a disability board is established and who are subject to the jurisdiction of that board; and one member from the public at large who resides within the county but does not reside within a city in which a city disability board is established, to be appointed by the other four members designated in this subsection. However, in counties with a population less than sixty thousand, the member of the disability board appointed by a majority of the mayors of the cities and towns within the county that do not contain a city disability board must be a resident of one of the cities and towns but need not be a member of a city or town legislative body. Only those active or retired firefighters and law enforcement officers who are subject to the jurisdiction of the board have the right to elect under this section. All firefighters and law enforcement officers employed by or retired from an employer within the county who are not employed by or retired from a city in which a disability board is established are eligible for election. All members appointed or elected pursuant to this subsection shall serve for two year terms. If there are no firefighters under the jurisdiction of the board eligible to vote, a second eligible employee representative shall be elected by the law enforcement officers eligible to vote. If there are no law enforcement officers under the jurisdiction of the board eligible to vote, a second eligible representative shall be elected by the firefighters eligible to vote.

(2) The members of both the county and city disability boards shall not receive compensation for their service upon the boards but the members shall be reimbursed by their respective county or city for all expenses incidental to such service as to the amount authorized by law.

(3) The disability boards authorized for establishment by this section shall perform all functions, exercise all powers, and make all such determinations as specified in this chapter. [2013 c 213 § 1; 2013 c 23 § 69; 2005 c 66 § 1; 2003 c 30 § 3; 2000 c 234 § 1; 1988 c 164 § 1; 1982 c 12 § 1; 1974 ex.s. c 120 § 9; 1970 ex.s. c 6 § 6; 1969 ex.s. c 219 § 3; 1969 ex.s. c 209 § 11.]

Reviser's note: This section was amended by 2013 c 23 § 69 and by 2013 c 213 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2005 c 66: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 15, 2005]." [2005 c 66 § 2.]

Additional notes found at www.leg.wa.gov

41.26.150 Sickness or disability benefits—Medical services. (1) Whenever any active member, or any member hereafter retired, on account of service, sickness, or disability, not caused or brought on by dissipation or abuse, of which the disability board shall be judge, is confined in any hospital or in home, and whether or not so confined, requires medical services, the employer shall pay for the active or retired member the necessary medical services not payable from some other source as provided for in subsection (2) of this section. In the case of active or retired firefighters the employer may make the payments provided for in this section from the firefighters' pension fund established pursuant to RCW 41.16.050 where the fund had been established prior to March 1, 1970. If this pension fund is depleted, the employer shall have the obligation to pay all benefits payable under chapters 41.16 and 41.18 RCW.

(a) The disability board in all cases may have the active or retired member suffering from such sickness or disability examined at any time by a licensed physician or physicians, to be appointed by the disability board, for the purpose of ascertaining the nature and extent of the sickness or disability, the physician or physicians to report to the disability board the result of the examination within three days thereafter. Any active or retired member who refuses to submit to such examination or examinations shall forfeit all rights to benefits under this section for the period of the refusal.

(b) The disability board shall designate the medical services available to any sick or disabled member.

(2) The medical services payable under this section will be reduced by any amount received or eligible to be received by the member under workers' compensation, social security including the changes incorporated under Public Law 89-97, insurance provided by another employer, other pension plan, or any other similar source. Failure to apply for coverage if otherwise eligible under the provisions of Public Law 89-97 shall not be deemed a refusal of payment of benefits thereby enabling collection of charges under the provisions of this chapter.

(3) Upon making the payments provided for in subsection (1) of this section, the employer shall be subrogated to all rights of the member against any third party who may be held liable for the member's injuries or for payment of the cost of medical services in connection with a member's sickness or disability to the extent necessary to recover the amount of payments made by the employer.

[2013 RCW Supp—page 436]

(4) Any employer under this chapter, either singly, or jointly with any other such employer or employers through an association thereof as provided for in chapter 48.21 RCW, may provide for all or part of one or more plans of group hospitalization and medical aid insurance to cover any of its employees who are members of the Washington law enforcement officers' and firefighters' retirement system, and/or retired former employees who were, before retirement, members of the retirement system, through contracts with regularly constituted insurance carriers, with health maintenance organizations as defined in chapter 48.46 RCW, or with health care service contractors as defined in chapter 48.44 RCW. Benefits payable under the plan or plans shall be deemed to be amounts received or eligible to be received by the active or retired member under subsection (2) of this section.

(5) Any employer under this chapter may, at its discretion, elect to reimburse a retired former employee under this chapter for premiums the retired former employee has paid for medical insurance that supplements medicare, including premiums the retired former employee has paid for medicare part B coverage. [2013 c 23 § 70; 1992 c 22 § 3; 1991 c 35 § 22; 1987 c 185 § 12; 1983 c 106 § 23; 1974 ex.s. c 120 § 11; 1971 ex.s. c 257 § 10; 1970 ex.s. c 6 § 10; 1969 ex.s. c 219 § 4; 1969 ex.s. c 209 § 15.]

Intent—1991 c 35: See note following RCW 41.26.005.

Intent—Severability—1987 c 185: See notes following RCW 51.12.130.

Purpose—Severability—1971 ex.s. c 257: See notes following RCW 41.26.030.

Additional notes found at www.leg.wa.gov

41.26.470 Earned disability allowance—Cancellation of allowance—Reentry—Receipt of service credit while disabled—Conditions—Disposition upon death of recipient—Disabled in the line of duty—Total disability—Reimbursement for certain payments. (1) A member of the retirement system who becomes totally incapacitated for continued employment by an employer as determined by the director shall be eligible to receive an allowance under the provisions of RCW 41.26.410 through 41.26.550. Such member shall receive a monthly disability allowance computed as provided for in RCW 41.26.420 and shall have such allowance actuarially reduced to reflect the difference in the number of years between age at disability and the attainment of age fifty-three, except under subsection (7) of this section.

(2) Any member who receives an allowance under the provisions of this section shall be subject to such comprehensive medical examinations as required by the department. If such medical examinations reveal that such a member has recovered from the incapacitating disability and the member is no longer entitled to benefits under Title 51 RCW, the retirement allowance shall be canceled and the member shall be restored to duty in the same civil service rank, if any, held by the member at the time of retirement or, if unable to perform the duties of the rank, then, at the member's request, in such other like or lesser rank as may be or become open and available, the duties of which the member is then able to perform. In no event shall a member previously drawing a disability allowance be returned or be restored to duty at a salary or rate of pay less than the current salary attached to the rank

or position held by the member at the date of the retirement for disability. If the department determines that the member is able to return to service, the member is entitled to notice and a hearing. Both the notice and the hearing shall comply with the requirements of chapter 34.05 RCW, the administrative procedure act.

(3) Those members subject to this chapter who became disabled in the line of duty on or after July 23, 1989, and who receive benefits under RCW 41.04.500 through 41.04.530 or similar benefits under RCW 41.04.535 shall receive or continue to receive service credit subject to the following:

(a) No member may receive more than one month's service credit in a calendar month.

(b) No service credit under this section may be allowed after a member separates or is separated without leave of absence.

(c) Employer contributions shall be paid by the employer at the rate in effect for the period of the service credited.

(d) Employee contributions shall be collected by the employer and paid to the department at the rate in effect for the period of service credited.

(e) State contributions shall be as provided in RCW 41.45.060 and 41.45.067.

(f) Contributions shall be based on the regular compensation which the member would have received had the disability not occurred.

(g) The service and compensation credit under this section shall be granted for a period not to exceed six consecutive months.

(h) Should the legislature revoke the service credit authorized under this section or repeal this section, no affected employee is entitled to receive the credit as a matter of contractual right.

(4)(a) If the recipient of a monthly retirement allowance under this section dies before the total of the retirement allowance paid to the recipient equals the amount of the accumulated contributions at the date of retirement, then the balance shall be paid to the member's estate, or such person or persons, trust, or organization as the recipient has nominated by written designation duly executed and filed with the director, or, if there is no such designated person or persons still living at the time of the recipient's death, then to the surviving spouse or domestic partner, or, if there is neither such designated person or persons still living at the time of his or her death nor a surviving spouse or domestic partner, then to his or her legal representative.

(b) If a recipient of a monthly retirement allowance under this section died before April 27, 1989, and before the total of the retirement allowance paid to the recipient equaled the amount of his or her accumulated contributions at the date of retirement, then the department shall pay the balance of the accumulated contributions to the member's surviving spouse or, if there is no surviving spouse, then in equal shares to the member's children. If there is no surviving spouse or children, the department shall retain the contributions.

(5) Should the disability retirement allowance of any disability beneficiary be canceled for any cause other than reentrance into service or retirement for service, he or she shall be paid the excess, if any, of the accumulated contributions at the time of retirement over all payments made on his or her behalf under this chapter.

(6) A member who becomes disabled in the line of duty, and who ceases to be an employee of an employer except by service or disability retirement, may request a refund of one hundred fifty percent of the member's accumulated contributions. Any accumulated contributions attributable to restorations made under RCW 41.50.165(2) shall be refunded at one hundred percent. A person in receipt of this benefit is a retiree.

(7) A member who becomes disabled in the line of duty shall be entitled to receive a minimum retirement allowance equal to ten percent of such member's final average salary. The member shall additionally receive a retirement allowance equal to two percent of such member's average final salary for each year of service beyond five.

(8) A member who became disabled in the line of duty before January 1, 2001, and is receiving an allowance under RCW 41.26.430 or subsection (1) of this section shall be entitled to receive a minimum retirement allowance equal to ten percent of such member's final average salary. The member shall additionally receive a retirement allowance equal to two percent of such member's average final salary for each year of service beyond five, and shall have the allowance actuarially reduced to reflect the difference in the number of years between age at disability and the attainment of age fifty-three. An additional benefit shall not result in a total monthly benefit greater than that provided in subsection (1) of this section.

(9) A member who is totally disabled in the line of duty is entitled to receive a retirement allowance equal to seventy percent of the member's final average salary. The allowance provided under this subsection shall be offset by:

(a) Temporary disability wage-replacement benefits or permanent total disability benefits provided to the member under Title 51 RCW; and

(b) Federal social security disability benefits, if any; so that such an allowance does not result in the member receiving combined benefits that exceed one hundred percent of the member's final average salary. However, the offsets shall not in any case reduce the allowance provided under this subsection below the member's accrued retirement allowance.

A member is considered totally disabled if he or she is unable to perform any substantial gainful activity due to a physical or mental condition that may be expected to result in death or that has lasted or is expected to last at least twelve months. Substantial gainful activity is defined as average earnings in excess of eight hundred sixty dollars a month in 2006 adjusted annually as determined by the director based on federal social security disability standards. The department may require a person in receipt of an allowance under this subsection to provide any financial records that are necessary to determine continued eligibility for such an allowance. A person in receipt of an allowance under this subsection whose earnings exceed the threshold for substantial gainful activity shall have their benefit converted to a line-of-duty disability retirement allowance as provided in subsection (7) of this section.

Any person in receipt of an allowance under the provisions of this section is subject to comprehensive medical examinations as may be required by the department under

subsection (2) of this section in order to determine continued eligibility for such an allowance.

(10)(a) In addition to the retirement allowance provided in subsection (9) of this section, the retirement allowance of a member who is totally disabled in the line of duty shall include reimbursement for any payments made by the member after June 10, 2010, for premiums on employer-provided medical insurance, insurance authorized by the consolidated omnibus budget reconciliation act of 1985 (COBRA), medicare part A (hospital insurance), and medicare part B (medical insurance). A member who is entitled to medicare must enroll and maintain enrollment in both medicare part A and medicare part B in order to remain eligible for the reimbursement provided in this subsection. The legislature reserves the right to amend or repeal the benefits provided in this subsection in the future and no member or beneficiary has a contractual right to receive any distribution not granted prior to that time.

(b) The retirement allowance of a member who is not eligible for reimbursement provided in (a) of this subsection shall include reimbursement for any payments made after June 30, 2013, for premiums on other medical insurance. However, in no instance shall the reimbursement exceed the amount reimbursed for premiums authorized by the consolidated omnibus budget reconciliation act of 1985 (COBRA). [2013 c 287 § 2; 2010 c 259 § 2. Prior: 2009 c 523 § 6; 2009 c 95 § 1; 2006 c 39 § 1; 2005 c 451 § 1; 2004 c 4 § 1; 2001 c 261 § 2; 2000 c 247 § 1104; 1999 c 135 § 1; 1995 c 144 § 18; 1993 c 517 § 4; 1990 c 249 § 19; prior: 1989 c 191 § 1; 1989 c 88 § 1; 1982 c 12 § 2; 1981 c 294 § 9; 1977 ex.s. c 294 § 8.]

Short title—2013 c 287: "This act may be known as the Wynn Loiland act." [2013 c 287 § 1.]

Short title—2010 c 259: "This act may be known as the Jason McKisack act." [2010 c 259 § 1.]

Effective date—2006 c 39: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 14, 2006]." [2006 c 39 § 3.]

Effective date—2005 c 451: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 13, 2005]." [2005 c 451 § 2.]

Application—2004 c 4 § 1: "This act applies to all members, subject to section 1 of this act, who become or became disabled in the line of duty on or after January 1, 2001." [2004 c 4 § 2.]

Purpose—1993 c 517: See note following RCW 41.26.420.

Findings—1990 c 249: See note following RCW 2.10.146.

Disability leave supplement for law enforcement officers and firefighters: RCW 41.04.500 through 41.04.550.

Additional notes found at www.leg.wa.gov

41.26.802 Local public safety enhancement account—Transfers into account. (1) By September 30, 2011, if the prior fiscal biennium's general state revenues exceed the previous fiscal biennium's revenues by more than five percent, subject to appropriation by the legislature, the state treasurer shall transfer five million dollars to the local public safety enhancement account.

(2) By September 30, 2015, if the prior fiscal biennium's general state revenues exceed the previous fiscal biennium's revenues by more than five percent, subject to appropriation

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by the legislature, the state treasurer shall transfer twenty million dollars to the local public safety enhancement account.

(3) By September 30, 2017, and by September 30 of each odd-numbered year thereafter, if the prior fiscal biennium's general state revenues exceed the previous fiscal biennium's revenues by more than five percent, subject to appropriation by the legislature, the state treasurer shall transfer the lesser of one-third of the increase, or fifty million dollars, to the local public safety enhancement account. [2013 2nd sp.s. c 4 § 969; 2008 c 99 § 4.]

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

Findings—Purpose—2008 c 99: See note following RCW 41.26.800.

Chapter 41.60 RCW STATE EMPLOYEES' SUGGESTION AWARDS AND INCENTIVE PAY

Sections

41.60.050 Appropriations for administrative costs.

41.60.050 Appropriations for administrative costs. The legislature shall appropriate from the personnel service fund for the payment of administrative costs of the productivity board. However, during the 2011-2013 and 2013-2015 fiscal biennia, the operations of the productivity board shall be suspended. [2013 2nd sp.s. c 4 § 970. Prior: 2011 1st sp.s. c 50 § 937; 2011 1st sp.s. c 43 § 473; 1991 sp.s. c 16 § 918; 1987 c 387 § 4; 1985 c 114 § 3; 1983 c 54 § 3; 1982 c 167 § 11; 1975-'76 2nd ex.s. c 122 § 3; 1969 ex.s. c 152 § 6; 1965 ex.s. c 142 § 5.]

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

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

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

Personnel service fund: RCW 41.06.280.

Additional notes found at www.leg.wa.gov

Chapter 41.80 RCW STATE COLLECTIVE BARGAINING

Sections

41.80.010 Negotiation and ratification of collective bargaining agreements.

41.80.020 Scope of bargaining.

41.80.010 Negotiation and ratification of collective bargaining agreements. (1) For the purpose of negotiating collective bargaining agreements under this chapter, the employer shall be represented by the governor or governor's designee, except as provided for institutions of higher education in subsection (4) of this section.

(2)(a) If an exclusive bargaining representative represents more than one bargaining unit, the exclusive bargaining representative shall negotiate with each employer representative as designated in subsection (1) of this section one master collective bargaining agreement on behalf of all the employees in bargaining units that the exclusive bargaining representative represents. For those exclusive bargaining repre-

representatives who represent fewer than a total of five hundred employees each, negotiation shall be by a coalition of all those exclusive bargaining representatives. The coalition shall bargain for a master collective bargaining agreement covering all of the employees represented by the coalition. The governor's designee and the exclusive bargaining representative or representatives are authorized to enter into supplemental bargaining of agency-specific issues for inclusion in or as an addendum to the master collective bargaining agreement, subject to the parties' agreement regarding the issues and procedures for supplemental bargaining. This section does not prohibit cooperation and coordination of bargaining between two or more exclusive bargaining representatives.

(b) This subsection (2) does not apply to exclusive bargaining representatives who represent employees of institutions of higher education, except when the institution of higher education has elected to exercise its option under subsection (4) of this section to have its negotiations conducted by the governor or governor's designee under the procedures provided for general government agencies in subsections (1) through (3) of this section.

(c) If five hundred or more employees of an independent state elected official listed in RCW 43.01.010 are organized in a bargaining unit or bargaining units under RCW 41.80.070, the official shall be consulted by the governor or the governor's designee before any agreement is reached under (a) of this subsection concerning supplemental bargaining of agency specific issues affecting the employees in such bargaining unit.

(3) The governor shall submit a request for funds necessary to implement the compensation and fringe benefit provisions in the master collective bargaining agreement or for legislation necessary to implement the agreement. Requests for funds necessary to implement the provisions of bargaining agreements shall not be submitted to the legislature by the governor unless such requests:

(a) Have been submitted to the director of the office of financial management by October 1 prior to the legislative session at which the requests are to be considered; and

(b) Have been certified by the director of the office of financial management as being feasible financially for the state.

The legislature shall approve or reject the submission of the request for funds as a whole. The legislature shall not consider a request for funds to implement a collective bargaining agreement unless the request is transmitted to the legislature as part of the governor's budget document submitted under RCW 43.88.030 and 43.88.060. If the legislature rejects or fails to act on the submission, either party may reopen all or part of the agreement or the exclusive bargaining representative may seek to implement the procedures provided for in RCW 41.80.090.

(4)(a)(i) For the purpose of negotiating agreements for institutions of higher education, the employer shall be the respective governing board of each of the universities, colleges, or community colleges or a designee chosen by the board to negotiate on its behalf.

(ii) A governing board of a university or college may elect to have its negotiations conducted by the governor or governor's designee under the procedures provided for gen-

eral government agencies in subsections (1) through (3) of this section, except that:

(A) The governor or the governor's designee and an exclusive bargaining representative shall negotiate one master collective bargaining agreement for all of the bargaining units of employees of a university or college that the representative represents; or

(B) If the parties mutually agree, the governor or the governor's designee and an exclusive bargaining representative shall negotiate one master collective bargaining agreement for all of the bargaining units of employees of more than one university or college that the representative represents.

(iii) A governing board of a community college may elect to have its negotiations conducted by the governor or governor's designee under the procedures provided for general government agencies in subsections (1) through (3) of this section.

(b) Prior to entering into negotiations under this chapter, the institutions of higher education or their designees shall consult with the director of the office of financial management regarding financial and budgetary issues that are likely to arise in the impending negotiations.

(c)(i) In the case of bargaining agreements reached between institutions of higher education other than the University of Washington and exclusive bargaining representatives agreed to under the provisions of this chapter, if appropriations are necessary to implement the compensation and fringe benefit provisions of the bargaining agreements, the governor shall submit a request for such funds to the legislature according to the provisions of subsection (3) of this section, except as provided in (c)(iii) of this subsection.

(ii) In the case of bargaining agreements reached between the University of Washington and exclusive bargaining representatives agreed to under the provisions of this chapter, if appropriations are necessary to implement the compensation and fringe benefit provisions of a bargaining agreement, the governor shall submit a request for such funds to the legislature according to the provisions of subsection (3) of this section, except as provided in this subsection (4)(c)(ii) and as provided in (c)(iii) of this subsection.

(A) If appropriations of less than ten thousand dollars are necessary to implement the provisions of a bargaining agreement, a request for such funds shall not be submitted to the legislature by the governor unless the request has been submitted to the director of the office of financial management by October 1 prior to the legislative session at which the request is to be considered.

(B) If appropriations of ten thousand dollars or more are necessary to implement the provisions of a bargaining agreement, a request for such funds shall not be submitted to the legislature by the governor unless the request:

(I) Has been submitted to the director of the office of financial management by October 1 prior to the legislative session at which the request is to be considered; and

(II) Has been certified by the director of the office of financial management as being feasible financially for the state.

(C) If the director of the office of financial management does not certify a request under (c)(ii)(B) of this subsection as being feasible financially for the state, the parties shall enter

into collective bargaining solely for the purpose of reaching a mutually agreed upon modification of the agreement necessary to address the absence of those requested funds. The legislature may act upon the compensation and fringe benefit provisions of the modified collective bargaining agreement if those provisions are agreed upon and submitted to the office of financial management and legislative budget committees before final legislative action on the biennial or supplemental operating budget by the sitting legislature.

(iii) In the case of a bargaining unit of employees of institutions of higher education in which the exclusive bargaining representative is certified during or after the conclusion of a legislative session, the legislature may act upon the compensation and fringe benefit provisions of the unit's initial collective bargaining agreement if those provisions are agreed upon and submitted to the office of financial management and legislative budget committees before final legislative action on the biennial or supplemental operating budget by the sitting legislature.

(5) There is hereby created a joint committee on employment relations, which consists of two members with leadership positions in the house of representatives, representing each of the two largest caucuses; the chair and ranking minority member of the house appropriations committee, or its successor, representing each of the two largest caucuses; two members with leadership positions in the senate, representing each of the two largest caucuses; and the chair and ranking minority member of the senate ways and means committee, or its successor, representing each of the two largest caucuses. The governor shall periodically consult with the committee regarding appropriations necessary to implement the compensation and fringe benefit provisions in the master collective bargaining agreements, and upon completion of negotiations, advise the committee on the elements of the agreements and on any legislation necessary to implement the agreements.

(6) If, after the compensation and fringe benefit provisions of an agreement are approved by the legislature, a significant revenue shortfall occurs resulting in reduced appropriations, as declared by proclamation of the governor or by resolution of the legislature, both parties shall immediately enter into collective bargaining for a mutually agreed upon modification of the agreement.

(7) After the expiration date of a collective bargaining agreement negotiated under this chapter, all of the terms and conditions specified in the collective bargaining agreement remain in effect until the effective date of a subsequently negotiated agreement, not to exceed one year from the expiration date stated in the agreement. Thereafter, the employer may unilaterally implement according to law.

(8) For the 2013-2015 fiscal biennium, a collective bargaining agreement related to employee health care benefits negotiated between the employer and coalition pursuant to RCW 41.80.020(3) regarding the dollar amount expended on behalf of each employee shall be a separate agreement for which the governor may request funds necessary to implement the agreement. The legislature may act upon a 2013-2015 collective bargaining agreement related to employee health care benefits if an agreement is reached and submitted to the office of financial management and legislative budget committees before final legislative action on the

biennial or supplemental operating appropriations act by the sitting legislature. [2013 2nd sp.s. c 4 § 971. Prior: 2011 1st sp.s. c 50 § 938; 2011 c 344 § 1; 2010 c 104 § 1; 2002 c 354 § 302.]

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

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

41.80.020 Scope of bargaining. (1) Except as otherwise provided in this chapter, the matters subject to bargaining include wages, hours, and other terms and conditions of employment, and the negotiation of any question arising under a collective bargaining agreement.

(2) The employer is not required to bargain over matters pertaining to:

(a) Health care benefits or other employee insurance benefits, except as required in subsection (3) of this section;

(b) Any retirement system or retirement benefit; or

(c) Rules of the human resources director, the director of enterprise services, or the Washington personnel resources board adopted under RCW 41.06.157.

(3) Matters subject to bargaining include the number of names to be certified for vacancies, promotional preferences, and the dollar amount expended on behalf of each employee for health care benefits. However, except as provided otherwise in this subsection for institutions of higher education, negotiations regarding the number of names to be certified for vacancies, promotional preferences, and the dollar amount expended on behalf of each employee for health care benefits shall be conducted between the employer and one coalition of all the exclusive bargaining representatives subject to this chapter. The exclusive bargaining representatives for employees that are subject to chapter 47.64 RCW shall bargain the dollar amount expended on behalf of each employee for health care benefits with the employer as part of the coalition under this subsection. Any such provision agreed to by the employer and the coalition shall be included in all master collective bargaining agreements negotiated by the parties. For institutions of higher education, promotional preferences and the number of names to be certified for vacancies shall be bargained under the provisions of RCW 41.80.010(4). For agreements covering the 2013-2015 fiscal biennium, any agreement between the employer and the coalition regarding the dollar amount expended on behalf of each employee for health care benefits is a separate agreement and shall not be included in the master collective bargaining agreements negotiated by the parties.

(4) The employer and the exclusive bargaining representative shall not agree to any proposal that would prevent the implementation of approved affirmative action plans or that would be inconsistent with the comparable worth agreement that provided the basis for the salary changes implemented beginning with the 1983-1985 biennium to achieve comparable worth.

(5) The employer and the exclusive bargaining representative shall not bargain over matters pertaining to management rights established in RCW 41.80.040.

(6) Except as otherwise provided in this chapter, if a conflict exists between an executive order, administrative rule, or agency policy relating to wages, hours, and terms and condi-

tions of employment and a collective bargaining agreement negotiated under this chapter, the collective bargaining agreement shall prevail. A provision of a collective bargaining agreement that conflicts with the terms of a statute is invalid and unenforceable.

(7) This section does not prohibit bargaining that affects contracts authorized by RCW 41.06.142. [2013 2nd sp.s. c 4 § 972. Prior: 2011 1st sp.s. c 50 § 939; 2011 1st sp.s. c 43 § 445; 2010 c 283 § 16; 2002 c 354 § 303.]

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

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

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

Findings—Intent—Effective date—2010 c 283: See notes following RCW 47.60.355.

Title 42

PUBLIC OFFICERS AND AGENCIES

Chapters

- 42.12** **Vacancies.**
42.17A **Campaign disclosure and contribution.**
42.52 **Ethics in public service.**
42.56 **Public records act.**

Chapter 42.12 RCW VACANCIES

Sections

- 42.12.040 Vacancy in partisan elective office—Successor elected—When.
42.12.070 Filling nonpartisan vacancies.

42.12.040 Vacancy in partisan elective office—Successor elected—When. (1) If a vacancy occurs in any partisan elective office in the executive or legislative branches of state government or in any partisan county elective office before the first day of the regular filing period, the position must be open for filing during the regular filing period as provided in RCW 29A.24.171 and a successor shall be elected at the general election. Except during the last year of the term of office, if such a vacancy occurs on or after the first day of the regular filing period, the election of the successor shall occur at the next succeeding general election as provided in RCW 29A.24.171. The elected successor shall hold office for the remainder of the unexpired term. This section shall not apply to any vacancy occurring in a charter county which has charter provisions inconsistent with this section.

(2) If a vacancy occurs in any legislative office or in any partisan county office after the general election in a year that the position appears on the ballot and before the start of the next term, the term of the successor who is of the same party as the incumbent may commence once he or she has qualified as defined in RCW 29A.04.133 and shall continue through the term for which he or she was elected. [2013 c 11 § 88; 2011 c 349 § 27. Prior: 2006 c 344 § 29; 2005 c 2 § 15 (Initiative Measure No. 872, approved November 2, 2004); 2003 c 238 § 4; 2002 c 108 § 2; 1981 c 180 § 1.]

Reviser's note: The constitutionality of Initiative Measure No. 872 was upheld in *Washington State Grange v. Washington State Republican Party, et al.*, 552 U.S. 442 (2008).

Effective date—2011 c 349 §§ 10-12, 27, 28, and 30: See note following RCW 29A.24.171.

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

Short title—Intent—Contingent effective date—2005 c 2 (Initiative Measure No. 872): See notes following RCW 29A.52.112.

Contingent effective date—2003 c 238: See note following RCW 36.16.110.

County office, appointment of acting official: RCW 36.16.115.

Additional notes found at www.leg.wa.gov

42.12.070 Filling nonpartisan vacancies. A vacancy on an elected nonpartisan governing body of a special purpose district where property ownership is not a qualification to vote, a town, or a city other than a first-class city or a charter code city, shall be filled as follows unless the provisions of law relating to the special district, town, or city provide otherwise:

(1) Where one position is vacant, the remaining members of the governing body shall appoint a qualified person to fill the vacant position.

(2) Where two or more positions are vacant and two or more members of the governing body remain in office, the remaining members of the governing body shall appoint a qualified person to fill one of the vacant positions, the remaining members of the governing body and the newly appointed person shall appoint another qualified person to fill another vacant position, and so on until each of the vacant positions is filled with each of the new appointees participating in each appointment that is made after his or her appointment.

(3) If less than two members of a governing body remain in office, the county legislative authority of the county in which all or the largest geographic portion of the city, town, or special district is located shall appoint a qualified person or persons to the governing body until the governing body has two members.

(4) If a governing body fails to appoint a qualified person to fill a vacancy within ninety days of the occurrence of the vacancy, the authority of the governing body to fill the vacancy shall cease and the county legislative authority of the county in which all or the largest geographic portion of the city, town, or special district is located shall appoint a qualified person to fill the vacancy.

(5) If the county legislative authority of the county fails to appoint a qualified person within one hundred eighty days of the occurrence of the vacancy, the county legislative authority or the remaining members of the governing body of the city, town, or special district may petition the governor to appoint a qualified person to fill the vacancy. The governor may appoint a qualified person to fill the vacancy after being petitioned if at the time the governor fills the vacancy the county legislative authority has not appointed a qualified person to fill the vacancy.

(6) As provided in chapter 29A.24 RCW, each person who is appointed shall serve until a qualified person is elected at the next election at which a member of the governing body normally would be elected. The person elected shall take

office immediately and serve the remainder of the unexpired term. [2013 c 11 § 89; 2011 c 349 § 28; 1994 c 223 § 1.]

Effective date—2011 c 349 §§ 10-12, 27, 28, and 30: See note following RCW 29A.24.171.

Chapter 42.17A RCW

CAMPAIGN DISCLOSURE AND CONTRIBUTION

Sections

- 42.17A.055 Electronic filing—Availability. (*Effective January 1, 2014.*)
 42.17A.320 Identification of sponsor—Exemptions.
 42.17A.405 Limits specified—Exemptions.
 42.17A.750 Civil remedies and sanctions—Referral for criminal prosecution. (*Effective January 1, 2014.*)

42.17A.055 Electronic filing—Availability. (*Effective January 1, 2014.*) (1) The commission shall make available to candidates, public officials, and political committees that are required to file reports under this chapter an electronic filing alternative for submitting financial affairs reports, contribution reports, and expenditure reports.

(2) The commission shall make available to lobbyists and lobbyists' employers required to file reports under RCW 42.17A.600, 42.17A.615, 42.17A.625, or 42.17A.630 an electronic filing alternative for submitting these reports.

(3) State agencies required to report under RCW 42.17A.635 must file all reports electronically.

(4) The commission shall make available to candidates, public officials, political committees, lobbyists, and lobbyists' employers an electronic copy of the appropriate reporting forms at no charge. [2013 c 166 § 2; 2010 c 204 § 202; 2000 c 237 § 3; 1999 c 401 § 11. Formerly RCW 42.17.369.]

Effective date—2013 c 166: "This act takes effect January 1, 2014." [2013 c 166 § 3.]

42.17A.320 Identification of sponsor—Exemptions.

(1) All written political advertising, whether relating to candidates or ballot propositions, shall include the sponsor's name and address. All radio and television political advertising, whether relating to candidates or ballot propositions, shall include the sponsor's name. The use of an assumed name for the sponsor of electioneering communications, independent expenditures, or political advertising shall be unlawful. For partisan office, if a candidate has expressed a party or independent preference on the declaration of candidacy, that party or independent designation shall be clearly identified in electioneering communications, independent expenditures, or political advertising.

(2) In addition to the information required by subsection (1) of this section, except as specifically addressed in subsections (4) and (5) of this section, all political advertising undertaken as an independent expenditure or an electioneering communication by a person or entity other than a bona fide political party must include as part of the communication:

(a) The statement: "No candidate authorized this ad. It is paid for by (name, address, city, state)";

(b) If the sponsor is a political committee, the statement: "Top Five Contributors," followed by a listing of the names of the five persons or entities making the largest contributions in excess of seven hundred dollars reportable under this

chapter during the twelve-month period before the date of the advertisement or communication; and

(c) If the sponsor is a political committee established, maintained, or controlled directly, or indirectly through the formation of one or more political committees, by an individual, corporation, union, association, or other entity, the full name of that individual or entity.

(3) The information required by subsections (1) and (2) of this section shall:

(a) Appear on the first page or fold of the written advertisement or communication in at least ten-point type, or in type at least ten percent of the largest size type used in a written advertisement or communication directed at more than one voter, such as a billboard or poster, whichever is larger;

(b) Not be subject to the half-tone or screening process; and

(c) Be set apart from any other printed matter.

(4) In an independent expenditure or electioneering communication transmitted via television or other medium that includes a visual image, the following statement must either be clearly spoken, or appear in print and be visible for at least four seconds, appear in letters greater than four percent of the visual screen height, and have a reasonable color contrast with the background: "No candidate authorized this ad. Paid for by (name, city, state)." If the advertisement or communication is undertaken by a nonindividual other than a party organization, then the following notation must also be included: "Top Five Contributors" followed by a listing of the names of the five persons or entities making the largest contributions in excess of seven hundred dollars reportable under this chapter during the twelve-month period preceding the date on which the advertisement is initially published or otherwise presented to the public. Abbreviations may be used to describe contributing entities if the full name of the entity has been clearly spoken previously during the broadcast advertisement.

(5) The following statement shall be clearly spoken in an independent expenditure or electioneering communication transmitted by a method that does not include a visual image: "No candidate authorized this ad. Paid for by (name, city, state)." If the independent expenditure or electioneering communication is undertaken by a nonindividual other than a party organization, then the following statement must also be included: "Top Five Contributors" followed by a listing of the names of the five persons or entities making the largest contributions in excess of seven hundred dollars reportable under this chapter during the twelve-month period preceding the date on which the advertisement is initially published or otherwise presented to the public. Abbreviations may be used to describe contributing entities if the full name of the entity has been clearly spoken previously during the broadcast advertisement.

(6) Political advertising costing one thousand dollars or more supporting or opposing ballot measures sponsored by a political committee must include the information on the "Top Five Contributors" consistent with subsections (2), (4), and (5) of this section. A series of political advertising sponsored by the same political committee, each of which is under one thousand dollars, must include the "Top Five Contributors" information required by this section once their cumulative value reaches one thousand dollars or more.

(7) Political yard signs are exempt from the requirements of this section that the sponsor's name and address, and "Top Five Contributor" information, be listed on the advertising. In addition, the public disclosure commission shall, by rule, exempt from the identification requirements of this section forms of political advertising such as campaign buttons, balloons, pens, pencils, sky-writing, inscriptions, and other forms of advertising where identification is impractical.

(8) For the purposes of this section, "yard sign" means any outdoor sign with dimensions no greater than eight feet by four feet. [2013 c 138 § 1; 2012 c 226 § 1; 2010 c 204 § 505; 2005 c 445 § 9; 1995 c 397 § 19; 1993 c 2 § 22 (Initiative Measure No. 134, approved November 3, 1992); 1984 c 216 § 1. Formerly RCW 42.17.510.]

Advertising rates for political candidates: RCW 65.16.095.

42.17A.405 Limits specified—Exemptions. (1) The contribution limits in this section apply to:

- (a) Candidates for legislative office;
- (b) Candidates for state office other than legislative office;
- (c) Candidates for county office;
- (d) Candidates for special purpose district office if that district is authorized to provide freight and passenger transfer and terminal facilities and that district has over two hundred thousand registered voters;
- (e) Candidates for city council office;
- (f) Candidates for mayoral office;
- (g) Candidates for school board office;
- (h) Candidates for public hospital district board of commissioners in districts with a population over one hundred fifty thousand;
- (i) Persons holding an office in (a) through (h) of this subsection against whom recall charges have been filed or to a political committee having the expectation of making expenditures in support of the recall of a person holding the office;
- (j) Caucus political committees;
- (k) Bona fide political parties.

(2) No person, other than a bona fide political party or a caucus political committee, may make contributions to a candidate for a legislative office, county office, city council office, mayoral office, school board office, or public hospital district board of commissioners that in the aggregate exceed eight hundred dollars or to a candidate for a public office in a special purpose district or a state office other than a legislative office that in the aggregate exceed one thousand six hundred dollars for each election in which the candidate is on the ballot or appears as a write-in candidate. Contributions to candidates subject to the limits in this section made with respect to a primary may not be made after the date of the primary. However, contributions to a candidate or a candidate's authorized committee may be made with respect to a primary until thirty days after the primary, subject to the following limitations: (a) The candidate lost the primary; (b) the candidate's authorized committee has insufficient funds to pay debts outstanding as of the date of the primary; and (c) the contributions may only be raised and spent to satisfy the outstanding debt. Contributions to candidates subject to the limits in this section made with respect to a general election may

not be made after the final day of the applicable election cycle.

(3) No person, other than a bona fide political party or a caucus political committee, may make contributions to a state official, a county official, a city official, a school board member, a public hospital district commissioner, or a public official in a special purpose district against whom recall charges have been filed, or to a political committee having the expectation of making expenditures in support of the recall of the state official, county official, city official, school board member, public hospital district commissioner, or public official in a special purpose district during a recall campaign that in the aggregate exceed eight hundred dollars if for a legislative office, county office, school board office, public hospital district office, or city office, or one thousand six hundred dollars if for a special purpose district office or a state office other than a legislative office.

(4)(a) Notwithstanding subsection (2) of this section, no bona fide political party or caucus political committee may make contributions to a candidate during an election cycle that in the aggregate exceed (i) eighty cents multiplied by the number of eligible registered voters in the jurisdiction from which the candidate is elected if the contributor is a caucus political committee or the governing body of a state organization, or (ii) forty cents multiplied by the number of registered voters in the jurisdiction from which the candidate is elected if the contributor is a county central committee or a legislative district committee.

(b) No candidate may accept contributions from a county central committee or a legislative district committee during an election cycle that when combined with contributions from other county central committees or legislative district committees would in the aggregate exceed forty cents times the number of registered voters in the jurisdiction from which the candidate is elected.

(5)(a) Notwithstanding subsection (3) of this section, no bona fide political party or caucus political committee may make contributions to a state official, county official, city official, school board member, public hospital district commissioner, or a public official in a special purpose district against whom recall charges have been filed, or to a political committee having the expectation of making expenditures in support of the state official, county official, city official, school board member, public hospital district commissioner, or a public official in a special purpose district during a recall campaign that in the aggregate exceed (i) eighty cents multiplied by the number of eligible registered voters in the jurisdiction entitled to recall the state official if the contributor is a caucus political committee or the governing body of a state organization, or (ii) forty cents multiplied by the number of registered voters in the jurisdiction from which the candidate is elected if the contributor is a county central committee or a legislative district committee.

(b) No official holding an office specified in subsection (1) of this section against whom recall charges have been filed, no authorized committee of the official, and no political committee having the expectation of making expenditures in support of the recall of the official may accept contributions from a county central committee or a legislative district committee during an election cycle that when combined with contributions from other county central committees or legislative

district committees would in the aggregate exceed forty cents multiplied by the number of registered voters in the jurisdiction from which the candidate is elected.

(6) For purposes of determining contribution limits under subsections (4) and (5) of this section, the number of eligible registered voters in a jurisdiction is the number at the time of the most recent general election in the jurisdiction.

(7) Notwithstanding subsections (2) through (5) of this section, no person other than an individual, bona fide political party, or caucus political committee may make contributions reportable under this chapter to a caucus political committee that in the aggregate exceed eight hundred dollars in a calendar year or to a bona fide political party that in the aggregate exceed four thousand dollars in a calendar year. This subsection does not apply to loans made in the ordinary course of business.

(8) For the purposes of RCW 42.17A.125, 42.17A.405 through 42.17A.415, 42.17A.450 through 42.17A.495, 42.17A.500, 42.17A.560, and 42.17A.565, a contribution to the authorized political committee of a candidate or of an official specified in subsection (1) of this section against whom recall charges have been filed is considered to be a contribution to the candidate or official.

(9) A contribution received within the twelve-month period after a recall election concerning an office specified in subsection (1) of this section is considered to be a contribution during that recall campaign if the contribution is used to pay a debt or obligation incurred to influence the outcome of that recall campaign.

(10) The contributions allowed by subsection (3) of this section are in addition to those allowed by subsection (2) of this section, and the contributions allowed by subsection (5) of this section are in addition to those allowed by subsection (4) of this section.

(11) RCW 42.17A.125, 42.17A.405 through 42.17A.415, 42.17A.450 through 42.17A.495, 42.17A.500, 42.17A.560, and 42.17A.565 apply to a special election conducted to fill a vacancy in an office specified in subsection (1) of this section. However, the contributions made to a candidate or received by a candidate for a primary or special election conducted to fill such a vacancy shall not be counted toward any of the limitations that apply to the candidate or to contributions made to the candidate for any other primary or election.

(12) Notwithstanding the other subsections of this section, no corporation or business entity not doing business in Washington state, no labor union with fewer than ten members who reside in Washington state, and no political committee that has not received contributions of ten dollars or more from at least ten persons registered to vote in Washington state during the preceding one hundred eighty days may make contributions reportable under this chapter to a state office candidate, to a state official against whom recall charges have been filed, or to a political committee having the expectation of making expenditures in support of the recall of the official. This subsection does not apply to loans made in the ordinary course of business.

(13) Notwithstanding the other subsections of this section, no county central committee or legislative district committee may make contributions reportable under this chapter to a candidate specified in subsection (1) of this section, or an

official specified in subsection (1) of this section against whom recall charges have been filed, or political committee having the expectation of making expenditures in support of the recall of an official specified in subsection (1) of this section if the county central committee or legislative district committee is outside of the jurisdiction entitled to elect the candidate or recall the official.

(14) No person may accept contributions that exceed the contribution limitations provided in this section.

(15) The following contributions are exempt from the contribution limits of this section:

(a) An expenditure or contribution earmarked for voter registration, for absentee ballot information, for precinct caucuses, for get-out-the-vote campaigns, for precinct judges or inspectors, for sample ballots, or for ballot counting, all without promotion of or political advertising for individual candidates;

(b) An expenditure by a political committee for its own internal organization or fund-raising without direct association with individual candidates; or

(c) An expenditure or contribution for independent expenditures as defined in RCW 42.17A.005 or electioneering communications as defined in RCW 42.17A.005. [2013 c 311 § 1; 2012 c 202 § 1. Prior: 2010 c 206 § 1; 2010 c 204 § 602; 2006 c 348 § 1; 2005 c 445 § 11; prior: 2001 c 208 § 1; 1995 c 397 § 20; 1993 c 2 § 4 (Initiative Measure No. 134, approved November 3, 1992). Formerly RCW 42.17.640.]

42.17A.750 Civil remedies and sanctions—Referral for criminal prosecution. (Effective January 1, 2014.) (1) In addition to the penalties in subsection (2) of this section, and any other remedies provided by law, one or more of the following civil remedies and sanctions may be imposed by court order in addition to any other remedies provided by law:

(a) If the court finds that the violation of any provision of this chapter by any candidate or political committee probably affected the outcome of any election, the result of that election may be held void and a special election held within sixty days of the finding. Any action to void an election shall be commenced within one year of the date of the election in question. It is intended that this remedy be imposed freely in all appropriate cases to protect the right of the electorate to an informed and knowledgeable vote.

(b) If any lobbyist or sponsor of any grass roots lobbying campaign violates any of the provisions of this chapter, his or her registration may be revoked or suspended and he or she may be enjoined from receiving compensation or making expenditures for lobbying. The imposition of a sanction shall not excuse the lobbyist from filing statements and reports required by this chapter.

(c) A person who violates any of the provisions of this chapter may be subject to a civil penalty of not more than ten thousand dollars for each violation. However, a person or entity who violates RCW 42.17A.405 may be subject to a civil penalty of ten thousand dollars or three times the amount of the contribution illegally made or accepted, whichever is greater.

(d) A person who fails to file a properly completed statement or report within the time required by this chapter may

be subject to a civil penalty of ten dollars per day for each day each delinquency continues.

(e) Each state agency director who knowingly fails to file statements required by RCW 42.17A.635 shall be subject to personal liability in the form of a civil penalty in the amount of one hundred dollars per statement. These penalties are in addition to any other civil remedies or sanctions imposed on the agency.

(f) A person who fails to report a contribution or expenditure as required by this chapter may be subject to a civil penalty equivalent to the amount not reported as required.

(g) Any state agency official, officer, or employee who is responsible for or knowingly directs or expends public funds in violation of RCW 42.17A.635 (2) or (3) may be subject to personal liability in the form of a civil penalty in an amount that is at least equivalent to the amount of public funds expended in the violation.

(h) The court may enjoin any person to prevent the doing of any act herein prohibited, or to compel the performance of any act required herein.

(2) The commission may refer the following violations for criminal prosecution:

(a) A person who, with actual malice, violates a provision of this chapter is guilty of a misdemeanor under chapter 9.92 RCW;

(b) A person who, within a five-year period, with actual malice, violates three or more provisions of this chapter is guilty of a gross misdemeanor under chapter 9.92 RCW; and

(c) A person who, with actual malice, procures or offers any false or forged document to be filed, registered, or recorded with the commission under this chapter is guilty of a class C felony under chapter 9.94A RCW. [2013 c 166 § 1; 2011 c 145 § 6; 2010 c 204 § 1001; 2006 c 315 § 2; 1993 c 2 § 28 (Initiative Measure No. 134, approved November 3, 1992); 1973 c 1 § 39 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.390.]

Effective date—2013 c 166: See note following RCW 42.17A.055.

Findings—Intent—Effective date—2011 c 145: See notes following RCW 42.17A.005.

Intent—2006 c 315: "It is the intent of the legislature to increase the authority of the public disclosure commission to more effectively foster compliance with our state's public disclosure and fair campaign practices act. It is the intent of the legislature to make the agency's penalty authority for violations of this chapter more consistent with other agencies that enforce state ethics laws and more commensurate with the level of political spending in the state of Washington." [2006 c 315 § 1.]

Severability—2006 c 315: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2006 c 315 § 4.]

Chapter 42.52 RCW

ETHICS IN PUBLIC SERVICE

Sections

42.52.360	Authority of executive ethics board.
42.52.365	Executive branch agencies—Ethics advisors—Ethics training.
42.52.410	Filing complaint—Whistleblower protection—Penalty for reprisal or retaliation.
42.52.420	Investigation.
42.52.460	Citizen actions.
42.52.575	Information about scholarship opportunities.

42.52.360 Authority of executive ethics board. (1)

The executive ethics board shall enforce this chapter and rules adopted under it with respect to statewide elected officers and all other officers and employees in the executive branch, boards and commissions, and institutions of higher education.

(2) The executive ethics board shall enforce this chapter with regard to the activities of university research employees as provided in this subsection.

(a) With respect to compliance with RCW 42.52.030, 42.52.110, 42.52.130, 42.52.140, and 42.52.150, the administrative process shall be consistent with and adhere to no less than the current standards in regulations of the United States public health service and the office of the secretary of the department of health and human services in Title 42 C.F.R. Part 50, Subpart F relating to promotion of objectivity in research.

(b) With respect to compliance with RCW 42.52.040, 42.52.080, and 42.52.120, the administrative process shall include a comprehensive system for the disclosure, review, and approval of outside work activities by university research employees while assuring that such employees are fulfilling their employment obligations to the university.

(c) With respect to compliance with RCW 42.52.160, the administrative process shall include a reasonable determination by the university of acceptable private uses having de minimis costs to the university and a method for establishing fair and reasonable reimbursement charges for private uses the costs of which are in excess of de minimis.

(3) The executive ethics board shall:

(a) Develop educational materials and training;

(b) Adopt rules and policies governing the conduct of business by the board, and adopt rules defining working hours for purposes of RCW 42.52.180 and where otherwise authorized under chapter 154, Laws of 1994;

(c) Issue advisory opinions;

(d) Investigate, hear, and determine complaints by any person or on its own motion;

(e) Impose sanctions including reprimands and monetary penalties;

(f) Recommend to the appropriate authorities suspension, removal from position, prosecution, or other appropriate remedy; and

(g) Establish criteria regarding the levels of civil penalties appropriate for violations of this chapter and rules adopted under it.

(4) The board may:

(a) Issue subpoenas for the attendance and testimony of witnesses and the production of documentary evidence relating to any matter under examination by the board or involved in any hearing;

(b) Administer oaths and affirmations;

(c) Examine witnesses; and

(d) Receive evidence.

(5) The board shall not delegate to the board's executive director its authority to issue advisories, advisory letters, or opinions.

(6) Except as provided in RCW 42.52.220, the executive ethics board may review and approve agency policies as provided for in this chapter.

(7) This section does not apply to state officers and state employees of the judicial branch. [2013 c 190 § 3; 2005 c 106 § 5; 1994 c 154 § 206.]

Finding—2013 c 190: See note following RCW 42.52.410.

42.52.365 Executive branch agencies—Ethics advisors—Ethics training. (1) Each executive branch agency shall designate an ethics advisor or advisors to assist the agency's employees in understanding their obligations under the ethics in public service act. Agencies shall inform the executive ethics board of their designated advisors. As funding permits and as determined by the executive ethics board and the agency head, the advisors shall receive regular ethics training.

(2) Executive branch officers and employees are encouraged to attend ethics training offered by the executive ethics board at least once every thirty-six months. [2013 c 190 § 6.]

Finding—2013 c 190: See note following RCW 42.52.410.

42.52.410 Filing complaint—Whistleblower protection—Penalty for reprisal or retaliation. (1) A person may, personally or by his or her attorney, make, sign, and file with the appropriate ethics board a complaint on a form provided by the appropriate ethics board. The complaint shall state the name of the person alleged to have violated this chapter or rules adopted under it and the particulars thereof, and contain such other information as may be required by the appropriate ethics board.

(2) If it has reason to believe that any person has been engaged or is engaging in a violation of this chapter or rules adopted under it, an ethics board may issue a complaint.

(3)(a) A state employee who files a complaint with the appropriate ethics board shall be afforded the protection afforded to a whistleblower under RCW 42.40.050 and 49.60.210(2), subject to the limitations of RCW 42.40.035 and 42.40.910. An agency, manager, or supervisor may not retaliate against a state employee who, after making a reasonable attempt to ascertain the correctness of the information furnished, files a complaint with the appropriate ethics board.

(b) A state employee may not be denied the protections in chapter 42.40 RCW even if the ethics board denies an investigation of the complaint.

(4) If a determination is made that a reprisal or retaliatory action has been taken against the state employee, the retaliator may be subject to a civil penalty of up to five thousand dollars. [2013 c 190 § 2; 1994 c 154 § 211.]

Finding—2013 c 190: "The legislature finds that ensuring public trust in government is a priority. The public expects its elected officials and state employees to adhere to the highest ethical standards during their service, and this includes a commitment to full and independent investigations, with proper penalties, in cases where the ethics in public service act is violated." [2013 c 190 § 1.]

42.52.420 Investigation. (1) After the filing of any complaint, except as provided in RCW 42.52.450, the staff of the appropriate ethics board shall investigate the complaint. The ethics board may request the assistance of the office of the attorney general or a contract investigator in conducting its investigation.

(2) The results of the investigation shall be reduced to writing and the staff shall either make a determination that the complaint should be dismissed pursuant to RCW

42.52.425, or recommend to the board that there is or that there is not reasonable cause to believe that a violation of this chapter or rules adopted under it has been or is being committed.

(3) The board's determination on reasonable cause shall be provided to the complainant and to the person named in such complaint.

(4) The identity of a person filing a complaint under RCW 42.52.410(1) is exempt from public disclosure, as provided in RCW 42.56.240. [2013 c 190 § 4; 2000 c 211 § 1; 1994 c 154 § 212.]

Finding—2013 c 190: See note following RCW 42.52.410.

42.52.460 Citizen actions. Any person who has notified the appropriate ethics board and the attorney general in writing that there is reason to believe that RCW 42.52.180 is being or has been violated may, in the name of the state, bring a citizen action for any of the actions authorized under this chapter. A citizen action may be brought only if the appropriate ethics board or the attorney general have failed to commence an action under this chapter within forty-five days after notice from the person, the person has thereafter notified the appropriate ethics board and the attorney general that the person will commence a citizen's action within ten days upon their failure to commence an action, and the appropriate ethics board and the attorney general have in fact failed to bring an action within ten days of receipt of the second notice. An action is deemed to have been commenced when the appropriate ethics board or the board's executive director accepts a complaint for filing and initiates a preliminary investigation.

If the person who brings the citizen's action prevails, the judgment awarded shall escheat to the state, but the person shall be entitled to be reimbursed by the state of Washington for costs and attorneys' fees incurred. If a citizen's action that the court finds was brought without reasonable cause is dismissed, the court may order the person commencing the action to pay all costs of trial and reasonable attorneys' fees incurred by the defendant.

Upon commencement of a citizen action under this section, at the request of a state officer or state employee who is a defendant, the office of the attorney general shall represent the defendant if the attorney general finds that the defendant's conduct complied with this chapter and was within the scope of employment. [2013 c 190 § 5; 1994 c 154 § 216.]

Finding—2013 c 190: See note following RCW 42.52.410.

42.52.575 Information about scholarship opportunities. This chapter does not prohibit the department of labor and industries from providing information about scholarship opportunities offered by nonprofit organizations and available to children and spouses of workers who suffered an injury in the course of employment resulting in death or permanent total disability. The department of labor and industries may, in its sole discretion, provide information about one or more scholarship opportunities. The cost of printing and inserting materials, any additional mailing costs, and any other related costs must be borne by the scholarship organization. [2013 c 134 § 1.]

**Chapter 42.56 RCW
PUBLIC RECORDS ACT**

Sections

42.56.230	Personal information <i>(as amended by 2013 c 220)</i> .
42.56.230	Personal information <i>(as amended by 2013 c 336)</i> .
42.56.240	Investigative, law enforcement, and crime victims.
42.56.270	Financial, commercial, and proprietary information. <i>(Effective January 1, 2014.)</i>
42.56.360	Health care.
42.56.400	Insurance and financial institutions. <i>(Effective until July 1, 2017.)</i>
42.56.400	Insurance and financial institutions. <i>(Effective July 1, 2017.)</i>
42.56.420	Security.

42.56.230 Personal information *(as amended by 2013 c 220)*. The following personal information is exempt from public inspection and copying under this chapter:

(1) Personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, or welfare recipients;

(2)(a) Personal information (~~including but not limited to, addresses, telephone numbers, personal electronic mail addresses, social security numbers, emergency contact and date of birth information~~).

(i) For a child enrolled in licensed child care in any files maintained by the department of early learning; or

(ii) For a (~~participant~~) child enrolled in a public or nonprofit program serving or pertaining to children, adolescents, or students, including but not limited to early learning or child care services, parks and recreation programs, youth development programs, and after-school programs.

(b) Emergency contact information under this subsection (2) may be provided to appropriate authorities and medical personnel for the purpose of treating the individual during an emergency situation;

(3) Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy;

(4) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would: (a) Be prohibited to such persons by RCW 84.08.210, 82.32.330, 84.40.020, 84.40.340, or any ordinance authorized under RCW 35.102.145; or (b) violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer;

(5) Credit card numbers, debit card numbers, electronic check numbers, card expiration dates, or bank or other financial account numbers, except when disclosure is expressly required by or governed by other law;

(6) Personal and financial information related to a small loan or any system of authorizing a small loan in RCW 31.45.093; and

(7)(a) Documents and related materials and scanned images of documents and related materials used to prove identity, age, residential address, social security number, or other personal information required to apply for a driver's license or identicaid.

(b) Information provided under RCW 46.20.111 that indicates that an applicant declined to register with the selective service system. [2013 c 220 § 1. Prior: 2011 c 350 § 2; 2011 c 173 § 1; 2010 c 106 § 102; 2009 c 510 § 8; 2008 c 200 § 5; 2005 c 274 § 403.]

42.56.230 Personal information *(as amended by 2013 c 336)*. The following personal information is exempt from public inspection and copying under this chapter:

(1) Personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, or welfare recipients;

(2) Personal information (~~(c)~~) including, but not limited to, addresses, telephone numbers, personal electronic mail addresses, social security numbers, emergency contact and date of birth information for a participant in a public or nonprofit program serving or pertaining to children, adolescents, or students, including but not limited to early learning or child care services, parks and recreation programs, youth development programs, and after-school programs. Emergency contact information may be provided to appropriate authorities and medical personnel for the purpose of treating the individual during an emergency situation;

(3) Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy;

(4) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other per-

sons would: (a) Be prohibited to such persons by RCW 84.08.210, 82.32.330, 84.40.020, 84.40.340, or any ordinance authorized under RCW 35.102.145; or (b) violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer;

(5) Credit card numbers, debit card numbers, electronic check numbers, card expiration dates, or bank or other financial account numbers, except when disclosure is expressly required by or governed by other law;

(6) Personal and financial information related to a small loan or any system of authorizing a small loan in RCW 31.45.093; and

(7)(a) (~~Documents and related materials and scanned images of documents and related materials~~) Any record used to prove identity, age, residential address, social security number, or other personal information required to apply for a driver's license or identicaid.

(b) Information provided under RCW 46.20.111 that indicates that an applicant declined to register with the selective service system.

(c) Any record pertaining to a vehicle license plate, driver's license, or identicaid issued under RCW 46.08.066 that, alone or in combination with any other records, may reveal the identity of an individual, or reveal that an individual is or was, performing an undercover or covert law enforcement, confidential public health work, public assistance fraud, or child support investigative activity. This exemption does not prevent the release of the total number of vehicle license plates, drivers' licenses, or identicards that, under RCW 46.08.066, an agency or department has applied for, been issued, denied, returned, destroyed, lost, and reported for misuse.

(d) Any record pertaining to a vessel registration issued under RCW 88.02.330 that, alone or in combination with any other records, may reveal the identity of an individual, or reveal that an individual is or was, performing an undercover or covert law enforcement activity. This exemption does not prevent the release of the total number of vessel registrations that, under RCW 88.02.330, an agency or department has applied for, been issued, denied, returned, destroyed, lost, and reported for misuse.

(e) Upon request by the legislature, the department of licensing shall provide a report to the legislature containing all of the information in (c) and (d) of this subsection that is subject to public disclosure. [2013 c 336 § 3. Prior: 2011 c 350 § 2; 2011 c 173 § 1; 2010 c 106 § 102; 2009 c 510 § 8; 2008 c 200 § 5; 2005 c 274 § 403.]

Reviser's note: RCW 42.56.230 was amended twice during the 2013 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Effective date—2013 c 336: See note following RCW 46.08.066.

Effective date—2011 c 350: See note following RCW 46.20.111.

Effective date—2010 c 106: See note following RCW 35.102.145.

Effective date—2009 c 510: See RCW 31.45.901.

Finding—Intent—Liberal construction—2009 c 510: See note following RCW 31.45.010.

42.56.240 Investigative, law enforcement, and crime victims. The following investigative, law enforcement, and crime victim information is exempt from public inspection and copying under this chapter:

(1) Specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy;

(2) Information revealing the identity of persons who are witnesses to or victims of crime or who file complaints with investigative, law enforcement, or penology agencies, other than the commission, if disclosure would endanger any person's life, physical safety, or property. If at the time a complaint is filed the complainant, victim, or witness indicates a desire for disclosure or nondisclosure, such desire shall govern. However, all complaints filed with the commission about any elected official or candidate for public office must be made in writing and signed by the complainant under oath;

(3) Any records of investigative reports prepared by any state, county, municipal, or other law enforcement agency pertaining to sex offenses contained in chapter 9A.44 RCW or sexually violent offenses as defined in RCW 71.09.020, which have been transferred to the Washington association of sheriffs and police chiefs for permanent electronic retention and retrieval pursuant to RCW 40.14.070(2)(b);

(4) License applications under RCW 9.41.070; copies of license applications or information on the applications may be released to law enforcement or corrections agencies;

(5) Information revealing the identity of child victims of sexual assault who are under age eighteen. Identifying information means the child victim's name, address, location, photograph, and in cases in which the child victim is a relative or stepchild of the alleged perpetrator, identification of the relationship between the child and the alleged perpetrator;

(6) The statewide gang database referenced in RCW 43.43.762;

(7) Data from the electronic sales tracking system established in RCW 69.43.165;

(8) Information submitted to the statewide unified sex offender notification and registration program under RCW 36.28A.040(6) by a person for the purpose of receiving notification regarding a registered sex offender, including the person's name, residential address, and e-mail address;

(9) Personally identifying information collected by law enforcement agencies pursuant to local security alarm system programs and vacation crime watch programs. Nothing in this subsection shall be interpreted so as to prohibit the legal owner of a residence or business from accessing information regarding his or her residence or business; and

(10) The felony firearm offense conviction database of felony firearm offenders established in RCW 43.43.822; and

(11) The identity of a state employee or officer who has in good faith filed a complaint with an ethics board, as provided in RCW 42.52.410, or who has in good faith reported improper governmental action, as defined in RCW 42.40.020, to the auditor or other public official, as defined in RCW 42.40.020; and

(12) The following security threat group information collected and maintained by the department of corrections pursuant to RCW 72.09.745: (a) Information that could lead to the identification of a person's security threat group status, affiliation, or activities; (b) information that reveals specific security threats associated with the operation and activities of security threat groups; and (c) information that identifies the number of security threat group members, affiliates, or associates. [2013 c 315 § 2; 2013 c 190 § 7; 2013 c 183 § 1; 2012 c 88 § 1. Prior: 2010 c 266 § 2; 2010 c 182 § 5; 2008 c 276 § 202; 2005 c 274 § 404.]

Reviser's note: This section was amended by 2013 c 183 § 1, 2013 c 190 § 7, and by 2013 c 315 § 2, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Finding—2013 c 190: See note following RCW 42.52.410.

Severability—Part headings, subheadings not law—2008 c 276: See notes following RCW 36.28A.200.

42.56.270 Financial, commercial, and proprietary information. (*Effective January 1, 2014.*) The following

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financial, commercial, and proprietary information is exempt from disclosure under this chapter:

(1) Valuable formulae, designs, drawings, computer source code or object code, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss;

(2) Financial information supplied by or on behalf of a person, firm, or corporation for the purpose of qualifying to submit a bid or proposal for (a) a ferry system construction or repair contract as required by RCW 47.60.680 through 47.60.750 or (b) highway construction or improvement as required by RCW 47.28.070;

(3) Financial and commercial information and records supplied by private persons pertaining to export services provided under chapters 43.163 and 53.31 RCW, and by persons pertaining to export projects under RCW 43.23.035;

(4) Financial and commercial information and records supplied by businesses or individuals during application for loans or program services provided by chapters 43.325, 43.163, 43.160, 43.330, and 43.168 RCW, or during application for economic development loans or program services provided by any local agency;

(5) Financial information, business plans, examination reports, and any information produced or obtained in evaluating or examining a business and industrial development corporation organized or seeking certification under chapter 31.24 RCW;

(6) Financial and commercial information supplied to the state investment board by any person when the information relates to the investment of public trust or retirement funds and when disclosure would result in loss to such funds or in private loss to the providers of this information;

(7) Financial and valuable trade information under RCW 51.36.120;

(8) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the clean Washington center in applications for, or delivery of, program services under chapter 70.95H RCW;

(9) Financial and commercial information requested by the public stadium authority from any person or organization that leases or uses the stadium and exhibition center as defined in RCW 36.102.010;

(10)(a) Financial information, including but not limited to account numbers and values, and other identification numbers supplied by or on behalf of a person, firm, corporation, limited liability company, partnership, or other entity related to an application for a horse racing license submitted pursuant to RCW 67.16.260(1)(b), liquor license, gambling license, or lottery retail license;

(b) Internal control documents, independent auditors' reports and financial statements, and supporting documents: (i) Of house-banked social card game licensees required by the gambling commission pursuant to rules adopted under chapter 9.46 RCW; or (ii) submitted by tribes with an approved tribal/state compact for class III gaming;

(11) Proprietary data, trade secrets, or other information that relates to: (a) A vendor's unique methods of conducting business; (b) data unique to the product or services of the vendor; or (c) determining prices or rates to be charged for services, submitted by any vendor to the department of social and health services for purposes of the development, acquisi-

tion, or implementation of state purchased health care as defined in RCW 41.05.011;

(12)(a) When supplied to and in the records of the department of commerce:

(i) Financial and proprietary information collected from any person and provided to the department of commerce pursuant to RCW 43.330.050(8); and

(ii) Financial or proprietary information collected from any person and provided to the department of commerce or the office of the governor in connection with the siting, recruitment, expansion, retention, or relocation of that person's business and until a siting decision is made, identifying information of any person supplying information under this subsection and the locations being considered for siting, relocation, or expansion of a business;

(b) When developed by the department of commerce based on information as described in (a)(i) of this subsection, any work product is not exempt from disclosure;

(c) For the purposes of this subsection, "siting decision" means the decision to acquire or not to acquire a site;

(d) If there is no written contact for a period of sixty days to the department of commerce from a person connected with siting, recruitment, expansion, retention, or relocation of that person's business, information described in (a)(ii) of this subsection will be available to the public under this chapter;

(13) Financial and proprietary information submitted to or obtained by the department of ecology or the authority created under chapter 70.95N RCW to implement chapter 70.95N RCW;

(14) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the life sciences discovery fund authority in applications for, or delivery of, grants under chapter 43.350 RCW, to the extent that such information, if revealed, would reasonably be expected to result in private loss to the providers of this information;

(15) Financial and commercial information provided as evidence to the department of licensing as required by RCW 19.112.110 or 19.112.120, except information disclosed in aggregate form that does not permit the identification of information related to individual fuel licensees;

(16) Any production records, mineral assessments, and trade secrets submitted by a permit holder, mine operator, or landowner to the department of natural resources under RCW 78.44.085;

(17)(a) Farm plans developed by conservation districts, unless permission to release the farm plan is granted by the landowner or operator who requested the plan, or the farm plan is used for the application or issuance of a permit;

(b) Farm plans developed under chapter 90.48 RCW and not under the federal clean water act, 33 U.S.C. Sec. 1251 et seq., are subject to RCW 42.56.610 and 90.64.190;

(18) Financial, commercial, operations, and technical and research information and data submitted to or obtained by a health sciences and services authority in applications for, or delivery of, grants under RCW 35.104.010 through 35.104.060, to the extent that such information, if revealed, would reasonably be expected to result in private loss to providers of this information;

(19) Information gathered under chapter 19.85 RCW or RCW 34.05.328 that can be identified to a particular business;

(20) Financial and commercial information submitted to or obtained by the University of Washington, other than information the university is required to disclose under RCW 28B.20.150, when the information relates to investments in private funds, to the extent that such information, if revealed, would reasonably be expected to result in loss to the University of Washington consolidated endowment fund or to result in private loss to the providers of this information;

(21) Financial, commercial, operations, and technical and research information and data submitted to or obtained by innovate Washington in applications for, or delivery of, grants and loans under chapter 43.333 RCW, to the extent that such information, if revealed, would reasonably be expected to result in private loss to the providers of this information; and

(22) Market share data submitted by a manufacturer under RCW 70.95N.190(4). [2013 c 305 § 14; 2011 1st sp.s. c 14 § 15; 2009 c 394 § 3; 2008 c 306 § 1. Prior: 2007 c 470 § 2; (2007 c 470 § 1 expired June 30, 2008); 2007 c 251 § 13; (2007 c 251 § 12 expired June 30, 2008); 2007 c 197 § 4; (2007 c 197 § 3 expired June 30, 2008); prior: 2006 c 369 § 2; 2006 c 341 § 6; 2006 c 338 § 5; 2006 c 302 § 12; 2006 c 209 § 7; 2006 c 183 § 37; 2006 c 171 § 8; 2005 c 274 § 407.]

Effective date—2013 c 305: See note following RCW 70.95N.020.

Effective date—2011 1st sp.s. c 14: See RCW 43.333.901.

Intent—2009 c 394: See note following RCW 28B.20.150.

Effective date—2008 c 306 § 1: "Section 1 of this act takes effect June 30, 2008." [2008 c 306 § 2.]

Effective date—2007 c 470 § 2: "Section 2 of this act takes effect June 30, 2008." [2007 c 470 § 4.]

Expiration date—2007 c 470 § 1: "Section 1 of this act expires June 30, 2008." [2007 c 470 § 3.]

Effective date—2007 c 251 § 13: "Section 13 of this act takes effect June 30, 2008." [2007 c 251 § 18.]

Expiration date—2007 c 251 § 12: "Section 12 of this act expires June 30, 2008." [2007 c 251 § 17.]

Captions not law—Severability—2007 c 251: See notes following RCW 35.104.010.

Effective date—2007 c 197 § 4: "Section 4 of this act takes effect June 30, 2008." [2007 c 197 § 11.]

Expiration date—2007 c 197 § 3: "Section 3 of this act expires June 30, 2008." [2007 c 197 § 10.]

Effective date—2006 c 369 § 2: "Section 2 of this act takes effect July 1, 2006." [2006 c 369 § 3.]

Effective date—2006 c 341 § 6: "Section 6 of this act takes effect July 1, 2006." [2006 c 341 § 7.]

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

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

Effective date—2006 c 302 §§ 10 and 12: See note following RCW 66.28.180.

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

Effective date—2006 c 171 §§ 8 and 10: "Sections 8 and 10 of this act take effect July 1, 2006." [2006 c 171 § 13.]

Findings—Severability—2006 c 171: See RCW 43.325.001 and 43.325.901.

42.56.360 Health care. (1) The following health care information is exempt from disclosure under this chapter:

(a) Information obtained by the pharmacy quality assurance commission as provided in RCW 69.45.090;

(b) Information obtained by the pharmacy quality assurance commission or the department of health and its representatives as provided in RCW 69.41.044, 69.41.280, and 18.64.420;

(c) Information and documents created specifically for, and collected and maintained by a quality improvement committee under RCW 43.70.510, 70.230.080, or 70.41.200, or by a peer review committee under RCW 4.24.250, or by a quality assurance committee pursuant to RCW 74.42.640 or 18.20.390, or by a hospital, as defined in RCW 43.70.056, for reporting of health care-associated infections under RCW 43.70.056, a notification of an incident under RCW 70.56.040(5), and reports regarding adverse events under RCW 70.56.020(2)(b), regardless of which agency is in possession of the information and documents;

(d)(i) Proprietary financial and commercial information that the submitting entity, with review by the department of health, specifically identifies at the time it is submitted and that is provided to or obtained by the department of health in connection with an application for, or the supervision of, an antitrust exemption sought by the submitting entity under RCW 43.72.310;

(ii) If a request for such information is received, the submitting entity must be notified of the request. Within ten business days of receipt of the notice, the submitting entity shall provide a written statement of the continuing need for confidentiality, which shall be provided to the requester. Upon receipt of such notice, the department of health shall continue to treat information designated under this subsection (1)(d) as exempt from disclosure;

(iii) If the requester initiates an action to compel disclosure under this chapter, the submitting entity must be joined as a party to demonstrate the continuing need for confidentiality;

(e) Records of the entity obtained in an action under RCW 18.71.300 through 18.71.340;

(f) Complaints filed under chapter 18.130 RCW after July 27, 1997, to the extent provided in RCW 18.130.095(1);

(g) Information obtained by the department of health under chapter 70.225 RCW;

(h) Information collected by the department of health under chapter 70.245 RCW except as provided in RCW 70.245.150;

(i) Cardiac and stroke system performance data submitted to national, state, or local data collection systems under RCW 70.168.150(2)(b); and

(j) All documents, including completed forms, received pursuant to a wellness program under RCW 41.04.362, but not statistical reports that do not identify an individual.

(2) Chapter 70.02 RCW applies to public inspection and copying of health care information of patients.

(3)(a) Documents related to infant mortality reviews conducted pursuant to RCW 70.05.170 are exempt from disclosure as provided for in RCW 70.05.170(3).

(b)(i) If an agency provides copies of public records to another agency that are exempt from public disclosure under this subsection (3), those records remain exempt to the same

extent the records were exempt in the possession of the originating entity.

(ii) For notice purposes only, agencies providing exempt records under this subsection (3) to other agencies may mark any exempt records as "exempt" so that the receiving agency is aware of the exemption, however whether or not a record is marked exempt does not affect whether the record is actually exempt from disclosure. [2013 c 19 § 47. Prior: 2010 c 128 § 3; 2010 c 52 § 6; prior: 2009 c 1 § 24 (Initiative Measure No. 1000, approved November 4, 2008); (2009 c 1 § 23 (Initiative Measure No. 1000), approved November 4, 2008) expired July 1, 2009); 2008 c 136 § 5; (2008 c 136 § 4 expired July 1, 2009); prior: 2007 c 273 § 25; 2007 c 261 § 4; 2007 c 259 § 49; prior: 2006 c 209 § 9; 2006 c 8 § 112; 2005 c 274 § 416.]

Findings—Intent—2010 c 52: See note following RCW 70.168.015.

Expiration date—2009 c 1 (Initiative Measure No. 1000) § 23: "Section 23 of this act expires July 1, 2009." [2009 c 1 § 31 (Initiative Measure No. 1000, approved November 4, 2008).]

Short title—Severability—Effective dates—Captions, part headings, and subpart headings not law—2009 c 1 (Initiative Measure No. 1000): See RCW 70.245.901 through 70.245.904.

Effective date—2008 c 136 § 5: "Section 5 of this act takes effect July 1, 2009." [2008 c 136 § 7.]

Expiration date—2008 c 136 § 4: "Section 4 of this act expires July 1, 2009." [2008 c 136 § 6.]

Effective date—Implementation—2007 c 273: See RCW 70.230.900 and 70.230.901.

Findings—2007 c 261: See note following RCW 43.70.056.

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

Effective date—2006 c 8 §§ 112 and 210: "Sections 112 and 210 of this act take effect July 1, 2006." [2006 c 8 § 405.]

Findings—Intent—Part headings and subheadings not law—Severability—2006 c 8: See notes following RCW 5.64.010.

Basic health plan—Confidentiality: RCW 70.47.150.

42.56.400 Insurance and financial institutions. (Effective until July 1, 2017.) The following information relating to insurance and financial institutions is exempt from disclosure under this chapter:

(1) Records maintained by the board of industrial insurance appeals that are related to appeals of crime victims' compensation claims filed with the board under RCW 7.68.110;

(2) Information obtained and exempted or withheld from public inspection by the health care authority under RCW 41.05.026, whether retained by the authority, transferred to another state purchased health care program by the authority, or transferred by the authority to a technical review committee created to facilitate the development, acquisition, or implementation of state purchased health care under chapter 41.05 RCW;

(3) The names and individual identification data of either all owners or all insureds, or both, received by the insurance commissioner under chapter 48.102 RCW;

(4) Information provided under RCW 48.30A.045 through 48.30A.060;

(5) Information provided under RCW 48.05.510 through 48.05.535, 48.43.200 through 48.43.225, 48.44.530 through 48.44.555, and 48.46.600 through 48.46.625;

(6) Examination reports and information obtained by the department of financial institutions from banks under RCW 30.04.075, from savings banks under RCW 32.04.220, from savings and loan associations under RCW 33.04.110, from credit unions under RCW 31.12.565, from check cashers and sellers under RCW 31.45.030(3), and from securities brokers and investment advisers under RCW 21.20.100, all of which is confidential and privileged information;

(7) Information provided to the insurance commissioner under RCW 48.110.040(3);

(8) Documents, materials, or information obtained by the insurance commissioner under RCW 48.02.065, all of which are confidential and privileged;

(9) Confidential proprietary and trade secret information provided to the commissioner under RCW 48.31C.020 through 48.31C.050 and 48.31C.070;

(10) Data filed under RCW 48.140.020, 48.140.030, 48.140.050, and 7.70.140 that, alone or in combination with any other data, may reveal the identity of a claimant, health care provider, health care facility, insuring entity, or self-insurer involved in a particular claim or a collection of claims. For the purposes of this subsection:

(a) "Claimant" has the same meaning as in RCW 48.140.010(2).

(b) "Health care facility" has the same meaning as in RCW 48.140.010(6).

(c) "Health care provider" has the same meaning as in RCW 48.140.010(7).

(d) "Insuring entity" has the same meaning as in RCW 48.140.010(8).

(e) "Self-insurer" has the same meaning as in RCW 48.140.010(11);

(11) Documents, materials, or information obtained by the insurance commissioner under RCW 48.135.060;

(12) Documents, materials, or information obtained by the insurance commissioner under RCW 48.37.060;

(13) Confidential and privileged documents obtained or produced by the insurance commissioner and identified in RCW 48.37.080;

(14) Documents, materials, or information obtained by the insurance commissioner under RCW 48.37.140;

(15) Documents, materials, or information obtained by the insurance commissioner under RCW 48.17.595;

(16) Documents, materials, or information obtained by the insurance commissioner under RCW 48.102.051(1) and 48.102.140 (3) and (7)(a)(ii);

(17) Documents, materials, or information obtained by the insurance commissioner in the commissioner's capacity as receiver under RCW 48.31.025 and 48.99.017, which are records under the jurisdiction and control of the receivership court. The commissioner is not required to search for, log, produce, or otherwise comply with the public records act for any records that the commissioner obtains under chapters 48.31 and 48.99 RCW in the commissioner's capacity as a receiver, except as directed by the receivership court;

(18) Documents, materials, or information obtained by the insurance commissioner under RCW 48.13.151;

(19) Data, information, and documents provided by a carrier pursuant to section 1, chapter 172, Laws of 2010;

(20) Information in a filing of usage-based insurance about the usage-based component of the rate pursuant to RCW 48.19.040(5)(b);

(21) Data, information, and documents, other than those described in RCW 48.02.210(2), that are submitted to the office of the insurance commissioner by an entity providing health care coverage pursuant to RCW 28A.400.275 and 48.02.210; and

(22) Data, information, and documents obtained by the insurance commissioner under RCW 48.29.017; and

(23) Information not subject to public inspection or public disclosure under RCW 48.43.730(5). [2013 c 277 § 5; 2013 c 65 § 5; 2012 2nd sp.s. c 3 § 8; 2012 c 222 § 2; 2011 c 188 § 21. Prior: 2010 c 172 § 2; 2010 c 97 § 3; 2009 c 104 § 23; prior: 2007 c 197 § 7; 2007 c 117 § 36; 2007 c 82 § 17; prior: 2006 c 284 § 17; 2006 c 8 § 210; 2005 c 274 § 420.]

Reviser's note: This section was amended by 2013 c 65 § 5 and by 2013 c 277 § 5, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Expiration date—2013 c 277: See note following RCW 48.43.730.

Findings—Goals—Intent—2012 2nd sp.s. c 3: See note following RCW 28A.400.275.

Effective date—2011 c 188: See RCW 48.13.900.

Severability—Effective date—2007 c 117: See RCW 48.17.900 and 48.17.901.

Severability—Effective date—2006 c 284: See RCW 48.135.900 and 48.135.901.

Effective date—2006 c 8 §§ 112 and 210: See note following RCW 42.56.360.

Findings—Intent—Part headings and subheadings not law—Severability—2006 c 8: See notes following RCW 5.64.010.

42.56.400 Insurance and financial institutions. (*Effective July 1, 2017.*) The following information relating to insurance and financial institutions is exempt from disclosure under this chapter:

(1) Records maintained by the board of industrial insurance appeals that are related to appeals of crime victims' compensation claims filed with the board under RCW 7.68.110;

(2) Information obtained and exempted or withheld from public inspection by the health care authority under RCW 41.05.026, whether retained by the authority, transferred to another state purchased health care program by the authority, or transferred by the authority to a technical review committee created to facilitate the development, acquisition, or implementation of state purchased health care under chapter 41.05 RCW;

(3) The names and individual identification data of either all owners or all insureds, or both, received by the insurance commissioner under chapter 48.102 RCW;

(4) Information provided under RCW 48.30A.045 through 48.30A.060;

(5) Information provided under RCW 48.05.510 through 48.05.535, 48.43.200 through 48.43.225, 48.44.530 through 48.44.555, and 48.46.600 through 48.46.625;

(6) Examination reports and information obtained by the department of financial institutions from banks under RCW 30.04.075, from savings banks under RCW 32.04.220, from savings and loan associations under RCW 33.04.110, from credit unions under RCW 31.12.565, from check cashers and

sellers under RCW 31.45.030(3), and from securities brokers and investment advisers under RCW 21.20.100, all of which is confidential and privileged information;

(7) Information provided to the insurance commissioner under RCW 48.110.040(3);

(8) Documents, materials, or information obtained by the insurance commissioner under RCW 48.02.065, all of which are confidential and privileged;

(9) Confidential proprietary and trade secret information provided to the commissioner under RCW 48.31C.020 through 48.31C.050 and 48.31C.070;

(10) Data filed under RCW 48.140.020, 48.140.030, 48.140.050, and 7.70.140 that, alone or in combination with any other data, may reveal the identity of a claimant, health care provider, health care facility, insuring entity, or self-insurer involved in a particular claim or a collection of claims. For the purposes of this subsection:

(a) "Claimant" has the same meaning as in RCW 48.140.010(2).

(b) "Health care facility" has the same meaning as in RCW 48.140.010(6).

(c) "Health care provider" has the same meaning as in RCW 48.140.010(7).

(d) "Insuring entity" has the same meaning as in RCW 48.140.010(8).

(e) "Self-insurer" has the same meaning as in RCW 48.140.010(11);

(11) Documents, materials, or information obtained by the insurance commissioner under RCW 48.135.060;

(12) Documents, materials, or information obtained by the insurance commissioner under RCW 48.37.060;

(13) Confidential and privileged documents obtained or produced by the insurance commissioner and identified in RCW 48.37.080;

(14) Documents, materials, or information obtained by the insurance commissioner under RCW 48.37.140;

(15) Documents, materials, or information obtained by the insurance commissioner under RCW 48.17.595;

(16) Documents, materials, or information obtained by the insurance commissioner under RCW 48.102.051(1) and 48.102.140 (3) and (7)(a)(ii);

(17) Documents, materials, or information obtained by the insurance commissioner in the commissioner's capacity as receiver under RCW 48.31.025 and 48.99.017, which are records under the jurisdiction and control of the receivership court. The commissioner is not required to search for, log, produce, or otherwise comply with the public records act for any records that the commissioner obtains under chapters 48.31 and 48.99 RCW in the commissioner's capacity as a receiver, except as directed by the receivership court;

(18) Documents, materials, or information obtained by the insurance commissioner under RCW 48.13.151;

(19) Data, information, and documents provided by a carrier pursuant to section 1, chapter 172, Laws of 2010;

(20) Information in a filing of usage-based insurance about the usage-based component of the rate pursuant to RCW 48.19.040(5)(b);

(21) Data, information, and documents, other than those described in RCW 48.02.210(2), that are submitted to the office of the insurance commissioner by an entity providing

health care coverage pursuant to RCW 28A.400.275 and 48.02.210; and

(22) Data, information, and documents obtained by the insurance commissioner under RCW 48.29.017. [2013 c 65 § 5; 2012 2nd sp.s. c 3 § 8; 2012 c 222 § 2; 2011 c 188 § 21. Prior: 2010 c 172 § 2; 2010 c 97 § 3; 2009 c 104 § 23; prior: 2007 c 197 § 7; 2007 c 117 § 36; 2007 c 82 § 17; prior: 2006 c 284 § 17; 2006 c 8 § 210; 2005 c 274 § 420.]

Findings—Goals—Intent—2012 2nd sp.s. c 3: See note following RCW 28A.400.275.

Effective date—2011 c 188: See RCW 48.13.900.

Severability—Effective date—2007 c 117: See RCW 48.17.900 and 48.17.901.

Severability—Effective date—2006 c 284: See RCW 48.135.900 and 48.135.901.

Effective date—2006 c 8 §§ 112 and 210: See note following RCW 42.56.360.

Findings—Intent—Part headings and subheadings not law—Severability—2006 c 8: See notes following RCW 5.64.010.

42.56.420 Security. The following information relating to security is exempt from disclosure under this chapter:

(1) Those portions of records assembled, prepared, or maintained to prevent, mitigate, or respond to criminal terrorist acts, which are acts that significantly disrupt the conduct of government or of the general civilian population of the state or the United States and that manifest an extreme indifference to human life, the public disclosure of which would have a substantial likelihood of threatening public safety, consisting of:

(a) Specific and unique vulnerability assessments or specific and unique response or deployment plans, including compiled underlying data collected in preparation of or essential to the assessments, or to the response or deployment plans; and

(b) Records not subject to public disclosure under federal law that are shared by federal or international agencies, and information prepared from national security briefings provided to state or local government officials related to domestic preparedness for acts of terrorism;

(2) Those portions of records containing specific and unique vulnerability assessments or specific and unique emergency and escape response plans at a city, county, or state adult or juvenile correctional facility, or secure facility for persons civilly confined under chapter 71.09 RCW, the public disclosure of which would have a substantial likelihood of threatening the security of a city, county, or state adult or juvenile correctional facility, secure facility for persons civilly confined under chapter 71.09 RCW, or any individual's safety;

(3) Information compiled by school districts or schools in the development of their comprehensive safe school plans under RCW 28A.320.125, to the extent that they identify specific vulnerabilities of school districts and each individual school;

(4) Information regarding the infrastructure and security of computer and telecommunications networks, consisting of security passwords, security access codes and programs, access codes for secure software applications, security and service recovery plans, security risk assessments, and security test results to the extent that they identify specific system

vulnerabilities, and other such information the release of which may increase risk to the confidentiality, integrity, or availability of agency security, information technology infrastructure, or assets; and

(5) The system security and emergency preparedness plan required under RCW 35.21.228, 35A.21.300, 36.01.210, 36.57.120, 36.57A.170, and 81.112.180. [2013 2nd sp.s. c 33 § 9; 2009 c 67 § 1; 2005 c 274 § 422.]

Title 43

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- 43.190 Long-term care ombuds program.
- 43.215 Department of early learning.
- 43.280 Community treatment services for victims of sexual assault.

- 43.325 Energy freedom program.
- 43.330 Department of commerce.
- 43.338 Washington manufacturing innovation and modernization extension service program.
- 43.372 Marine waters planning and management.
- 43.378 Allocation of revenues derived from certain geothermal resources.

**Chapter 43.03 RCW
SALARIES AND EXPENSES**

Sections

- 43.03.011 Salaries of state elected officials of the executive branch.
- 43.03.012 Salaries of judges.
- 43.03.013 Salaries of members of the legislature.

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

- (1) Effective September 1, 2012:
 - (a) Governor \$ 166,891
 - (b) Lieutenant governor \$ 93,948
 - (c) Secretary of state \$ 116,950
 - (d) Treasurer \$ 116,950
 - (e) Auditor \$ 116,950
 - (f) Attorney general \$ 151,718
 - (g) Superintendent of public instruction \$ 121,618
 - (h) Commissioner of public lands \$ 121,618
 - (i) Insurance commissioner \$ 116,950
- (2) Effective September 1, 2013:
 - (a) Governor \$ 166,891
 - (b) Lieutenant governor \$ 97,000
 - (c) Secretary of state \$ 116,950
 - (d) Treasurer \$ 125,000
 - (e) Auditor \$ 116,950
 - (f) Attorney general \$ 151,718
 - (g) Superintendent of public instruction \$ 124,050
 - (h) Commissioner of public lands \$ 124,050
 - (i) Insurance commissioner \$ 116,950
- (3) Effective September 1, 2014:
 - (a) Governor \$ 166,891
 - (b) Lieutenant governor \$ 97,000
 - (c) Secretary of state \$ 116,950
 - (d) Treasurer \$ 125,000
 - (e) Auditor \$ 116,950
 - (f) Attorney general \$ 151,718
 - (g) Superintendent of public instruction \$ 127,772
 - (h) Commissioner of public lands \$ 124,050
 - (i) Insurance commissioner \$ 116,950

(4) The lieutenant governor shall receive the fixed amount of his or her salary plus 1/260th of the difference between his or her salary and that of the governor for each day that the lieutenant governor is called upon to perform the duties of the governor by reason of the absence from the state, removal, resignation, death, or disability of the governor. [2013 c 340 § 1; 2011 c 380 § 1; 2009 c 581 § 1; 2009 c 549 § 5004; 2007 c 524 § 1; 2005 c 519 § 1; 2003 1st sp.s. c 1 § 1; 2001 1st sp.s. c 3 § 1; 1999 sp.s. c 3 § 1; 1997 c 458 § 1; 1995 2nd sp.s. c 1 § 1; 1993 sp.s. c 26 § 1; 1991 sp.s. c 1 § 1; 1989 2nd ex.s. c 4 § 1; 1987 1st ex.s. c 1 § 1, part.]

43.03.012 Salaries of judges. Pursuant to Article XXVIII, section 1 of the state Constitution and RCW

2.04.092, 2.06.062, 2.08.092, 3.58.010, and 43.03.310, the annual salaries of the judges of the state shall be as follows:

- (1) Effective September 1, 2012:
 - (a) Justices of the supreme court. \$ 164,221
 - (b) Judges of the court of appeals. \$ 156,328
 - (c) Judges of the superior court. \$ 148,832
 - (d) Full-time judges of the district court. \$ 141,710
- (2) Effective September 1, 2013:
 - (a) Justices of the supreme court. \$ 167,505
 - (b) Judges of the court of appeals. \$ 159,455
 - (c) Judges of the superior court. \$ 151,809
 - (d) Full-time judges of the district court. \$ 144,544
- (3) Effective September 1, 2014:
 - (a) Justices of the supreme court. \$ 172,531
 - (b) Judges of the court of appeals. \$ 164,238
 - (c) Judges of the superior court. \$ 156,363
 - (d) Full-time judges of the district court. \$ 148,881
- (4) The salary for a part-time district court judge shall be the proportion of full-time work for which the position is authorized, multiplied by the salary for a full-time district court judge. [2013 c 340 § 2; 2011 c 380 § 2; 2009 c 581 § 2; 2007 c 524 § 2; 2005 c 519 § 2; 2003 1st sp.s. c 1 § 2; 2001 1st sp.s. c 3 § 2; 1999 sp.s. c 3 § 2; 1997 c 458 § 2; 1995 2nd sp.s. c 1 § 2; 1993 sp.s. c 26 § 2; 1991 sp.s. c 1 § 2; 1989 2nd ex.s. c 4 § 2; 1987 1st ex.s. c 1 § 1, part.]

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

- (1) Effective September 1, 2012:
 - (a) Legislators \$ 42,106
 - (b) Speaker of the house \$ 50,106
 - (c) Senate majority leader. \$ 50,106
 - (d) House minority leader. \$ 46,106
 - (e) Senate minority leader. \$ 46,106
- (2) Effective September 1, 2013:
 - (a) Legislators \$ 42,106
 - (b) Speaker of the house \$ 50,106
 - (c) Senate majority leader. \$ 50,106
 - (d) House minority leader. \$ 46,106
 - (e) Senate minority leader. \$ 46,106
- (3) Effective September 1, 2014:
 - (a) Legislators \$ 42,106
 - (b) Speaker of the house \$ 50,106
 - (c) Senate majority leader. \$ 50,106
 - (d) House minority leader. \$ 46,106
 - (e) Senate minority leader. \$ 46,106

[2013 c 340 § 3; 2011 c 380 § 3; 2009 c 581 § 3; 2007 c 524 § 3; 2005 c 519 § 3; 2003 1st sp.s. c 1 § 3; 2001 1st sp.s. c 3 § 3; 1999 sp.s. c 3 § 3; 1997 c 458 § 3; 1995 2nd sp.s. c 1 § 3; 1993 sp.s. c 26 § 3; 1991 sp.s. c 1 § 3; 1989 2nd ex.s. c 4 § 3; 1987 1st ex.s. c 1 § 1, part.]

**Chapter 43.06 RCW
GOVERNOR**

Sections

- 43.06.210 Proclamations—Generally—State of emergency.
- 43.06.338 Washington marine resources advisory council. (*Expires June 30, 2017.*)

43.06.400 Listing of reduction in revenues from tax exemptions to be submitted to legislature by department of revenue—Periodic review and submission of recommendations to legislature by governor. (*Effective July 1, 2015.*)

43.06.210 Proclamations—Generally—State of emergency. The proclamation of a state of emergency and other proclamations or orders issued by the governor pursuant to RCW 43.06.010, and 43.06.200 through 43.06.270 as now or hereafter amended shall be in writing and shall be signed by the governor and shall then be filed with the secretary of state. A proclamation of a state of emergency is effective upon the governor’s signature. The governor shall give as much public notice as practical through the news media of the issuance of proclamations or orders pursuant to RCW 43.06.010, and 43.06.200 through 43.06.270 as now or hereafter amended. The state of emergency shall cease to exist upon the issuance of a proclamation of the governor declaring its termination: PROVIDED, That the governor must terminate said state of emergency proclamation when order has been restored in the area affected. [2013 c 21 § 1; 1977 ex.s. c 328 § 12; 1975-'76 2nd ex.s. c 108 § 27; 1969 ex.s. c 186 § 2.]

Energy supply emergencies: Chapter 43.21G RCW.

Additional notes found at www.leg.wa.gov

43.06.338 Washington marine resources advisory council. (*Expires June 30, 2017.*) (1) The Washington marine resources advisory council is created within the office of the governor.

(2) The Washington marine resources advisory council is composed of:

- (a) The governor, or the governor’s designee, who shall serve as the chair of the council;
- (b) The commissioner of public lands, or the commissioner’s designee;
- (c) Two members of the senate, appointed by the president of the senate, one from each of the two largest caucuses in the senate;
- (d) Two members of the house of representatives, appointed by the speaker of the house of representatives, one from each of the two largest caucuses in the house of representatives;
- (e) One representative of federally recognized Indian tribes with reservations lying within or partially within counties bordering the outer coast, if selected by action of all of the governing bodies of all federally recognized Indian tribes in such an area;
- (f) One representative of federally recognized Indian tribes with reservations lying within or partially within counties bordering Puget Sound, if selected by action of all of the governing bodies of all federally recognized Indian tribes in such an area;

(g) One representative of each of the following sectors, appointed by the governor:

- (i) Commercial fishing;
- (ii) Recreational fishing;
- (iii) Marine recreation and tourism, other than fishing;
- (iv) Coastal shellfish growers;
- (v) Puget Sound shellfish growers;
- (vi) Marine businesses; and
- (vii) Conservation organizations;

(h) The chair of the Washington state conservation commission, or the chair's designee;

(i) One representative appointed by the largest statewide general agricultural association;

(j) One representative appointed by the largest statewide business association;

(k) The chair of the Washington coastal marine advisory council;

(l) The chair of the leadership council of the Puget Sound partnership;

(m) The director of the department of ecology;

(n) The director of the department of fish and wildlife; and

(o) The chair of the Northwest Straits commission.

(3) The governor shall invite the participation of the following entities as nonvoting members:

(a) The national oceanic and atmospheric administration; and

(b) Academic institutions conducting scientific research on ocean acidification.

(4) The governor shall make the appointments of the members under subsection (2)(g) of this section by September 1, 2013.

(5) Any member appointed by the governor may be removed by the governor for cause.

(6) A majority of the voting members of the Washington marine resources advisory council constitute a quorum for the transaction of business.

(7) The chair of the Washington marine resources advisory council shall schedule meetings and establish the agenda. The first meeting of the council must be scheduled by November 1, 2013. The council shall meet at least twice per calendar year. At each meeting the council shall afford an opportunity to the public to comment upon agenda items and other matters relating to the protection and conservation of the state's ocean resources.

(8) The Washington marine resources advisory council shall have the following powers and duties:

(a) To maintain a sustainable coordinated focus, including the involvement of and the collaboration among all levels of government and nongovernmental entities, the private sector, and citizens by increasing the state's ability to work to address impacts of ocean acidification;

(b) To advise and work with the University of Washington and others to conduct ongoing technical analysis on the effects and sources of ocean acidification. The recommendations must identify a range of actions necessary to implement the recommendations and take into consideration the differences between instate impacts and sources and out-of-state impacts and sources;

(c) To deliver recommendations to the governor and appropriate committees in the Washington state senate and house of representatives that must include, as necessary, any minority reports requested by a councilmember;

(d) To seek public and private funding resources necessary, and the commitment of other resources, for ongoing technical analysis to support the council's recommendations; and

(e) To assist in conducting public education activities regarding the impacts of and contributions to ocean acidifica-

tion and regarding implementation strategies to support the actions adopted by the legislature.

(9) This section expires June 30, 2017. [2013 c 318 § 4.]

43.06.400 Listing of reduction in revenues from tax exemptions to be submitted to legislature by department of revenue—Periodic review and submission of recommendations to legislature by governor. (Effective July 1, 2015.)

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) Beginning in January 1984, and every four years thereafter the governor is requested to review the report from the department of revenue and may submit recommendations to the legislature with respect to the repeal or modification of any tax exemption. The ways and means committees of each house and the appropriate standing committee of each house must hold public hearings and take appropriate action on the recommendations submitted by the governor.

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

(6) For purposes of the listing due in January 2012, the department of revenue does not have to prepare or update the listing with respect to any tax exemption that would not be

likely to increase state revenue if the exemption was repealed or otherwise eliminated. [2013 c 225 § 605; 2011 1st sp.s. c 20 § 201; 1999 c 372 § 5; 1987 c 472 § 16; 1983 2nd ex.s. c 3 § 60.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Review and termination of tax preferences: Chapter 43.136 RCW.

Additional notes found at www.leg.wa.gov

Chapter 43.06A RCW OFFICE OF THE FAMILY AND CHILDREN'S OMBUDS

Sections

- 43.06A.010 Office created—Purpose.
- 43.06A.020 Ombuds—Appointment, term of office.
- 43.06A.030 Duties.
- 43.06A.050 Confidentiality.
- 43.06A.060 Admissibility of evidence—Testimony regarding official duties.
- 43.06A.070 Release of identifying information.
- 43.06A.080 Inapplicability of privilege in RCW 43.06A.060.
- 43.06A.085 Liability for good faith performance—Privileged communications.
- 43.06A.090 Report of conduct warranting criminal or disciplinary proceedings.
- 43.06A.100 Communication with children in custody of department of social and health services—Access to information in possession or control of department or state institutions.
- 43.06A.110 Child fatality review recommendations—Annual report.

43.06A.010 Office created—Purpose. There is hereby created an office of the family and children's ombuds within the office of the governor for the purpose of promoting public awareness and understanding of family and children services, identifying system issues and responses for the governor and the legislature to act upon, and monitoring and ensuring compliance with administrative acts, relevant statutes, rules, and policies pertaining to family and children's services and the placement, supervision, and treatment of children in the state's care or in state-licensed facilities or residences. The ombuds shall report directly to the governor and shall exercise his or her powers and duties independently of the secretary. [2013 c 23 § 71; 1996 c 131 § 2.]

Additional notes found at www.leg.wa.gov

43.06A.020 Ombuds—Appointment, term of office.

(1) Subject to confirmation by the senate, the governor shall appoint an ombuds who shall be a person of recognized judgment, independence, objectivity, and integrity, and shall be qualified by training or experience, or both, in family and children's services law and policy. Prior to the appointment, the governor shall consult with, and may receive recommendations from the committee, regarding the selection of the ombuds.

(2) The person appointed ombuds shall hold office for a term of three years and shall continue to hold office until reappointed or until his or her successor is appointed. The governor may remove the ombuds only for neglect of duty, misconduct, or inability to perform duties. Any vacancy shall be filled by similar appointment for the remainder of the unexpired term. [2013 c 23 § 72; 1998 c 288 § 7; 1996 c 131 § 3.]

Additional notes found at www.leg.wa.gov

43.06A.030 Duties. The ombuds shall perform the following duties:

(1) Provide information as appropriate on the rights and responsibilities of individuals receiving family and children's services, and on the procedures for providing these services;

(2) Investigate, upon his or her own initiative or upon receipt of a complaint, an administrative act alleged to be contrary to law, rule, or policy, imposed without an adequate statement of reason, or based on irrelevant, immaterial, or erroneous grounds; however, the ombuds may decline to investigate any complaint as provided by rules adopted under this chapter;

(3) Monitor the procedures as established, implemented, and practiced by the department to carry out its responsibilities in delivering family and children's services with a view toward appropriate preservation of families and ensuring children's health and safety;

(4) Review periodically the facilities and procedures of state institutions serving children, and state-licensed facilities or residences;

(5) Recommend changes in the procedures for addressing the needs of families and children;

(6) Submit annually to the committee and to the governor by November 1st a report analyzing the work of the office, including recommendations;

(7) Grant the committee access to all relevant records in the possession of the ombuds unless prohibited by law; and

(8) Adopt rules necessary to implement this chapter. [2013 c 23 § 73; 1996 c 131 § 4.]

43.06A.050 Confidentiality. The ombuds shall treat all matters under investigation, including the identities of service recipients, complainants, and individuals from whom information is acquired, as confidential, except as far as disclosures may be necessary to enable the ombuds to perform the duties of the office and to support any recommendations resulting from an investigation. Upon receipt of information that by law is confidential or privileged, the ombuds shall maintain the confidentiality of such information and shall not further disclose or disseminate the information except as provided by applicable state or federal law. Investigative records of the office of the ombuds are confidential and are exempt from public disclosure under chapter 42.56 RCW. [2013 c 23 § 74; 2005 c 274 § 294; 1996 c 131 § 6.]

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

43.06A.060 Admissibility of evidence—Testimony regarding official duties. Neither the ombuds nor the ombuds's staff may be compelled, in any judicial or administrative proceeding, to testify or to produce evidence regarding the exercise of the official duties of the ombuds or of the ombuds's staff. All related memoranda, work product, notes, and case files of the ombuds's office are confidential, are not subject to discovery, judicial or administrative subpoena, or other method of legal compulsion, and are not admissible in evidence in a judicial or administrative proceeding. This section shall not apply to the legislative children's oversight committee. [2013 c 23 § 75; 1998 c 288 § 1.]

Additional notes found at www.leg.wa.gov

43.06A.070 Release of identifying information. Identifying information about complainants or witnesses shall not be subject to any method of legal compulsion, nor shall such information be revealed to the legislative children's oversight committee or the governor except under the following circumstances: (1) The complainant or witness waives confidentiality; (2) under a legislative subpoena when there is a legislative investigation for neglect of duty or misconduct by the ombuds or ombuds's office when the identifying information is necessary to the investigation of the ombuds's acts; or (3) under an investigation or inquiry by the governor as to neglect of duty or misconduct by the ombuds or ombuds's office when the identifying information is necessary to the investigation of the ombuds's acts.

For the purposes of this section, "identifying information" includes the complainant's or witness's name, location, telephone number, likeness, social security number or other identification number, or identification of immediate family members. [2013 c 23 § 76; 1998 c 288 § 2.]

Additional notes found at www.leg.wa.gov

43.06A.080 Inapplicability of privilege in RCW 43.06A.060. The privilege described in RCW 43.06A.060 does not apply when:

(1) The ombuds or ombuds's staff member has direct knowledge of an alleged crime, and the testimony, evidence, or discovery sought is relevant to that allegation;

(2) The ombuds or a member of the ombuds's staff has received a threat of, or becomes aware of a risk of, imminent serious harm to any person, and the testimony, evidence, or discovery sought is relevant to that threat or risk;

(3) The ombuds has been asked to provide general information regarding the general operation of, or the general processes employed at, the ombuds's office; or

(4) The ombuds or ombuds's staff member has direct knowledge of a failure by any person specified in RCW 26.44.030, including the state family and children's ombuds or any volunteer in the ombuds's office, to comply with RCW 26.44.030. [2013 c 23 § 77; 1998 c 288 § 3.]

Additional notes found at www.leg.wa.gov

43.06A.085 Liability for good faith performance—Privileged communications. (1) An employee of the office of the family and children's ombuds is not liable for good faith performance of responsibilities under this chapter.

(2) No discriminatory, disciplinary, or retaliatory action may be taken against an employee of the department, an employee of a contracting agency of the department, a foster parent, or a recipient of family and children's services for any communication made, or information given or disclosed, to aid the office of the family and children's ombuds in carrying out its responsibilities, unless the communication or information is made, given, or disclosed maliciously or without good faith. This subsection is not intended to infringe on the rights of the employer to supervise, discipline, or terminate an employee for other reasons.

(3) All communications by an ombuds, if reasonably related to the requirements of that individual's responsibilities under this chapter and done in good faith, are privileged and that privilege shall serve as a defense in any action in

libel or slander. [2013 c 23 § 78; 2009 c 88 § 2; 1999 c 390 § 7.]

43.06A.090 Report of conduct warranting criminal or disciplinary proceedings. When the ombuds or ombuds's staff member has reasonable cause to believe that any public official, employee, or other person has acted in a manner warranting criminal or disciplinary proceedings, the ombuds or ombuds's staff member shall report the matter, or cause a report to be made, to the appropriate authorities. [2013 c 23 § 79; 1998 c 288 § 4.]

Additional notes found at www.leg.wa.gov

43.06A.100 Communication with children in custody of department of social and health services—Access to information in possession or control of department or state institutions. The department of social and health services shall:

(1) Allow the ombuds or the ombuds's designee to communicate privately with any child in the custody of the department for the purposes of carrying out its duties under this chapter;

(2) Permit the ombuds or the ombuds designee physical access to state institutions serving children, and state licensed facilities or residences for the purpose of carrying out its duties under this chapter;

(3) Upon the ombuds's request, grant the ombuds or the ombuds's designee the right to access, inspect, and copy all relevant information, records, or documents in the possession or control of the department that the ombuds considers necessary in an investigation; and

(4) Grant the office of the family and children's ombuds unrestricted online access to the case and management information system (CAMIS) or any successor information system for the purpose of carrying out its duties under this chapter. [2013 c 23 § 80; 2008 c 211 § 3; 1999 c 390 § 5.]

43.06A.110 Child fatality review recommendations—Annual report. The office of the family and children's ombuds shall issue an annual report to the legislature on the status of the implementation of child fatality review recommendations. [2013 c 23 § 81; 2008 c 211 § 2.]

Chapter 43.06B RCW

OFFICE OF THE EDUCATION OMBUDS

Sections

43.06B.010	Office created—Purposes—Appointment—Regional education ombuds.
43.06B.020	Powers and duties.
43.06B.030	Liability for good faith performance—Privileged communications.
43.06B.040	Confidentiality.
43.06B.050	Annual reports.
43.06B.060	Public school antiharassment policies and strategies—Lead agency.

43.06B.010 Office created—Purposes—Appointment—Regional education ombuds. (1) There is hereby created the office of the education ombuds within the office of the governor for the purposes of providing information to parents, students, and others regarding their rights and responsibilities with respect to the state's public elementary

and secondary education system, and advocating on behalf of elementary and secondary students.

(2)(a) The governor shall appoint an ombuds who shall be a person of recognized judgment, independence, objectivity, and integrity and shall be qualified by training or experience or both in the following areas:

- (i) Public education law and policy in this state;
 - (ii) Dispute resolution or problem resolution techniques, including mediation and negotiation; and
 - (iii) Community outreach.
- (b) The education ombuds may not be an employee of any school district, the office of the superintendent of public instruction, or the state board of education while serving as an education ombuds.

(3) Before the appointment of the education ombuds, the governor shall share information regarding the appointment to a six-person legislative committee appointed and comprised as follows:

- (a) The committee shall consist of three senators and three members of the house of representatives from the legislature.
- (b) The senate members of the committee shall be appointed by the president of the senate. Two members shall represent the majority caucus and one member the minority caucus.
- (c) The house of representatives members of the committee shall be appointed by the speaker of the house of representatives. Two members shall represent the majority caucus and one member the minority caucus.

(4) If sufficient appropriations are provided, the education ombuds shall delegate and certify regional education ombuds. The education ombuds shall ensure that the regional ombuds selected are appropriate to the community in which they serve and hold the same qualifications as in subsection (2)(a) of this section. The education ombuds may not contract with the superintendent of public instruction, or any school, school district, or current employee of a school, school district, or the office of the superintendent of public instruction for the provision of regional ombuds services. [2013 c 23 § 82; 2006 c 116 § 3.]

43.06B.020 Powers and duties. The education ombuds shall have the following powers and duties:

- (1) To develop parental involvement materials, including instructional guides developed to inform parents of the essential academic learning requirements required by the superintendent of public instruction. The instructional guides also shall contain actions parents may take to assist their children in meeting the requirements, and should focus on reaching parents who have not previously been involved with their children's education;
- (2) To provide information to students, parents, and interested members of the public regarding this state's public elementary and secondary education system;
- (3) To identify obstacles to greater parent and community involvement in school shared decision-making processes and recommend strategies for helping parents and community members to participate effectively in school shared decision-making processes, including understanding and respecting the roles of school building administrators and staff;

(4) To identify and recommend strategies for improving the success rates of ethnic and racial student groups and students with disabilities, with disproportionate academic achievement;

(5) To refer complainants and others to appropriate resources, agencies, or departments;

(6) To facilitate the resolution of complaints made by parents and students with regard to the state's public elementary and secondary education system;

(7) To perform such other functions consistent with the purpose of the education ombuds; and

(8) To consult with representatives of the following organizations and groups regarding the work of the office of the education ombuds, including but not limited to:

- (a) The state parent teacher association;
- (b) Certificated and classified school employees;
- (c) School and school district administrators;
- (d) Parents of special education students;
- (e) Parents of English language learners;
- (f) The Washington state commission on Hispanic affairs;
- (g) The Washington state commission on African-American affairs;
- (h) The Washington state commission on Asian Pacific American affairs; and
- (i) The governor's office of Indian affairs. [2013 c 23 § 83; 2008 c 165 § 2; 2006 c 116 § 4.]

43.06B.030 Liability for good faith performance—Privileged communications. (1) Neither the education ombuds nor any regional educational ombuds are liable for good faith performance of responsibilities under this chapter.

(2) No discriminatory, disciplinary, or retaliatory action may be taken against any student or employee of any school district, the office of the superintendent of public instruction, or the state board of education, for any communication made, or information given or disclosed, to aid the education ombuds in carrying out his or her duties and responsibilities, unless the same was done without good faith or maliciously. This subsection is not intended to infringe upon the rights of a school district to supervise, discipline, or terminate an employee for other reasons or to discipline a student for other reasons.

(3) All communications by the education ombuds or the ombuds's staff or designee, if reasonably related to the education ombuds's duties and responsibilities and done in good faith, are privileged and that privilege shall serve as a defense to any action in libel or slander. [2013 c 23 § 84; 2006 c 116 § 5.]

43.06B.040 Confidentiality. The education ombuds shall treat all matters, including the identities of students, complainants, and individuals from whom information is acquired, as confidential, except as necessary to enable the education ombuds to perform the duties of the office. Upon receipt of information that by law is confidential or privileged, the ombuds shall maintain the confidentiality of such information and shall not further disclose or disseminate the information except as provided by applicable state or federal law. [2013 c 23 § 85; 2006 c 116 § 6.]

43.06B.050 Annual reports. The education ombuds shall report on the work and accomplishment of the office and advise and make recommendations to the governor, the legislature, and the state board of education annually. The initial report to the governor, the legislature, and the state board of education shall be made by September 1, 2007, and there shall be annual reports by September 1st each year thereafter. The annual reports shall provide at least the following information:

(1) How the education ombuds's services have been used and by whom;

(2) Methods for the education ombuds to increase and enhance family and community involvement in public education;

(3) Recommendations to eliminate barriers and obstacles to meaningful family and community involvement in public education; and

(4) Strategies to improve the educational opportunities for all students in the state, including recommendations from organizations and groups provided in RCW 43.06B.020(8). [2013 c 23 § 86; 2006 c 116 § 7.]

43.06B.060 Public school antiharassment policies and strategies—Lead agency. In addition to duties assigned under RCW 43.06B.020, the office of the education ombuds shall serve as the lead agency to provide resources and tools to parents and families about public school antiharassment policies and strategies. [2013 c 23 § 87; 2010 c 239 § 3.]

Finding—Intent—2010 c 239: See note following RCW 28A.300.285.

Chapter 43.08 RCW STATE TREASURER

Sections

43.08.190 State treasurer's service fund—Creation—Purpose.

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

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

During the 2009-2011 fiscal biennium and the 2011-2013 and 2013-2015 fiscal biennia, the legislature may transfer from the state treasurer's service fund to the state general fund such amounts as reflect the excess fund balance of the fund. [2013 2nd sp.s. c 4 § 973; 2011 1st sp.s. c 50 § 941; 2010 c 222 § 3; 2009 c 564 § 926; 2008 c 329 § 912; 2005 c 518 § 925; 2003 1st sp.s. c 25 § 916; 1991 sp.s. c 13 § 83; 1985 c 405 § 506; 1973 c 27 § 2.]

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

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

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

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

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

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

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

Additional notes found at www.leg.wa.gov

Chapter 43.09 RCW STATE AUDITOR

Sections

43.09.166 Subpoenas—Court approval—Process.
43.09.475 Performance audits of government account.

43.09.166 Subpoenas—Court approval—Process.

(1) In addition to the authority granted in RCW 43.09.165, the state auditor and his or her authorized assistants may apply for and obtain a superior court order approving and authorizing a subpoena in advance of its issuance. The application may be made in the county where the subpoenaed person resides or is found, or the county where the subpoenaed records or documents are located, or in Thurston county. The application must (a) state that an order is sought pursuant to this subsection; (b) adequately specify the records, documents, or testimony; and (c) declare under oath that an investigation is being conducted for a lawfully authorized purpose related to an investigation within the state auditor's authority and that the subpoenaed documents or testimony are reasonably related to an investigation within the state auditor's authority.

(2) Where the application under this section is made to the satisfaction of the court, the court must issue an order approving the subpoena. An order under this section constitutes authority of law for the state auditor to subpoena the records or testimony.

(3) The state auditor and his or her authorized assistants may seek approval and a court may issue an order under this section without prior notice to any person, including the person to whom the subpoena is directed and the person who is the subject of an investigation. [2013 c 50 § 2.]

Intent—2013 c 50: "The legislature intends to provide a process for the state auditor's office to apply for court approval of an investigative subpoena which is authorized under current law in cases where the agency seeks such approval, or where court approval is required by Article I, section 7 of the state Constitution. The legislature does not intend to require court approval except where otherwise required by law or Article I, section 7 of the state Constitution. The legislature does not intend to create any new authority to subpoena records or create any new rights for any person." [2013 c 50 § 1.]

43.09.475 Performance audits of government account. The performance audits of government account is hereby created in the custody of the state treasurer. Revenue identified in RCW 82.08.020(5) and 82.12.0201 shall be deposited in the account. Money in the account shall be used to fund the performance audits and follow-up performance audits under RCW 43.09.470 and shall be expended by the state auditor in accordance with chapter 1, Laws of 2006. Only the state auditor or the state auditor's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. During the 2011-2013 and the 2013-2015 fiscal biennia, the performance audits of government account may be appropriated for fraud investigations in the state auditor's office and the department of social and health services, audit and collection functions in the department of revenue, the joint legislative audit and review committee, the office of financial management, the superintendent of public instruction and audits of school districts. In addition, during the 2011-2013 and 2013-2015 fiscal biennia the account may be used to fund the office of financial management's contract for the compliance audit of the state auditor. [2013 2nd sp.s. c 4 § 974; 2011 1st sp.s. c 50 § 942; 2009 c 564 § 929; 2006 c 1 § 5 (Initiative Measure No. 900, approved November 8, 2005).]

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

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

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

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

Chapter 43.10 RCW

ATTORNEY GENERAL

Sections

43.10.150 Legal services revolving fund—Created—Purpose.

43.10.150 Legal services revolving fund—Created—Purpose. A legal services revolving fund is hereby created in the state treasury for the purpose of a centralized funding, accounting, and distribution of the actual costs of the legal services provided to agencies of the state government by the attorney general. During the 2013-2015 fiscal biennium, the legislature may transfer from the legal services revolving account to the state general fund such amounts as reflect the excess fund balance of the account. [2013 2nd sp.s. c 4 § 975; 1974 ex.s. c 146 § 1; 1971 ex.s. c 71 § 1.]

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

Legal services revolving fund—Approval of certain changes required: RCW 43.88.350.

Additional notes found at www.leg.wa.gov

[2013 RCW Supp—page 460]

Chapter 43.17 RCW

ADMINISTRATIVE DEPARTMENTS AND AGENCIES—GENERAL PROVISIONS

Sections

43.17.250 Countywide planning policy.

43.17.250 Countywide planning policy. (1) Whenever a state agency is considering awarding grants or loans for a county, city, or town planning under RCW 36.70A.040 to finance public facilities, it shall consider whether the county, city, or town requesting the grant or loan has adopted a comprehensive plan and development regulations as required by RCW 36.70A.040.

(2) If a comprehensive plan, development regulation, or amendment thereto adopted by a county, city, or town has been appealed to the growth management hearings board under RCW 36.70A.280, the county, city, or town may not be determined to be ineligible or otherwise penalized in the acceptance of applications or the awarding of state agency grants or loans during the pendency of the appeal before the board or subsequent judicial appeals. This subsection (2) applies only to counties, cities, and towns that have: (a) Delayed the initial effective date of the action subject to the petition before the board until after the board issues a final determination; or (b) within thirty days of receiving notice of a petition for review by the board, delayed or suspended the effective date of the action subject to the petition before the board until after the board issues a final determination.

(3) When reviewing competing requests from counties, cities, or towns planning under RCW 36.70A.040, a state agency considering awarding grants or loans for public facilities shall accord additional preference to those counties, cities, or towns that have adopted a comprehensive plan and development regulations as required by RCW 36.70A.040. For the purposes of the preference accorded in this section, a county, city, or town planning under RCW 36.70A.040 is deemed to have satisfied the requirements for adopting a comprehensive plan and development regulations specified in RCW 36.70A.040 if the county, city, or town:

(a) Adopts or has adopted a comprehensive plan and development regulations within the time periods specified in RCW 36.70A.040;

(b) Adopts or has adopted a comprehensive plan and development regulations before the state agency makes a decision regarding award recipients of the grants or loans if the county, city, or town failed to adopt a comprehensive plan and/or development regulations within the time periods specified in RCW 36.70A.040; or

(c) Demonstrates substantial progress toward adopting a comprehensive plan or development regulations within the time periods specified in RCW 36.70A.040. A county, city, or town that is more than six months out of compliance with the time periods specified in RCW 36.70A.040 shall not be deemed to demonstrate substantial progress for purposes of this section.

(4) The preference specified in subsection (3) of this section applies only to competing requests for grants or loans from counties, cities, or towns planning under RCW 36.70A.040. A request from a county, city, or town planning under RCW 36.70A.040 shall be accorded no additional pref-

erence based on subsection (3) of this section over a request from a county, city, or town not planning under RCW 36.70A.040.

(5) Whenever a state agency is considering awarding grants or loans for public facilities to a special district requesting funding for a proposed facility located in a county, city, or town planning under RCW 36.70A.040, it shall consider whether the county, city, or town in whose planning jurisdiction the proposed facility is located has adopted a comprehensive plan and development regulations as required by RCW 36.70A.040 and shall apply the standards in subsection (2) of this section and the preference specified in subsection (3) of this section and restricted in subsection (4) of this section. [2013 c 275 § 2; 1999 c 164 § 601; 1991 sp.s. c 32 § 25.]

Findings—Intent—Part headings and subheadings not law—Effective date—Severability—1999 c 164: See notes following RCW 43.160.010.

Additional notes found at www.leg.wa.gov

Chapter 43.19 RCW

DEPARTMENT OF ENTERPRISE SERVICES

(Formerly: Department of general administration)

Sections

43.19.025	Enterprise services account.
43.19.1919	Surplus personal property—Sale, exchange—Exceptions and limitations—Transferring ownership of department-owned vessel.
43.19.642	Biodiesel fuel blends—Use by agencies—Biannual report.
43.19.648	Publicly owned vehicles, vessels, and construction equipment—Fuel usage—Advisory committee—Tires.
43.19.730	Repealed.
43.19.791	Data processing revolving fund—Created—Use.
43.19.800	Transfer of ownership of department-owned vessel—Further requirements.

43.19.025 Enterprise services account. The enterprise services account is created in the custody of the state treasurer and shall be used for all activities conducted by the department, except information technology services. Only the director or the director's designee may authorize expenditures from the account. The account is subject to the allotment procedures under chapter 43.88 RCW. [2013 c 251 § 2; 2011 1st sp.s. c 43 § 202; 2002 c 332 § 3; 2001 c 292 § 2; 1998 c 105 § 1.]

Residual balance of funds—Effective date—2013 c 251: See notes following RCW 41.06.280.

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

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

Additional notes found at www.leg.wa.gov

43.19.1919 Surplus personal property—Sale, exchange—Exceptions and limitations—Transferring ownership of department-owned vessel. (1) The department shall sell or exchange personal property belonging to the state for which the agency, office, department, or educational institution having custody thereof has no further use, at public or private sale, and cause the moneys realized from the sale of any such property to be paid into the fund from which such property was purchased or, if such fund no longer exists,

into the state general fund. This requirement is subject to the following exceptions and limitations:

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

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

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

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

(e) A state agency having a surplus personal property asset with a fair market value of less than five hundred dollars may transfer the asset to another state agency without charging fair market value. A state agency conducting this action must maintain adequate records to comply with agency inventory procedures and state audit requirements.

(2)(a) Prior to transferring ownership of a department-owned vessel, the department shall conduct a thorough review of the physical condition of the vessel, the vessel's operating capability, and any containers and other materials that are not fixed to the vessel.

(b) If the department determines that the vessel is in a state of advanced deterioration or poses a reasonably imminent threat to human health or safety, including a threat of environmental contamination, the department may: (i) Not transfer the vessel until the conditions identified under this subsection have been corrected; or (ii) permanently dispose of the vessel by landfill, deconstruction, or other related method. [2013 c 291 § 5; 2011 1st sp.s. c 43 § 215; 2000 c 183 § 1; 1997 c 264 § 2; (1995 2nd sp.s. c 14 § 513 expired June 30, 1997); 1991 c 216 § 2; 1989 c 144 § 1; 1988 c 124 § 8; 1975-'76 2nd ex.s. c 21 § 11; 1965 c 8 § 43.19.1919. Prior: 1959 c 178 § 10.]

***Reviser's note:** RCW 43.19.190, 43.19.1901, 43.19.1905, 43.19.19052, 43.19.1906, 43.19.1908, 43.19.1911, 43.19.1913, 43.19.1914, 43.19.1915, 43.19.1937, and 43.19.1939 were repealed by 2012 c 224 § 29, effective January 1, 2013. See chapter 39.26 RCW.

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

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

surplus, tangible property to assist the homeless in meeting their basic needs." [1991 c 216 § 1.]

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

Additional notes found at www.leg.wa.gov

43.19.642 Biodiesel fuel blends—Use by agencies—Biannual report. (1) Effective June 1, 2006, for agencies complying with the ultra-low sulfur diesel mandate of the United States environmental protection agency for on-highway diesel fuel, agencies shall use biodiesel as an additive to ultra-low sulfur diesel for lubricity, provided that the use of a lubricity additive is warranted and that the use of biodiesel is comparable in performance and cost with other available lubricity additives. The amount of biodiesel added to the ultra-low sulfur diesel fuel shall be not less than two percent.

(2) Except as provided in subsection (5) of this section, effective June 1, 2009, state agencies are required to use a minimum of twenty percent biodiesel as compared to total volume of all diesel purchases made by the agencies for the operation of the agencies' diesel-powered vessels, vehicles, and construction equipment.

(3) All state agencies using biodiesel fuel shall, beginning on July 1, 2006, file biannual reports with the department of enterprise services documenting the use of the fuel and a description of how any problems encountered were resolved.

(4) By December 1, 2009, the department of enterprise services shall:

(a) Report to the legislature on the average true price differential for biodiesel by blend and location; and

(b) Examine alternative fuel procurement methods that work to address potential market barriers for in-state biodiesel producers and report these findings to the legislature.

(5) During the 2011-2013 and 2013-2015 fiscal biennia, the Washington state ferries is required to use a minimum of five percent biodiesel as compared to total volume of all diesel purchases made by the Washington state ferries for the operation of the Washington state ferries diesel-powered vessels, as long as the price of a B5 biodiesel blend does not exceed the price of conventional diesel fuel by five percent or more. [2013 c 306 § 701; 2012 c 86 § 802; 2010 c 247 § 701; 2009 c 470 § 716; 2007 c 348 § 201; 2006 c 338 § 10; 2003 c 17 § 2.]

Effective date—2013 c 306: See note following RCW 47.64.170.

Effective date—2012 c 86: See note following RCW 47.76.360.

Effective date—2010 c 247: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 30, 2010]." [2010 c 247 § 802.]

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

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

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

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

Findings—2003 c 17: "The legislature recognizes that:

- (1) Biodiesel is less polluting than petroleum diesel;
- (2) Using biodiesel in neat form or blended with petroleum diesel significantly reduces air toxics and cancer-causing compounds as well as the soot associated with petroleum diesel exhaust;
- (3) Biodiesel degrades much faster than petroleum diesel;
- (4) Biodiesel is less toxic than petroleum fuels;

(5) The United States environmental protection agency's new emission standards for petroleum diesel that take effect June 1, 2006, will require the addition of a lubricant to ultra-low sulfur diesel to counteract premature wear of injection pumps;

(6) Biodiesel provides the needed lubricity to ultra-low sulfur diesel;

(7) Biodiesel use in state-owned diesel-powered vehicles provides a means for the state to comply with the alternative fuel vehicle purchase requirements of the energy policy act of 1992, P.L. 102-486; and

(8) The state is in a position to set an example of large scale use of biodiesel in diesel-powered vehicles and equipment." [2003 c 17 § 1.]

43.19.648 Publicly owned vehicles, vessels, and construction equipment—Fuel usage—Advisory committee—Tires. (1) Effective June 1, 2015, all state agencies, to the extent determined practicable by the rules adopted by the department of commerce pursuant to RCW 43.325.080, are required to satisfy one hundred percent of their fuel usage for operating publicly owned vessels, vehicles, and construction equipment from electricity or biofuel. Compressed natural gas, liquefied natural gas, or propane may be substituted for electricity or biofuel if the department of commerce determines that electricity and biofuel are not reasonably available.

(2)(a) Effective June 1, 2018, all local government subdivisions of the state, to the extent determined practicable by the rules adopted by the department of commerce pursuant to RCW 43.325.080, are required to satisfy one hundred percent of their fuel usage for operating publicly owned vessels, vehicles, and construction equipment from electricity or biofuel. The department of commerce shall convene an advisory committee of representatives of local government subdivisions, representatives from organizations representing each local government subdivision, and either (i) an electric utility or (ii) a natural gas utility, or both, to work with the department to develop the rules. The department may invite additional stakeholders to participate in the advisory committee as needed and determined by the department.

(b) The following are exempt from this requirement: (i) Transit agencies using compressed natural gas on June 1, 2018, and (ii) engine retrofits that would void warranties. Nothing in this section is intended to require the replacement of equipment before the end of its useful life. Compressed natural gas, liquefied natural gas, or propane may be substituted for electricity or biofuel if the department of commerce determines that electricity and biofuel are not reasonably available.

(c)(i) Rules adopted pursuant to RCW 43.325.080 must provide the authority for local government subdivisions to elect to exempt police, fire, and other emergency response vehicles, including utility vehicles frequently used for emergency response, from the fuel usage requirement in (a) of this subsection.

(ii) Prior to executing its authority under (c)(i) of this subsection, a local government subdivision must provide notice to the department of commerce of the exemption. The notice must include the rationale for the exemption and an explanation of how the exemption is consistent with rules adopted by the department of commerce.

(d) Before June 1, 2018, local government subdivisions purchasing vessels, vehicles, and construction equipment capable of using biodiesel must request warranty protection for the highest level of biodiesel the vessel, vehicle, or construction equipment is capable of using, up to one hundred

percent biodiesel, as long as the costs are reasonably equal to a vessel, vehicle, or construction equipment that is not warranted to use up to one hundred percent biodiesel.

(3) In order to phase in this transition for the state, all state agencies, to the extent determined practicable by the department of commerce by rules adopted pursuant to RCW 43.325.080, are required to achieve forty percent fuel usage for operating publicly owned vessels, vehicles, and construction equipment from electricity or biofuel by June 1, 2013. Compressed natural gas, liquefied natural gas, or propane may be substituted for electricity or biofuel if the department of commerce determines that electricity and biofuel are not reasonably available. The department of enterprise services, in consultation with the department of commerce, shall report to the governor and the legislature by December 1, 2013, on what percentage of the state's fuel usage is from electricity or biofuel.

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

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

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

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

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

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

(b) "Battery exchange station" means a fully automated facility that will enable an electric vehicle with a swappable battery to enter a drive lane and exchange the depleted battery with a fully charged battery through a fully automated process, which meets or exceeds any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540. [2013 c 328 § 1; 2012 c 171 § 1; 2011 c 353 § 4; 2009 c 459 § 7; 2007 c 348 § 202.]

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

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

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

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

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

43.19.791 Data processing revolving fund—Created—Use. There is created a revolving fund to be known as the data processing revolving fund in the custody of the state treasurer. The revolving fund shall be used for the acquisition of equipment, software, supplies, and services and the payment of salaries, wages, and other costs incidental to the acquisition, development, operation, and administration of information services, telecommunications, systems, software, supplies and equipment, including the payment of principal and interest on bonds issued for capital projects, by the department, Washington State University's computer services center, the department of enterprise services' personnel information systems group and financial systems management group, and other users as determined by the office of financial management. The revolving fund is subject to the allotment procedure provided under chapter 43.88 RCW. The chief information officer or the chief information officer's designee, with the approval of the technology services board, is authorized to expend up to one million dollars per fiscal biennium for the technology services board to conduct independent technical and financial analysis of proposed information technology projects, and such an expenditure does not require an appropriation. Disbursements from the revolving fund for the services component of the department are not subject to appropriation. Disbursements for the strategic planning and policy component of the department are subject to appropriation. All disbursements from the fund are subject to the allotment procedures provided under chapter 43.88 RCW. The department shall establish and implement a billing structure to assure all agencies pay an equitable share of the costs.

During the 2011-2013 and the 2013-2015 fiscal biennia, the legislature may transfer from the data processing revolving account to the state general fund such amounts as reflect the excess fund balance and may use the data processing revolving account for information technology projects.

As used in this section, the word "supplies" shall not be interpreted to delegate or abrogate the division of purchasing's responsibilities and authority to purchase supplies as described in *RCW 43.19.190 and 43.19.200. [2013 2nd sp.s. c 4 § 976; 2011 2nd sp.s. c 9 § 906. Prior: 2011 1st sp.s. c 43 § 601; 2011 c 5 § 912; 2010 1st sp.s. c 37 § 931; 1999 c 80 § 8; 1992 c 235 § 6; 1987 c 504 § 11; 1983 c 3 § 116; 1974 ex.s. c 129 § 1. Formerly RCW 43.105.080.]

***Reviser's note:** RCW 43.19.190 and 43.19.200 were repealed by 2012 c 224 § 29, effective January 1, 2013.

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

Effective dates—2011 2nd sp.s. c 9: See note following RCW 28B.50.837.

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

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

Effective date—2010 1st sp.s. c 37: See note following RCW 13.06.050.

43.19.800 Transfer of ownership of department-owned vessel—Further requirements. (1) Following the inspection required under RCW 43.19.1919 and prior to transferring ownership of a department-owned vessel, the department shall obtain the following from the transferee:

(a) The purposes for which the transferee intends to use the vessel; and

(b) Information demonstrating the prospective owner's intent to obtain legal moorage following the transfer, in the manner determined by the department.

(2)(a) The department shall remove any containers or other materials that are not fixed to the vessel and contain hazardous substances, as defined under RCW 70.105D.020.

(b) However, the department may transfer a vessel with:

(i) Those containers or materials described under (a) of this subsection where the transferee demonstrates to the department's satisfaction that the container's or material's presence is consistent with the anticipated use of the vessel; and

(ii) A reasonable amount of fuel as determined by the department, based on factors including the vessel's size, condition, and anticipated use of the vessel, including initial destination following transfer.

(c) The department may consult with the department of ecology in carrying out the requirements of this subsection (2).

(3) Prior to sale, and unless the vessel has a title or valid marine document, the department is required to apply for a certificate of title for the vessel under RCW 88.02.510 and register the vessel under RCW 88.02.550. [2013 c 291 § 6.]

Chapter 43.20A RCW
DEPARTMENT OF SOCIAL AND
HEALTH SERVICES

Sections

- 43.20A.725 Telecommunications devices for the hearing and speech impaired—Program for provision of services and equipment—Telecommunications relay service excise tax—Rules.
- 43.20A.765 Mental health first aid training for teachers and educational staff.
- 43.20A.895 Adult behavioral health system—Improvement strategy.
- 43.20A.897 Tribal-centric behavioral health system.

43.20A.725 Telecommunications devices for the hearing and speech impaired—Program for provision of services and equipment—Telecommunications relay service excise tax—Rules. Subject to the enactment into law of the 2013 amendments to RCW 82.14B.040 in section 103, chapter 8, Laws of 2013 2nd sp. sess., the 2013 amendments to RCW 82.14B.042 in section 104, chapter 8, Laws of 2013 2nd sp. sess., the 2013 amendments to RCW 82.14B.030 in section 105, chapter 8, Laws of 2013 2nd sp. sess., the 2013 amendments to RCW 82.14B.200 in section 106, chapter 8, Laws of 2013 2nd sp. sess., and the 2013 amendments to RCW 82.08.0289 in section 107, chapter 8, Laws of 2013 2nd sp. sess.:

(1) The department, through the sole authority of the office or its successor organization, must maintain a program whereby an individual of school age or older who possesses a hearing or speech impairment is provided with telecommunications equipment, software, and/or peripheral devices, digital or otherwise, that is determined by the office to be necessary for such a person to access and use telecommunications transmission services effectively.

(2) The department, through the sole authority of the office or its successor organization, must maintain a program

where telecommunications relay services of a human or electronic nature will be provided to connect hearing impaired, deaf-blind, or speech impaired persons with persons who do not have a hearing or speech impairment. Such telecommunications relay services must provide the ability for an individual who has a hearing or speech impairment to engage in voice, tactile, or visual communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing or speech impairment to communicate using voice or visual communication services by wire or radio subject to subsection (4)(b) of this section.

(3) The telecommunications relay service and equipment distribution program may operate in such a manner as to provide communications transmission opportunities that are capable of incorporating new technologies that have demonstrated benefits consistent with the intent of this chapter and are in the best interests of the citizens of this state.

(4) The office must administer and control the award of money to all parties incurring costs in implementing and maintaining telecommunications services, programs, equipment, and technical support services according to this section. The relay service contract must be awarded to an individual company registered as a telecommunications company by the utilities and transportation commission, to a group of registered telecommunications companies, or to any other company or organization determined by the office as qualified to provide relay services, contingent upon that company or organization being approved as a registered telecommunications company prior to final contract approval. The relay system providers and telecommunications equipment vendors must be selected on the basis of cost-effectiveness and utility to the greatest extent possible under the program and technical specifications established by the office.

(a) To the extent funds are available for the purposes authorized by this chapter, the office may award contracts for communications and related services and equipment for hearing impaired or speech impaired individuals accessing or receiving services provided by, or contracted for, the department to meet access obligations under Title 2 of the federal Americans with disabilities act or related federal regulations.

(b) The office must perform its duties under this section with the goal of achieving functional equivalency of access to and use of telecommunications services similar to the enjoyment of access to and use of such services experienced by an individual who does not have a hearing or speech impairment only to the extent that funds are available for the purposes authorized by this chapter.

(5) The program must be funded by the legislature by means of a biennial general fund appropriation to the department for the purposes of the program.

(6) The telecommunications relay service program and equipment vendors must provide services and equipment consistent with the requirements of federal law for the operation of both interstate and intrastate telecommunications services for the hearing impaired or speech impaired. The department and the utilities and transportation commission are responsible for ensuring compliance with federal requirements and must provide timely notice to the legislature of any legislation that may be required to accomplish compliance.

(7) The department must adopt rules establishing eligibility criteria, ownership obligations, financial contributions, and a program for distribution to individuals requesting and receiving such telecommunications devices distributed by the office, and other rules necessary to administer programs and services consistent with this chapter. [2013 2nd sp.s. c 8 § 109; 2011 1st sp.s. c 50 § 944; 2010 1st sp.s. c 37 § 921; 2004 c 254 § 1; 2001 c 210 § 2; 1998 c 245 § 59; 1993 c 425 § 1; 1992 c 144 § 3; 1990 c 89 § 3; 1987 c 304 § 3.]

Findings—Intent—Effective dates—2013 2nd sp.s. c 8: See notes following RCW 82.14B.040.

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

Effective date—2010 1st sp.s. c 37: See note following RCW 13.06.050.

Responsibility for collection of tax—2004 c 254: "(1) The department of revenue is responsible for the administration and collection of telephone program excise taxes as provided in this act only with regard to telephone program excise taxes that are imposed on switched access lines for any time period occurring on or after July 1, 2004.

(2) The department of social and health services is responsible for the administration and collection of telephone program excise taxes as provided in this act only with regard to telephone program excise taxes that are imposed on switched access lines for the current year and the four preceding years which occurred prior to July 1, 2004." [2004 c 254 § 13.]

Implementation—2004 c 254: "The secretary of the department of social and health services and the director of the department of revenue may take the necessary steps to ensure that this act is implemented on its effective date." [2004 c 254 § 15.]

Effective date—2004 c 254: See note following RCW 82.72.010.

Legislative findings—Severability—1992 c 144: See notes following RCW 43.20A.720.

Legislative finding—1990 c 89: See note following RCW 43.20A.720. Additional notes found at www.leg.wa.gov

43.20A.765 Mental health first aid training for teachers and educational staff. Subject to appropriation for this specific purpose, the department shall provide funds for mental health first aid training targeted at teachers and educational staff. The training will follow the model developed by the department of psychology in Melbourne, Australia. Instruction provided will describe common mental disorders that arise in youth, their possible causes and risk factors, the availability of evidence-based medical, psychological, and alternative treatments, processes for making referrals for behavioral health services, and methods to effectively render assistance in both initial intervention and crisis situations. The department shall collaborate with the office of the superintendent of public instruction to identify sites and methods of instruction that leverage local resources to the extent possible for the purpose of making the mental health first aid training broadly available. [2013 c 197 § 9.]

***Reviser's note:** 2013 c 197 directed that this section be added to chapter 71.24 RCW. This section has been codified in chapter 43.20A RCW, which relates more directly to duties of the department of social and health services.

Finding—Intent—2013 c 197: "(1) The legislature finds that a lack of information about mental health problems among the general public leads to stigmatizing attitudes and prevents people from seeking help early and seeking the best sort of help. It also prevents people from providing support to family members, friends, and colleagues because they might not know what to do. This lack of knowledge about mental health problems limits the initial accessibility of evidence-based treatments and leads to a lack of support for people with a mental disorder from family, friends, and other members of the community.

(2) The focus on training for teachers and educational staff is intended

to provide opportunities for early intervention when the first signs of developing mental illness may be recognized in children, teens, and young adults, so that appropriate referrals may be made to evidence-based behavioral health services." [2013 c 197 § 8.]

Findings—Intent—2013 c 197: See note following RCW 28A.410.226.

Civil liability—2013 c 197: See RCW 28A.310.501.

43.20A.895 Adult behavioral health system—Improvement strategy. (1) The systems responsible for financing, administration, and delivery of publicly funded mental health and chemical dependency services to adults must be designed and administered to achieve improved outcomes for adult clients served by those systems through increased use and development of evidence-based, research-based, and promising practices, as defined in RCW 71.24.025. For purposes of this section, client outcomes include: Improved health status; increased participation in employment and education; reduced involvement with the criminal justice system; enhanced safety and access to treatment for forensic patients; reduction in avoidable utilization of and costs associated with hospital, emergency room, and crisis services; increased housing stability; improved quality of life, including measures of recovery and resilience; and decreased population level disparities in access to treatment and treatment outcomes.

(2) The department and the health care authority must implement a strategy for the improvement of the adult behavioral health system.

(a) The department must establish a steering committee that includes at least the following members: Behavioral health service recipients and their families; local government; representatives of regional support networks; representatives of county coordinators; law enforcement; city and county jails; tribal representatives; behavioral health service providers, including at least one chemical dependency provider and at least one psychiatric advanced registered nurse practitioner; housing providers; medicaid managed care plan representatives; long-term care service providers; organizations representing health care professionals providing services in mental health settings; the Washington state hospital association; the Washington state medical association; individuals with expertise in evidence-based and research-based behavioral health service practices; and the health care authority.

(b) The adult behavioral health system improvement strategy must include:

(i) An assessment of the capacity of the current publicly funded behavioral health services system to provide evidence-based, research-based, and promising practices;

(ii) Identification, development, and increased use of evidence-based, research-based, and promising practices;

(iii) Design and implementation of a transparent quality management system, including analysis of current system capacity to implement outcomes reporting and development of baseline and improvement targets for each outcome measure provided in this section;

(iv) Identification and phased implementation of service delivery, financing, or other strategies that will promote improvement of the behavioral health system as described in this section and incentivize the medical care, behavioral health, and long-term care service delivery systems to achieve the improvements described in this section and col-

laborate across systems. The strategies must include phased implementation of public reporting of outcome and performance measures in a form that allows for comparison of performance and levels of improvement between geographic regions of Washington; and

(v) Identification of effective methods for promoting workforce capacity, efficiency, stability, diversity, and safety.

(c) The department must seek private foundation and federal grant funding to support the adult behavioral health system improvement strategy.

(d) By May 15, 2014, the Washington state institute for public policy, in consultation with the department, the University of Washington evidence-based practice institute, the University of Washington alcohol and drug abuse institute, and the Washington institute for mental health research and training, shall prepare an inventory of evidence-based, research-based, and promising practices for prevention and intervention services pursuant to subsection (1) of this section. The department shall use the inventory in preparing the behavioral health improvement strategy. The department shall provide the institute with data necessary to complete the inventory.

(e) By August 1, 2014, the department must report to the governor and the relevant fiscal and policy committees of the legislature on the status of implementation of the behavioral health improvement strategy, including strategies developed or implemented to date, timelines, and costs to accomplish phased implementation of the adult behavioral health system improvement strategy.

(3) The department must contract for the services of an independent consultant to review the provision of forensic mental health services in Washington state and provide recommendations as to whether and how the state's forensic mental health system should be modified to provide an appropriate treatment environment for individuals with mental disorders who have been charged with a crime while enhancing the safety and security of the public and other patients and staff at forensic treatment facilities. By August 1, 2014, the department must submit a report regarding the recommendations of the independent consultant to the governor and the relevant fiscal and policy committees of the legislature. [2013 c 338 § 2.]

Task force—2013 c 338: "(1)(a) Beginning May 1, 2014, the legislature shall convene a task force to examine reform of the adult behavioral health system, with voting members as provided in this subsection.

(i) The president of the senate shall appoint one member from each of the two largest caucuses of the senate.

(ii) The speaker of the house of representatives shall appoint one member from each of the two largest caucuses in the house of representatives.

(iii) The governor shall appoint five members consisting of the secretary of the department of social and health services or the secretary's designee, the director of the health care authority or the director's designee, the director of the office of financial management or the director's designee, the secretary of the department of corrections or the secretary's designee, and a representative of the governor.

(iv) The governor shall request participation by a representative of tribal governments.

(b) The task force shall choose two cochairs from among its legislative members.

(c) The task force shall adopt a bottom-up approach and welcome input and participation from all stakeholders interested in the improvement of the adult behavioral health system. To that end, the task force must invite participation from, at a minimum, the following: Behavioral health service recipients and their families; local government; representatives of regional

support networks; representatives of county coordinators; law enforcement; city and county jails; tribal representatives; behavioral health service providers; housing providers; labor representatives; counties with state hospitals; mental health advocates; public defenders with involuntary mental health commitment or mental health court experience; medicaid managed care plan representatives; long-term care service providers; the Washington state hospital association; and individuals with expertise in evidence-based and research-based behavioral health service practices. Leadership of subcommittees formed by the task force may be drawn from this body of invited participants.

(2) The task force shall undertake a systemwide review of the adult behavioral health system and make recommendations for reform concerning, but not limited to, the following:

(a) The means by which services are delivered for adults with mental illness and chemical dependency disorders;

(b) Availability of effective means to promote recovery and prevent harm associated with mental illness;

(c) Crisis services, including boarding of mental health patients outside of regularly certified treatment beds;

(d) Best practices for cross-system collaboration between behavioral health treatment providers, medical care providers, long-term care service providers, entities providing health home services to high-risk medicaid clients, law enforcement, and criminal justice agencies; and

(e) Public safety practices involving persons with mental illness with forensic involvement.

(3) Staff support for the task force must be provided by the senate committee services and the house of representatives office of program research.

(4) Legislative members of the task force must be reimbursed for travel expenses in accordance with RCW 44.04.120. Nonlegislative members, except those representing an employer or organization, are entitled to be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

(5) The expenses of the task force must be paid jointly by the senate and house of representatives. Task force expenditures are subject to approval by the senate facilities and operations committee and the house of representatives executive rules committee, or their successor committees.

(6) The task force shall report its findings and recommendations to the governor and the appropriate committees of the legislature by January 1, 2015.

(7) This section expires June 1, 2015." [2013 c 338 § 1.]

43.20A.897 Tribal-centric behavioral health system.

(1) By November 30, 2013, the department and the health care authority must report to the governor and the relevant fiscal and policy committees of the legislature, consistent with RCW 43.01.036, a plan that establishes a tribal-centric behavioral health system incorporating both mental health and chemical dependency services. The plan must assure that child, adult, and older adult American Indians and Alaskan Natives eligible for medicaid have increased access to culturally appropriate mental health and chemical dependency services. The plan must:

(a) Include implementation dates, major milestones, and fiscal estimates as needed;

(b) Emphasize the use of culturally appropriate evidence-based and promising practices;

(c) Address equitable access to crisis services, outpatient care, voluntary and involuntary hospitalization, and behavioral health care coordination;

(d) Identify statutory changes necessary to implement the tribal-centric behavioral health system; and

(e) Be developed with the department's Indian policy advisory committee and the American Indian health commission, in consultation with Washington's federally recognized tribes.

(2) The department shall enter into agreements with the tribes and urban Indian health programs and modify regional support network contracts as necessary to develop a tribal-

centric behavioral health system that better serves the needs of the tribes. [2013 c 338 § 7.]

Task force—2013 c 338: See note following RCW 43.20A.895.

Chapter 43.21A RCW DEPARTMENT OF ECOLOGY

Sections

- 43.21A.081 Five-year formal review process of existing rules.
43.21A.700 Transfer of ownership of department-owned vessel—Review of vessel's physical condition.
43.21A.702 Transfer of ownership of department-owned vessel—Further requirements.

43.21A.081 Five-year formal review process of existing rules. The department of ecology must establish and perform, within existing funds, a formal review process of its existing rules every five years. The goal of the review is to decrease the numbers of, simplify the process, and decrease the time required for obtaining licenses, permits, and inspections, as applicable, in order to reduce the regulatory burden on businesses without compromising public health and safety. Benchmarks must be adopted to assess the effectiveness of streamlining efforts. The department must establish a process for effectively applying sunset provisions to rules when applicable. The department must report back to the applicable committees of the legislature with its review process and benchmarks by January 2014. [2013 2nd sp.s. c 30 § 2.]

Findings—Intent—2013 2nd sp.s. c 30: "The legislature finds that regulatory processes impose significant costs on doing business and significantly influence investment behavior, location decisions, start-up activity, expansions, and hiring. The legislature further finds that, for more than a decade, the executive and legislative branches have called upon state agencies to review their regulations to achieve meaningful regulatory reform and improve the regulatory climate for Washington businesses. However, a 2012 performance audit conducted by the state auditor's office found that the departments of ecology, health, and labor and industries have not adopted sufficient streamlining processes or formally measured the results of their streamlining activities. Thus, it is the intent of the legislature to formally direct these three state agencies to achieve the regulatory reform that has been repeatedly called for by the governor and the legislature." [2013 2nd sp.s. c 30 § 1.]

43.21A.700 Transfer of ownership of department-owned vessel—Review of vessel's physical condition. (1) Prior to transferring ownership of a department-owned vessel, the department shall conduct a thorough review of the physical condition of the vessel, the vessel's operating capability, and any containers and other materials that are not fixed to the vessel.

(2) If the department determines that the vessel is in a state of advanced deterioration or poses a reasonably imminent threat to human health or safety, including a threat of environmental contamination, the department may: (a) Not transfer the vessel until the conditions identified under this subsection have been corrected; or (b) permanently dispose of the vessel by landfill, deconstruction, or other related method. [2013 c 291 § 23.]

43.21A.702 Transfer of ownership of department-owned vessel—Further requirements. (1) Following the inspection required under RCW 43.21A.700 and prior to

transferring ownership of a department-owned vessel, the department shall obtain the following from the transferee:

(a) The purposes for which the transferee intends to use the vessel; and

(b) Information demonstrating the prospective owner's intent to obtain legal moorage following the transfer, in the manner determined by the department.

(2)(a) The department shall remove any containers or other materials that are not fixed to the vessel and contain hazardous substances, as defined under RCW 70.105D.020.

(b) However, the department may transfer a vessel with:

(i) Those containers or materials described under (a) of this subsection where the transferee demonstrates to the department's satisfaction that the container's or material's presence is consistent with the anticipated use of the vessel; and

(ii) A reasonable amount of fuel as determined by the department, based on factors including the vessel's size, condition, and anticipated use of the vessel including initial destination following transfer.

(3) Prior to sale, and unless the vessel has a valid marine document, the department is required to apply for a title or certificate of title for the vessel under RCW 88.02.510 and register the vessel under RCW 88.02.550. [2013 c 291 § 24.]

Chapter 43.21B RCW ENVIRONMENTAL AND LAND USE HEARINGS OFFICE—POLLUTION CONTROL HEARINGS BOARD

Sections

- 43.21B.110 Pollution control hearings board jurisdiction. (*Effective until June 30, 2019.*)
43.21B.110 Pollution control hearings board jurisdiction. (*Effective June 30, 2019.*)
43.21B.305 Appeals that involve penalties of fifteen thousand dollars or less or that involve a derelict or abandoned vessel under RCW 79.100.120.

43.21B.110 Pollution control hearings board jurisdiction. (*Effective until June 30, 2019.*) (1) The hearings board shall only have jurisdiction to hear and decide appeals from the following decisions of the department, the director, local conservation districts, the air pollution control boards or authorities as established pursuant to chapter 70.94 RCW, local health departments, the department of natural resources, the department of fish and wildlife, the parks and recreation commission, and authorized public entities described in chapter 79.100 RCW:

(a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431, 70.105.080, 70.107.050, 76.09.170, 77.55.291, 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and 90.64.102.

(b) Orders issued pursuant to RCW 18.104.043, 18.104.060, 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070, 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

(c) A final decision by the department or director made under chapter 183, Laws of 2009.

(d) Except as provided in RCW 90.03.210(2), the issuance, modification, or termination of any permit, certificate, or license by the department or any air authority in the exer-

cise of its jurisdiction, including the issuance or termination of a waste disposal permit, the denial of an application for a waste disposal permit, the modification of the conditions or the terms of a waste disposal permit, or a decision to approve or deny an application for a solid waste permit exemption under RCW 70.95.300.

(e) Decisions of local health departments regarding the grant or denial of solid waste permits pursuant to chapter 70.95 RCW.

(f) Decisions of local health departments regarding the issuance and enforcement of permits to use or dispose of bio-solids under RCW 70.95J.080.

(g) Decisions of the department regarding waste-derived fertilizer or micronutrient fertilizer under RCW 15.54.820, and decisions of the department regarding waste-derived soil amendments under RCW 70.95.205.

(h) Decisions of local conservation districts related to the denial of approval or denial of certification of a dairy nutrient management plan; conditions contained in a plan; application of any dairy nutrient management practices, standards, methods, and technologies to a particular dairy farm; and failure to adhere to the plan review and approval timelines in RCW 90.64.026.

(i) Any other decision by the department or an air authority which pursuant to law must be decided as an adjudicative proceeding under chapter 34.05 RCW.

(j) Decisions of the department of natural resources, the department of fish and wildlife, and the department that are reviewable under chapter 76.09 RCW, and the department of natural resources' appeals of county, city, or town objections under RCW 76.09.050(7).

(k) Forest health hazard orders issued by the commissioner of public lands under RCW 76.06.180.

(l) Decisions of the department of fish and wildlife to issue, deny, condition, or modify a hydraulic project approval permit under chapter 77.55 RCW.

(m) Decisions of the department of natural resources that are reviewable under RCW 78.44.270.

(n) Decisions of an authorized public entity under RCW 79.100.010 to take temporary possession or custody of a vessel or to contest the amount of reimbursement owed that are reviewable by the hearings board under RCW 79.100.120.

(2) The following hearings shall not be conducted by the hearings board:

(a) Hearings required by law to be conducted by the shorelines hearings board pursuant to chapter 90.58 RCW.

(b) Hearings conducted by the department pursuant to RCW 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

(c) Appeals of decisions by the department under RCW 90.03.110 and 90.44.220.

(d) Hearings conducted by the department to adopt, modify, or repeal rules.

(3) Review of rules and regulations adopted by the hearings board shall be subject to review in accordance with the provisions of the administrative procedure act, chapter 34.05 RCW. [2013 c 291 § 33. Prior: 2010 c 210 § 7; 2010 c 84 § 2; prior: 2009 c 456 § 16; 2009 c 332 § 18; 2009 c 183 § 17; 2003 c 393 § 19; 2001 c 220 § 2; prior: 1998 c 262 § 18; 1998 c 156 § 8; 1998 c 36 § 22; 1993 c 387 § 22; prior: 1992 c 174

§ 13; 1992 c 73 § 1; 1989 c 175 § 102; 1987 c 109 § 10; 1970 ex.s. c 62 § 41.]

Expiration date—2013 c 291 § 33: "Section 33 of this act expires June 30, 2019." [2013 c 291 § 46.]

Expiration dates—2010 c 210 §§ 3, 5, and 7: "(1) Sections 3 and 5 of this act expire July 1, 2011.

(2) Section 7 of this act expires June 30, 2019." [2010 c 210 § 45.]

Intent—Effective dates—Application—Pending cases and rules—2010 c 210: See notes following RCW 43.21B.001.

Expiration date—2010 c 84 § 2: "Section 2 of this act expires June 30, 2019." [2010 c 84 § 5.]

Application—2009 c 332: See note following RCW 90.03.110.

Expiration date—2009 c 183: See note following RCW 90.92.010.

Intent—2001 c 220: "The legislature intends to assure that appeals of department of ecology decisions regarding changes or transfers of water rights that are the subject of an ongoing general adjudication of water rights are governed by an appeals process that is efficient and eliminates unnecessary duplication, while fully preserving the rights of all affected parties. The legislature intends to address only the judicial review process for certain decisions of the pollution control hearings board when a general adjudication is being actively litigated. The legislature intends to fully preserve the role of the pollution control hearings board, except as specifically provided in this act." [2001 c 220 § 1.]

Intent—1998 c 36: See RCW 15.54.265.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

Order for compliance with oil spill contingency or prevention plan not subject to review by pollution control hearings board: RCW 90.56.270.

Additional notes found at www.leg.wa.gov

43.21B.110 Pollution control hearings board jurisdiction. (Effective June 30, 2019.) (1) The hearings board shall only have jurisdiction to hear and decide appeals from the following decisions of the department, the director, local conservation districts, the air pollution control boards or authorities as established pursuant to chapter 70.94 RCW, local health departments, the department of natural resources, the department of fish and wildlife, the parks and recreation commission, and authorized public entities described in chapter 79.100 RCW:

(a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431, 70.105.080, 70.107.050, 76.09.170, 77.55.291, 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and 90.64.102.

(b) Orders issued pursuant to RCW 18.104.043, 18.104.060, 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070, 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

(c) Except as provided in RCW 90.03.210(2), the issuance, modification, or termination of any permit, certificate, or license by the department or any air authority in the exercise of its jurisdiction, including the issuance or termination of a waste disposal permit, the denial of an application for a waste disposal permit, the modification of the conditions or the terms of a waste disposal permit, or a decision to approve or deny an application for a solid waste permit exemption under RCW 70.95.300.

(d) Decisions of local health departments regarding the grant or denial of solid waste permits pursuant to chapter 70.95 RCW.

(e) Decisions of local health departments regarding the issuance and enforcement of permits to use or dispose of bio-solids under RCW 70.95J.080.

(f) Decisions of the department regarding waste-derived fertilizer or micronutrient fertilizer under RCW 15.54.820, and decisions of the department regarding waste-derived soil amendments under RCW 70.95.205.

(g) Decisions of local conservation districts related to the denial of approval or denial of certification of a dairy nutrient management plan; conditions contained in a plan; application of any dairy nutrient management practices, standards, methods, and technologies to a particular dairy farm; and failure to adhere to the plan review and approval timelines in RCW 90.64.026.

(h) Any other decision by the department or an air authority which pursuant to law must be decided as an adjudicative proceeding under chapter 34.05 RCW.

(i) Decisions of the department of natural resources, the department of fish and wildlife, and the department that are reviewable under chapter 76.09 RCW, and the department of natural resources' appeals of county, city, or town objections under RCW 76.09.050(7).

(j) Forest health hazard orders issued by the commissioner of public lands under RCW 76.06.180.

(k) Decisions of the department of fish and wildlife to issue, deny, condition, or modify a hydraulic project approval permit under chapter 77.55 RCW.

(l) Decisions of the department of natural resources that are reviewable under RCW 78.44.270.

(m) Decisions of an authorized public entity under RCW 79.100.010 to take temporary possession or custody of a vessel or to contest the amount of reimbursement owed that are reviewable by the hearings board under RCW 79.100.120.

(2) The following hearings shall not be conducted by the hearings board:

(a) Hearings required by law to be conducted by the shoreline hearings board pursuant to chapter 90.58 RCW.

(b) Hearings conducted by the department pursuant to RCW 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

(c) Appeals of decisions by the department under RCW 90.03.110 and 90.44.220.

(d) Hearings conducted by the department to adopt, modify, or repeal rules.

(3) Review of rules and regulations adopted by the hearings board shall be subject to review in accordance with the provisions of the administrative procedure act, chapter 34.05 RCW. [2013 c 291 § 34. Prior: 2010 c 210 § 8; 2010 c 84 § 3; prior: 2009 c 456 § 16; 2009 c 332 § 18; 2003 c 393 § 19; 2001 c 220 § 2; prior: 1998 c 262 § 18; 1998 c 156 § 8; 1998 c 36 § 22; 1993 c 387 § 22; prior: 1992 c 174 § 13; 1992 c 73 § 1; 1989 c 175 § 102; 1987 c 109 § 10; 1970 ex.s. c 62 § 41.]

Effective date—2013 c 291 § 34: "Section 34 of this act takes effect June 30, 2019." [2013 c 291 § 47.]

Intent—Effective dates—Application—Pending cases and rules—2010 c 210: See notes following RCW 43.21B.001.

Effective date—2010 c 84 § 3: "Section 3 of this act takes effect June 30, 2019." [2010 c 84 § 6.]

Application—2009 c 332: See note following RCW 90.03.110.

Intent—2001 c 220: "The legislature intends to assure that appeals of department of ecology decisions regarding changes or transfers of water rights that are the subject of an ongoing general adjudication of water rights are governed by an appeals process that is efficient and eliminates unnecessary duplication, while fully preserving the rights of all affected parties. The legislature intends to address only the judicial review process for certain

decisions of the pollution control hearings board when a general adjudication is being actively litigated. The legislature intends to fully preserve the role of the pollution control hearings board, except as specifically provided in this act." [2001 c 220 § 1.]

Intent—1998 c 36: See RCW 15.54.265.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

Order for compliance with oil spill contingency or prevention plan not subject to review by pollution control hearings board: RCW 90.56.270.

Additional notes found at www.leg.wa.gov

43.21B.305 Appeals that involve penalties of fifteen thousand dollars or less or that involve a derelict or abandoned vessel under RCW 79.100.120. (1) In an appeal that involves a penalty of fifteen thousand dollars or less or that involves a derelict or abandoned vessel under RCW 79.100.120, the appeal may be heard by one member of the board, whose decision shall be the final decision of the board. The board shall define by rule alternative procedures to expedite appeals involving penalties of fifteen thousand dollars or less or involving a derelict or abandoned vessel. These alternatives may include: Mediation, upon agreement of all parties; submission of testimony by affidavit; or other forms that may lead to less formal and faster resolution of appeals.

(2) For appeals that involve a derelict or abandoned vessel under RCW 79.100.120 only, an administrative law judge employed by the board may be substituted for a board member under this section. [2013 c 291 § 44; 2005 c 34 § 2; 1994 c 253 § 5.]

Chapter 43.21C RCW

STATE ENVIRONMENTAL POLICY

Sections

- 43.21C.0384 Application of RCW 43.21C.030(2)(c) to wireless services facilities—Reporting requirement—Definitions.
43.21C.428 Recovery of expenses of nonproject environmental impact statements—Fees for subsequent development.

43.21C.0384 Application of RCW 43.21C.030(2)(c) to wireless services facilities—Reporting requirement—Definitions. (1) Decisions pertaining to applications to site wireless service facilities are not subject to the requirements of RCW 43.21C.030(2)(c), if those facilities meet the following requirements:

(a) The collocation of new equipment, removal of equipment, or replacement of existing equipment on existing or replacement structures does not substantially change the physical dimensions of such structures; or

(b) The siting project involves constructing a wireless service tower less than sixty feet in height that is located in a commercial, industrial, manufacturing, forest, or agricultural zone. This exemption does not apply to projects within a designated critical area.

(2) The exemption authorized under subsection (1) of this section may only be applied to a project consisting of a series of actions when all actions in the series are categorically exempt and the actions together do not have a probable significant adverse environmental impact.

(3) The department of ecology shall adopt rules to create a categorical exemption for wireless service facilities that

meet the conditions set forth in subsections (1) and (2) of this section.

(4) By January 1, 2020, all wireless service providers granted an exemption to RCW 43.21C.030(2)(c) must provide the legislature with the number of permits issued pertaining to wireless service facilities, the number of exemptions granted under this section, and the total dollar investment in wireless service facilities between July 1, 2013, and June 30, 2019.

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

(a) "Collocation" means the mounting or installation of equipment on an existing tower, building, or structure for the purpose of either transmitting or receiving, or both, radio frequency signals for communications purposes.

(b) "Existing structure" means any existing tower, pole, building, or other structure capable of supporting wireless service facilities.

(c) "Substantially change the physical dimensions" means:

(i) The mounting of equipment on a structure that would increase the height of the structure by more than ten percent, or twenty feet, whichever is greater; or

(ii) The mounting of equipment that would involve adding an appurtenance to the body of the structure that would protrude from the edge of the structure more than twenty feet, or more than the width of the structure at the level of the appurtenance, whichever is greater.

(d) "Wireless service facilities" means facilities for the provision of wireless services.

(e) "Wireless services" means wireless data and telecommunications services, including commercial mobile services, commercial mobile data services, unlicensed wireless services, and common carrier wireless exchange access services, as defined by federal laws and regulations. [2013 c 317 § 1; 1996 c 323 § 2.]

Alphabetization—2013 c 317: "The code reviser is directed to put the defined terms in RCW 43.21C.0384(5) into alphabetical order." [2013 c 317 § 2.]

Findings—1996 c 323: See note following RCW 43.70.600.

43.21C.428 Recovery of expenses of nonproject environmental impact statements—Fees for subsequent development. (1) A county, city, or town may recover its reasonable expenses of preparation of a nonproject environmental impact statement prepared under RCW 43.21C.229 and 43.21C.440:

(a) Through access to financial assistance under RCW 36.70A.490;

(b) With funding from private sources; and

(c) By the assessment of fees consistent with the requirements and limitations of this section.

(2)(a) A county, city, or town is authorized to assess a fee upon subsequent development that will make use of and benefit from: (i) The analysis in an environmental impact statement prepared for the purpose of compliance with RCW 43.21C.440 regarding planned actions; or (ii) the reduction in environmental analysis requirements resulting from the exercise of authority under RCW 43.21C.229 regarding infill development.

(b) The amount of the fee must be reasonable and proportionate to the total expenses incurred by the county, city, or town in the preparation of the environmental impact statement.

(c) Counties, cities, and towns are not authorized by this section to assess fees for general comprehensive plan amendments or updates.

(3) A county, city, or town assessing fees under subsection (2)(a) of this section must provide for a mechanism by which project proponents may either elect to utilize the environmental review completed by the lead agency and pay the fees under subsection (1) of this section or certify that they do not want the local jurisdiction to utilize the environmental review completed as a part of a planned action and therefore not be assessed any associated fees. Project proponents who choose this option may not make use of or benefit from the up-front environmental review prepared by the local jurisdiction.

(4) Prior to the collection of fees, the county, city, or town must enact an ordinance that establishes the total amount of expenses to be recovered through fees and provides objective standards for determining the fee amount to be imposed upon each development proposal proportionate to the impacts of each development and to the benefits accruing to each development from the nonproject environmental review. The ordinance must provide: (a) A procedure by which an applicant who disagrees with whether the amount of the fee is correct, reasonable, or proportionate may pay the fee with the written stipulation "paid under protest"; and (b) if the county, city, or town provides for an administrative appeal of its decision on the project for which the fees are imposed, any dispute about the amount of the fees must be resolved in the same administrative appeals process. Any disagreement about the reasonableness, proportionality, or amount of the fees imposed upon a development may not be the basis for delay in issuance of a project permit for that development.

(5) The ordinance adopted under subsection (4) of this section must make information available about the amount of the expenses designated for recovery. When these expenses have been fully recovered, the county, city, or town may no longer assess a fee under this section.

(6) Any fees collected under this section from subsequent development may be used to reimburse funding received from private sources to conduct the environmental review.

(7) The county, city, or town shall refund fees collected where a court of competent jurisdiction determines that the environmental review conducted under RCW 43.21C.440, regarding planned actions, or under RCW 43.21C.229, regarding infill development, was not sufficient to comply with the requirements of this chapter regarding the proposed development activity for which the fees were collected. The applicant and the county, city, or town may mutually agree to a partial refund or to waive the refund in the interest of resolving any dispute regarding compliance with this chapter. [2013 c 243 § 1.]

Chapter 43.22 RCW**DEPARTMENT OF LABOR AND INDUSTRIES**

Sections

- 43.22.035 Printed materials—Department's duties.
 43.22.052 Five-year formal review process of existing rules.

43.22.035 Printed materials—Department's duties.

When an employer initially files a business license application under chapter 19.02 RCW for the purpose, in whole or in part, of registering to pay industrial insurance taxes, the department must send to the employer any printed material the department recommends or requires the employer to post. Any time the printed material has substantive changes in the information, the department must send a copy to each employer. [2013 c 144 § 39; 2007 c 287 § 2.]

43.22.052 Five-year formal review process of existing rules. The department of labor and industries must establish and perform, within existing funds, a formal review process of its existing rules every five years. The goal of the review is to decrease the numbers of, simplify the process, and decrease the time required for obtaining licenses, permits, and inspections, as applicable, in order to reduce the regulatory burden on businesses without compromising public health and safety. Benchmarks must be adopted to assess the effectiveness of streamlining efforts. The department must establish a process for effectively applying sunset provisions to rules when applicable. The department must report back to the applicable committees of the legislature with its review process and benchmarks by January 2014. [2013 2nd sp.s. c 30 § 3.]

Findings—Intent—2013 2nd sp.s. c 30: See note following RCW 43.21A.081.

Chapter 43.24 RCW**DEPARTMENT OF LICENSING**

Sections

- 43.24.150 Business and professions account.
 43.24.160 Repealed.

43.24.150 Business and professions account. (1) The business and professions account is created in the state treasury. All receipts from business or professional licenses, registrations, certifications, renewals, examinations, or civil penalties assessed and collected by the department from the following chapters must be deposited into the account:

- (a) Chapter 18.11 RCW, auctioneers;
- (b) Chapter 18.16 RCW, cosmetologists, barbers, and manicurists;
- (c) Chapter 18.145 RCW, court reporters;
- (d) Chapter 18.165 RCW, private investigators;
- (e) Chapter 18.170 RCW, security guards;
- (f) Chapter 18.185 RCW, bail bond agents;
- (g) Chapter 18.280 RCW, home inspectors;
- (h) Chapter 19.16 RCW, collection agencies;
- (i) Chapter 19.31 RCW, employment agencies;
- (j) Chapter 19.105 RCW, camping resorts;
- (k) Chapter 19.138 RCW, sellers of travel;
- (l) Chapter 42.44 RCW, notaries public;
- (m) Chapter 64.36 RCW, timeshares;

(n) Chapter 67.08 RCW, boxing, martial arts, and wrestling;

(o) Chapter 18.300 RCW, body art, body piercing, and tattooing;

(p) Chapter 79A.60 RCW, whitewater river outfitters;

(q) Chapter 19.158 RCW, commercial telephone solicitation; and

(r) Chapter 19.290 RCW, scrap metal businesses.

Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for expenses incurred in carrying out these business and professions licensing activities of the department. Any residue in the account must be accumulated and may not revert to the general fund at the end of the biennium. However, during the 2013-2015 fiscal biennium the legislature may transfer to the state general fund such amounts as reflect the excess fund balance in the account.

(2) The director must biennially prepare a budget request based on the anticipated costs of administering the business and professions licensing activities listed in subsection (1) of this section, which must include the estimated income from these business and professions fees. [2013 2nd sp.s. c 4 § 978; 2013 2nd sp.s. c 4 § 977; 2013 c 322 § 30; 2011 c 298 § 25. Prior: 2009 c 429 § 4; 2009 c 412 § 21; 2009 c 370 § 19; 2008 c 119 § 22; 2005 c 25 § 1.]

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

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

Effective date—2009 c 412 §§ 1-21: See RCW 18.300.901.

Short title—Implementation—2009 c 412: See RCW 18.300.900 and 18.300.902.

Effective date—2009 c 370 §§ 17 and 19: See note following RCW 18.96.210.

Finding—2009 c 370: See note following RCW 18.96.010.

Effective date—2005 c 25: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005." [2005 c 25 § 5.]

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

Chapter 43.30 RCW**DEPARTMENT OF NATURAL RESOURCES**

Sections

- 43.30.555 Geoduck harvest safety committee.
 43.30.560 Geoduck diver safety program—Rule-making authority—Limitation on civil suit or action.
 43.30.565 Transfer of ownership of department-owned vessel—Review of vessel's physical condition.
 43.30.570 Transfer of ownership of department-owned vessel—Further requirements.

43.30.555 Geoduck harvest safety committee. (1) The department shall establish a geoduck harvest safety committee. The geoduck harvest safety committee consists of one representative from the department, one representative from the department's geoduck diver advisory committee, one representative from an organization representing the interests of geoduck harvesters, and one representative from an organiza-

tion representing the interests of geoduck divers. Each representative must be appointed by the administrator.

(2) The geoduck harvest safety committee must meet at least quarterly. By December 1, 2013, the committee must submit a recommendation to the department regarding the establishment of a geoduck diver safety program and safety requirements for geoduck divers licensed under RCW 77.65.410.

(3) Upon the establishment of the geoduck diver safety program under RCW 43.30.560, the geoduck harvest safety committee must continue to review and evaluate the safety program's success and effectiveness and recommend to the department appropriate changes to improve the geoduck diver safety program. [2013 c 204 § 4.]

43.30.560 Geoduck diver safety program—Rule-making authority—Limitation on civil suit or action. (1) By December 1, 2014, the department must, by rule, create a geoduck diver safety program and establish safety requirements for geoduck divers licensed under RCW 77.65.410. The department must adopt rules based on the recommendation of the geoduck harvest safety committee established in RCW 43.30.555.

(2) The department may adopt, amend, or repeal rules as needed to ensure the success and effectiveness of the geoduck diver safety program created under subsection (1) of this section. The department must consider the recommendations provided by the geoduck harvest safety committee under RCW 43.30.555(3).

(3) The department may not adopt rules in conflict with commercial diving safety standards and regulations promulgated and implemented by the federal occupational safety and health administration established under the federal occupational safety and health act of 1970 (84 Stat. 1590 et seq.; 29 U.S.C. Sec. 651 et seq.).

(4) A civil suit or action may not be commenced or prosecuted against the administrator, department, or any other government officer or entity by reason of any actions taken in connection with the adoption or enforcement of the geoduck diver safety program and safety requirements established under subsections (1) and (2) of this section. The state of Washington does not waive its sovereign immunity with respect to any actions taken by the department under this section. [2013 c 204 § 5.]

43.30.565 Transfer of ownership of department-owned vessel—Review of vessel's physical condition. (1) Prior to transferring ownership of a department-owned vessel, the department shall conduct a thorough review of the physical condition of the vessel, the vessel's operating capability, and any containers and other materials that are not fixed to the vessel.

(2) If the department determines that the vessel is in a state of advanced deterioration or poses a reasonably imminent threat to human health or safety, including a threat of environmental contamination, the department may: (a) Not transfer the vessel until the conditions identified under this subsection have been corrected; or (b) permanently dispose of the vessel by landfill, deconstruction, or other related method.

(3) Vessels taken into custody under chapter 79.100 RCW are not subject to this section or RCW 43.30.570. [2013 c 291 § 7.]

43.30.570 Transfer of ownership of department-owned vessel—Further requirements. (1) Following the inspection required under RCW 43.30.565 and prior to transferring ownership of a department-owned vessel, the department shall obtain the following from the transferee:

(a) The purposes for which the transferee intends to use the vessel; and

(b) Information demonstrating the prospective owner's intent to obtain legal moorage following the transfer, in the manner determined by the department.

(2)(a) The department shall remove any containers or other materials that are not fixed to the vessel and contain hazardous substances, as defined under RCW 70.105D.020.

(b) However, the department may transfer a vessel with:

(i) Those containers or materials described under (a) of this subsection where the transferee demonstrates to the department's satisfaction that the container's or material's presence is consistent with the anticipated use of the vessel; and

(ii) A reasonable amount of fuel as determined by the department, based on factors including the vessel's size, condition, and anticipated use of the vessel, including initial destination following transfer.

(c) The department may consult with the department of ecology in carrying out the requirements of this subsection.

(3) Prior to sale, and unless the vessel has a title or valid marine document, the department is required to apply for a certificate of title for the vessel under RCW 88.02.510 and register the vessel under RCW 88.02.550. [2013 c 291 § 8.]

Chapter 43.34 RCW CAPITOL COMMITTEE

Sections

43.34.080 Capitol campus design advisory committee—Generally.

43.34.080 Capitol campus design advisory committee—Generally. (1) The capitol campus design advisory committee is established as an advisory group to the capitol committee and the director of enterprise services to review programs, planning, design, and landscaping of state capitol facilities and grounds and to make recommendations that will contribute to the attainment of architectural, aesthetic, functional, and environmental excellence in design and maintenance of capitol facilities on campus and located in neighboring communities.

(2) The advisory committee shall consist of the following persons who shall be appointed by and serve at the pleasure of the director of enterprise services:

(a) Two architects;

(b) A landscape architect; and

(c) An urban planner.

The director of enterprise services shall appoint the chair and vice chair and shall provide the staff and resources necessary for implementing this section. The advisory committee shall meet at least once every ninety days and at the call of the chair.

The members of the committee shall be reimbursed as provided in RCW 43.03.220 and 44.04.120.

(3) The advisory committee shall also consist of the secretary of state and two members of the house of representatives, one from each caucus, who shall be appointed by the speaker of the house of representatives, and two members of the senate, one from each caucus, who shall be appointed by the president of the senate.

(4) The advisory committee shall review plans and designs affecting state capitol facilities as they are developed. The advisory committee's review shall include:

(a) The process of solicitation and selection of appropriate professional design services including design-build proposals;

(b) Compliance with the capitol campus master plan and design concepts as adopted by the capitol committee;

(c) The design, siting, and grouping of state capitol facilities relative to the service needs of state government and the impact upon the local community's economy, environment, traffic patterns, and other factors;

(d) The relationship of overall state capitol facility planning to the respective comprehensive plans for long-range urban development of the cities of Olympia, Lacey, and Tumwater, and Thurston county; and

(e) Landscaping plans and designs, including planting proposals, street furniture, sculpture, monuments, and access to the capitol campus and buildings.

(5) For development of the property known as the 1063 block, the committee may review the proposal selected by the department of enterprise services but must not propose changes that will affect the scope, budget, or schedule of the project. [2013 2nd sp.s. c 19 § 7015; 2011 1st sp.s. c 21 § 34; 1990 c 93 § 1.]

Effective date—2013 2nd sp.s. c 19: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [July 1, 2013]." [2013 2nd sp.s. c 19 § 7044.]

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

Chapter 43.41 RCW

OFFICE OF FINANCIAL MANAGEMENT

Sections

43.41.430 Information technology investment pool—Information technology projects—Reports.

43.41.430 Information technology investment pool—Information technology projects—Reports. (1) Subject to funds appropriated for this specific purpose, the office of financial management may establish an information technology investment pool and may enter into financial contracts for the acquisition of information technology projects for state agencies. Information technology projects funded under this section must meet the following requirements:

(a) The project begins or continues replacement of information technology systems with modern and more efficient information technology systems;

(b) The project improves the ability of an agency to recover from major disaster; or

(c) The project provides future savings and efficiencies for an agency through reduced operating costs, improved customer service, or increased revenue collections.

(2) Preference for project approval under this section must be given to an agency that has prior project approval from the office of the chief information officer and an approved business plan, and the primary hurdle to project funding is the lack of funding capacity.

(3) The office of financial management with assistance from the office of the chief information officer shall report to the governor and the fiscal committees of the legislature by November 1st of each year on the status of distributions and expenditures on information technology projects and improved statewide or agency performance results achieved by project funding. [2013 2nd sp.s. c 33 § 5.]

Chapter 43.41A RCW

OFFICE OF THE CHIEF INFORMATION OFFICER

Sections

43.41A.010 Office of the chief information officer—Created—Powers, duties, and functions.

43.41A.025 Governing information technology—Standards and policies—Powers and duties of office.

43.41A.027 Security standards and policies—State agencies' information technology security plans and programs.

43.41A.010 Office of the chief information officer—Created—Powers, duties, and functions. (1) The office of the chief information officer is created within the office of financial management.

(2) Powers, duties, and functions assigned to the department of information services as specified in this chapter shall be transferred to the office of chief information officer as provided in this chapter.

(3) The primary duties of the office are:

(a) To prepare and lead the implementation of a strategic direction and enterprise architecture for information technology for state government;

(b) To enable the standardization and consolidation of information technology infrastructure across all state agencies to support enterprise-based system development and improve and maintain service delivery;

(c) To establish standards and policies for the consistent and efficient operation of information technology services throughout state government;

(d) To establish statewide enterprise architecture that will serve as the organizing standard for information technology for state agencies;

(e) To educate and inform state managers and policy-makers on technological developments, industry trends and best practices, industry benchmarks that strengthen decision making and professional development, and industry understanding for public managers and decision makers.

(4) In the case of institutions of higher education, the powers of the office and the provisions of this chapter apply to business and administrative applications but do not apply to (a) academic and research applications; and (b) medical, clinical, and health care applications, including the business and administrative applications for such operations. However, institutions of higher education must disclose to the office any proposed academic applications that are enter-

prise-wide in nature relative to the needs and interests of other institutions of higher education. Institutions of higher education shall provide to the chief information officer sufficient data and information on proposed expenditures on business and administrative applications to permit the chief information officer to evaluate the proposed expenditures pursuant to RCW 43.88.092(3).

(5) The legislature and the judiciary, which are constitutionally recognized as separate branches of government, are strongly encouraged to coordinate with the office and participate in shared services initiatives and the development of enterprise-based strategies, where appropriate. Legislative and judicial agencies of the state shall submit to the chief information officer information on proposed information technology expenditures to allow the chief information officer to evaluate the proposed expenditures on an advisory basis. [2013 2nd sp.s. c 33 § 3; 2011 1st sp.s. c 43 § 702.]

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

43.41A.025 Governing information technology—Standards and policies—Powers and duties of office. (1) The chief information officer shall establish standards and policies to govern information technology in the state of Washington.

(2) The office shall have the following powers and duties related to information services:

(a) To develop statewide standards and policies governing the acquisition and disposition of equipment, software, and personal and purchased services, licensing of the radio spectrum by or on behalf of state agencies, and confidentiality of computerized data;

(b) To develop statewide or interagency technical policies, standards, and procedures;

(c) To review and approve standards and common specifications for new or expanded telecommunications networks proposed by agencies, public postsecondary education institutions, educational service districts, or statewide or regional providers of K-12 information technology services;

(d) To develop a detailed business plan for any service or activity to be contracted under RCW 41.06.142(7)(b) by the consolidated technology services agency;

(e) To provide direction concerning strategic planning goals and objectives for the state. The office shall seek input from the legislature and the judiciary;

(f) To establish policies for the periodic review by the office of agency performance which may include but are not limited to analysis of:

(i) Planning, management, control, and use of information services;

(ii) Training and education; and

(iii) Project management;

(g) To coordinate with state agencies with an annual information technology expenditure that exceeds ten million dollars to implement a technology business management program to identify opportunities for savings and efficiencies in information technology expenditures and to monitor ongoing financial performance of technology investments; and

(h) In conjunction with the consolidated technology services agency, to develop statewide standards for agency purchases of technology networking equipment and services.

[2013 RCW Supp—page 474]

(3) Statewide technical standards to promote and facilitate electronic information sharing and access are an essential component of acceptable and reliable public access service and complement content-related standards designed to meet those goals. The office shall:

(a) Establish technical standards to facilitate electronic access to government information and interoperability of information systems, including wireless communications systems; and

(b) Require agencies to include an evaluation of electronic public access needs when planning new information systems or major upgrades of systems.

In developing these standards, the office is encouraged to include the state library, state archives, and appropriate representatives of state and local government.

(4) The office shall perform other matters and things necessary to carry out the purposes and provisions of this chapter. [2013 2nd sp.s. c 33 § 1; 2011 1st sp.s. c 43 § 706.]

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

43.41A.027 Security standards and policies—State agencies' information technology security plans and programs. The office shall establish security standards and policies to ensure the confidentiality, availability, and integrity of the information transacted, stored, or processed in the state's information technology systems and infrastructure. Each state agency, institution of higher education, the legislature, and the judiciary must develop an information technology security plan and program.

(1) Each state agency information technology security plan and program must adhere to the office's security standards and policies. Each state agency must review and update its plan and program annually and certify to the office that its plan and program is in compliance with the office's security standards and policies. The office may require an agency to obtain an independent compliance audit of its information technology security plan and program.

(2) In the case of institutions of higher education, the judiciary, and the legislature, each information technology security plan and program must be comparable to the intended outcomes of the office's security standards and policies. Each institution, the legislature, and the judiciary shall submit their information technology security plan and program to the office annually for review and comment. [2013 2nd sp.s. c 33 § 8.]

Chapter 43.43 RCW

WASHINGTON STATE PATROL

Sections

43.43.395	Ignition interlock devices—Standards—Compliance.
43.43.3952	Ignition interlock devices—Officer required to report violations—Liability.
43.43.510	Crime information center—Files of general assistance to law enforcement agencies established—Runaway children—Information publicly available.
43.43.822	County sheriff to forward registration information—Felony firearm offense conviction database—Exempt from public disclosure.
43.43.885	No-buy list database program.

- 43.43.887 No-buy list database program—Washington association of sheriffs and police chiefs not liable for civil damages.
- 43.43.939 Director of fire protection—Adoption of minimum standard requirements for before-school and after-school programs.

43.43.395 Ignition interlock devices—Standards—

Compliance. (1) The state patrol shall by rule provide standards for the certification, installation, repair, maintenance, monitoring, inspection, and removal of ignition interlock devices, as defined under RCW 46.04.215, and equipment as outlined under this section, and may inspect the records and equipment of manufacturers and vendors during regular business hours for compliance with statutes and rules and may suspend or revoke certification for any noncompliance.

(2)(a) When a certified service provider or individual installer of ignition interlock devices is found to be out of compliance, the installation privileges of that certified service provider or individual installer may be suspended or revoked until the certified service provider or individual installer comes into compliance. During any suspension or revocation period, the certified service provider or individual installer is responsible for notifying affected customers of any changes in their service agreement.

(b) A certified service provider or individual installer whose certification is suspended or revoked for noncompliance has a right to an administrative hearing under chapter 34.05 RCW to contest the suspension or revocation, or both. For the administrative hearing, the procedure and rules of evidence are as specified in chapter 34.05 RCW, except as otherwise provided in this chapter. Any request for an administrative hearing must be made in writing and must be received by the state patrol within twenty days after the receipt of the notice of suspension or revocation.

(3)(a) An ignition interlock device must employ fuel cell technology. For the purposes of this subsection, "fuel cell technology" consists of the following electrochemical method: An electrolyte designed to oxidize the alcohol and release electrons to be collected by an active electrode; a current flow is generated within the electrode proportional to the amount of alcohol oxidized on the fuel cell surface; and the electrical current is measured and reported as breath alcohol concentration. Fuel cell technology is highly specific for alcohols.

(b) When reasonably available in the area, as determined by the state patrol, an ignition interlock device must employ technology capable of taking a photo identification of the user giving the breath sample and recording on the photo the time the breath sample was given.

(c) To be certified, an ignition interlock device must:

(i) Meet or exceed the minimum test standards according to rules adopted by the state patrol. Only a notarized statement from a laboratory that is certified by the international organization of standardization and is capable of performing the tests specified will be accepted as proof of meeting or exceeding the standards. The notarized statement must include the name and signature of the person in charge of the tests under the certification statement. The state patrol must adopt by rule the required language of the certification statement that must, at a minimum, outline that the testing meets or exceeds all specifications listed in the federal register adopted in rule by the state patrol; and

(ii) Be maintained in accordance with the rules and standards adopted by the state patrol. [2013 2nd sp.s. c 35 § 9; 2012 c 183 § 16; 2010 c 268 § 2.]

Effective date—2012 c 183: See note following RCW 2.28.175.

43.43.3952 Ignition interlock devices—Officer required to report violations—Liability.

(1) Any officer conducting field inspections of ignition interlock devices under the ignition interlock program shall report violations by program participants to the court.

(2) The Washington state patrol may not be held liable for any damages resulting from any act or omission in conducting activities under the ignition interlock program, other than acts or omissions constituting gross negligence or willful or wanton misconduct. [2013 2nd sp.s. c 35 § 35.]

43.43.510 Crime information center—Files of general assistance to law enforcement agencies established—Runaway children—Information publicly available.

(1) As soon as is practical and feasible there shall be established, by means of data processing, files listing stolen and wanted vehicles, outstanding warrants, identifying children whose parents, custodians, or legal guardians have reported as having run away from home or the custodial residence, identifiable stolen property, files maintaining the central registry of sex offenders required to register under chapter 9A.44 RCW, and such other files as may be of general assistance to law enforcement agencies.

(2)(a) At the request of a parent, legal custodian, or guardian who has reported a child as having run away from home or the custodial residence, the Washington state patrol shall make the information about the runaway child as is filed in subsection (1) of this section publicly available.

(b) The information that can be made publicly available under (a) of this subsection is limited to information that will facilitate the safe return of the child to his or her home or custodial residence and so long as making the information publicly available incurs no additional costs. [2013 c 4 § 4; 2010 c 229 § 4; 1998 c 67 § 2; 1995 c 312 § 45; 1967 ex.s. c 27 § 2.]

Findings—2010 c 229: See note following RCW 13.32A.082.

Additional notes found at www.leg.wa.gov

43.43.822 County sheriff to forward registration information—Felony firearm offense conviction database—Exempt from public disclosure.

(1) The county sheriff shall forward registration information, photographs, and fingerprints obtained pursuant to RCW 9.41.333 to the Washington state patrol within five working days.

(2) Upon implementation of chapter 183, Laws of 2013, the Washington state patrol shall maintain a felony firearm offense conviction database of felony firearm offenders required to register under RCW 9.41.333 and shall adopt rules as are necessary to carry out the purposes of chapter 183, Laws of 2013.

(3) Upon expiration of the person's duty to register, as described in RCW 9.41.333(8), the Washington state patrol shall automatically remove the person's name and information from the database.

(4) The felony firearm offense conviction database of felony firearm offenders shall be used only for law enforce-

ment purposes and is not subject to public disclosure under chapter 42.56 RCW. [2013 c 183 § 6.]

43.43.885 No-buy list database program. (1) Beginning on July 1, 2014, when funded, the Washington association of sheriffs and police chiefs shall implement and operate an ongoing electronic statewide no-buy list database program.

(2) The database must be made available on a web site.

(3) The no-buy list database program shall allow for any scrap metal business to enter a customer's name and date of birth into the database. The database must determine if the customer pursuing the transaction with the scrap metal business has been convicted in Washington of any crime involving burglary, robbery, theft, or possession of or receiving stolen property within the past four years.

(4) If the customer has been convicted of any crime involving burglary, robbery, theft, or possession of or receiving stolen property within the past four years despite whether the person was acting in his or her own behalf or as the agent of another then, at a minimum, the no-buy list database program must immediately send an alert to the scrap metal business stating: (a) That the customer is listed on a current no-buy list, (b) the four-year expiration period for the customer's most recent crime listed, and (c) a notification that entering into a transaction with the customer is prohibited under RCW 19.290.070. [2013 c 322 § 31.]

43.43.887 No-buy list database program—Washington association of sheriffs and police chiefs not liable for civil damages. The Washington association of sheriffs and police chiefs shall not be held liable for civil damages resulting from any act or omission in carrying out the requirements of RCW 43.43.885 other than an act or omission constituting gross negligence or willful or wanton misconduct. [2013 c 322 § 33.]

43.43.939 Director of fire protection—Adoption of minimum standard requirements for before-school and after-school programs. The chief of the Washington state patrol, through the director of fire protection, shall have the power and it shall be his or her duty to adopt licensing minimum standard requirements for before-school and after-school programs in existing buildings approved by the state fire marshal. [2013 c 227 § 2.]

Chapter 43.63A RCW

DEPARTMENT OF COMMUNITY, TRADE, AND ECONOMIC DEVELOPMENT

(Formerly: Department of community development)

Sections

43.63A.740 Prostitution prevention and intervention account.

43.63A.740 Prostitution prevention and intervention account. The prostitution prevention and intervention account is created in the state treasury. Expenditures from the account may be used in the following order of priority:

(1) Funding the statewide coordinating committee on sex trafficking;

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(2) Programs that provide mental health and substance abuse counseling, parenting skills training, housing relief, education, and vocational training for youth who have been diverted for a prostitution or prostitution loitering offense pursuant to RCW 13.40.213;

(3) Funding for services provided to sexually exploited children as defined in RCW 13.32A.030 in secure and semi-secure crisis residential centers with access to staff trained to meet their specific needs;

(4) Funding for services specified in RCW *74.14B.060 and 74.14B.070 for sexually exploited children; and

(5) Funding the grant program to enhance prostitution prevention and intervention services under RCW 43.63A.720. [2013 c 121 § 3; 2010 c 289 § 18; 2009 c 387 § 2; 1995 c 353 § 11.]

*Reviser's note: RCW 74.14B.060 was repealed by 2012 c 29 § 14.

Intent—Finding—2013 c 121: See note following RCW 43.280.091.

Chapter 43.70 RCW

DEPARTMENT OF HEALTH

Sections

43.70.041	Five-year formal review process of existing rules.
43.70.056	Health care-associated infections—Data collection and reporting—Advisory committee—Rules. (<i>Effective until July 1, 2017.</i>)
43.70.056	Health care-associated infections—Data collection and reporting—Advisory committee—Rules. (<i>Effective July 1, 2017.</i>)
43.70.110	License fees—Costs—Other charges—Waiver.
43.70.240	Written operating agreements.
43.70.250	License fees for professions, occupations, and businesses.
43.70.325	Repealed.
43.70.442	Suicide assessment, treatment, and management training—Requirement for certain professionals—Model list of programs—Rules.
43.70.740	Adjudicative proceedings.

43.70.041 Five-year formal review process of existing rules. The department of health must establish and perform, within existing funds, a formal review process of its existing rules every five years. The goal of the review is to decrease the numbers of, simplify the process, and decrease the time required for obtaining licenses, permits, and inspections, as applicable, in order to reduce the regulatory burden on businesses without compromising public health and safety. Benchmarks must be adopted to assess the effectiveness of streamlining efforts. The department must establish a process for effectively applying sunset provisions to rules when applicable. The department must report back to the applicable committees of the legislature with its review process and benchmarks by January 2014. [2013 2nd sp.s. c 30 § 4.]

Findings—Intent—2013 2nd sp.s. c 30: See note following RCW 43.21A.081.

43.70.056 Health care-associated infections—Data collection and reporting—Advisory committee—Rules. (*Effective until July 1, 2017.*) (1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Health care-associated infection" means a localized or systemic condition that results from adverse reaction to the presence of an infectious agent or its toxins and that was not present or incubating at the time of admission to the hospital.

(b) "Hospital" means a health care facility licensed under chapter 70.41 RCW.

(2)(a) A hospital shall collect data related to health care-associated infections as required under this subsection (2) on the following:

(i) Central line-associated bloodstream infection in all hospital inpatient areas where patients normally reside at least twenty-four hours;

(ii) Surgical site infection for the following procedures:

(A) Deep sternal wound for cardiac surgery, including coronary artery bypass graft;

(B) Total hip and knee replacement surgery; and

(C) Colon and abdominal hysterectomy procedures.

(b) The department shall, by rule, delete, add, or modify categories of reporting when the department determines that doing so is necessary to align state reporting with the reporting categories of the centers for medicare and medicaid services. The department shall begin rule making forty-five calendar days, or as soon as practicable, after the centers for medicare and medicaid services adopts changes to reporting requirements.

(c) A hospital must routinely collect and submit the data required to be collected under (a) and (b) of this subsection to the national healthcare safety network of the United States centers for disease control and prevention in accordance with national healthcare safety network definitions, methods, requirements, and procedures.

If the centers for medicare and medicaid services changes reporting from the national healthcare safety network to another database or through another process, the department shall review the new reporting database or process and consider whether it aligns with the purposes of this section.

(d) Data collection and submission required under this subsection (2) must be overseen by a qualified individual with the appropriate level of skill and knowledge to oversee data collection and submission.

(e)(i) A hospital must release to the department, or grant the department access to, its hospital-specific information contained in the reports submitted under this subsection (2), as requested by the department consistent with *RCW 70.02.050.

(ii) The hospital reports obtained by the department under this subsection (2), and any of the information contained in them, are not subject to discovery by subpoena or admissible as evidence in a civil proceeding, and are not subject to public disclosure as provided in RCW 42.56.360.

(3) The department shall:

(a) Provide oversight of the health care-associated infection reporting program established in this section;

(b) By November 1, 2013, and biennially thereafter, submit a report to the appropriate committees of the legislature that contains: (i) Categories of reporting currently required of hospitals under subsection (2)(a) of this section; (ii) categories of reporting the department plans to add, delete, or modify by rule; and (iii) a description of the evaluation process used under (d) of this subsection;

(c) By December 1, 2009, and by each December 1st thereafter, prepare and publish a report on the department's web site that compares the health care-associated infection rates at individual hospitals in the state using the data

reported in the previous calendar year pursuant to subsection (2) of this section. The department may update the reports quarterly. In developing a methodology for the report and determining its contents, the department shall consider the recommendations of the advisory committee established in subsection (5) of this section. The report is subject to the following:

(i) The report must disclose data in a format that does not release health information about any individual patient; and

(ii) The report must not include data if the department determines that a data set is too small or possesses other characteristics that make it otherwise unrepresentative of a hospital's particular ability to achieve a specific outcome; (d) Evaluate, on a regular basis, the quality and accuracy of health care-associated infection reporting required under subsection (2) of this section and the data collection, analysis, and reporting methodologies; and

(e) Provide assistance to hospitals with the reporting requirements of this chapter including definitions of required reporting elements.

(4) The department may respond to requests for data and other information from the data required to be reported under subsection (2) of this section, at the requestor's expense, for special studies and analysis consistent with requirements for confidentiality of patient records.

(5)(a) The department shall establish an advisory committee which may include members representing infection control professionals and epidemiologists, licensed health care providers, nursing staff, organizations that represent health care providers and facilities, health maintenance organizations, health care payers and consumers, and the department. The advisory committee shall make recommendations to assist the department in carrying out its responsibilities under this section, including making recommendations on allowing a hospital to review and verify data to be released in the report and on excluding from the report selected data from certified critical access hospitals.

(b) In developing its recommendations, the advisory committee shall consider methodologies and practices related to health care-associated infections of the United States centers for disease control and prevention, the centers for medicare and medicaid services, the joint commission, the national quality forum, the institute for healthcare improvement, and other relevant organizations.

(6) The department shall adopt rules as necessary to carry out its responsibilities under this section. [2013 c 319 § 1; 2010 c 113 § 1; 2009 c 244 § 2; 2007 c 261 § 2.]

***Reviser's note:** RCW 70.02.050 was amended by 2013 c 200 § 3, eliminating many of the provisions relating to disclosure of health care information without patient's authorization, effective July 1, 2014. See RCW 70.02.200 through 70.02.260.

Effective date—2010 c 113: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 18, 2010]." [2010 c 113 § 2.]

Findings—2007 c 261: "The legislature finds that each year health care-associated infections affect two million Americans. These infections result in the unnecessary death of ninety thousand patients and costs the health care system 4.5 billion dollars. Hospitals should be implementing evidence-based measures to reduce hospital-acquired infections. The legislature further finds the public should have access to data on outcome measures regarding hospital-acquired infections. Data reporting should be consistent with national hospital reporting standards." [2007 c 261 § 1.]

43.70.056 Health care-associated infections—Data collection and reporting—Advisory committee—Rules. (Effective July 1, 2017.) (1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Health care-associated infection" means a localized or systemic condition that results from adverse reaction to the presence of an infectious agent or its toxins and that was not present or incubating at the time of admission to the hospital.

(b) "Hospital" means a health care facility licensed under chapter 70.41 RCW.

(2)(a) A hospital shall collect data related to health care-associated infections as required under this subsection (2) on the following:

(i) Central line-associated bloodstream infection in all hospital inpatient areas where patients normally reside at least twenty-four hours;

(ii) Surgical site infection for colon and abdominal hysterectomy procedures.

(b) The department shall, by rule, delete, add, or modify categories of reporting when the department determines that doing so is necessary to align state reporting with the reporting categories of the centers for medicare and medicaid services. The department shall begin rule making forty-five calendar days, or as soon as practicable, after the centers for medicare and medicaid services adopts changes to reporting requirements.

(c) A hospital must routinely collect and submit the data required to be collected under (a) and (b) of this subsection to the national healthcare safety network of the United States centers for disease control and prevention in accordance with national healthcare safety network definitions, methods, requirements, and procedures.

If the centers for medicare and medicaid services changes reporting from the national healthcare safety network to another database or through another process, the department shall review the new reporting database or process and consider whether it aligns with the purposes of this section.

(d) Data collection and submission required under this subsection (2) must be overseen by a qualified individual with the appropriate level of skill and knowledge to oversee data collection and submission.

(e)(i) A hospital must release to the department, or grant the department access to, its hospital-specific information contained in the reports submitted under this subsection (2), as requested by the department consistent with *RCW 70.02.050.

(ii) The hospital reports obtained by the department under this subsection (2), and any of the information contained in them, are not subject to discovery by subpoena or admissible as evidence in a civil proceeding, and are not subject to public disclosure as provided in RCW 42.56.360.

(3) The department shall:

(a) Provide oversight of the health care-associated infection reporting program established in this section;

(b) By November 1, 2013, and biennially thereafter, submit a report to the appropriate committees of the legislature that contains: (i) Categories of reporting currently required of hospitals under subsection (2)(a) of this section; (ii) categories of reporting the department plans to add, delete, or

modify by rule; and (iii) a description of the evaluation process used under (d) of this subsection;

(c) By December 1, 2009, and by each December 1st thereafter, prepare and publish a report on the department's web site that compares the health care-associated infection rates at individual hospitals in the state using the data reported in the previous calendar year pursuant to subsection (2) of this section. The department may update the reports quarterly. In developing a methodology for the report and determining its contents, the department shall consider the recommendations of the advisory committee established in subsection (5) of this section. The report is subject to the following:

(i) The report must disclose data in a format that does not release health information about any individual patient; and

(ii) The report must not include data if the department determines that a data set is too small or possesses other characteristics that make it otherwise unrepresentative of a hospital's particular ability to achieve a specific outcome;

(d) Evaluate, on a regular basis, the quality and accuracy of health care-associated infection reporting required under subsection (2) of this section and the data collection, analysis, and reporting methodologies; and

(e) Provide assistance to hospitals with the reporting requirements of this chapter including definitions of required reporting elements.

(4) The department may respond to requests for data and other information from the data required to be reported under subsection (2) of this section, at the requestor's expense, for special studies and analysis consistent with requirements for confidentiality of patient records.

(5)(a) The department shall establish an advisory committee which may include members representing infection control professionals and epidemiologists, licensed health care providers, nursing staff, organizations that represent health care providers and facilities, health maintenance organizations, health care payers and consumers, and the department. The advisory committee shall make recommendations to assist the department in carrying out its responsibilities under this section, including making recommendations on allowing a hospital to review and verify data to be released in the report and on excluding from the report selected data from certified critical access hospitals.

(b) In developing its recommendations, the advisory committee shall consider methodologies and practices related to health care-associated infections of the United States centers for disease control and prevention, the centers for medicare and medicaid services, the joint commission, the national quality forum, the institute for healthcare improvement, and other relevant organizations.

(6) The department shall adopt rules as necessary to carry out its responsibilities under this section. [2013 c 319 § 2; 2013 c 319 § 1; 2010 c 113 § 1; 2009 c 244 § 2; 2007 c 261 § 2.]

***Reviser's note:** RCW 70.02.050 was amended by 2013 c 200 § 3, eliminating many of the provisions relating to disclosure of health care information without patient's authorization, effective July 1, 2014. See RCW 70.02.200 through 70.02.260.

Effective date—2013 c 319 § 2: "Section 2 of this act takes effect July 1, 2017." [2013 c 319 § 4.]

Effective date—2010 c 113: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 18, 2010]." [2010 c 113 § 2.]

Findings—2007 c 261: "The legislature finds that each year health care-associated infections affect two million Americans. These infections result in the unnecessary death of ninety thousand patients and costs the health care system 4.5 billion dollars. Hospitals should be implementing evidence-based measures to reduce hospital-acquired infections. The legislature further finds the public should have access to data on outcome measures regarding hospital-acquired infections. Data reporting should be consistent with national hospital reporting standards." [2007 c 261 § 1.]

43.70.110 License fees—Costs—Other charges—

Waiver. (1) The secretary shall charge fees to the licensee for obtaining a license. Physicians regulated pursuant to chapter 18.71 RCW who reside and practice in Washington and obtain or renew a retired active license are exempt from such fees. After June 30, 1995, municipal corporations providing emergency medical care and transportation services pursuant to chapter 18.73 RCW shall be exempt from such fees, provided that such other emergency services shall only be charged for their pro rata share of the cost of licensure and inspection, if appropriate. The secretary may waive the fees when, in the discretion of the secretary, the fees would not be in the best interest of public health and safety, or when the fees would be to the financial disadvantage of the state.

(2) Except as provided in subsection (3) of this section, fees charged shall be based on, but shall not exceed, the cost to the department for the licensure of the activity or class of activities and may include costs of necessary inspection.

(3) License fees shall include amounts in addition to the cost of licensure activities in the following circumstances:

(a) For registered nurses and licensed practical nurses licensed under chapter 18.79 RCW, support of a central nursing resource center as provided in RCW 18.79.202;

(b) For all health care providers licensed under RCW 18.130.040, the cost of regulatory activities for retired volunteer medical worker licensees as provided in RCW 18.130.360; and

(c) For physicians licensed under chapter 18.71 RCW, physician assistants licensed under chapter 18.71A RCW, osteopathic physicians licensed under chapter 18.57 RCW, osteopathic physicians' assistants licensed under chapter 18.57A RCW, naturopaths licensed under chapter 18.36A RCW, podiatrists licensed under chapter 18.22 RCW, chiropractors licensed under chapter 18.25 RCW, psychologists licensed under chapter 18.83 RCW, registered nurses and licensed practical nurses licensed under chapter 18.79 RCW, optometrists licensed under chapter 18.53 RCW, mental health counselors licensed under chapter 18.225 RCW, massage therapists licensed under chapter 18.108 RCW, clinical social workers licensed under chapter 18.225 RCW, midwives licensed under chapter 18.50 RCW, licensed marriage and family therapists under chapter 18.225 RCW, occupational therapists and occupational therapy assistants licensed under chapter 18.59 RCW, dietitians and nutritionists certified under chapter 18.138 RCW, speech-language pathologists licensed under chapter 18.35 RCW, and East Asian medicine practitioners licensed under chapter 18.06 RCW, the license fees shall include up to an additional twenty-five dollars to be transferred by the department to the University of Washington for the purposes of RCW 43.70.112.

(4) Department of health advisory committees may review fees established by the secretary for licenses and comment upon the appropriateness of the level of such fees. [2013 c 249 § 1; 2013 c 77 § 1; 2011 c 35 § 1; 2010 c 286 § 15; 2009 c 403 § 5; 2007 c 259 § 11; 2006 c 72 § 3; 2005 c 268 § 2; 1993 sp.s. c 24 § 918; 1989 1st ex.s. c 9 § 263.]

Reviser's note: This section was amended by 2013 c 77 § 1 and by 2013 c 249 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2013 c 77: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 25, 2013]." [2013 c 77 § 4.]

Intent—2010 c 286: See RCW 18.06.005.

Finding—Intent—2009 c 403: See note following RCW 18.71.080.

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

Finding—2005 c 268: See note following RCW 18.79.202.

Additional notes found at www.leg.wa.gov

43.70.240 Written operating agreements. The secretary and each of the professional licensing and disciplinary boards listed in RCW 18.130.040(2)(b) shall enter into written operating agreements on administrative procedures with input from the regulated profession and the public. The intent of these agreements is to provide a process for the department to consult each board on administrative matters and to ensure that the administration and staff functions effectively enable each board to fulfill its statutory responsibilities in a manner that supports the health care delivery system and evidence-based practices across all health professions. The agreements shall include, but not be limited to, the following provisions:

- (1) Administrative activities supporting the board's policies, goals, and objectives;
- (2) Development and review of the agency budget as it relates to the board;
- (3) Board-related personnel issues;
- (4) Use of performance audits to evaluate the consistent use of common business practices where appropriate; and
- (5) Calculation and reporting of timelines and performance measures.

The agreements shall be reviewed and revised in like manner if appropriate at the beginning of each biennium, and at other times upon written request by the secretary or the board. Any dispute between a board and the department, including the terms of the operating agreement, must be mediated and determined by a representative of the office of financial management. [2013 c 81 § 7; 1998 c 245 § 73; 1989 1st ex.s. c 9 § 304.]

Effective date—2013 c 81: See note following RCW 18.25.210.

43.70.250 License fees for professions, occupations, and businesses. It shall be the policy of the state of Washington that the cost of each professional, occupational, or business licensing program be fully borne by the members of that profession, occupation, or business. The secretary shall from time to time establish the amount of all application fees, license fees, registration fees, examination fees, permit fees, renewal fees, and any other fee associated with licensing or regulation of professions, occupations, or businesses admin-

istered by the department. In fixing said fees, the secretary shall set the fees for each program at a sufficient level to defray the costs of administering that program and the cost of regulating licensed volunteer medical workers in accordance with RCW 18.130.360, except as provided in RCW 18.79.202. All such fees shall be fixed by rule adopted by the secretary in accordance with the provisions of the administrative procedure act, chapter 34.05 RCW. [2013 c 77 § 2; 2006 c 72 § 4; 2005 c 268 § 3; 1996 c 191 § 1; 1989 1st ex.s. c 9 § 319.]

Effective date—2013 c 77: See note following RCW 43.70.110.

Finding—2005 c 268: See note following RCW 18.79.202.

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

43.70.442 Suicide assessment, treatment, and management training—Requirement for certain professionals—Model list of programs—Rules. (1)(a) Beginning January 1, 2014, each of the following professionals certified or licensed under Title 18 RCW shall, at least once every six years, complete training in suicide assessment, treatment, and management that is approved, in rule, by the relevant disciplining authority:

- (i) An adviser or counselor certified under chapter 18.19 RCW;
- (ii) A chemical dependency professional licensed under chapter 18.205 RCW;
- (iii) A marriage and family therapist licensed under chapter 18.225 RCW;
- (iv) A mental health counselor licensed under chapter 18.225 RCW;
- (v) An occupational therapy practitioner licensed under chapter 18.59 RCW;
- (vi) A psychologist licensed under chapter 18.83 RCW;
- (vii) An advanced social worker or independent clinical social worker licensed under chapter 18.225 RCW; and
- (viii) A social worker associate—advanced or social worker associate—independent clinical licensed under chapter 18.225 RCW.

(b) The requirements in (a) of this subsection apply to a person holding a retired active license for one of the professions in (a) of this subsection.

(c) The training required by this subsection must be at least six hours in length, unless a disciplinary authority has determined, under subsection (8)(b) of this section, that training that includes only screening and referral elements is appropriate for the profession in question, in which case the training must be at least three hours in length.

(2)(a) Except as provided in (b) of this subsection, a professional listed in subsection (1)(a) of this section must complete the first training required by this section during the first full continuing education reporting period after January 1, 2014, or the first full continuing education reporting period after initial licensure or certification, whichever occurs later.

(b) A professional listed in subsection (1)(a) of this section applying for initial licensure on or after January 1, 2014, may delay completion of the first training required by this section for six years after initial licensure if he or she can demonstrate successful completion of the training required in

subsection (1) of this section no more than six years prior to the application for initial licensure.

(3) The hours spent completing training in suicide assessment, treatment, and management under this section count toward meeting any applicable continuing education or continuing competency requirements for each profession.

(4)(a) A disciplining authority may, by rule, specify minimum training and experience that is sufficient to exempt a professional from the training requirements in subsection (1) of this section.

(b) The board of occupational therapy practice may exempt an occupational therapy practitioner from the training requirements of subsection (1) of this section if the occupational therapy practitioner has only brief or limited patient contact.

(5)(a) The secretary and the disciplining authorities shall work collaboratively to develop a model list of training programs in suicide assessment, treatment, and management.

(b) When developing the model list, the secretary and the disciplining authorities shall:

(i) Consider suicide assessment, treatment, and management training programs of at least six hours in length listed on the best practices registry of the American foundation for suicide prevention and the suicide prevention resource center; and

(ii) Consult with public and private institutions of higher education, experts in suicide assessment, treatment, and management, and affected professional associations.

(c) The secretary and the disciplining authorities shall report the model list of training programs to the appropriate committees of the legislature no later than December 15, 2013.

(6) Nothing in this section may be interpreted to expand or limit the scope of practice of any profession regulated under chapter 18.130 RCW.

(7) The secretary and the disciplining authorities affected by this section shall adopt any rules necessary to implement this section.

(8) For purposes of this section:

(a) "Disciplining authority" has the same meaning as in RCW 18.130.020.

(b) "Training in suicide assessment, treatment, and management" means empirically supported training approved by the appropriate disciplining authority that contains the following elements: Suicide assessment, including screening and referral, suicide treatment, and suicide management. However, the disciplining authority may approve training that includes only screening and referral elements if appropriate for the profession in question based on the profession's scope of practice. The board of occupational therapy may also approve training that includes only screening and referral elements if appropriate for occupational therapy practitioners based on practice setting.

(9) A state or local government employee is exempt from the requirements of this section if he or she receives a total of at least six hours of training in suicide assessment, treatment, and management from his or her employer every six years. For purposes of this subsection, the training may be provided in one six-hour block or may be spread among shorter training sessions at the employer's discretion.

(10) An employee of a community mental health agency licensed under chapter 71.24 RCW or a chemical dependency program certified under chapter 70.96A RCW is exempt from the requirements of this section if he or she receives a total of at least six hours of training in suicide assessment, treatment, and management from his or her employer every six years. For purposes of this subsection, the training may be provided in one six-hour block or may be spread among shorter training sessions at the employer's discretion. [2013 c 78 § 1; 2013 c 73 § 6; 2012 c 181 § 2.]

Reviser's note: This section was amended by 2013 c 73 § 6 and by 2013 c 78 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—Intent—2012 c 181: "(1) The legislature finds that:

- (a) According to the centers for disease control and prevention:
- (i) In 2008, more than thirty-six thousand people died by suicide in the United States, making it the tenth leading cause of death nationally.
 - (ii) During 2007-2008, an estimated five hundred sixty-nine thousand people visited hospital emergency departments with self-inflicted injuries in the United States, seventy percent of whom had attempted suicide.
 - (iii) During 2008-2009, the average percentages of adults who thought, planned, or attempted suicide in Washington were higher than the national average.
- (b) According to a national study, veterans face an elevated risk of suicide as compared to the general population, more than twice the risk among male veterans. Another study has indicated a positive correlation between posttraumatic stress disorder and suicide.
- (i) Washington state is home to more than sixty thousand men and women who have deployed in support of the wars in Iraq and Afghanistan.
 - (ii) Research continues on how the effects of wartime service and injuries such as traumatic brain injury, posttraumatic stress disorder, or other service-related conditions, may increase the number of veterans who attempt suicide.
 - (iii) As more men and women separate from the military and transition back into civilian life, community mental health providers will become a vital resource to help these veterans and their families deal with issues that may arise.
- (c) Suicide has an enormous impact on the family and friends of the victim as well as the community as a whole.
- (d) Approximately ninety percent of people who die by suicide had a diagnosable psychiatric disorder at the time of death. Most suicide victims exhibit warning signs or behaviors prior to an attempt.
- (e) Improved training and education in suicide assessment, treatment, and management has been recommended by a variety of organizations, including the United States department of health and human services and the institute of medicine.
- (2) It is therefore the intent of the legislature to help lower the suicide rate in Washington by requiring certain health professionals to complete training in suicide assessment, treatment, and management as part of their continuing education, continuing competency, or recertification requirements.
- (3) The legislature does not intend to expand or limit the existing scope of practice of any health professional affected by this act." [2012 c 181 § 1.]

Short title—2012 c 181: "This act may be known and cited as the Matt Adler suicide assessment, treatment, and management training act of 2012." [2012 c 181 § 4.]

43.70.740 Adjudicative proceedings. In all adjudicative proceedings before the secretary or the department, the secretary may delegate initial decision-making authority to a presiding officer. The presiding officer shall enter an initial order pursuant to RCW 34.05.461 subject to the review of the secretary or his or her designee. Pursuant to RCW 34.05.464, the secretary may, by rule, provide that initial orders in specified classes of cases may become final without further agency action unless, within a specified time period:

- (1) The secretary upon his or her own motion determines that the initial order should be reviewed; or

- (2) A party to the proceedings files a petition for administrative review of the initial order. [2013 c 109 § 3.]

Chapter 43.71 RCW

WASHINGTON HEALTH BENEFIT EXCHANGE

Sections

43.71.010	Definitions.
43.71.060	Health benefit exchange account.
43.71.080	Assessment to fund exchange—Generally—Performance review.

43.71.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise. Terms and phrases used in this chapter that are not defined in this section must be defined as consistent with implementation of a state health benefit exchange pursuant to the affordable care act.

(1) "Affordable care act" means the federal patient protection and affordable care act, P.L. 111-148, as amended by the federal health care and education reconciliation act of 2010, P.L. 111-152, or federal regulations or guidance issued under the affordable care act.

(2) "Authority" means the Washington state health care authority, established under chapter 41.05 RCW.

(3) "Board" means the governing board established in RCW 43.71.020.

(4) "Commissioner" means the insurance commissioner, established in Title 48 RCW.

(5) "Exchange" means the Washington health benefit exchange established in RCW 43.71.020.

(6) "Self-sustaining" means capable of operating with revenue attributable to the operations of the exchange. Self-sustaining sources include, but are not limited to, federal grants, federal premium tax subsidies and credits, charges to health carriers, premiums paid by enrollees, and premium taxes under RCW 48.14.0201(5)(b) and 48.14.020(2). [2013 2nd sp.s. c 6 § 1; 2012 c 87 § 2; 2011 c 317 § 2.]

43.71.060 Health benefit exchange account. (1) The health benefit exchange account is created in the state treasury. Moneys in the account may be spent only after appropriation. Expenditures from the account may only be used to fund the operation of the exchange and identification, collection, and distribution of premium taxes collected under RCW 48.14.0201(5)(b) and 48.14.020(2).

(2) The following funds must be deposited in the account:

(a) Premium taxes collected under RCW 48.14.0201(5)(b) and 48.14.020(2);

(b) Assessments authorized under RCW 43.71.080; and

(c) Amounts transferred by the pool administrator as specified in the state omnibus appropriations act pursuant to RCW 48.41.090.

(3) All receipts from federal grants received under the affordable care act may be deposited into the account. Expenditures from the account may be used only for purposes consistent with the grants.

(4) During the 2013-2015 fiscal biennium, the legislature may transfer from the health benefit exchange account to the state general fund such amounts as reflect the excess fund

balance of the account. [2013 2nd sp.s. c 6 § 2; 2012 c 87 § 5; 2011 c 317 § 7.]

43.71.080 Assessment to fund exchange—Generally—Performance review. (1)(a) Beginning January 1, 2015, the exchange may require each issuer writing premiums for qualified health benefit plans or stand-alone dental plans offered through the exchange to pay an assessment in an amount necessary to fund the operations of the exchange, applicable to operational costs incurred beginning January 1, 2015.

(b) The assessment is an exchange user fee as that term is used in 45 C.F.R. 156.80. Assessments of issuers may be made only if the amount of expected premium taxes, as provided under RCW 48.14.0201(5)(b) and 48.14.020(2), and other funds deposited in the health benefit exchange account in the current calendar year are insufficient to fund exchange operations in the following calendar year at the level authorized by the legislature for that purpose in the omnibus appropriations act.

(c) If the exchange is charging an assessment, the exchange shall display the amount of the assessment per member per month for enrollees. A health benefit plan or stand-alone dental plan may identify the amount of the assessment to enrollees, but must not bill the enrollee for the amount of the assessment separately from the premium.

(2) The board, in collaboration with the issuers, the health care authority, and the commissioner, must establish a fair and transparent process for calculating the assessment amount. The process must meet the following requirements:

(a) The assessment only applies to issuers that offer coverage in the exchange and only for those market segments offered and must be based on the number of enrollees in qualified health plans and stand-alone dental plans in the exchange for a calendar year;

(b) The assessment must be established on a flat dollar and cents amount per member per month, and the assessment for dental plans must be proportional to the premiums paid for stand-alone dental plans in the exchange;

(c) Issuers must be notified of the assessment amount by the exchange on a timely basis;

(d) An appropriate assessment reconciliation process must be established by the exchange that is administratively efficient;

(e) Issuers must remit the assessment due to the exchange in quarterly installments after receiving notification from the exchange of the due dates of the quarterly installments;

(f) A procedure must be established to allow issuers subject to assessments under this section to have grievances reviewed by an impartial body and reported to the board; and

(g) A procedure for enforcement must be established if an issuer fails to remit its assessment amount to the exchange within ten business days of the quarterly installment due date.

(3) The exchange shall deposit proceeds from the assessments in the health benefit exchange account under RCW 43.71.060.

(4) The assessment described in this section shall be considered a special purpose obligation or assessment in connection with coverage described in this section for the purpose of

funding the operations of the exchange, and may not be applied by issuers to vary premium rates at the plan level.

(5) The exchange shall monitor enrollment and provide periodic reports which must be available on its web site.

(6) The board shall offer all qualified health plans through the exchange, and the exchange shall not add criteria for certification of qualified health plans beyond those set out in RCW 43.71.065 without specific statutory direction. Nothing shall be construed to limit duties, obligations, and authority otherwise legislatively delegated or granted to the exchange.

(7) The exchange shall report to the joint select committee on health care oversight on a quarterly basis with an update on budget expenses and operations.

(8) By July 1, 2016, the state auditor shall conduct a performance review of the cost of exchange operations and shall make recommendations to the board and the health care committees of the legislature addressing improvements in cost performance and adoption of best practices. The auditor shall further evaluate the potential cost and customer service benefits through regionalization with other states of some exchange operation functions or through a partnership with the federal government. The cost of the state auditor review must be borne by the exchange. [2013 2nd sp.s. c 6 § 3.]

Chapter 43.79 RCW STATE FUNDS

Sections

43.79.445	Death investigations account—Disbursal.
43.79.480	Tobacco settlement account—Transfers to life sciences discovery fund—Tobacco prevention and control account.

43.79.445 Death investigations account—Disbursal.

There is established an account in the state treasury referred to as the "death investigations account" which shall exist for the purpose of receiving, holding, investing, and disbursing funds appropriated or provided in RCW 70.58.107 and any moneys appropriated or otherwise provided thereafter.

Moneys in the death investigations account shall be disbursed by the state treasurer once every year on December 31 and at any other time determined by the treasurer. The treasurer shall make disbursements to: The state toxicology laboratory, counties for the cost of autopsies, the state patrol for providing partial funding for the state dental identification system, the criminal justice training commission for training county coroners, medical examiners and their staff, and the state forensic investigations council. Funds from the death investigations account may be appropriated during the 2013-2015 fiscal biennium for the activities of the state crime laboratory within the Washington state patrol. [2013 2nd sp.s. c 4 § 979; 2005 c 166 § 3; 1997 c 454 § 901; 1995 c 398 § 9; 1991 sp.s. c 13 § 21; 1991 c 176 § 4; 1986 c 31 § 2; 1985 c 57 § 41; 1983 1st ex.s. c 16 § 18.]

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

Additional notes found at www.leg.wa.gov

43.79.480 Tobacco settlement account—Transfers to life sciences discovery fund—Tobacco prevention and control account. (1) Moneys received by the state of Wash-

ington in accordance with the settlement of the state's legal action against tobacco product manufacturers, exclusive of costs and attorneys' fees, shall be deposited in the tobacco settlement account created in this section except as these moneys are sold or assigned under chapter 43.340 RCW.

(2) The tobacco settlement account is created in the state treasury. Moneys in the tobacco settlement account may only be transferred to the state general fund, and to the tobacco prevention and control account for purposes set forth in this section. The legislature shall transfer amounts received as strategic contribution payments as defined in RCW 43.350.010 to the life sciences discovery fund created in RCW 43.350.070. During the 2009-2011 and 2011-2013 fiscal biennia, the legislature may transfer less than the entire strategic contribution payments, and may transfer amounts attributable to strategic contribution payments into the basic health plan stabilization account. During the 2013-2015 fiscal biennium, the legislature may transfer less than the entire strategic contribution payments, and may transfer amounts attributable to strategic contribution payments into the state general fund.

(3) The tobacco prevention and control account is created in the state treasury. The source of revenue for this account is moneys transferred to the account from the tobacco settlement account, investment earnings, donations to the account, and other revenues as directed by law. Expenditures from the account are subject to appropriation. During the 2009-2011 fiscal biennium, the legislature may transfer from the tobacco prevention and control account to the state general fund such amounts as represent the excess fund balance of the account. [2013 2nd sp.s. c 4 § 980; 2011 1st sp.s. c 50 § 947. Prior: 2009 c 564 § 937; 2009 c 479 § 30; 2005 c 424 § 12; 2002 c 365 § 15; 1999 c 309 § 927.]

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

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

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

Effective date—2009 c 479: See note following RCW 2.56.030.

Captions not law—Liberal construction—Severability—Effective dates—2005 c 424: See RCW 43.350.900 through 43.350.903.

Additional notes found at www.leg.wa.gov

Chapter 43.79A RCW TREASURER'S TRUST FUND

Sections

43.79A.040 Management—Income—Investment income account—Distribution.

43.79A.040 Management—Income—Investment income account—Distribution. (1) Money in the treasurer's trust fund may be deposited, invested, and reinvested by the state treasurer in accordance with RCW 43.84.080 in the same manner and to the same extent as if the money were in the state treasury, and may be commingled with moneys in the state treasury for cash management and cash balance purposes.

(2) All income received from investment of the treasurer's trust fund must be set aside in an account in the trea-

sure trust fund to be known as the investment income account.

(3) The investment income account may be utilized for the payment of purchased banking services on behalf of treasurer's trust funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasurer or affected state agencies. The investment income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for payments to financial institutions. Payments must occur prior to distribution of earnings set forth in subsection (4) of this section.

(4)(a) Monthly, the state treasurer must distribute the earnings credited to the investment income account to the state general fund except under (b), (c), and (d) of this subsection.

(b) The following accounts and funds must receive their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The Washington promise scholarship account, the Washington advanced college tuition payment program account, the accessible communities account, the community and technical college innovation account, the agricultural local fund, the American Indian scholarship endowment fund, the foster care scholarship endowment fund, the foster care endowed scholarship trust fund, the contract harvesting revolving account, the Washington state combined fund drive account, the commemorative works account, the county enhanced 911 excise tax account, the toll collection account, the developmental disabilities endowment trust fund, the energy account, the fair fund, the family leave insurance account, the food animal veterinarian conditional scholarship account, the fruit and vegetable inspection account, the future teachers conditional scholarship account, the game farm alternative account, the GET ready for math and science scholarship account, the Washington global health technologies and product development account, the grain inspection revolving fund, the industrial insurance rainy day fund, the juvenile accountability incentive account, the law enforcement officers' and firefighters' plan 2 expense fund, the local tourism promotion account, the multiagency permitting team account, the pilotage account, the produce railcar pool account, the regional transportation investment district account, the rural rehabilitation account, the stadium and exhibition center account, the youth athletic facility account, the self-insurance revolving fund, the children's trust fund, the Washington horse racing commission Washington bred owners' bonus fund and breeder awards account, the Washington horse racing commission class C purse fund account, the individual development account program account, the Washington horse racing commission operating account, the life sciences discovery fund, the Washington state heritage center account, the reduced cigarette ignition propensity account, the center for childhood deafness and hearing loss account, the school for the blind account, the Millersylvania park trust fund, the public employees' and retirees' insurance reserve fund, and the radiation perpetual maintenance fund.

(c) The following accounts and funds must receive eighty percent of their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The advanced right-of-way revolving fund, the advanced environmental mitigation revolving account, the

federal narcotics asset forfeitures account, the high occupancy vehicle account, the local rail service assistance account, and the miscellaneous transportation programs account.

(d) Any state agency that has independent authority over accounts or funds not statutorily required to be held in the custody of the state treasurer that deposits funds into a fund or account in the custody of the state treasurer pursuant to an agreement with the office of the state treasurer shall receive its proportionate share of earnings based upon each account's or fund's average daily balance for the period.

(5) In conformance with Article II, section 37 of the state Constitution, no trust accounts or funds shall be allocated earnings without the specific affirmative directive of this section. [2013 c 251 § 5; 2013 c 88 § 1. Prior: 2012 c 198 § 8; 2012 c 196 § 6; 2012 c 187 § 13; 2012 c 114 § 3; 2011 1st sp.s. c 37 § 603; 2011 c 274 § 4; prior: 2010 1st sp.s. c 19 § 22; 2010 1st sp.s. c 13 § 4; 2010 1st sp.s. c 9 § 6; 2010 c 222 § 4; 2010 c 215 § 7; 2009 c 87 § 4; prior: 2008 c 239 § 9; 2008 c 208 § 9; 2008 c 128 § 20; 2008 c 122 § 24; prior: 2007 c 523 § 5; 2007 c 357 § 21; 2007 c 214 § 14; prior: 2006 c 311 § 21; 2006 c 120 § 2; prior: 2005 c 424 § 18; 2005 c 402 § 8; 2005 c 215 § 10; 2005 c 16 § 2; prior: 2004 c 246 § 8; 2004 c 58 § 10; prior: 2003 c 403 § 9; 2003 c 313 § 10; 2003 c 191 § 7; 2003 c 148 § 15; 2003 c 92 § 8; 2003 c 19 § 12; prior: 2002 c 322 § 5; 2002 c 204 § 7; 2002 c 61 § 6; prior: 2001 c 201 § 4; 2001 c 184 § 4; 2000 c 79 § 45; prior: 1999 c 384 § 8; 1999 c 182 § 2; 1998 c 268 § 1; prior: 1997 c 368 § 8; 1997 c 289 § 13; 1997 c 220 § 221 (Referendum Bill No. 48, approved June 17, 1997); 1997 c 140 § 6; 1997 c 94 § 3; 1996 c 253 § 409; prior: 1995 c 394 § 2; 1995 c 365 § 1; prior: 1993 sp.s. c 8 § 2; 1993 c 500 § 5; 1991 sp.s. c 13 § 82; 1973 1st ex.s. c 15 § 4.]

Reviser's note: This section was amended by 2013 c 88 § 1 and by 2013 c 251 § 5, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Residual balance of funds—Effective date—2013 c 251: See notes following RCW 41.06.280.

Effective date—2012 c 198: See note following RCW 70.94.6532.

Finding—Effective date—2011 1st sp.s. c 37: See notes following RCW 51.32.090.

Finding—Intent—2011 c 274: See note following RCW 28B.50.515.

Effective dates—2010 1st sp.s. c 19: See note following RCW 82.14B.010.

Effective date—2010 1st sp.s. c 9: See note following RCW 28A.650.035.

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

Findings—2010 c 215: See note following RCW 50.40.071.

Effective date—2009 c 87 § 4: "Section 4 of this act takes effect August 1, 2009." [2009 c 87 § 5.]

Effective date—2008 c 239: See RCW 19.305.900.

Findings—Intent—2008 c 208: See RCW 28B.121.005.

Effective date—2008 c 128 §§ 17-20: See note following RCW 88.16.061.

Effective date—2008 c 122 §§ 23 and 24: See note following RCW 47.56.167.

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

Findings—2006 c 311: See note following RCW 36.120.020.

Captions not law—Liberal construction—Severability—Effective dates—2005 c 424: See RCW 43.350.900 through 43.350.903.

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SEED act—Findings—Purpose—Short title—2005 c 402: See RCW 43.31.450 and 43.31.485.

Effective date—2004 c 246: See note following RCW 67.16.270.

Intent—2003 c 403: See RCW 70.210.010.

Findings—Severability—2003 c 313: See notes following RCW 79.15.500.

Severability—Effective date—2003 c 92: See RCW 41.26.905 and 41.26.906.

Finding—Intent—Short title—Captions not law—2003 c 19: See RCW 28B.133.005, 28B.133.900, and 28B.133.901.

Intent—Captions not law—1999 c 384: See notes following RCW 43.330.431.

Findings—Intent—Rules adoption—Severability—Effective date—1997 c 368: See notes following RCW 82.08.810.

Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220: See RCW 36.102.800 through 36.102.803.

Intent—1997 c 140: See note following RCW 47.12.330.

Findings—Purpose—Severability—Part headings not law—1996 c 253: See notes following RCW 28B.109.010.

Finding—Severability—Effective date—1993 c 500: See notes following RCW 43.41.180.

Additional notes found at www.leg.wa.gov

Chapter 43.82 RCW STATE AGENCY HOUSING

Sections

43.82.010 Acquisition, lease, and disposal of real estate for state agencies—Long-range planning—Use of lease as collateral or security—Colocation and consolidation—Studies—Delegation of functions—Exemptions.

43.82.010 Acquisition, lease, and disposal of real estate for state agencies—Long-range planning—Use of lease as collateral or security—Colocation and consolidation—Studies—Delegation of functions—Exemptions.

(1) The director of enterprise services, on behalf of the agency involved and after consultation with the office of financial management, shall purchase, lease, lease purchase, rent, or otherwise acquire all real estate, improved or unimproved, as may be required by elected state officials, institutions, departments, commissions, boards, and other state agencies, or federal agencies where joint state and federal activities are undertaken and may grant easements and transfer, exchange, sell, lease, or sublease all or part of any surplus real estate for those state agencies which do not otherwise have the specific authority to dispose of real estate. This section does not transfer financial liability for the acquired property to the department of enterprise services.

(2) Except for real estate occupied by federal agencies, the director shall determine the location, size, and design of any real estate or improvements thereon acquired or held pursuant to subsection (1) of this section. Facilities acquired or held pursuant to this chapter, and any improvements thereon, shall conform to standards adopted by the director and approved by the office of financial management governing facility efficiency unless a specific exemption from such standards is provided by the director of enterprise services. The director of enterprise services shall report to the office of financial management and the appropriate committees of the

legislature annually on any exemptions granted pursuant to this subsection.

(3) The director of enterprise services may fix the terms and conditions of each lease entered into under this chapter, except that no lease shall extend greater than twenty years in duration. The director of enterprise services may enter into a long-term lease greater than ten years in duration upon a determination by the director of the office of financial management that the long-term lease provides a more favorable rate than would otherwise be available, it appears to a substantial certainty that the facility is necessary for use by the state for the full length of the lease term, and the facility meets the standards adopted pursuant to subsection (2) of this section. The director of enterprise services may enter into a long-term lease greater than ten years in duration if an analysis shows that the life-cycle cost of leasing the facility is less than the life-cycle cost of purchasing or constructing a facility in lieu of leasing the facility.

(4) Except as permitted under chapter 39.94 RCW, no lease for or on behalf of any state agency may be used or referred to as collateral or security for the payment of securities offered for sale through a public offering. Except as permitted under chapter 39.94 RCW, no lease for or on behalf of any state agency may be used or referred to as collateral or security for the payment of securities offered for sale through a private placement without the prior written approval of the state treasurer. However, this limitation shall not prevent a lessor from assigning or encumbering its interest in a lease as security for the repayment of a promissory note provided that the transaction would otherwise be an exempt transaction under RCW 21.20.320. The state treasurer shall adopt rules that establish the criteria under which any such approval may be granted. In establishing such criteria the state treasurer shall give primary consideration to the protection of the state's credit rating and the integrity of the state's debt management program. If it appears to the state treasurer that any lease has been used or referred to in violation of this subsection or rules adopted under this subsection, then he or she may recommend that the governor cause such lease to be terminated. The department of enterprise services shall promptly notify the state treasurer whenever it may appear to the department that any lease has been used or referred to in violation of this subsection or rules adopted under this subsection.

(5) It is the policy of the state to encourage the colocation and consolidation of state services into single or adjacent facilities, whenever appropriate, to improve public service delivery, minimize duplication of facilities, increase efficiency of operations, and promote sound growth management planning.

(6) The director of enterprise services shall provide coordinated long-range planning services to identify and evaluate opportunities for colocating and consolidating state facilities. Upon the renewal of any lease, the inception of a new lease, or the purchase of a facility, the director of enterprise services shall determine whether an opportunity exists for colocating the agency or agencies in a single facility with other agencies located in the same geographic area. If a colocation opportunity exists, the director of enterprise services shall consult with the affected state agencies and the office of financial management to evaluate the impact colocation would have on

the cost and delivery of agency programs, including whether program delivery would be enhanced due to the centralization of services. The director of enterprise services, in consultation with the office of financial management, shall develop procedures for implementing colocation and consolidation of state facilities.

(7) The director of enterprise services is authorized to purchase, lease, rent, or otherwise acquire improved or unimproved real estate as owner or lessee and to lease or sublet all or a part of such real estate to state or federal agencies. The director of enterprise services shall charge each using agency its proportionate rental which shall include an amount sufficient to pay all costs, including, but not limited to, those for utilities, janitorial and accounting services, and sufficient to provide for contingencies; which shall not exceed five percent of the average annual rental, to meet unforeseen expenses incident to management of the real estate.

(8) If the director of enterprise services determines that it is necessary or advisable to undertake any work, construction, alteration, repair, or improvement on any real estate acquired pursuant to subsection (1) or (7) of this section, the director shall cause plans and specifications thereof and an estimate of the cost of such work to be made and filed in his or her office and the state agency benefiting thereby is hereby authorized to pay for such work out of any available funds: PROVIDED, That the cost of executing such work shall not exceed the sum of twenty-five thousand dollars. Work, construction, alteration, repair, or improvement in excess of twenty-five thousand dollars, other than that done by the owner of the property if other than the state, shall be performed in accordance with the public works law of this state.

(9) In order to obtain maximum utilization of space, the director of enterprise services shall make space utilization studies, and shall establish standards for use of space by state agencies. Such studies shall include the identification of opportunities for colocation and consolidation of state agency office and support facilities.

(10) The director of enterprise services may construct new buildings on, or improve existing facilities, and furnish and equip, all real estate under his or her management. Prior to the construction of new buildings or major improvements to existing facilities or acquisition of facilities using a lease purchase contract, the director of enterprise services shall conduct an evaluation of the facility design and budget using life-cycle cost analysis, value-engineering, and other techniques to maximize the long-term effectiveness and efficiency of the facility or improvement.

(11) All conveyances and contracts to purchase, lease, rent, transfer, exchange, or sell real estate and to grant and accept easements shall be approved as to form by the attorney general, signed by the director of enterprise services or the director's designee, and recorded with the county auditor of the county in which the property is located.

(12) The director of enterprise services may delegate any or all of the functions specified in this section to any agency upon such terms and conditions as the director deems advisable. By January 1st of each year, beginning January 1, 2008, the department shall submit an annual report to the office of financial management and the appropriate committees of the legislature on all delegated leases.

(13) This section does not apply to the acquisition of real estate by:

(a) The state college and universities for research or experimental purposes;

(b) The state liquor control board for liquor stores and warehouses;

(c) The department of natural resources, the department of fish and wildlife, the department of transportation, and the state parks and recreation commission for purposes other than the leasing of offices, warehouses, and real estate for similar purposes; and

(d) The department of commerce for community college health career training programs, offices for the department of commerce or other appropriate state agencies, and other non-profit community uses, including community meeting and training facilities, where the real estate is acquired during the 2013-2015 fiscal biennium.

(14) Notwithstanding any provision in this chapter to the contrary, the department of enterprise services may negotiate ground leases for public lands on which property is to be acquired under a financing contract pursuant to chapter 39.94 RCW under terms approved by the state finance committee.

(15) The department of enterprise services shall report annually to the office of financial management and the appropriate fiscal committees of the legislature on facility leases executed for all state agencies for the preceding year, lease terms, and annual lease costs. The report must include leases executed under RCW 43.82.045 and subsection (12) of this section. [2013 2nd sp.s. c 4 § 981; 2007 c 506 § 8; 2004 c 277 § 906; 1997 c 117 § 1. Prior: 1994 c 264 § 28; 1994 c 219 § 7; 1990 c 47 § 1; 1988 c 36 § 20; 1982 c 41 § 1; 1969 c 121 § 1; 1967 c 229 § 1; 1965 c 8 § 43.82.010; prior: 1961 c 184 § 1; 1959 c 255 § 1.]

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

Findings—Intent—2007 c 506: See note following RCW 43.82.035.

Severability—Effective dates—2004 c 277: See notes following RCW 89.08.550.

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

Departments to share occupancy costs—Capital projects surcharge: RCW 43.01.090.

East capitol site, acquisition and development: RCW 79.24.500 through 79.24.530.

Public works: Chapter 39.04 RCW.

Use of enterprise services account in acquiring real estate: RCW 43.19.500.

Additional notes found at www.leg.wa.gov

Chapter 43.84 RCW

INVESTMENTS AND INTERFUND LOANS

Sections

43.84.092 Deposit of surplus balance investment earnings—Treasury income account—Accounts and funds credited. (*Contingent expiration date.*)

43.84.092 Deposit of surplus balance investment earnings—Treasury income account—Accounts and funds credited. (*Contingent effective date.*)

43.84.092 Deposit of surplus balance investment earnings—Treasury income account—Accounts and funds credited. (*Contingent expiration date.*) (1) All earnings of investments of surplus balances in the state treasury

shall be deposited to the treasury income account, which account is hereby established in the state treasury.

(2) The treasury income account shall be utilized to pay or receive funds associated with federal programs as required by the federal cash management improvement act of 1990. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for refunds or allocations of interest earnings required by the cash management improvement act. Refunds of interest to the federal treasury required under the cash management improvement act fall under RCW 43.88.180 and shall not require appropriation. The office of financial management shall determine the amounts due to or from the federal government pursuant to the cash management improvement act. The office of financial management may direct transfers of funds between accounts as deemed necessary to implement the provisions of the cash management improvement act, and this subsection. Refunds or allocations shall occur prior to the distributions of earnings set forth in subsection (4) of this section.

(3) Except for the provisions of RCW 43.84.160, the treasury income account may be utilized for the payment of purchased banking services on behalf of treasury funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasury and affected state agencies. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for payments to financial institutions. Payments shall occur prior to distribution of earnings set forth in subsection (4) of this section.

(4) Monthly, the state treasurer shall distribute the earnings credited to the treasury income account. The state treasurer shall credit the general fund with all the earnings credited to the treasury income account except:

(a) The following accounts and funds shall receive their proportionate share of earnings based upon each account's and fund's average daily balance for the period: The aeronautics account, the aircraft search and rescue account, the Alaskan Way viaduct replacement project account, the brownfield redevelopment trust fund account, the budget stabilization account, the capital vessel replacement account, the capitol building construction account, the Cedar River channel construction and operation account, the Central Washington University capital projects account, the charitable, educational, penal and reformatory institutions account, the cleanup settlement account, the Columbia river basin water supply development account, the Columbia river basin taxable bond water supply development account, the Columbia river basin water supply revenue recovery account, the common school construction fund, the county arterial preservation account, the county criminal justice assistance account, the deferred compensation administrative account, the deferred compensation principal account, the department of licensing services account, the department of retirement systems expense account, the developmental disabilities community trust account, the drinking water assistance account, the drinking water assistance administrative account, the drinking water assistance repayment account, the Eastern Washington University capital projects account, the Interstate 405 express toll lanes operations account, the education construction fund, the education legacy trust account, the election account, the energy freedom account, the energy

recovery act account, the essential rail assistance account, The Evergreen State College capital projects account, the federal forest revolving account, the ferry bond retirement fund, the freight mobility investment account, the freight mobility multimodal account, the grade crossing protective fund, the public health services account, the high capacity transportation account, the state higher education construction account, the higher education construction account, the highway bond retirement fund, the highway infrastructure account, the highway safety fund, the high occupancy toll lanes operations account, the hospital safety net assessment fund, the industrial insurance premium refund account, the judges' retirement account, the judicial retirement administrative account, the judicial retirement principal account, the local leasehold excise tax account, the local real estate excise tax account, the local sales and use tax account, the marine resources stewardship trust account, the medical aid account, the mobile home park relocation fund, the motor vehicle fund, the motorcycle safety education account, the multimodal transportation account, the multiuse roadway safety account, the municipal criminal justice assistance account, the natural resources deposit account, the oyster reserve land account, the pension funding stabilization account, the perpetual surveillance and maintenance account, the public employees' retirement system plan 1 account, the public employees' retirement system combined plan 2 and plan 3 account, the public facilities construction loan revolving account beginning July 1, 2004, the public health supplemental account, the public works assistance account, the Puget Sound capital construction account, the Puget Sound ferry operations account, the real estate appraiser commission account, the recreational vehicle account, the regional mobility grant program account, the resource management cost account, the rural arterial trust account, the rural mobility grant program account, the rural Washington loan fund, the site closure account, the skilled nursing facility safety net trust fund, the small city pavement and sidewalk account, the special category C account, the special wildlife account, the state employees' insurance account, the state employees' insurance reserve account, the state investment board expense account, the state investment board commingled trust fund accounts, the state patrol highway account, the state route number 520 civil penalties account, the state route number 520 corridor account, the state wildlife account, the supplemental pension account, the Tacoma Narrows toll bridge account, the teachers' retirement system plan 1 account, the teachers' retirement system combined plan 2 and plan 3 account, the tobacco prevention and control account, the tobacco settlement account, the toll facility bond retirement account, the transportation 2003 account (nickel account), the transportation equipment fund, the transportation fund, the transportation improvement account, the transportation improvement board bond retirement account, the transportation infrastructure account, the transportation partnership account, the traumatic brain injury account, the tuition recovery trust fund, the University of Washington bond retirement fund, the University of Washington building account, the volunteer firefighters' and reserve officers' relief and pension principal fund, the volunteer firefighters' and reserve officers' administrative fund, the Washington judicial retirement system account, the Washington law

enforcement officers' and firefighters' system plan 1 retirement account, the Washington law enforcement officers' and firefighters' system plan 2 retirement account, the Washington public safety employees' plan 2 retirement account, the Washington school employees' retirement system combined plan 2 and 3 account, the Washington state economic development commission account, the Washington state health insurance pool account, the Washington state patrol retirement account, the Washington State University building account, the Washington State University bond retirement fund, the water pollution control revolving administration account, the water pollution control revolving fund, the Western Washington University capital projects account, the Yakima integrated plan implementation account, the Yakima integrated plan implementation revenue recovery account, and the Yakima integrated plan implementation taxable bond account. Earnings derived from investing balances of the agricultural permanent fund, the normal school permanent fund, the permanent common school fund, the scientific permanent fund, the state university permanent fund, and the state reclamation revolving account shall be allocated to their respective beneficiary accounts.

(b) Any state agency that has independent authority over accounts or funds not statutorily required to be held in the state treasury that deposits funds into a fund or account in the state treasury pursuant to an agreement with the office of the state treasurer shall receive its proportionate share of earnings based upon each account's or fund's average daily balance for the period.

(5) In conformance with Article II, section 37 of the state Constitution, no treasury accounts or funds shall be allocated earnings without the specific affirmative directive of this section. [2013 2nd sp.s. c 23 § 24; 2013 2nd sp.s. c 11 § 15; 2013 2nd sp.s. c 1 § 15. Prior: 2013 c 251 § 3; 2013 c 96 § 3; 2012 c 198 § 2; 2012 c 196 § 7; 2012 c 187 § 14; 2012 c 83 § 4; prior: 2011 1st sp.s. c 16 § 6; 2011 1st sp.s. c 7 § 22; 2011 c 369 § 6; 2011 c 339 § 1; 2011 c 311 § 9; 2011 c 272 § 3; 2011 c 120 § 3; 2011 c 83 § 7; prior: 2010 1st sp.s. c 30 § 20; 2010 1st sp.s. c 9 § 7; 2010 c 248 § 6; 2010 c 222 § 5; 2010 c 162 § 6; 2010 c 145 § 11; prior: 2009 c 479 § 31; 2009 c 472 § 5; 2009 c 451 § 8; (2009 c 451 § 7 expired July 1, 2009); prior: 2008 c 128 § 19; 2008 c 106 § 4; (2008 c 106 § 3 expired July 1, 2009); (2008 c 106 § 2 expired July 1, 2008); prior: 2007 c 514 § 3; 2007 c 513 § 1; 2007 c 484 § 4; 2007 c 356 § 9; prior: 2006 c 337 § 11; (2006 c 337 § 10 expired July 1, 2006); 2006 c 311 § 23; (2006 c 311 § 22 expired July 1, 2006); 2006 c 171 § 10; (2006 c 171 § 9 expired July 1, 2006); 2006 c 56 § 10; (2006 c 56 § 9 expired July 1, 2006); 2006 c 6 § 8; prior: 2005 c 514 § 1106; 2005 c 353 § 4; 2005 c 339 § 23; 2005 c 314 § 110; 2005 c 312 § 8; 2005 c 94 § 2; 2005 c 83 § 5; prior: (2005 c 353 § 2 expired July 1, 2005); 2004 c 242 § 60; prior: 2003 c 361 § 602; 2003 c 324 § 1; 2003 c 150 § 2; 2003 c 48 § 2; prior: 2002 c 242 § 2; 2002 c 114 § 24; 2002 c 56 § 402; prior: 2001 2nd sp.s. c 14 § 608; (2001 2nd sp.s. c 14 § 607 expired March 1, 2002); 2001 c 273 § 6; (2001 c 273 § 5 expired March 1, 2002); 2001 c 141 § 3; (2001 c 141 § 2 expired March 1, 2002); 2001 c 80 § 5; (2001 c 80 § 4 expired March 1, 2002); 2000 2nd sp.s. c 4 § 6; prior: 2000 2nd sp.s. c 4 § 5; (2000 2nd sp.s. c 4 §§ 3, 4 expired September 1, 2000); 2000 c 247 § 702; 2000 c 79 § 39; (2000 c 79 §§ 37, 38 expired September 1, 2000); prior:

1999 c 380 § 9; 1999 c 380 § 8; 1999 c 309 § 929; (1999 c 309 § 928 expired September 1, 2000); 1999 c 268 § 5; (1999 c 268 § 4 expired September 1, 2000); 1999 c 94 § 4; (1999 c 94 §§ 2, 3 expired September 1, 2000); 1998 c 341 § 708; 1997 c 218 § 5; 1996 c 262 § 4; prior: 1995 c 394 § 1; 1995 c 122 § 12; prior: 1994 c 2 § 6 (Initiative Measure No. 601, approved November 2, 1993); 1993 sp.s. c 25 § 511; 1993 sp.s. c 8 § 1; 1993 c 500 § 6; 1993 c 492 § 473; 1993 c 445 § 4; 1993 c 329 § 2; 1993 c 4 § 9; 1992 c 235 § 4; 1991 sp.s. c 13 § 57; 1990 2nd ex.s. c 1 § 204; 1989 c 419 § 12; 1985 c 57 § 51.]

Reviser's note: This section was amended by 2013 2nd sp.s. c 11 § 15 and by 2013 2nd sp.s. c 23 § 24, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Contingent expiration date—2013 2nd sp.s. c 23 § 24: "Section 24 of this act expires if the requirements set out in section 7, chapter 36, Laws of 2012 are met." [2013 2nd sp.s. c 23 § 29.]

Finding—Intent—2013 2nd sp.s. c 23: See note following RCW 46.09.442.

Effective date—2013 2nd sp.s. c 23: See note following RCW 46.09.310.

Contingent expiration date—2013 2nd sp.s. c 11 § 15: "Section 15 of this act expires if the requirements set out in section 7, chapter 36, Laws of 2012 are met." [2013 2nd sp.s. c 11 § 17.]

Contingent expiration date—2013 2nd sp.s. c 1 § 15: "Section 15 of this act expires on the date the requirements set out in section 7, chapter 36, Laws of 2012 are met." [2013 2nd sp.s. c 1 § 17.]

Findings—Intent—Effective date—2013 2nd sp.s. c 1: See notes following RCW 70.105D.020.

Contingent expiration date—2013 c 251 § 3: "Section 3 of this act expires if the requirements set out in section 7, chapter 36, Laws of 2012 are met." [2013 c 251 § 15.]

Residual balance of funds—Effective date—2013 c 251: See notes following RCW 41.06.280.

Contingent expiration date—2013 c 96 § 3: "Section 3 of this act expires if the requirements set out in section 7, chapter 36, Laws of 2012 are met." [2013 c 96 § 5.]

Effective date—2012 c 198: See note following RCW 70.94.6532.

Finding—Intent—2012 c 83: See note following RCW 47.56.862.

Effective date—2011 1st sp.s. c 16 §§ 1-15: See note following RCW 47.60.530.

Purpose—Findings—Intent—Severability—Effective date—2011 1st sp.s. c 7: See RCW 74.48.005, 74.48.900, and 74.48.901.

Intent—2011 c 369: See note following RCW 47.56.880.

Effective date—2011 c 339: "Sections 1 through 4 and 6 through 38 of this act take effect September 1, 2011." [2011 c 339 § 39.]

Effective date—2010 1st sp.s. c 30: See RCW 74.60.903.

Effective date—2010 1st sp.s. c 9: See note following RCW 28A.650.035.

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

Effective date—2010 c 162: See note following RCW 43.42.090.

Effective date—2009 c 479: See note following RCW 2.56.030.

Intent—Effective date—2009 c 472: See notes following RCW 47.56.870.

Effective date—2009 c 451 § 8: "Section 8 of this act takes effect July 1, 2009." [2009 c 451 § 9.]

Expiration dates—2009 c 451 §§ 2, 3, 5, 6, and 7: See note following RCW 43.325.010.

Effective date—Intent—2009 c 451: See notes following RCW 43.325.010.

Effective date—2008 c 128 §§ 17-20: See note following RCW 88.16.061.

Expiration dates—2008 c 106 §§ 2 and 3: "(1) Section 2 of this act expires July 1, 2008.

(2) Section 3 of this act expires July 1, 2009." [2008 c 106 § 5.]

Effective dates—2008 c 106 §§ 3 and 4: "(1) Section 3 of this act takes effect July 1, 2008.

(2) Section 4 of this act takes effect July 1, 2009." [2008 c 106 § 6.]

Effective date—2007 c 513: "This act takes effect July 1, 2009." [2007 c 513 § 2.]

Contingent effective date—2007 c 484 §§ 2-8: See note following RCW 43.79.495.

Short title—2007 c 356: See note following RCW 74.31.005.

Effective date—2006 c 337 § 11: "Section 11 of this act takes effect July 1, 2006." [2006 c 337 § 14.]

Expiration date—2006 c 337 § 10: "Section 10 of this act expires July 1, 2006." [2006 c 337 § 13.]

Effective date—2006 c 311 § 23: "Section 23 of this act takes effect July 1, 2006." [2006 c 311 § 31.]

Expiration date—2006 c 311 § 22: "Section 22 of this act expires July 1, 2006." [2006 c 311 § 30.]

Findings—2006 c 311: See note following RCW 36.120.020.

Expiration date—2006 c 171 § 9: "Section 9 of this act expires July 1, 2006." [2006 c 171 § 14.]

Effective date—2006 c 171 §§ 8 and 10: See note following RCW 42.56.270.

Findings—Severability—2006 c 171: See RCW 43.325.001 and 43.325.901.

Expiration date—2006 c 56 § 9: "Section 9 of this act expires July 1, 2006." [2006 c 56 § 11.]

Effective dates—2006 c 56: See note following RCW 41.45.230.

Effective date—2006 c 6: See RCW 90.90.900.

Effective date—2005 c 514 § 1106: "Section 1106 of this act takes effect July 1, 2006." [2005 c 514 § 1313.]

Part headings not law—Severability—2005 c 514: See notes following RCW 82.12.808.

Effective dates—2005 c 353: See note following RCW 71A.20.170.

Effective date—2005 c 339 § 23: "Section 23 of this act takes effect July 1, 2006." [2005 c 339 § 25.]

Effective dates—2005 c 314 §§ 110 and 201-206: See note following RCW 46.68.035.

Part headings not law—2005 c 314: See note following RCW 46.68.035.

Effective dates—2005 c 312 §§ 6 and 8: "(1) Section 6 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect June 30, 2005.

(2) Section 8 of this act takes effect July 1, 2006." [2005 c 312 § 11.]

Intent—Captions—2005 c 312: See notes following RCW 47.56.401.

Effective dates—2005 c 94: "(1) Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005.

(2) Section 2 of this act takes effect July 1, 2006." [2005 c 94 § 3.]

Findings—Effective dates—2005 c 83: See notes following RCW 47.26.340.

Effective date—2004 c 242: See RCW 41.37.901.

Findings—Part headings not law—Severability—2003 c 361: See notes following RCW 82.36.025.

Effective dates—2003 c 361: See note following RCW 82.08.020.

Effective date—2003 c 150 §§ 2 and 3: "Sections 2 and 3 of this act take effect July 1, 2005." [2003 c 150 § 4.]

Findings—Intent—2003 c 150; 2002 c 242: "The legislature finds that the community economic revitalization board plays a valuable and unique role in stimulating and diversifying local economies, attracting private investment, creating new jobs, and generating additional state and local tax revenues by investing in public facilities projects that result in new or expanded economic development. The legislature also finds that it is in the

best interest of the state and local communities to secure a stable and dedicated source of funds for the community economic revitalization board. It is the intent of the legislature to establish an ongoing funding source for the community economic revitalization board that will be used exclusively to advance economic development infrastructure. This act provides a partial funding solution by directing that beginning July 1, 2005, the interest earnings generated by the public works assistance account shall be used to fund the community economic revitalization board's financial assistance programs. These funds are not for use other than for the stated purpose and goals of the community economic revitalization board." [2003 c 150 § 1; 2002 c 242 § 1.]

Effective date—2003 c 48: See note following RCW 29A.04.440.

Finding—Intent—2002 c 114: See RCW 47.46.011.

Purpose—2001 c 141: "This act is needed to comply with federal law, which is the source of funds in the drinking water assistance account, used to fund the Washington state drinking water loan program as part of the federal safe drinking water act." [2001 c 141 § 1.]

Findings—Intent—2001 c 80: See note following RCW 43.70.040.

Legislative finding—1999 c 94: "The legislature finds that a periodic review of the accounts and their uses is necessary. While creating new accounts may facilitate the implementation of legislative intent, the creation of too many accounts limits the effectiveness of performance-based budgeting. Too many accounts also limit the flexibility of the legislature to address emerging and changing issues in addition to creating administrative burdens for the responsible agencies. Accounts created for specific purposes may no longer be valid or needed. Accordingly, this act eliminates accounts that are not in use or are unneeded and consolidates accounts that are similar in nature." [1999 c 94 § 1.]

Findings—Effective date—1997 c 218: See notes following RCW 70.119.030.

Transportation infrastructure account—Highway infrastructure account—Finding—Intent—Purpose—1996 c 262: See RCW 82.44.195.

Declaration—Intent—Purpose—1995 c 122: See RCW 59.21.006.

Findings—Intent—1993 sp.s. c 25: See note following RCW 82.45.010.

Finding—Severability—Effective date—1993 c 500: See notes following RCW 43.41.180.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

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

Additional notes found at www.leg.wa.gov

43.84.092 Deposit of surplus balance investment earnings—Treasury income account—Accounts and funds credited. (Contingent effective date.) (1) All earnings of investments of surplus balances in the state treasury shall be deposited to the treasury income account, which account is hereby established in the state treasury.

(2) The treasury income account shall be utilized to pay or receive funds associated with federal programs as required by the federal cash management improvement act of 1990. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for refunds or allocations of interest earnings required by the cash management improvement act. Refunds of interest to the federal treasury required under the cash management improvement act fall under RCW 43.88.180 and shall not require appropriation. The office of financial management shall determine the amounts due to or from the federal government pursuant to the cash management improvement act. The office of financial management may direct transfers of funds between accounts as deemed necessary to implement the provisions of the cash management improvement act, and this subsection. Refunds or allocations shall occur prior to the distributions of earnings set forth in subsection (4) of this section.

(3) Except for the provisions of RCW 43.84.160, the treasury income account may be utilized for the payment of purchased banking services on behalf of treasury funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasury and affected state agencies. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for payments to financial institutions. Payments shall occur prior to distribution of earnings set forth in subsection (4) of this section.

(4) Monthly, the state treasurer shall distribute the earnings credited to the treasury income account. The state treasurer shall credit the general fund with all the earnings credited to the treasury income account except:

(a) The following accounts and funds shall receive their proportionate share of earnings based upon each account's and fund's average daily balance for the period: The aeronautics account, the aircraft search and rescue account, the Alaskan Way viaduct replacement project account, the brownfield redevelopment trust fund account, the budget stabilization account, the capital vessel replacement account, the capitol building construction account, the Cedar River channel construction and operation account, the Central Washington University capital projects account, the charitable, educational, penal and reformatory institutions account, the cleanup settlement account, the Columbia river basin water supply development account, the Columbia river basin taxable bond water supply development account, the Columbia river basin water supply revenue recovery account, the Columbia river crossing project account, the common school construction fund, the county arterial preservation account, the county criminal justice assistance account, the deferred compensation administrative account, the deferred compensation principal account, the department of licensing services account, the department of retirement systems expense account, the developmental disabilities community trust account, the drinking water assistance account, the drinking water assistance administrative account, the drinking water assistance repayment account, the Eastern Washington University capital projects account, the Interstate 405 express toll lanes operations account, the education construction fund, the education legacy trust account, the election account, the energy freedom account, the energy recovery act account, the essential rail assistance account, The Evergreen State College capital projects account, the federal forest revolving account, the ferry bond retirement fund, the freight mobility investment account, the freight mobility multimodal account, the grade crossing protective fund, the public health services account, the high capacity transportation account, the state higher education construction account, the higher education construction account, the highway bond retirement fund, the highway infrastructure account, the highway safety fund, the high occupancy toll lanes operations account, the hospital safety net assessment fund, the industrial insurance premium refund account, the judges' retirement account, the judicial retirement administrative account, the judicial retirement principal account, the local leasehold excise tax account, the local real estate excise tax account, the local sales and use tax account, the marine resources stewardship trust account, the medical aid account, the mobile home park relocation fund, the motor vehicle fund, the motorcycle safety education

account, the multimodal transportation account, the multiuse roadway safety account, the municipal criminal justice assistance account, the natural resources deposit account, the oyster reserve land account, the pension funding stabilization account, the perpetual surveillance and maintenance account, the public employees' retirement system plan 1 account, the public employees' retirement system combined plan 2 and plan 3 account, the public facilities construction loan revolving account beginning July 1, 2004, the public health supplemental account, the public works assistance account, the Puget Sound capital construction account, the Puget Sound ferry operations account, the real estate appraiser commission account, the recreational vehicle account, the regional mobility grant program account, the resource management cost account, the rural arterial trust account, the rural mobility grant program account, the rural Washington loan fund, the site closure account, the skilled nursing facility safety net trust fund, the small city pavement and sidewalk account, the special category C account, the special wildlife account, the state employees' insurance account, the state employees' insurance reserve account, the state investment board expense account, the state investment board commingled trust fund accounts, the state patrol highway account, the state route number 520 civil penalties account, the state route number 520 corridor account, the state wildlife account, the supplemental pension account, the Tacoma Narrows toll bridge account, the teachers' retirement system plan 1 account, the teachers' retirement system combined plan 2 and plan 3 account, the tobacco prevention and control account, the tobacco settlement account, the toll facility bond retirement account, the transportation 2003 account (nickel account), the transportation equipment fund, the transportation fund, the transportation improvement account, the transportation improvement board bond retirement account, the transportation infrastructure account, the transportation partnership account, the traumatic brain injury account, the tuition recovery trust fund, the University of Washington bond retirement fund, the University of Washington building account, the volunteer firefighters' and reserve officers' relief and pension principal fund, the volunteer firefighters' and reserve officers' administrative fund, the Washington judicial retirement system account, the Washington law enforcement officers' and firefighters' system plan 1 retirement account, the Washington law enforcement officers' and firefighters' system plan 2 retirement account, the Washington public safety employees' plan 2 retirement account, the Washington school employees' retirement system combined plan 2 and 3 account, the Washington state economic development commission account, the Washington state health insurance pool account, the Washington state patrol retirement account, the Washington State University building account, the Washington State University bond retirement fund, the water pollution control revolving administration account, the water pollution control revolving fund, the Western Washington University capital projects account, the Yakima integrated plan implementation account, the Yakima integrated plan implementation revenue recovery account, and the Yakima integrated plan implementation taxable bond account. Earnings derived from investing balances of the agricultural permanent fund, the normal school permanent fund, the permanent common school fund, the scientific per-

manent fund, the state university permanent fund, and the state reclamation revolving account shall be allocated to their respective beneficiary accounts.

(b) Any state agency that has independent authority over accounts or funds not statutorily required to be held in the state treasury that deposits funds into a fund or account in the state treasury pursuant to an agreement with the office of the state treasurer shall receive its proportionate share of earnings based upon each account's or fund's average daily balance for the period.

(5) In conformance with Article II, section 37 of the state Constitution, no treasury accounts or funds shall be allocated earnings without the specific affirmative directive of this section. [2013 2nd sp.s. c 23 § 25; 2013 2nd sp.s. c 11 § 16; 2013 2nd sp.s. c 1 § 16. Prior: 2013 c 251 § 4; 2013 c 96 § 4; 2012 c 198 § 2; 2012 c 196 § 7; 2012 c 187 § 14; 2012 c 83 § 4; 2012 c 36 § 5; prior: 2011 1st sp.s. c 16 § 6; 2011 1st sp.s. c 7 § 22; 2011 c 369 § 6; 2011 c 339 § 1; 2011 c 311 § 9; 2011 c 272 § 3; 2011 c 120 § 3; 2011 c 83 § 7; prior: 2010 1st sp.s. c 30 § 20; 2010 1st sp.s. c 9 § 7; 2010 c 248 § 6; 2010 c 222 § 5; 2010 c 162 § 6; 2010 c 145 § 11; prior: 2009 c 479 § 31; 2009 c 472 § 5; 2009 c 451 § 8; (2009 c 451 § 7 expired July 1, 2009); prior: 2008 c 128 § 19; 2008 c 106 § 4; (2008 c 106 § 3 expired July 1, 2009); (2008 c 106 § 2 expired July 1, 2008); prior: 2007 c 514 § 3; 2007 c 513 § 1; 2007 c 484 § 4; 2007 c 356 § 9; prior: 2006 c 337 § 11; (2006 c 337 § 10 expired July 1, 2006); 2006 c 311 § 23; (2006 c 311 § 22 expired July 1, 2006); 2006 c 171 § 10; (2006 c 171 § 9 expired July 1, 2006); 2006 c 56 § 10; (2006 c 56 § 9 expired July 1, 2006); 2006 c 6 § 8; prior: 2005 c 514 § 1106; 2005 c 353 § 4; 2005 c 339 § 23; 2005 c 314 § 110; 2005 c 312 § 8; 2005 c 94 § 2; 2005 c 83 § 5; prior: (2005 c 353 § 2 expired July 1, 2005); 2004 c 242 § 60; prior: 2003 c 361 § 602; 2003 c 324 § 1; 2003 c 150 § 2; 2003 c 48 § 2; prior: 2002 c 242 § 2; 2002 c 114 § 24; 2002 c 56 § 402; prior: 2001 2nd sp.s. c 14 § 608; (2001 2nd sp.s. c 14 § 607 expired March 1, 2002); 2001 c 273 § 6; (2001 c 273 § 5 expired March 1, 2002); 2001 c 141 § 3; (2001 c 141 § 2 expired March 1, 2002); 2001 c 80 § 5; (2001 c 80 § 4 expired March 1, 2002); 2000 2nd sp.s. c 4 § 6; prior: 2000 2nd sp.s. c 4 § 5; (2000 2nd sp.s. c 4 §§ 3, 4 expired September 1, 2000); 2000 c 247 § 702; 2000 c 79 § 39; (2000 c 79 §§ 37, 38 expired September 1, 2000); prior: 1999 c 380 § 9; 1999 c 380 § 8; 1999 c 309 § 929; (1999 c 309 § 928 expired September 1, 2000); 1999 c 268 § 5; (1999 c 268 § 4 expired September 1, 2000); 1999 c 94 § 4; (1999 c 94 §§ 2, 3 expired September 1, 2000); 1998 c 341 § 708; 1997 c 218 § 5; 1996 c 262 § 4; prior: 1995 c 394 § 1; 1995 c 122 § 12; prior: 1994 c 2 § 6 (Initiative Measure No. 601, approved November 2, 1993); 1993 sp.s. c 25 § 511; 1993 sp.s. c 8 § 1; 1993 c 500 § 6; 1993 c 492 § 473; 1993 c 445 § 4; 1993 c 329 § 2; 1993 c 4 § 9; 1992 c 235 § 4; 1991 sp.s. c 13 § 57; 1990 2nd ex.s. c 1 § 204; 1989 c 419 § 12; 1985 c 57 § 51.]

Reviser's note: This section was amended by 2013 2nd sp.s. c 11 § 16 and by 2013 2nd sp.s. c 23 § 25, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Contingent effective date—2013 2nd sp.s. c 23 § 25: "Section 25 of this act takes effect if the requirements set out in section 7, chapter 36, Laws of 2012 are met." [2013 2nd sp.s. c 23 § 30.]

Finding—Intent—2013 2nd sp.s. c 23: See note following RCW 46.09.442.

Contingent effective date—2013 2nd sp.s. c 11 § 16: "Section 16 of this act takes effect if the requirements set out in section 7, chapter 36, Laws of 2012 are met." [2013 2nd sp.s. c 11 § 18.]

Contingent effective date—2013 2nd sp.s. c 1 § 16: "Section 16 of this act takes effect on the date the requirements set out in section 7, chapter 36, Laws of 2012 are met." [2013 2nd sp.s. c 1 § 18.]

Findings—Intent—2013 2nd sp.s. c 1: See note following RCW 70.105D.020.

Contingent effective date—2013 c 251 § 4: "Section 4 of this act takes effect if the requirements set out in section 7, chapter 36, Laws of 2012 are met." [2013 c 251 § 16.]

Residual balance of funds—Effective date—2013 c 251: See notes following RCW 41.06.280.

Contingent effective date—2013 c 96 § 4: "Section 4 of this act takes effect if the requirements set out in section 7, chapter 36, Laws of 2012 are met." [2013 c 96 § 6.]

Effective date—2012 c 198: See note following RCW 70.94.6532.

Finding—Intent—2012 c 83: See note following RCW 47.56.862.

Finding—Contingent effective date—Notice of certification and toll rate agreements—2012 c 36: See notes following RCW 47.56.890.

Effective date—2011 1st sp.s. c 16 §§ 1-15: See note following RCW 47.60.530.

Purpose—Findings—Intent—Severability—Effective date—2011 1st sp.s. c 7: See RCW 74.48.005, 74.48.900, and 74.48.901.

Intent—2011 c 369: See note following RCW 47.56.880.

Effective date—2011 c 339: "Sections 1 through 4 and 6 through 38 of this act take effect September 1, 2011." [2011 c 339 § 39.]

Effective date—2010 1st sp.s. c 30: See RCW 74.60.903.

Effective date—2010 1st sp.s. c 9: See note following RCW 28A.650.035.

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

Effective date—2010 c 162: See note following RCW 43.42.090.

Effective date—2009 c 479: See note following RCW 2.56.030.

Intent—Effective date—2009 c 472: See notes following RCW 47.56.870.

Effective date—2009 c 451 § 8: "Section 8 of this act takes effect July 1, 2009." [2009 c 451 § 9.]

Expiration dates—2009 c 451 §§ 2, 3, 5, 6, and 7: See note following RCW 43.325.010.

Effective date—Intent—2009 c 451: See notes following RCW 43.325.010.

Effective date—2008 c 128 §§ 17-20: See note following RCW 88.16.061.

Expiration dates—2008 c 106 §§ 2 and 3: "(1) Section 2 of this act expires July 1, 2008.

(2) Section 3 of this act expires July 1, 2009." [2008 c 106 § 5.]

Effective dates—2008 c 106 §§ 3 and 4: "(1) Section 3 of this act takes effect July 1, 2008.

(2) Section 4 of this act takes effect July 1, 2009." [2008 c 106 § 6.]

Effective date—2007 c 513: "This act takes effect July 1, 2009." [2007 c 513 § 2.]

Contingent effective date—2007 c 484 §§ 2-8: See note following RCW 43.79.495.

Short title—2007 c 356: See note following RCW 74.31.005.

Effective date—2006 c 337 § 11: "Section 11 of this act takes effect July 1, 2006." [2006 c 337 § 14.]

Expiration date—2006 c 337 § 10: "Section 10 of this act expires July 1, 2006." [2006 c 337 § 13.]

Effective date—2006 c 311 § 23: "Section 23 of this act takes effect July 1, 2006." [2006 c 311 § 31.]

Expiration date—2006 c 311 § 22: "Section 22 of this act expires July 1, 2006." [2006 c 311 § 30.]

Findings—2006 c 311: See note following RCW 36.120.020.

Expiration date—2006 c 171 § 9: "Section 9 of this act expires July 1, 2006." [2006 c 171 § 14.]

Effective date—2006 c 171 §§ 8 and 10: See note following RCW 42.56.270.

Findings—Severability—2006 c 171: See RCW 43.325.001 and 43.325.901.

Expiration date—2006 c 56 § 9: "Section 9 of this act expires July 1, 2006." [2006 c 56 § 11.]

Effective dates—2006 c 56: See note following RCW 41.45.230.

Effective date—2006 c 6: See RCW 90.90.900.

Effective date—2005 c 514 § 1106: "Section 1106 of this act takes effect July 1, 2006." [2005 c 514 § 1313.]

Part headings not law—Severability—2005 c 514: See notes following RCW 82.12.808.

Effective dates—2005 c 353: See note following RCW 71A.20.170.

Effective date—2005 c 339 § 23: "Section 23 of this act takes effect July 1, 2006." [2005 c 339 § 25.]

Effective dates—2005 c 314 §§ 110 and 201-206: See note following RCW 46.68.035.

Part headings not law—2005 c 314: See note following RCW 46.68.035.

Effective dates—2005 c 312 §§ 6 and 8: "(1) Section 6 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect June 30, 2005.

(2) Section 8 of this act takes effect July 1, 2006." [2005 c 312 § 11.]

Intent—Captions—2005 c 312: See notes following RCW 47.56.401.

Effective dates—2005 c 94: "(1) Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005.

(2) Section 2 of this act takes effect July 1, 2006." [2005 c 94 § 3.]

Findings—Effective dates—2005 c 83: See notes following RCW 47.26.340.

Effective date—2004 c 242: See RCW 41.37.901.

Findings—Part headings not law—Severability—2003 c 361: See notes following RCW 82.36.025.

Effective dates—2003 c 361: See note following RCW 82.08.020.

Effective date—2003 c 150 §§ 2 and 3: "Sections 2 and 3 of this act take effect July 1, 2005." [2003 c 150 § 4.]

Findings—Intent—2003 c 150; 2002 c 242: "The legislature finds that the community economic revitalization board plays a valuable and unique role in stimulating and diversifying local economies, attracting private investment, creating new jobs, and generating additional state and local tax revenues by investing in public facilities projects that result in new or expanded economic development. The legislature also finds that it is in the best interest of the state and local communities to secure a stable and dedicated source of funds for the community economic revitalization board. It is the intent of the legislature to establish an ongoing funding source for the community economic revitalization board that will be used exclusively to advance economic development infrastructure. This act provides a partial funding solution by directing that beginning July 1, 2005, the interest earnings generated by the public works assistance account shall be used to fund the community economic revitalization board's financial assistance programs. These funds are not for use other than for the stated purpose and goals of the community economic revitalization board." [2003 c 150 § 1; 2002 c 242 § 1.]

Effective date—2003 c 48: See note following RCW 29A.04.440.

Finding—Intent—2002 c 114: See RCW 47.46.011.

Purpose—2001 c 141: "This act is needed to comply with federal law, which is the source of funds in the drinking water assistance account, used to fund the Washington state drinking water loan program as part of the federal safe drinking water act." [2001 c 141 § 1.]

Findings—Intent—2001 c 80: See note following RCW 43.70.040.

Legislative finding—1999 c 94: "The legislature finds that a periodic review of the accounts and their uses is necessary. While creating new accounts may facilitate the implementation of legislative intent, the creation of too many accounts limits the effectiveness of performance-based budgeting. Too many accounts also limit the flexibility of the legislature to address emerging and changing issues in addition to creating administrative burdens

for the responsible agencies. Accounts created for specific purposes may no longer be valid or needed. Accordingly, this act eliminates accounts that are not in use or are unneeded and consolidates accounts that are similar in nature." [1999 c 94 § 1.]

Findings—Effective date—1997 c 218: See notes following RCW 70.119.030.

Transportation infrastructure account—Highway infrastructure account—Finding—Intent—Purpose—1996 c 262: See RCW 82.44.195.

Declaration—Intent—Purpose—1995 c 122: See RCW 59.21.006.

Findings—Intent—1993 sp.s. c 25: See note following RCW 82.45.010.

Finding—Severability—Effective date—1993 c 500: See notes following RCW 43.41.180.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

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

Additional notes found at www.leg.wa.gov

Chapter 43.88 RCW STATE BUDGETING, ACCOUNTING, AND REPORTING SYSTEM

(Formerly: Budget and accounting)

Sections

43.88.092	Information technology budget detail—Information technology plan—Accounting method for information technology.
43.88.096	Budget detail—Designated state agencies—Federal receipts reporting requirements.
43.88.585	Fee inventory—State expenditure information web site—Work group.

43.88.092 Information technology budget detail—Information technology plan—Accounting method for information technology. (1) As part of the biennial budget process, the office of financial management shall collect from agencies, and agencies shall provide, information to produce reports, summaries, and budget detail sufficient to allow review, analysis, and documentation of all current and proposed expenditures for information technology by state agencies. Information technology budget detail must be included as part of the budget submittal documentation required pursuant to RCW 43.88.030.

(2) The office of financial management must collect, and present as part of the biennial budget documentation, information for all existing information technology projects as defined by technology services board policy. The office of financial management must work with the office of the chief information officer to maximize the ability to draw this information from the information technology portfolio management data collected by the consolidated technology services agency. Connecting project information collected through the portfolio management process with financial data developed under subsection (1) of this section provides transparency regarding expenditure data for existing technology projects.

(3) The chief information officer shall evaluate proposed information technology expenditures and establish priority ranking categories of the proposals. No more than one-third of the proposed expenditures shall be ranked in the highest priority category.

(4) The biennial budget documentation submitted by the office of financial management pursuant to RCW 43.88.030 must include an information technology plan and a technology budget for the state identifying current baseline funding

for information technology, proposed and ongoing major information technology projects, and their associated costs. This plan and technology budget must be presented using a method similar to the capital budget, identifying project costs through stages of the project and across fiscal periods and biennia from project initiation to implementation. This information must be submitted electronically, in a format to be determined by the office of financial management and the legislative evaluation and accountability program committee.

(5) The office of financial management shall also institute a method of accounting for information technology-related expenditures, including creating common definitions for what constitutes an information technology investment.

(6) For the purposes of this section, "major information technology projects" includes projects that have a significant anticipated cost, complexity, or are of statewide significance, such as enterprise-level solutions, enterprise resource planning, and shared services initiatives. [2013 2nd sp.s. c 33 § 4; 2011 1st sp.s. c 43 § 733; 2010 c 282 § 3.]

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

43.88.096 Budget detail—Designated state agencies—Federal receipts reporting requirements. (1) As used in this section:

(a) "Designated state agency" means the department of social and health services, the department of health, the health care authority, the department of commerce, the department of ecology, the department of fish and wildlife, the office of the superintendent of public instruction, and the department of early learning.

(b) "Federal receipts" means the federal financial assistance, as defined in 31 U.S.C. Sec. 7501 on September 28, 2013, that is reported as part of a single audit.

(c) "Single audit" is as defined in 31 U.S.C. Sec. 7501 on September 28, 2013.

(2) Subject to subsection (3) of this section, a designated state agency shall prepare as part of the agency's biennial budget submittal under this chapter a report that:

(a) Reports the aggregate value of federal receipts the designated state agency estimated for the ensuing biennium;

(b) Calculates the percentage of the designated state agency's total budget for the ensuing biennium that constitutes federal receipts that the designated state agency received; and

(c) Develops plans for operating the designated state agency if there is a reduction of:

(i) Five percent or more in the federal receipts that the designated state agency receives; and

(ii) Twenty-five percent or more in the federal receipts that the designated state agency receives.

(3) The report required by subsection (2) of this section prepared by the superintendent of public instruction shall include the information required by subsection (2)(a) through (c) of this section for each school district within the state. [2013 2nd sp.s. c 32 § 1.]

43.88.585 Fee inventory—State expenditure information web site—Work group. (1) By January 1, 2014, the office of financial management shall compile, maintain, and periodically update an inventory of all fees imposed by state

agencies and institutions of higher education pursuant to statute or administrative rule. At a minimum, the inventory shall identify the agency or institution collecting the fee, the purpose of the fee, the current amount of the fee, the amount of the fee over the previous five years, and the statutory authority for the fee. The office of financial management may aggregate or consolidate fee information when there is commonality among the fee payers or the purposes for which the fee is paid.

(2) To facilitate the fee inventory under this section, each state agency and institution of higher education shall report the information required under subsection (1) of this section to the office of financial management and shall update the information at least every two years.

(3) The fee inventory under this section shall be incorporated into the state expenditure information web site maintained by the legislative evaluation and accountability program committee under RCW 44.48.150.

(4) The office of financial management shall convene a work group consisting of representatives from the legislative evaluation and accountability program committee, the office of regulatory assistance, the department of licensing, the department of labor and industries, the department of transportation, and the department of health to develop a process to facilitate more frequent updates to the inventory and to recommend changes to increase public accessibility.

(5) For purposes of this section, "fee" means any charge, fixed by law or administrative rule, for the benefit of a service or to cover the cost of a regulatory program or the costs of administering a program for which the fee payer benefits. "Fee" does not include taxes; penalties or fines; intergovernmental charges; commercial charges; pension or health care contributions or rates; industrial, unemployment, or other state-operated insurance programs; or individualized cost recoveries. [2013 c 63 § 1.]

Chapter 43.88C RCW CASELOAD FORECAST COUNCIL

Sections

43.88C.010 Caseload forecast council—Duties.

43.88C.010 Caseload forecast council—Duties. (1) The caseload forecast council is hereby created. The council shall consist of two individuals appointed by the governor and four individuals, one of whom is appointed by the chairperson of each of the two largest political caucuses in the senate and house of representatives. The chair of the council shall be selected from among the four caucus appointees. The council may select such other officers as the members deem necessary.

(2) The council shall employ a caseload forecast supervisor to supervise the preparation of all caseload forecasts. As used in this chapter, "supervisor" means the caseload forecast supervisor.

(3) Approval by an affirmative vote of at least five members of the council is required for any decisions regarding employment of the supervisor. Employment of the supervisor shall terminate after each term of three years. At the end of the first year of each three-year term the council shall consider extension of the supervisor's term by one year. The

council may fix the compensation of the supervisor. The supervisor shall employ staff sufficient to accomplish the purposes of this section.

(4) The caseload forecast council shall oversee the preparation of and approve, by an affirmative vote of at least four members, the official state caseload forecasts prepared under RCW 43.88C.020. If the council is unable to approve a forecast before a date required in RCW 43.88C.020, the supervisor shall submit the forecast without approval and the forecast shall have the same effect as if approved by the council.

(5) A councilmember who does not cast an affirmative vote for approval of the official caseload forecast may request, and the supervisor shall provide, an alternative forecast based on assumptions specified by the member.

(6) Members of the caseload forecast council shall serve without additional compensation but shall be reimbursed for travel expenses in accordance with RCW 44.04.120 while attending sessions of the council or on official business authorized by the council. Nonlegislative members of the council shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

(7) "Caseload," as used in this chapter, means:

(a) The number of persons expected to meet entitlement requirements and require the services of public assistance programs, state correctional institutions, state correctional noninstitutional supervision, state institutions for juvenile offenders, the common school system, long-term care, medical assistance, foster care, and adoption support;

(b) The number of students who are eligible for the Washington college bound scholarship program and are expected to attend an institution of higher education as defined in RCW 28B.92.030.

(8) The caseload forecast council shall forecast the temporary assistance for needy families and the working connections child care programs as a courtesy.

(9) The caseload forecast council shall forecast youth participating in the extended foster care program pursuant to RCW 74.13.031 separately from other children who are residing in foster care and who are under eighteen years of age.

(10) Unless the context clearly requires otherwise, the definitions provided in RCW 43.88.020 apply to this chapter. [2013 c 332 § 11; 2012 c 217 § 3; 2011 c 304 § 2; 2000 c 90 § 1; 1997 c 168 § 1.]

Findings—Recommendations—Application—2013 c 332: See notes following RCW 13.34.267.

Effective date—2012 c 217: See note following RCW 74.08A.341.

Additional notes found at www.leg.wa.gov

Chapter 43.99G RCW BONDS FOR CAPITAL PROJECTS

Sections

43.99G.162 Proceeds—Deposit—Use.

43.99G.162 Proceeds—Deposit—Use. The proceeds from the sale of the bonds authorized in RCW 43.99G.160 shall be deposited in the Columbia river basin water supply development account created in chapter 6, Laws of 2006. If the state finance committee deems it necessary to issue the bonds authorized in RCW 43.99G.160 as taxable bonds in

order to comply with federal internal revenue service rules and regulations pertaining to the use of nontaxable bond proceeds, the proceeds of such taxable bonds shall be transferred to the Columbia river basin taxable bond water supply development account in lieu of any deposit otherwise provided by this section. The state treasurer shall submit written notice to the director of financial management if it is determined that any such transfer to the Columbia river basin taxable bond water supply development account is necessary. Moneys in the account may be spent only after appropriation. The proceeds shall be used exclusively for the purposes specified in RCW 43.99G.160 and for the payment of expenses incurred in the issuance and sale of the bonds. These proceeds shall be administered by the office of financial management, subject to legislative appropriation. [2013 2nd sp.s. c 20 § 6; 2006 c 167 § 203.]

Effective date—2013 2nd sp.s. c 20: See RCW 43.99Y.900.

Chapter 43.99Y RCW FINANCING FOR APPROPRIATIONS— 2011-2013 AND 2013-2015 BIENNIA

Sections

- 43.99Y.010 General obligation bonds for capital and operating appropriations acts.
- 43.99Y.020 Conditions and limitations.
- 43.99Y.030 Retirement of bonds—Reimbursement of general fund from debt-limit general fund bond retirement account.
- 43.99Y.040 Pledge and promise—Remedies.
- 43.99Y.050 Payment of principal and interest—Additional means for raising money authorized.
- 43.99Y.900 Effective date—2013 2nd sp.s. c 20.

43.99Y.010 General obligation bonds for capital and operating appropriations acts. For the purpose of providing funds to finance the projects described and authorized by the legislature in the capital and operating appropriations acts for the 2011-2013 and 2013-2015 fiscal biennia, and all costs incidental thereto, the state finance committee is authorized to issue general obligation bonds of the state of Washington in the sum of two billion thirty-six million dollars, or as much thereof as may be required, to finance these projects and all costs incidental thereto. Bonds authorized in this section may be sold at such price as the state finance committee shall determine. No bonds authorized in this section may be offered for sale without prior legislative appropriation of the net proceeds of the sale of the bonds. [2013 2nd sp.s. c 20 § 1.]

43.99Y.020 Conditions and limitations. (1) The proceeds from the sale of bonds authorized in RCW 43.99Y.010 shall be deposited in the state building construction account created by RCW 43.83.020. The proceeds shall be transferred as follows:

(a) One billion six hundred seventy million six hundred eighty-five thousand dollars to remain in the state building construction account created by RCW 43.83.020;

(b) Twenty-five million five hundred thousand dollars to the outdoor recreation account created by RCW 79A.25.060;

(c) Twenty-five million five hundred thousand dollars to the habitat conservation account created by RCW 79A.15.020;

(d) Eight million five hundred thousand dollars to the riparian protection account created by RCW 79A.15.120;

(e) Five million five hundred thousand dollars to the farmlands preservation account created by RCW 79A.15.130;

(f) Two hundred seventy-nine million five hundred thousand dollars to the state taxable building construction account. All receipts from taxable bond issues are to be deposited into the account. If the state finance committee deems it necessary or advantageous to issue more than the amount specified in this subsection (1)(f) as taxable bonds in order to comply with federal internal revenue service rules and regulations pertaining to the use of nontaxable bond proceeds or in order to reduce the total financing costs for bonds issued, the proceeds of such additional taxable bonds shall be transferred to the state taxable building construction account in lieu of any transfer otherwise provided by this section. If the state finance committee determines that a portion of the amount specified in this subsection (1)(f) as taxable bonds may be issued as nontaxable bonds in compliance with federal internal revenue service rules and regulations pertaining to the use of nontaxable bond proceeds, then such bond proceeds shall be transferred to the state building construction account in lieu of the transfer to the state taxable building construction account otherwise provided by this subsection (1)(f). The state treasurer shall submit written notice to the director of financial management if it is determined that any such additional transfer to the state taxable building construction account is necessary. Moneys in the account may be spent only after appropriation.

(2) These proceeds shall be used exclusively for the purposes specified in this section and for the payment of expenses incurred in the issuance and sale of the bonds issued for the purposes of this section, and shall be administered by the office of financial management subject to legislative appropriation. [2013 2nd sp.s. c 20 § 2.]

43.99Y.030 Retirement of bonds—Reimbursement of general fund from debt-limit general fund bond retirement account. (1) The debt-limit general fund bond retirement account shall be used for the payment of the principal of and interest on the bonds authorized in RCW 43.99Y.020(1) (a) through (f).

(2) The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount needed in the ensuing twelve months to meet the bond retirement and interest requirements on the bonds authorized in RCW 43.99Y.020(1) (a) through (f).

(3) On each date on which any interest or principal and interest payment is due on bonds issued for the purposes of RCW 43.99Y.020(1) (a) through (f) the state treasurer shall withdraw from any general state revenues received in the state treasury and deposit in the debt-limit general fund bond retirement account an amount equal to the amount certified by the state finance committee to be due on the payment date. [2013 2nd sp.s. c 20 § 3.]

43.99Y.040 Pledge and promise—Remedies. (1) Bonds issued under RCW 43.99Y.010 through 43.99Y.030 shall state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state

to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay the principal and interest as the same shall become due.

(2) The owner and holder of each of the bonds or the trustee for the owner and holder of any of the bonds may by mandamus or other appropriate proceeding require the transfer and payment of funds as directed in this section. [2013 2nd sp.s. c 20 § 4.]

43.99Y.050 Payment of principal and interest—Additional means for raising money authorized. The legislature may provide additional means for raising moneys for the payment of the principal of and interest on the bonds authorized in RCW 43.99Y.010, and RCW 43.99Y.020 and 43.99Y.030 shall not be deemed to provide an exclusive method for the payment. [2013 2nd sp.s. c 20 § 5.]

43.99Y.900 Effective date—2013 2nd sp.s. c 20. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [July 1, 2013]. [2013 2nd sp.s. c 20 § 9.]

Chapter 43.101 RCW

CRIMINAL JUSTICE TRAINING COMMISSION— EDUCATION AND TRAINING STANDARDS BOARDS

Sections

- 43.101.200 Law enforcement personnel—Basic law enforcement training required—Commission to provide.
43.101.430 Criminal justice training commission firing range maintenance account.

43.101.200 Law enforcement personnel—Basic law enforcement training required—Commission to provide.

(1) All law enforcement personnel, except volunteers, and reserve officers whether paid or unpaid, initially employed on or after January 1, 1978, shall engage in basic law enforcement training which complies with standards adopted by the commission pursuant to RCW 43.101.080. For personnel initially employed before January 1, 1990, such training shall be successfully completed during the first fifteen months of employment of such personnel unless otherwise extended or waived by the commission and shall be requisite to the continuation of such employment. Personnel initially employed on or after January 1, 1990, shall commence basic training during the first six months of employment unless the basic training requirement is otherwise waived or extended by the commission. Successful completion of basic training is requisite to the continuation of employment of such personnel initially employed on or after January 1, 1990.

(2) Except as otherwise provided in this chapter, the commission shall provide the aforementioned training together with necessary facilities, supplies, materials, and the board and room of noncommuting attendees for seven days per week, except during the 2013-2015 fiscal biennium when the employing, county, city, or state law enforcement agency shall reimburse the commission for twenty-five percent of the cost of training its personnel. Additionally, to the extent funds are provided for this purpose, the commission shall reimburse to participating law enforcement agencies with ten

or less full-time commissioned patrol officers the cost of temporary replacement of each officer who is enrolled in basic law enforcement training: PROVIDED, That such reimbursement shall include only the actual cost of temporary replacement not to exceed the total amount of salary and benefits received by the replaced officer during his or her training period. [2013 2nd sp.s. c 4 § 982; 2011 1st sp.s. c 50 § 949; 1997 c 351 § 13. Prior: 1993 sp.s. c 24 § 920; 1993 sp.s. c 21 § 5; 1989 c 299 § 2; 1977 ex.s. c 212 § 2.]

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

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

Additional notes found at www.leg.wa.gov

43.101.430 Criminal justice training commission firing range maintenance account. The criminal justice training commission firing range maintenance account is created in the custody of the state treasurer. All moneys generated by the rental of the commission's firing range facilities, property, and equipment must be deposited into the account. The sources of the moneys generated and deposited under this section may include federal, state, local, or private grants, consistent with RCW 43.101.190. Expenditures from the account may be used only for cost related to rental, maintenance, or development of the commission's firing range facilities, property, and equipment. Only the executive director, acting on behalf of the criminal justice training commission, or the executive director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2013 c 265 § 1.]

Chapter 43.131 RCW

WASHINGTON SUNSET ACT OF 1977

Sections

- 43.131.055 Program and fiscal review—Alternative public works contracting procedures. (*Contingent effective date; expires July 1, 2022.*)
43.131.407 Alternative public works contracting procedures—Termination.
43.131.408 Alternative public works contracting procedures—Repeal.
43.131.416 Child and family reinvestment account and methodology for calculating savings—Repeal.
43.131.417 Joint center for aerospace technology innovation—Termination.
43.131.418 Joint center for aerospace technology innovation—Repeal.
43.131.900 Expiration of RCW 43.131.010 through 43.131.150—Exception.

43.131.055 Program and fiscal review—Alternative public works contracting procedures. (*Contingent effective date; expires July 1, 2022.*) (1) If the sunset review process in RCW 43.131.010 through 43.131.150 expires before June 30, 2021, the joint legislative audit and review committee must conduct a program and fiscal review of the alternative public works contracting procedures authorized in chapter 39.10 RCW. The review must be completed by June 30, 2021, and findings reported to the office of financial management and any affected entities. The report must be prepared in the manner set forth in RCW 44.28.071 and 44.28.075.

(2) This section expires July 1, 2022. [2013 c 222 § 24.]

Contingent effective date—2013 c 222 § 24: "Section 24 of this act takes effect upon the expiration of RCW 43.131.051." [2013 c 222 § 25.]

43.131.407 Alternative public works contracting procedures—Termination. The alternative public works contracting procedures under chapter 39.10 RCW shall be terminated June 30, 2021, as provided in RCW 43.131.408. [2013 c 222 § 21; 2007 c 494 § 506.]

Effective date—2013 c 222: See note following RCW 39.10.210.

Part headings and captions not law—Effective dates—Severability—2007 c 494: See RCW 39.10.903 through 39.10.905.

43.131.408 Alternative public works contracting procedures—Repeal. The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective June 30, 2022:

- (1) RCW 39.10.200 and 2010 1st sp.s. c 21 § 2, 2007 c 494 § 1, & 1994 c 132 § 1;
- (2) RCW 39.10.210 and 2013 c 222 § 1, 2010 1st sp.s. c 36 § 6014, 2007 c 494 § 101, & 2005 c 469 § 3;
- (3) RCW 39.10.220 and 2013 c 222 § 2, 2007 c 494 § 102, & 2005 c 377 § 1;
- (4) RCW 39.10.230 and 2013 c 222 § 3, 2010 1st sp.s. c 21 § 3, 2009 c 75 § 1, 2007 c 494 § 103, & 2005 c 377 § 2;
- (5) RCW 39.10.240 and 2013 c 222 § 4 & 2007 c 494 § 104;
- (6) RCW 39.10.250 and 2013 c 222 § 5, 2009 c 75 § 2, & 2007 c 494 § 105;
- (7) RCW 39.10.260 and 2013 c 222 § 6 & 2007 c 494 § 106;
- (8) RCW 39.10.270 and 2013 c 222 § 7, 2009 c 75 § 3, & 2007 c 494 § 107;
- (9) RCW 39.10.280 and 2013 c 222 § 8 & 2007 c 494 § 108;
- (10) RCW 39.10.290 and 2007 c 494 § 109;
- (11) RCW 39.10.300 and 2013 c 222 § 9, 2009 c 75 § 4, & 2007 c 494 § 201;
- (12) RCW 39.10.320 and 2013 c 222 § 10, 2007 c 494 § 203, & 1994 c 132 § 7;
- (13) RCW 39.10.330 and 2013 c 222 § 11, 2009 c 75 § 5, & 2007 c 494 § 204;
- (14) RCW 39.10.340 and 2013 c 222 § 12 & 2007 c 494 § 301;
- (15) RCW 39.10.350 and 2007 c 494 § 302;
- (16) RCW 39.10.360 and 2013 c 222 § 13, 2009 c 75 § 6, & 2007 c 494 § 303;
- (17) RCW 39.10.370 and 2007 c 494 § 304;
- (18) RCW 39.10.380 and 2013 c 222 § 14 & 2007 c 494 § 305;
- (19) RCW 39.10.385 and 2013 c 222 § 15 & 2010 c 163 § 1;
- (20) RCW 39.10.390 and 2013 c 222 § 16 & 2007 c 494 § 306;
- (21) RCW 39.10.400 and 2013 c 222 § 17 & 2007 c 494 § 307;
- (22) RCW 39.10.410 and 2007 c 494 § 308;
- (23) RCW 39.10.420 and 2013 c 222 § 18, 2013 c 186 § 1, 2012 c 102 § 1, 2009 c 75 § 7, 2007 c 494 § 401, & 2003 c 301 § 1;
- (24) RCW 39.10.430 and 2007 c 494 § 402;

- (25) RCW 39.10.440 and 2013 c 222 § 19 & 2007 c 494 § 403;
- (26) RCW 39.10.450 and 2012 c 102 § 2 & 2007 c 494 § 404;
- (27) RCW 39.10.460 and 2012 c 102 § 3 & 2007 c 494 § 405;
- (28) RCW 39.10.470 and 2005 c 274 § 275 & 1994 c 132 § 10;
- (29) RCW 39.10.480 and 1994 c 132 § 9;
- (30) RCW 39.10.490 and 2013 c 222 § 20, 2007 c 494 § 501, & 2001 c 328 § 5;
- (31) RCW 39.10.900 and 1994 c 132 § 13;
- (32) RCW 39.10.901 and 1994 c 132 § 14;
- (33) RCW 39.10.903 and 2007 c 494 § 510;
- (34) RCW 39.10.904 and 2007 c 494 § 512; and
- (35) RCW 39.10.905 and 2007 c 494 § 513. [2013 c 222 § 22; 2013 c 186 § 2; 2012 c 102 § 4; 2010 1st sp.s. c 21 § 5; 2007 c 494 § 507.]

Reviser's note: This section was amended by 2013 c 186 § 2 and by 2013 c 222 § 22, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2013 c 222: See note following RCW 39.10.210.

Intent—2010 1st sp.s. c 21: See note following RCW 39.10.200.

Part headings and captions not law—Effective dates—Severability—2007 c 494: See RCW 39.10.903 through 39.10.905.

43.131.416 Child and family reinvestment account and methodology for calculating savings—Repeal. The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective June 30, 2019:

- (1) 2012 c 204 § 1 (uncodified);
- (2) RCW 74.13.107 and 2013 c 332 § 12 & 2012 c 204 § 2; and
- (3) RCW 43.135.0341 and 2012 c 204 § 3. [2013 c 332 § 13; 2012 c 204 § 5.]

Findings—Recommendations—Application—2013 c 332: See notes following RCW 13.34.267.

Findings—Intent—2012 c 204: See note following RCW 74.13.107.

43.131.417 Joint center for aerospace technology innovation—Termination. The joint center for aerospace technology innovation shall be terminated July 1, 2020, as provided in RCW 43.131.418. [2013 2nd sp.s. c 24 § 2; 2012 c 242 § 3.]

43.131.418 Joint center for aerospace technology innovation—Repeal. The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective July 1, 2021:

- (1) RCW 28B.155.010 and 2012 c 242 § 1; and
- (2) RCW 28B.155.020 and 2012 c 242 § 2. [2013 2nd sp.s. c 24 § 3; 2012 c 242 § 4.]

43.131.900 Expiration of RCW 43.131.010 through 43.131.150—Exception. RCW 43.131.010 through 43.131.150 expire June 30, 2025, unless extended by law for an additional fixed period of time. [2013 c 44 § 2; 2000 c 189 § 12; 1988 c 17 § 2; 1982 c 223 § 16; 1979 c 22 § 3; 1977 ex.s. c 289 § 16.]

Finding—Intent—2013 c 44: "The legislature finds that the sunset review process allows the legislature to evaluate the need for the continued

existence of agencies and programs, to assess the effectiveness and performance of these agencies and programs, and to ensure public accountability. It is the intent of the legislature to continue using this important accountability tool." [2013 c 44 § 1.]

Chapter 43.135 RCW
STATE EXPENDITURES LIMITATIONS
(Formerly: Tax revenue limitations)

Sections

- 43.135.0342 Dedication of premium taxes under RCW 48.14.0201 or 48.14.020.
43.135.045 Education construction fund—Appropriation conditions.

43.135.0342 Dedication of premium taxes under RCW 48.14.0201 or 48.14.020. RCW 43.135.034(4) does not apply to the dedication of premium taxes established under RCW 48.14.0201(5)(b) or 48.14.020(2). [2013 2nd sp.s. c 6 § 4.]

43.135.045 Education construction fund—Appropriation conditions. The education construction fund is hereby created in the state treasury.

(1) Funds may be appropriated from the education construction fund exclusively for common school construction or higher education construction.

(2) Funds may be appropriated for any other purpose only if approved by a two-thirds vote of each house of the legislature and if approved by a vote of the people at the next general election. An appropriation approved by the people under this subsection must result in an adjustment to the state expenditure limit only for the fiscal period for which the appropriation is made and does not affect any subsequent fiscal period. [2013 2nd sp.s. c 9 § 5. Prior: 2012 2nd sp.s. c 5 § 1; 2012 1st sp.s. c 10 § 5; 2011 1st sp.s. c 50 § 950; 2010 1st sp.s. c 27 § 5; prior: 2009 c 564 § 939; 2009 c 479 § 37; prior: 2007 c 520 § 6035; 2007 c 484 § 5; prior: 2005 c 518 § 931; (2005 c 488 § 920 expired June 30, 2007); 2005 c 314 § 401; 2005 c 72 § 6; 2003 1st sp.s. c 25 § 920; prior: (2003 1st sp.s. c 26 § 919 expired June 30, 2005); (2003 1st sp.s. c 26 § 918 expired June 30, 2005); (2002 c 33 § 2 expired June 30, 2003); prior: 2001 c 3 § 9 (Initiative Measure No. 728, approved November 7, 2000); 2000 2nd sp.s. c 5 § 1; 2000 2nd sp.s. c 2 § 3; 1994 c 2 § 3 (Initiative Measure No. 601, approved November 2, 1993).]

Intent—Effective dates—2013 2nd sp.s. c 9: See notes following RCW 28A.150.220.

Effective date—2012 2nd sp.s. c 5: "Sections 1 and 3 through 12 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 2012." [2012 2nd sp.s. c 5 § 14.]

Purpose—Construction—2012 1st sp.s. c 10: See note following RCW 84.52.0531.

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

Findings—Intent—2010 1st sp.s. c 27: See note following RCW 28B.76.526.

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

Effective date—2009 c 479: See note following RCW 2.56.030.

Part headings not law—Severability—Effective dates—2007 c 520: See notes following RCW 43.19.125.

Contingent effective date—2007 c 484 §§ 2-8: See note following RCW 43.79.495.

Effective date—2005 c 518 § 931: "Section 931 (RCW 43.135.045) of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect June 30, 2005." [2005 c 518 § 1808.]

Severability—2005 c 518: See note following RCW 28A.500.030.

Expiration date—2005 c 488 §§ 920 and 921: "Sections 920 and 921 of this act expire June 30, 2007." [2005 c 488 § 955.]

Part headings not law—Severability—Effective dates—2005 c 488: See notes following RCW 28B.50.360.

Effective date—2005 c 314 §§ 101-107, 109, 303-309, and 401: See note following RCW 46.68.290.

Part headings not law—2005 c 314: See note following RCW 46.68.035.

Findings—Effective dates—2005 c 72: See notes following RCW 43.135.010.

Expiration date—2003 1st sp.s. c 26: "Sections 918 through 921, 926, and 929 of this act expire June 30, 2005." [2003 1st sp.s. c 26 § 927.]

Severability—2003 1st sp.s. c 26: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2003 1st sp.s. c 26 § 930.]

Effective dates—2003 1st sp.s. c 26: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 26, 2003], except for section 919 of this act which takes effect June 30, 2003." [2003 1st sp.s. c 26 § 931.]

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

Short title—Purpose—Intent—Construction—Effective dates—2001 c 3 (Initiative Measure No. 728): See notes following RCW 67.70.240.

Additional notes found at www.leg.wa.gov

Chapter 43.136 RCW
TERMINATION OF TAX PREFERENCES

Sections

- 43.136.047 Beekeeper evaluation. (*Expires July 1, 2017.*)
43.136.057 Review of hog fuel tax exemption by joint legislative audit and review committee. (*Expires June 30, 2024.*)
43.136.058 Review of tax preferences for sales of machinery and equipment used in generating electricity. (*Expires January 1, 2020.*)
43.136.080 Tax preference performance statements—Task force created.

43.136.047 Beekeeper evaluation. (*Expires July 1, 2017.*) (1) As part of the joint legislative audit and review committee's tax preference review under this chapter for the tax preferences contained within RCW 82.08.200, 82.12.200, 82.04.629, 82.04.630, 82.08.0204, and 82.12.0204, the joint legislative audit and review committee must also evaluate whether Washington state taxes are a disproportionately large percentage of a commercial beekeeper's operational or capital costs, including an analysis of the impact of Washington state taxes on similar sized businesses.

(2) This section expires July 1, 2017. [2013 2nd sp.s. c 13 § 304.]

Findings—Intent—Honey bee work group—Created—2013 2nd sp.s. c 13: See notes following RCW 82.08.200.

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.08.200.

43.136.057 Review of hog fuel tax exemption by joint legislative audit and review committee. (*Expires June 30, 2024.*) (1) The intent of the tax exemption provided in RCW 82.08.956 and 82.12.956 is to promote the retention of rela-

tively high wage jobs in the counties where facilities who purchase and use hog fuel are located. Specifically, in a time when there is increasing pressure to close industrial facilities like mills and relocate this economic activity out of state or overseas, rural areas of the state are at risk of losing critical jobs that directly, or indirectly, support entire communities. The legislature, in enacting the hog fuel tax exemption, hopes to retain seventy five percent of the jobs at each facility in the state at which the exemption is claimed, between now and June 30, 2024.

(2) The joint legislative audit and review committee must review the performance through July 1, 2018, of the tax preferences established in RCW 82.08.956 and 82.12.956, and prepare a report to the legislature by October 31, 2019.

(3) The department of revenue must provide the committee with annual survey information and any other tax data necessary to conduct the review required in subsection (2) of this section. The employment security department and other agencies, as requested, must cooperate with the committee by providing information about the average wage of employment in the county where each facility owned or operated by a company claiming the exemption is located. The report is not limited to, but must include, the following information:

(a) Identification of the baseline number of jobs existing as of January 1, 2013, in facilities where the preference has been claimed, as well as related wage and benefit information;

(b) Identification of how the number of jobs at these facilities has changed during the duration of the credit;

(c) Analysis of how the wages provided to employees at affected facilities compare to the average wages in the county in which the facility is located;

(d) Analysis of how the benefits, including medical and other health care benefits, provided to employees at affected facilities compare to the average wages in the county in which the facility is located; and

(e) Whether and to what extent the goal has been achieved, of retaining seventy-five percent of employment at the facilities at which the exemption has been claimed.

(4) This section expires June 30, 2024. [2013 2nd sp.s. c 13 § 1005.]

Intent—2013 2nd sp.s. c 13: See note following RCW 82.08.956.

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.08.200.

43.136.058 Review of tax preferences for sales of machinery and equipment used in generating electricity.

(Expires January 1, 2020.) (1) The intent of the tax preference provided in RCW 82.08.962 and 82.12.962 is to promote electricity generation by facilities with generating capacity of not less than one thousand watts, using renewable energy fuel sources in order to improve energy security and decrease greenhouse gas emissions. Encouraging the development of more facilities that generate power from renewable energy has both immediate and long-term value to the state.

(2) As part of the joint legislative audit and review committee's 2019 tax preference reviews conducted under this chapter, the joint legislative audit and review committee must assess the performance of the tax preferences established in

RCW 82.08.956 and 82.12.956 with reference to the intent and performance milestones established in this section.

(3) The department of revenue must provide the joint legislative audit and review committee with annual survey information and any other tax data necessary to conduct the review required in subsection (2) of this section. The Washington State University energy program, department of ecology, and other agencies, as requested, must cooperate with the committee by providing information to assist the committee's analysis.

(4) The report is not limited to, but must include, the following information:

(a) Identification of the baseline number of facilities, prior to July 1, 2009, with generating capacity of not less than one thousand watts, using fuel cells, wind, sun, biomass energy, tidal or wave energy, geothermal resources, anaerobic digestion, technology that converts otherwise lost energy from exhaust, or landfill gas as the principal source of power.

(b) The number of facilities developed each year by purchasers claiming the preference for machinery, equipment, labor, or other services, and the increase in the number of such facilities, as compared to the baseline established in (a) of this subsection.

(c) The total generating capacity in megawatts and total power production in kilowatt-hours of the facilities reported in (b) of this subsection.

(d) The estimated greenhouse gas emissions avoided as a result of power generation from renewable energy sources by the facilities reported in (b) of this subsection.

(e) The number of barrels of oil and tons of coal avoided as a result of power generation from renewable energy sources by the facilities reported in (b) of this subsection, as estimated from the average fuel mix of electricity generated statewide.

(f) The number of employees and wages and benefits reported by taxpayers claiming the exemption at the facilities reported in (a) of this subsection.

(g) Subject to data availability, analysis of how the wages and benefits reported in (e) of this subsection compare with statewide averages and averages in the county in which the facility is located.

(5) This section expires January 1, 2020. [2013 2nd sp.s. c 13 § 1504.]

Intent—2013 2nd sp.s. c 13: See note following RCW 82.08.962.

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.08.200.

43.136.080 Tax preference performance statements—Task force created.

(1) The legislative auditor, with the assistance of a task force, must make recommendations on the appropriate data and metrics that should be included in tax preference performance statements to evaluate new tax preferences, as provided under RCW 82.32.808.

(2)(a) The task force is comprised of five members: (i) One person from the department of revenue; (ii) one person from an association representing Washington businesses; (iii) one person from the office of financial management; (iv) the legislative auditor or a designee of the legislative auditor; and (v) an economist with substantial experience in state taxes.

(b) The task force must choose its chair from among its membership.

(3) By January 1, 2014, and in compliance with RCW 43.01.036, the legislative auditor must submit a report to the appropriate fiscal committees of the legislature the findings and recommendations of the task force. [2013 2nd sp.s. c 13 § 1703.]

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.04.43393.

Chapter 43.140 RCW GEOTHERMAL ENERGY

Sections

43.140.010 through 43.140.060 Repealed.
43.140.900 Repealed.

43.140.010 through 43.140.060 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

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

Chapter 43.143 RCW OCEAN RESOURCES MANAGEMENT ACT

Sections

43.143.050 Washington coastal marine advisory council.
43.143.060 Washington coastal marine advisory council—Duties.

43.143.050 Washington coastal marine advisory council. (1) The Washington coastal marine advisory council is established in the executive office of the governor to fulfill the duties outlined in RCW 43.143.060.

(2)(a) Voting members of the Washington coastal marine advisory council shall be appointed by the governor or the governor's designee. The council consists of the following voting members:

- (i) The governor or the governor's designee;
- (ii) The director or commissioner, or the director's or commissioner's designee, of the following agencies:
 - (A) The department of ecology;
 - (B) The department of natural resources;
 - (C) The department of fish and wildlife;
 - (D) The state parks and recreation commission;
 - (E) The department of commerce; and
 - (F) Washington sea grant;
- (iii) The following members of the Washington coastal marine advisory council established by the department of ecology and as existing on January 15, 2013:
 - (A) One citizen from a coastal community;
 - (B) Two persons representing coastal commercial fishing;
 - (C) One representative from a coastal conservation group;
 - (D) One representative from a coastal economic development group;
 - (E) One representative from an educational institution;
 - (F) Two representatives from energy industries or organizations, one of which must be from the coast;
 - (G) One person representing coastal recreation;
 - (H) One person representing coastal recreational fishing;

(I) One person representing coastal shellfish aquaculture;

(J) One representative from the coastal shipping industry;

(K) One representative from a science organization;

(L) One representative from the coastal Washington sustainable salmon partnership;

(M) One representative from a coastal port; and

(N) One representative from each outer coast marine resources committee, to be selected by the marine resources committee.

(b) The Washington coastal marine advisory council shall adopt bylaws and operating procedures that may be modified from time to time by the council.

(3) The Washington coastal marine advisory council may invite state, tribal, local governments, federal agencies, scientific experts, and others with responsibility for the study and management of coastal and ocean resources or regulation of coastal and ocean activities to designate a liaison to the council to attend council meetings, respond to council requests for technical and policy information, perform collaborative research, and review any draft materials prepared by the council. The council may also invite representatives from other coastal states or Canadian provinces to participate, when appropriate, as nonvoting members.

(4) The chair of the Washington coastal marine advisory council must be nominated and elected by a majority of councilmembers. The term of the chair is one year, and the position is eligible for reelection. The agenda for each meeting must be developed as a collaborative process by councilmembers.

(5) The term of office of each member appointed by the governor is four years. Members are eligible for reappointment.

(6) The Washington coastal marine advisory council shall utilize a consensus approach to decision making. The council may put a decision to a vote among councilmembers, in the event that consensus cannot be reached. The council must include in its bylaws guidelines describing how consensus works and when a lack of consensus among councilmembers will trigger a vote.

(7) Consistent with available resources, the Washington coastal marine advisory council may hire a neutral convener to assist in the performance of the council's duties, including but not limited to the dissemination of information to all parties, facilitating selected tasks as requested by the councilmembers, and facilitation of setting meeting agendas.

(8) The department of ecology shall provide administrative and primary staff support for the Washington coastal marine advisory council.

(9) The Washington coastal marine advisory council must meet at least twice each year or as needed.

(10) A majority of the members of the Washington coastal marine advisory council constitutes a quorum for the transaction of business. [2013 c 318 § 1.]

43.143.060 Washington coastal marine advisory council—Duties. (1) The duties of the Washington coastal marine advisory council established in RCW 43.143.050 are to:

(a) Serve as a forum for communication concerning coastal waters issues, including issues related to: Resource management; shellfish aquaculture; marine and coastal hazards; ocean energy; open ocean aquaculture; coastal waters research; education; and other coastal marine-related issues.

(b) Serve as a point of contact for, and collaborate with, the federal government, regional entities, and other state governments regarding coastal waters issues.

(c) Provide a forum to discuss coastal waters resource policy, planning, and management issues; provide either recommendations or modifications, or both, of principles, and, when appropriate, mediate disagreements.

(d) Serve as an interagency resource to respond to issues facing coastal communities and coastal waters resources in a collaborative manner.

(e) Identify and pursue public and private funding opportunities for the programs and activities of the council and for relevant programs and activities of member entities.

(f) Provide recommendations to the governor, the legislature, and state and local agencies on specific coastal waters resource management issues, including:

(i) Annual recommendations regarding coastal marine spatial planning expenditures and projects, including uses of the marine resources stewardship trust account created in RCW 43.372.070;

(ii) Principles and standards required for emerging new coastal uses;

(iii) Data gaps and opportunities for scientific research addressing coastal waters resource management issues;

(iv) Implementation of Washington's ocean action plan 2006;

(v) Development and implementation of coast-wide goals and strategies, including marine spatial planning; and

(vi) A coastal perspective regarding cross-boundary coastal issues.

(2) In making recommendations under this section, the Washington coastal marine advisory council shall consider:

(a) The principles and policies articulated in Washington's ocean action plan; and

(b) The protection and preservation of existing sustainable uses for current and future generations, including economic stakeholders reliant on marine waters to stabilize the vitality of the coastal economy. [2013 c 318 § 2.]

Chapter 43.155 RCW

PUBLIC WORKS PROJECTS

Sections

43.155.050 Public works assistance account.

43.155.070 Eligibility, priority, limitations, and exceptions.

43.155.050 Public works assistance account. The public works assistance account is hereby established in the state treasury. Money may be placed in the public works assistance account from the proceeds of bonds when authorized by the legislature or from any other lawful source. Money in the public works assistance account shall be used to make loans and to give financial guarantees to local governments for public works projects. Moneys in the account may also be appropriated to provide for state match requirements under federal law for projects and activities conducted and

financed by the board under the drinking water assistance account. Not more than fifteen percent of the biennial capital budget appropriation to the public works board from this account may be expended or obligated for preconstruction loans, emergency loans, or loans for capital facility planning under this chapter; of this amount, not more than ten percent of the biennial capital budget appropriation may be expended for emergency loans and not more than one percent of the biennial capital budget appropriation may be expended for capital facility planning loans. During the 2011-2013 and 2013-2015 fiscal biennium, the legislature may transfer from the public works assistance account to the general fund, the water pollution control revolving account, and the drinking water assistance account such amounts as reflect the excess fund balance of the account. During the 2011-2013 fiscal biennium, the legislature may appropriate moneys from the account for economic development, innovation, and export grants, including brownfields; main street improvement grants; and the loan program consolidation board. During the 2013-2015 fiscal biennium, the legislature may transfer from the public works assistance account to the education legacy trust account such amounts as specified by the legislature. [2013 2nd sp.s. c 4 § 983; 2012 2nd sp.s. c 2 § 6004; 2011 1st sp.s. c 50 § 951. Prior: 2010 1st sp.s. c 37 § 932; 2010 1st sp.s. c 36 § 6007; (2009 c 564 § 940 expired June 30, 2011); (2008 c 328 § 6002 expired June 30, 2011); 2007 c 520 § 6037; (2007 c 520 § 6036 expired June 30, 2011); prior: 2005 c 488 § 925; (2005 c 425 § 4 expired June 30, 2011); 2001 c 131 § 2; prior: 1995 2nd sp.s. c 18 § 918; 1995 c 376 § 11; 1993 sp.s. c 24 § 921; 1985 c 471 § 8.]

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

Effective date—2012 2nd sp.s. c 2: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 23, 2012]." [2012 2nd sp.s. c 2 § 6013.]

Effective date—2011 1st sp.s. c 50 § 951: "Section 951 of this act takes effect June 30, 2011." [2011 1st sp.s. c 50 § 952.]

Effective date—2010 1st sp.s. c 37: See note following RCW 13.06.050.

Effective date—2010 1st sp.s. c 36: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 4, 2010]." [2010 1st sp.s. c 36 § 6018.]

Expiration date—2009 c 564 § 940: "Section 940 of this act expires June 30, 2011." [2009 c 564 § 962.]

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

Expiration date—2008 c 328 § 6002: "Section 6002 of this act expires June 30, 2011." [2008 c 328 § 6018.]

Part headings not law—2008 c 328: "Part headings in this act are not any part of the law." [2008 c 328 § 6020.]

Severability—2008 c 328: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2008 c 328 § 6021.]

Effective date—2008 c 328: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 1, 2008]." [2008 c 328 § 6022.]

Expiration date—2007 c 520 § 6036: "Section 6036 of this act expires June 30, 2011." [2007 c 520 § 6039.]

Part headings not law—Severability—Effective dates—2007 c 520: See notes following RCW 43.19.125.

Part headings not law—Severability—Effective dates—2005 c 488: See notes following RCW 28B.50.360.

Finding—2005 c 425: "The legislature has and continues to recognize the vital importance of economic development to the health and prosperity of Washington state as indicated in RCW 43.160.010, 43.155.070(4)(g), 43.163.005, and 43.168.010. The legislature finds that current economic development programs and funding, which are primarily low-interest loan programs, can be enhanced by creating a grant program to assist with public infrastructure projects that directly stimulate community and economic development by supporting the creation of new jobs or the retention of existing jobs." [2005 c 425 § 1.]

Expiration date—2005 c 425: "This act expires June 30, 2011." [2005 c 425 § 6.]

Severability—2005 c 425: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2005 c 425 § 7.]

Findings—1995 c 376: See note following RCW 70.116.060.

Additional notes found at www.leg.wa.gov

43.155.070 Eligibility, priority, limitations, and exceptions. (1) To qualify for financial assistance under this chapter the board must determine that a local government meets all of the following conditions:

(a) The city or county must be imposing a tax under chapter 82.46 RCW at a rate of at least one-quarter of one percent;

(b) The local government must have developed a capital facility plan; and

(c) The local government must be using all local revenue sources which are reasonably available for funding public works, taking into consideration local employment and economic factors.

(2) Except where necessary to address a public health need or substantial environmental degradation, a county, city, or town planning under RCW 36.70A.040 may not receive financial assistance under this chapter unless it has adopted a comprehensive plan, including a capital facilities plan element, and development regulations as required by RCW 36.70A.040. This subsection does not require any county, city, or town planning under RCW 36.70A.040 to adopt a comprehensive plan or development regulations before requesting or receiving financial assistance under this chapter if such request is made before the expiration of the time periods specified in RCW 36.70A.040. A county, city, or town planning under RCW 36.70A.040 that has not adopted a comprehensive plan and development regulations within the time periods specified in RCW 36.70A.040 may apply for and receive financial assistance under this chapter if the comprehensive plan and development regulations are adopted as required by RCW 36.70A.040 before executing a contractual agreement for financial assistance with the board.

(3) In considering awarding financial assistance for public facilities to special districts requesting funding for a proposed facility located in a county, city, or town planning under RCW 36.70A.040, the board must consider whether the county, city, or town planning under RCW 36.70A.040 in whose planning jurisdiction the proposed facility is located has adopted a comprehensive plan and development regulations as required by RCW 36.70A.040.

(4) The board must develop a priority process for public works projects as provided in this section. The intent of the priority process is to maximize the value of public works

projects accomplished with assistance under this chapter. The board must attempt to assure a geographical balance in assigning priorities to projects. The board must consider at least the following factors in assigning a priority to a project:

(a) Whether the local government receiving assistance has experienced severe fiscal distress resulting from natural disaster or emergency public works needs;

(b) Except as otherwise conditioned by RCW 43.155.110, whether the entity receiving assistance is a Puget Sound partner, as defined in RCW 90.71.010;

(c) Whether the project is referenced in the action agenda developed by the Puget Sound partnership under RCW 90.71.310;

(d) Whether the project is critical in nature and would affect the health and safety of a great number of citizens;

(e) Whether the applicant's permitting process has been certified as streamlined by the office of regulatory assistance;

(f) Whether the applicant has developed and adhered to guidelines regarding its permitting process for those applying for development permits consistent with section 1(2), chapter 231, Laws of 2007;

(g) The cost of the project compared to the size of the local government and amount of loan money available;

(h) The number of communities served by or funding the project;

(i) Whether the project is located in an area of high unemployment, compared to the average state unemployment;

(j) Whether the project is the acquisition, expansion, improvement, or renovation by a local government of a public water system that is in violation of health and safety standards, including the cost of extending existing service to such a system;

(k) Except as otherwise conditioned by RCW 43.155.120, and effective one calendar year following the development of model evergreen community management plans and ordinances under RCW 35.105.050, whether the entity receiving assistance has been recognized, and what gradation of recognition was received, in the evergreen community recognition program created in RCW 35.105.030;

(l) The relative benefit of the project to the community, considering the present level of economic activity in the community and the existing local capacity to increase local economic activity in communities that have low economic growth; and

(m) Other criteria that the board considers advisable.

(5) For the 2013-2015 fiscal biennium, in place of the criteria, ranking, and submission processes for construction loan lists provided in subsections (4) and (7) of this section:

(a) The board must develop a process for numerically ranking applications for construction loans submitted by local governments. The board must consider, at a minimum and in any order, the following factors in assigning a numerical ranking to a project:

(i) Whether the project is critical in nature and would affect the health and safety of many people;

(ii) The extent to which the project leverages nonstate funds;

(iii) The extent to which the project is ready to proceed to construction;

(iv) Whether the project is located in an area of high unemployment, compared to the average state unemployment;

(v) Whether the project promotes the sustainable use of resources and environmental quality;

(vi) Whether the project consolidates or regionalizes systems;

(vii) Whether the project encourages economic development through mixed-use and mixed income development consistent with chapter 36.70A RCW;

(viii) Whether the system is being well-managed in the present and for long-term sustainability;

(ix) Achieving equitable distribution of funds by geography and population;

(x) The extent to which the project meets the following state policy objectives:

(A) Efficient use of state resources;

(B) Preservation and enhancement of health and safety;

(C) Abatement of pollution and protection of the environment;

(D) Creation of new, family wage jobs, and avoidance of shifting existing jobs from one Washington state community to another;

(E) Fostering economic development consistent with chapter 36.70A RCW;

(F) Efficiency in delivery of goods and services, public transit, and transportation;

(G) Avoidance of additional costs to state and local governments that adversely impact local residents and small businesses; and

(H) Reduction of the overall cost of public infrastructure; and

(xi) Other criteria that the board considers necessary to achieve the purposes of this chapter.

(b) Before November 1, 2014, the board must develop and submit to the appropriate fiscal committees of the senate and house of representatives a ranked list of qualified public works projects which have been evaluated by the board and are recommended for funding by the legislature. The maximum amount of funding that the board may recommend for any jurisdiction is ten million dollars per biennium. For each project on the ranked list, as well as for eligible projects not recommended for funding, the board must document the numerical ranking that was assigned.

(6) Existing debt or financial obligations of local governments may not be refinanced under this chapter. Each local government applicant must provide documentation of attempts to secure additional local or other sources of funding for each public works project for which financial assistance is sought under this chapter.

(7) Before November 1st of each even-numbered year, the board must develop and submit to the appropriate fiscal committees of the senate and house of representatives a description of the loans made under RCW 43.155.065, 43.155.068, and subsection (10) of this section during the preceding fiscal year and a prioritized list of projects which are recommended for funding by the legislature, including one copy to the staff of each of the committees. The list must include, but not be limited to, a description of each project and recommended financing, the terms and conditions of the loan or financial guarantee, the local government jurisdiction

and unemployment rate, demonstration of the jurisdiction's critical need for the project and documentation of local funds being used to finance the public works project. The list must also include measures of fiscal capacity for each jurisdiction recommended for financial assistance, compared to authorized limits and state averages, including local government sales taxes; real estate excise taxes; property taxes; and charges for or taxes on sewerage, water, garbage, and other utilities.

(8) The board may not sign contracts or otherwise financially obligate funds from the public works assistance account before the legislature has appropriated funds for a specific list of public works projects. The legislature may remove projects from the list recommended by the board. The legislature may not change the order of the priorities recommended for funding by the board.

(9) Subsection (8) of this section does not apply to loans made under RCW 43.155.065, 43.155.068, and subsection (10) of this section.

(10) Loans made for the purpose of capital facilities plans are exempted from subsection (8) of this section.

(11) To qualify for loans or pledges for solid waste or recycling facilities under this chapter, a city or county must demonstrate that the solid waste or recycling facility is consistent with and necessary to implement the comprehensive solid waste management plan adopted by the city or county under chapter 70.95 RCW.

(12) After January 1, 2010, any project designed to address the effects of storm water or wastewater on Puget Sound may be funded under this section only if the project is not in conflict with the action agenda developed by the Puget Sound partnership under RCW 90.71.310.

(13) During the 2013-2015 fiscal biennium, for projects involving repair, replacement, or improvement of a wastewater treatment plant or other public works facility for which an investment grade efficiency audit is obtainable, the public works board must require as a contract condition that the project sponsor undertake an investment grade efficiency audit. The project sponsor may finance the costs of the audit as part of its public works assistance account program loan.

(14)(a) For public works assistance account application rounds conducted during the 2013-2015 fiscal biennium, the board must implement policies and procedures designed to maximize local government use of federally funded drinking water and clean water state revolving funds operated by the state departments of health and ecology. The board, department of ecology, and department of health must jointly develop evaluation criteria and application procedures that will increase access of eligible drinking water and wastewater projects to the public works assistance account for short-term preconstruction financing and to the federally funded state revolving funds for construction financing. The procedures must also strengthen coordinated funding of preconstruction and construction projects.

(b) For all construction loan projects proposed to the legislature for funding during the 2013-2015 fiscal biennium, the board must base interest rates on the average daily market interest rate for tax-exempt municipal bonds as published in the bond buyer's index for the period from sixty to thirty days before the start of the application cycle. For projects with a repayment period between five and twenty years, the rate

must be sixty percent of the market rate. For projects with a repayment period under five years, the rate must be thirty percent of the market rate. The board must also provide reduced interest rates, extended repayment periods, or forgivable principal loans for projects that meet financial hardship criteria as measured by the affordability index or similar standard measure of financial hardship.

(c) By December 1, 2013, the board must recommend to the appropriate committees of the legislature statutory language to make permanent these new criteria, procedures, and financing policies. [2013 2nd sp.s. c 19 § 7032; 2013 c 275 § 3; 2012 c 196 § 9; 2009 c 518 § 16; 2008 c 299 § 25. Prior: 2007 c 341 § 24; 2007 c 231 § 2; 2001 c 131 § 5; 1999 c 164 § 602; 1997 c 429 § 29; 1996 c 168 § 3; 1995 c 363 § 3; 1993 c 39 § 1; 1991 sp.s. c 32 § 23; 1990 1st ex.s. c 17 § 82; 1990 c 133 § 6; 1988 c 93 § 3; 1987 c 505 § 40; 1985 c 446 § 12.]

Effective date—2013 2nd sp.s. c 19: See note following RCW 43.34.080.

Short title—2008 c 299: See note following RCW 35.105.010.

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

Findings—Recommendations—Reports encouraged—2007 c 231: "(1) The legislature finds that permit programs have been legislatively established to protect the health, welfare, economy, and environment of Washington's citizens and to provide a fair, competitive opportunity for business innovation and consumer confidence. The legislature also finds that uncertainty in government processes to permit an activity by a citizen of Washington state is undesirable and erodes confidence in government. The legislature further finds that in the case of projects that would further economic development in the state, information about the permitting process is critical for an applicant's planning and financial assessment of the proposed project. The legislature also finds that applicants have a responsibility to provide complete and accurate information.

(2) The legislature recommends that applicants be provided with the following information when applying for a development permit from a city, county, or state agency:

- (a) The minimum and maximum time an agency will need to make a decision on a permit, including public comment requirements;
- (b) The minimum amount of information required for an agency to make a decision on a permit;
- (c) When an agency considers an application complete for processing;
- (d) The minimum and maximum costs in agency fees that will be incurred by the permit applicant; and
- (e) The reasons for a denial of a permit in writing.

(3) In providing this information to applicants, an agency should base estimates on the best information available about the permitting program and prior applications for similar permits, as well as on the information provided by the applicant. New information provided by the applicant subsequent to the agency estimates may change the information provided by an agency per subsection (2) of this section. Project modifications by an applicant may result in more time, more information, or higher fees being required for permit processing.

(4) This section does not create an independent cause of action, affect any existing cause of action, or establish time limits for purposes of RCW 64.40.020.

(5) City, county, and state agencies issuing development permits are encouraged to track the progress in providing the information to applicants per subsection (2) of this section by preparing an annual report of its performance for the preceding fiscal year. The report should be posted on its web site [and] made available and provided to the appropriate standing committees of the senate and house of representatives." [2007 c 231 § 1.]

Findings—Intent—Part headings and subheadings not law—Effective date—Severability—1999 c 164: See notes following RCW 43.160.010.

Finding—Purpose—1995 c 363: See note following RCW 43.155.068.

Intent—1990 1st ex.s. c 17: See note following RCW 43.210.010.

Findings—Severability—1990 c 133: See notes following RCW 36.94.140.

Additional notes found at www.leg.wa.gov

Chapter 43.180 RCW HOUSING FINANCE COMMISSION

Sections

43.180.050 Housing financing powers—Annual audit.

43.180.050 Housing financing powers—Annual audit. (1) In addition to other powers and duties prescribed in this chapter, and in furtherance of the purposes of this chapter to provide decent, safe, sanitary, and affordable housing for eligible persons, the commission is empowered to:

- (a) Issue bonds in accordance with this chapter;
- (b) Invest in, purchase, or make commitments to purchase or take assignments from mortgage lenders of mortgages or mortgage loans;
- (c) Make loans to or deposits with mortgage lenders for the purpose of making mortgage loans;
- (d) Make loans for down payment assistance to home buyers in conjunction with other commission programs; and
- (e) Participate fully in federal and other governmental programs and to take such actions as are necessary and consistent with this chapter to secure to itself and the people of the state the benefits of those programs and to meet their requirements, including such actions as the commission considers appropriate in order to have the interest payments on its bonds and other obligations treated as tax exempt under the code.

(2) The commission shall establish eligibility standards for eligible persons, considering at least the following factors:

- (a) Income;
- (b) Family size;
- (c) Cost, condition, and energy efficiency of available residential housing;
- (d) Availability of decent, safe, and sanitary housing;
- (e) Age or infirmity; and
- (f) Applicable federal, state, and local requirements.

The state auditor shall audit the books, records, and affairs of the commission annually to determine, among other things, if the use of bond proceeds complies with the general plan of housing finance objectives including compliance with the objective for the use of financing assistance for implementation of cost-effective energy efficiency measures in dwellings. [2013 c 13 § 1; 1986 c 264 § 1; 1983 c 161 § 5.]

Effective date—2013 c 13: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 17, 2013]." [2013 c 13 § 2.]

Chapter 43.185 RCW HOUSING ASSISTANCE PROGRAM

Sections

- 43.185.020 Definitions.
- 43.185.050 Use of moneys for loans and grant projects to provide housing—Eligible activities.
- 43.185.070 Notice of grant and loan application period—Priorities—Criteria for evaluation.

43.185.020 Definitions. (1) "Contracted amount" means the aggregate amount of all state funds for which the department has monitoring and compliance responsibility.

(2) "Department" means the department of commerce.

(3) "Director" means the director of the department of commerce. [2013 c 145 § 1; 2009 c 565 § 37; 1995 c 399 § 101; 1986 c 298 § 3.]

43.185.050 Use of moneys for loans and grant projects to provide housing—Eligible activities. (1) The department must use moneys from the housing trust fund and other legislative appropriations to finance in whole or in part any loans or grant projects that will provide housing for persons and families with special housing needs and with incomes at or below fifty percent of the median family income for the county or standard metropolitan statistical area where the project is located. At least thirty percent of these moneys used in any given funding cycle shall be for the benefit of projects located in rural areas of the state as defined by the department. If the department determines that it has not received an adequate number of suitable applications for rural projects during any given funding cycle, the department may allocate unused moneys for projects in nonrural areas of the state.

(2) Activities eligible for assistance from the housing trust fund and other legislative appropriations include, but are not limited to:

(a) New construction, rehabilitation, or acquisition of low and very low-income housing units;

(b) Rent subsidies;

(c) Matching funds for social services directly related to providing housing for special-need tenants in assisted projects;

(d) Technical assistance, design and finance services and consultation, and administrative costs for eligible nonprofit community or neighborhood-based organizations;

(e) Administrative costs for housing assistance groups or organizations when such grant or loan will substantially increase the recipient's access to housing funds other than those available under this chapter;

(f) Shelters and related services for the homeless, including emergency shelters and overnight youth shelters;

(g) Mortgage subsidies, including temporary rental and mortgage payment subsidies to prevent homelessness;

(h) Mortgage insurance guarantee or payments for eligible projects;

(i) Down payment or closing cost assistance for eligible first-time home buyers;

(j) Acquisition of housing units for the purpose of preservation as low-income or very low-income housing; and

(k) Projects making housing more accessible to families with members who have disabilities.

(3) Legislative appropriations from capital bond proceeds may be used only for the costs of projects authorized under subsection (2)(a), (i), and (j) of this section, and not for the administrative costs of the department.

(4) Moneys from repayment of loans from appropriations from capital bond proceeds may be used for all activities necessary for the proper functioning of the housing assistance program except for activities authorized under subsection (2)(b) and (c) of this section.

(5) Administrative costs associated with application, distribution, and project development activities of the department may not exceed three percent of the annual funds available for the housing assistance program. Reappropriations must not be included in the calculation of the annual funds available for determining the administrative costs.

(6) Administrative costs associated with compliance and monitoring activities of the department may not exceed one-quarter of one percent annually of the contracted amount of state investment in the housing assistance program. [2013 c 145 § 2; 2011 1st sp.s. c 50 § 953; 2006 c 371 § 236. Prior: 2005 c 518 § 1801; 2005 c 219 § 1; 2002 c 294 § 6; 1994 c 160 § 1; 1991 c 356 § 4; 1986 c 298 § 6.]

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

Part headings not law—Severability—Effective date—2006 c 371: See notes following RCW 43.325.040.

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

Findings—2002 c 294: See note following RCW 36.22.178.

43.185.070 Notice of grant and loan application period—Priorities—Criteria for evaluation. (1) During each calendar year in which funds from the housing trust fund or other legislative appropriations are available for use by the department for the housing assistance program, the department must announce to all known interested parties, and through major media throughout the state, a grant and loan application period of at least ninety days' duration. This announcement must be made as often as the director deems appropriate for proper utilization of resources. The department must then promptly grant as many applications as will utilize available funds less appropriate administrative costs of the department as provided in RCW 43.185.050.

(2) In awarding funds under this chapter, the department must:

(a) Provide for a geographic distribution on a statewide basis; and

(b) Until June 30, 2013, consider the total cost and per-unit cost of each project for which an application is submitted for funding under RCW 43.185.050(2) (a) and (j), as compared to similar housing projects constructed or renovated within the same geographic area.

(3) The department, with advice and input from the affordable housing advisory board established in RCW 43.185B.020, or a subcommittee of the affordable housing advisory board, must report recommendations for awarding funds in a cost-effective manner. The report must include an implementation plan, timeline, and any other items the department identifies as important to consider to the legislature by December 1, 2012.

(4) The department must give first priority to applications for projects and activities which utilize existing privately owned housing stock including privately owned housing stock purchased by nonprofit public development authorities and public housing authorities as created in chapter 35.82 RCW. As used in this subsection, privately owned housing stock includes housing that is acquired by a federal agency through a default on the mortgage by the private owner. Such projects and activities must be evaluated under subsection (5) of this section. Second priority must be given

to activities and projects which utilize existing publicly owned housing stock. All projects and activities must be evaluated by some or all of the criteria under subsection (5) of this section, and similar projects and activities shall be evaluated under the same criteria.

(5) The department must give preference for applications based on some or all of the criteria under this subsection, and similar projects and activities must be evaluated under the same criteria:

(a) The degree of leveraging of other funds that will occur;

(b) The degree of commitment from programs to provide necessary habilitation and support services for projects focusing on special needs populations;

(c) Recipient contributions to total project costs, including allied contributions from other sources such as professional, craft and trade services, and lender interest rate subsidies;

(d) Local government project contributions in the form of infrastructure improvements, and others;

(e) Projects that encourage ownership, management, and other project-related responsibility opportunities;

(f) Projects that demonstrate a strong probability of serving the original target group or income level for a period of at least twenty-five years;

(g) The applicant has the demonstrated ability, stability and resources to implement the project;

(h) Projects which demonstrate serving the greatest need;

(i) Projects that provide housing for persons and families with the lowest incomes;

(j) Projects serving special needs populations which are under statutory mandate to develop community housing;

(k) Project location and access to employment centers in the region or area;

(l) Projects that provide employment and training opportunities for disadvantaged youth under a youthbuild or youthbuild-type program as defined in RCW 50.72.020; and

(m) Project location and access to available public transportation services.

(6) The department may only approve applications for projects for persons with mental illness that are consistent with a regional support network six-year capital and operating plan. [2013 c 145 § 3; 2012 c 235 § 1. Prior: 2005 c 518 § 1802; 2005 c 219 § 2; 1994 sp.s. c 3 § 9; prior: 1991 c 356 § 5; 1991 c 295 § 2; 1988 c 286 § 1; 1986 c 298 § 8.]

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

Chapter 43.185A RCW AFFORDABLE HOUSING PROGRAM

Sections

- 43.185A.010 Definitions.
43.185A.030 Activities eligible for assistance.
43.185A.050 Grant and loan application process—Report.

43.185A.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Affordable housing" means residential housing for rental occupancy which, as long as the same is occupied by low-income households, requires payment of monthly housing costs, including utilities other than telephone, of no more than thirty percent of the family's income. The department must adopt policies for residential homeownership housing, occupied by low-income households, which specify the percentage of family income that may be spent on monthly housing costs, including utilities other than telephone, to qualify as affordable housing.

(2) "Contracted amount" has the same meaning as provided in RCW 43.185.020.

(3) "Department" means the department of commerce.

(4) "Director" means the director of the department of commerce.

(5) "First-time home buyer" means an individual or his or her spouse or domestic partner who have not owned a home during the three-year period prior to purchase of a home.

(6) "Low-income household" means a single person, family or unrelated persons living together whose adjusted income is less than eighty percent of the median family income, adjusted for household size, for the county where the project is located. [2013 c 145 § 4; 2009 c 565 § 38; 2008 c 6 § 301; 2000 c 255 § 9; 1995 c 399 § 102; 1991 c 356 § 10.]

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

Additional notes found at www.leg.wa.gov

43.185A.030 Activities eligible for assistance. (1) Using moneys specifically appropriated for such purpose, the department shall finance in whole or in part projects that will provide housing for low-income households.

(2) Activities eligible for assistance include, but are not limited to:

(a) New construction, rehabilitation, or acquisition of housing for low-income households;

(b) Rent subsidies in new construction or rehabilitated multifamily units;

(c) Down payment or closing costs assistance for first-time home buyers;

(d) Mortgage subsidies for new construction or rehabilitation of eligible multifamily units; and

(e) Mortgage insurance guarantee or payments for eligible projects.

(3) Legislative appropriations from capital bond proceeds may be used only for the costs of projects authorized under subsection (2)(a), (c), (d), and (e) of this section, and not for the administrative costs of the department.

(4) Moneys from repayment of loans from appropriations from capital bond proceeds may be used for all activities necessary for the proper functioning of the affordable housing program except for activities authorized under subsection (2)(b) of this section.

(5) Administrative costs associated with application, distribution, and project development activities of the department may not exceed three percent of the annual funds available for the affordable housing program. Reappropriations must not be included in the calculation of the annual funds available for determining the administrative costs.

(6) Administrative costs associated with compliance and monitoring activities of the department may not exceed one-quarter of one percent annually of the contracted amount of state investment in the affordable housing program. [2013 c 145 § 5; 2011 1st sp.s. c 50 § 954. Prior: 2005 c 518 § 1803; 2005 c 219 § 3; 1994 c 160 § 3; 1991 c 356 § 12.]

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

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

43.185A.050 Grant and loan application process—

Report. (1) During each calendar year in which funds are available for use by the department for the affordable housing program, the department must announce to all known interested parties, and through major media throughout the state, a grant and loan application period of at least ninety days' duration. This announcement must be made as often as the director deems appropriate for proper utilization of resources. The department must then promptly grant as many applications as will utilize available funds less appropriate administrative costs of the department as provided in RCW 43.185A.030.

(2) Until June 30, 2013, for applications submitted for funding under RCW 43.185A.030(2)(a), the department must consider total cost and per-unit cost of each project compared to similar housing projects constructed or renovated within the same geographic area.

(3) The department must develop, with advice and input from the affordable housing advisory board established in RCW 43.185B.020, or a subcommittee of the affordable housing advisory board:

(a) Additional criteria to evaluate applications for assistance under this chapter; and

(b) Recommendations for awarding funds under RCW 43.185A.030(2)(a) in a cost-effective manner, including an implementation plan, timeline, and any other items the department identifies as important to consider. The department must submit a report with the recommendations to the legislature by December 1, 2012. [2013 c 145 § 6; 2012 c 235 § 2; 1991 c 356 § 14.]

Chapter 43.185C RCW

HOMELESS HOUSING AND ASSISTANCE

Sections

- 43.185C.030 Washington homeless census or count—Confidentiality—Online information and referral system—Organizational quality management system. (*Effective July 1, 2014.*)
- 43.185C.220 Essential needs and housing support program—Distribution of funds. (*Effective January 1, 2014.*)
- 43.185C.230 Verification of eligibility—Medical care services. (*Effective January 1, 2014.*)

43.185C.030 Washington homeless census or count—Confidentiality—Online information and referral system—Organizational quality management system. (*Effective July 1, 2014.*) The department shall annually conduct a Washington homeless census or count consistent with the requirements of RCW 43.185C.180. The census shall make every effort to count all homeless individuals living outdoors, in shelters, and in transitional housing, coordinated, when reasonably feasible, with already existing homeless

census projects including those funded in part by the United States department of housing and urban development under the McKinney-Vento homeless assistance program. The department shall determine, in consultation with local governments, the data to be collected.

All personal information collected in the census is confidential, and the department and each local government shall take all necessary steps to protect the identity and confidentiality of each person counted.

The department and each local government are prohibited from disclosing any personally identifying information about any homeless individual when there is reason to believe or evidence indicating that the homeless individual is an adult or minor victim of domestic violence, dating violence, sexual assault, or stalking or is the parent or guardian of a child victim of domestic violence, dating violence, sexual assault, or stalking; or revealing other confidential information regarding HIV/AIDS status, as found in RCW 70.02.220. The department and each local government shall not ask any homeless housing provider to disclose personally identifying information about any homeless individuals when the providers implementing those programs have reason to believe or evidence indicating that those clients are adult or minor victims of domestic violence, dating violence, sexual assault, or stalking or are the parents or guardians of child victims of domestic violence, dating violence, sexual assault, or stalking. Summary data for the provider's facility or program may be substituted.

The Washington homeless census shall be conducted annually on a schedule created by the department. The department shall make summary data by county available to the public each year. This data, and its analysis, shall be included in the department's annual updated homeless housing program strategic plan.

Based on the annual census and provider information from the local government plans, the department shall, by the end of year four, implement an online information and referral system to enable local governments and providers to identify available housing for a homeless person. The department shall work with local governments and their providers to develop a capacity for continuous case management to assist homeless persons.

By the end of year four, the department shall implement an organizational quality management system. [2013 c 200 § 25; 2005 c 484 § 6.]

Effective date—2013 c 200: See note following RCW 70.02.010.

43.185C.220 Essential needs and housing support program—Distribution of funds. (*Effective January 1, 2014.*) (1) The department shall distribute funds for the essential needs and housing support program established under this section in a manner consistent with the requirements of this section and the biennial operating budget. The first distribution of funds must be completed by September 1, 2011. Essential needs or housing support is only for persons found eligible for such services under RCW 74.04.805 and is not considered an entitlement.

(2) The department shall distribute funds appropriated for the essential needs and housing support program in the form of grants to designated essential needs support and housing support entities within each county. The department

shall not distribute any funds until it approves the expenditure plan submitted by the designated essential needs support and housing support entities. The amount of funds to be distributed pursuant to this section shall be designated in the biennial operating budget. For the sole purpose of meeting the initial distribution of funds date, the department may distribute partial funds upon the department's approval of a preliminary expenditure plan. The department shall not distribute the remaining funds until it has approved a final expenditure plan.

(3)(a) During the 2011-2013 biennium, in awarding housing support that is not funded through the contingency fund in this subsection, the designated housing support entity shall provide housing support to clients who are homeless persons as defined in RCW 43.185C.010. As provided in the biennial operating budget for the 2011-2013 biennium, a contingency fund shall be used solely for those clients who are at substantial risk of losing stable housing or at substantial risk of losing one of the other services defined in RCW 74.62.010(6). For purposes of this chapter, "substantial risk" means the client has provided documentation that he or she will lose his or her housing within the next thirty days or that the services will be discontinued within the next thirty days.

(b) After July 1, 2013, the designated housing support entity shall give first priority to clients who are homeless persons as defined in RCW 43.185C.010 and second priority to clients who would be at substantial risk of losing stable housing without housing support.

(4) For each county, the department shall designate an essential needs support entity and a housing support entity that will begin providing these supports to medical care services program recipients on November 1, 2011. Essential needs and housing support entities are not required to provide assistance to every person referred to the local entity or who meets the priority standards in subsection (3) of this section.

(a) Each designated entity must be a local government or community-based organization, and may administer the funding for essential needs support, housing support, or both. Designated entities have the authority to subcontract with qualified entities. Upon request, and the approval of the department, two or more counties may combine resources to more effectively deliver services.

(b) The department's designation process must include a review of proficiency in managing housing or human services programs when designating housing support entities.

(c) Within a county, if the department directly awards separate grants to the designated housing support entity and the designated essential needs support entity, the department shall determine the amount allocated for essential needs support as directed in the biennial operating budget.

(5)(a) Essential needs and housing support entities must use funds distributed under this section as flexibly as is practicable to provide essential needs items and housing support to recipients of the essential needs and housing support program, subject to the requirements of this section.

(b) Benefits provided under the essential needs and housing support program shall not be provided to recipients in the form of cash assistance.

(c) The appropriations by the legislature for the purposes of the essential needs and housing support program established under this section shall be based on forecasted pro-

gram caseloads. The caseload forecast council shall provide a courtesy forecast of the population eligible for a referral for essential needs and housing support that is homeless or is included in reporting under subsection (7)(c)(iii) of this section. The department may move funds between entities or between counties to reflect actual caseload changes. In doing so, the department must: (i) Develop a process for reviewing the caseload of designated essential needs and housing support entities, and for redistributing grant funds from those entities experiencing reduced actual caseloads to those with increased actual caseloads; and (ii) inform all designated entities of the redistribution process. Savings resulting from program caseload attrition from the essential needs and housing support program shall not result in increased per-client expenditures.

(d) Essential needs and housing support entities must partner with other public and private organizations to maximize the beneficial impact of funds distributed under this section, and should attempt to leverage other sources of public and private funds to serve essential needs and housing support recipients. Funds appropriated in the operating budget for essential needs and housing support must be used only to serve persons eligible to receive services under that program.

(6) The department shall use no more than five percent of the funds for administration of the essential needs and housing support program. Each essential needs and housing support entity shall use no more than seven percent of the funds for administrative expenses.

(7) The department shall:

(a) Require housing support entities to enter data into the homeless client management information system;

(b) Require essential needs support entities to report on services provided under this section;

(c) In collaboration with the department of social and health services, submit a report annually to the relevant policy and fiscal committees of the legislature. A preliminary report shall be submitted by December 31, 2011, and must include (c)(i), (iii), and (v) of this subsection. Annual reports must be submitted beginning December 1, 2012, and must include:

(i) A description of the actions the department has taken to achieve the objectives of chapter 36, Laws of 2011 1st sess.;

(ii) The amount of funds used by the department to administer the program;

(iii) Information on the housing status of essential needs and housing support recipients served by housing support entities, and individuals who have requested housing support but did not receive housing support;

(iv) Grantee expenditure data related to administration and services provided under this section; and

(v) Efforts made to partner with other entities and leverage sources or public and private funds;

(d) Review the data submitted by the designated entities, and make recommendations for program improvements and administrative efficiencies. The department has the authority to designate alternative entities as necessary due to performance or other significant issues. Such change must only be made after consultation with the department of social and health services and the impacted entity.

(8) The department, counties, and essential needs and housing support entities are not civilly or criminally liable and may not have any penalty or cause of action of any nature arise against them related to decisions regarding: (a) The provision or lack of provision of housing or essential needs support; or (b) the type of housing arrangement supported with funds allocated under this section, when the decision was made in good faith and in the performance of the powers and duties under this section. However, this section does not prohibit legal actions against the department, county, or essential needs or housing support entity to enforce contractual duties or obligations. [2013 2nd sp.s. c 10 § 4; 2011 1st sp.s. c 36 § 4.]

Effective date—2013 2nd sp.s. c 10: See note following RCW 74.62.030.

Findings—Intent—2011 1st sp.s. c 36: See RCW 74.62.005.

Effective date—2011 1st sp.s. c 36: See note following RCW 74.62.005.

43.185C.230 Verification of eligibility—Medical care services. (Effective January 1, 2014.) The department, in collaboration with the department of social and health services, shall develop a mechanism through which the department and local governments or community-based organizations can verify a person has been determined eligible by the department of social and health services and remains eligible for the essential needs and housing support program. [2013 2nd sp.s. c 10 § 5; 2011 1st sp.s. c 36 § 5.]

Effective date—2013 2nd sp.s. c 10: See note following RCW 74.62.030.

Findings—Intent—2011 1st sp.s. c 36: See RCW 74.62.005.

Effective date—2011 1st sp.s. c 36: See note following RCW 74.62.005.

Chapter 43.190 RCW

LONG-TERM CARE OMBUDS PROGRAM

Sections

43.190.010	Findings.
43.190.030	Office of state long-term care ombuds created—Powers and duties—Rules.
43.190.040	Long-term care ombuds.
43.190.050	Posting of notice by long-term care facility—Distribution of information to residents.
43.190.060	Duties of ombuds.
43.190.065	Local and state long-term care ombuds—Duties and authority in federal older Americans act.
43.190.070	Referral procedures—Action on complaints.
43.190.080	Development of procedures on right of entry to facilities—Access to residents—Preservation of rights.
43.190.090	Liability of ombuds—Discriminatory, disciplinary, or retaliatory actions—Communications privileged—Testimony.
43.190.110	Confidentiality of records and files—Disclosures prohibited—Exception.
43.190.120	Expenditure of funds on long-term care ombuds program.

43.190.010 Findings. The legislature finds that in order to comply with the federal older Americans act and to effectively assist residents, patients, and clients of long-term care facilities in the assertion of their civil and human rights, a long-term care ombuds program should be instituted. [2013 c 23 § 88; 1983 c 290 § 1.]

43.190.030 Office of state long-term care ombuds created—Powers and duties—Rules. There is created the

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office of the state long-term care ombuds. The department of commerce shall contract with a private nonprofit organization to provide long-term care ombuds services as specified under, and consistent with, the federal older Americans act as amended, federal mandates, the goals of the state, and the needs of its citizens. The department of commerce shall ensure that all program and staff support necessary to enable the ombuds to effectively protect the interests of residents, patients, and clients of all long-term care facilities is provided by the nonprofit organization that contracts to provide long-term care ombuds services. The department of commerce shall adopt rules to carry out this chapter and the long-term care ombuds provisions of the federal older Americans act, as amended, and applicable federal regulations. The long-term care ombuds program shall have the following powers and duties:

(1) To provide services for coordinating the activities of long-term care ombuds throughout the state;

(2) Carry out such other activities as the department of commerce deems appropriate;

(3) Establish procedures consistent with RCW 43.190.110 for appropriate access by long-term care ombuds to long-term care facilities and patients' records, including procedures to protect the confidentiality of the records and ensure that the identity of any complainant or resident will not be disclosed without the written consent of the complainant or resident, or upon court order;

(4) Establish a statewide uniform reporting system to collect and analyze data relating to complaints and conditions in long-term care facilities for the purpose of identifying and resolving significant problems, with provision for submission of such data to the department of social and health services and to the federal department of health and human services, or its successor agency, on a regular basis; and

(5) Establish procedures to assure that any files maintained by ombuds programs shall be disclosed only at the discretion of the ombuds having authority over the disposition of such files, except that the identity of any complainant or resident of a long-term care facility shall not be disclosed by such ombuds unless:

(a) Such complainant or resident, or the complainant's or resident's legal representative, consents in writing to such disclosure; or

(b) Such disclosure is required by court order. [2013 c 23 § 89; 1997 c 194 § 1; 1995 c 399 § 105; 1988 c 119 § 2; 1983 c 290 § 3.]

Legislative findings—1988 c 119: "The legislature recognizes that the state long-term care ombudsman program and the office of the state long-term care ombudsman, located within the department of social and health services, have brought into serious question the ability of that office to serve as an effective mechanism on the state level for investigating and resolving complaints made by or on behalf of residents of long-term care facilities.

The legislature further finds it necessary to exercise its options under the federal older Americans act and identify an organization, outside of the department of social and health services and independent of any other state agency, to provide, through contract, long-term care ombudsman services." [1988 c 119 § 1.]

Use of survey findings—1988 c 119: "The survey findings, together with any reports of legislative committees in response to such survey, shall be used by the department of community development in determining the best manner to contract for and provide long-term care ombudsman services." [1988 c 119 § 4.]

Additional notes found at www.leg.wa.gov

43.190.040 Long-term care ombuds. (1) Any long-term care ombuds authorized by this chapter or a local governmental authority shall have training or experience or both in the following areas:

(a) Gerontology, long-term care, or other related social services programs.

(b) The legal system.

(c) Dispute or problem resolution techniques, including investigation, mediation, and negotiation.

(2) A long-term care ombuds shall not have been employed by or participated in the management of any long-term care facility within the past year.

(3) A long-term care ombuds shall not have been employed in a governmental position with direct involvement in the licensing, certification, or regulation of long-term care facilities within the past year.

(4) No long-term care ombuds or any member of his or her immediate family shall have, or have had within the past year, any significant ownership or investment interest in one or more long-term care facilities.

(5) A long-term care ombuds shall not be assigned to a long-term care facility in which a member of that ombuds's immediate family resides. [2013 c 23 § 90; 2002 c 100 § 1; 1983 c 290 § 4.]

43.190.050 Posting of notice by long-term care facility—Distribution of information to residents. Every long-term care facility shall post in a conspicuous location a notice of the nursing home complaint toll-free number and the name, address, and phone number of the office of the appropriate long-term care ombuds and a brief description of the services provided by the office. The form of the notice shall be approved by the office and the organization responsible for maintaining the nursing home complaint toll-free number. This information shall also be distributed to the residents, family members, and legal guardians upon the resident's admission to the facility. [2013 c 23 § 91; 1983 c 290 § 5.]

43.190.060 Duties of ombuds. A long-term care ombuds shall:

(1) Identify, investigate, and resolve complaints made by or on behalf of residents of long-term care facilities relating to administrative action, inaction, or decisions which may adversely affect the health, safety, welfare, and rights of these individuals;

(2) Monitor the development and implementation of federal, state, and local laws, rules, regulations, and policies with respect to long-term care facilities in this state;

(3) Provide information as appropriate to residents, resident representatives, and others regarding the rights of residents, and to public agencies regarding the problems of individuals residing in long-term care facilities; and

(4) Provide for training volunteers and promoting the development of citizen organizations to participate in the ombuds program. A trained volunteer long-term care ombuds, in accordance with the policies and procedures established by the state long-term care ombuds program, shall inform residents, their representatives, and others about the rights of residents, and may identify, investigate, and resolve complaints made by or on behalf of residents of long-term care facilities relating to action, inaction, or decisions,

that may adversely affect the health, safety, welfare, and rights of these individuals.

Nothing in chapter 133, Laws of 1999 shall be construed to empower the state long-term care ombuds or any local long-term care ombuds with statutory or regulatory licensing or sanctioning authority. [2013 c 23 § 92; 1999 c 133 § 1; 1995 1st sp.s. c 18 § 33; 1987 c 158 § 3; 1983 c 290 § 6.]

Definitions: See RCW 74.39.007.

Additional notes found at www.leg.wa.gov

43.190.065 Local and state long-term care ombuds—Duties and authority in federal older Americans act. A local long-term care ombuds, including a trained volunteer long-term care ombuds, shall have the duties and authority set forth in the federal older Americans act (42 U.S.C. Sec. 3058 et seq.) for local ombuds. The state long-term care ombuds and representatives of the office of the state long-term care ombuds, shall have the duties and authority set forth in the federal older Americans act for the state long-term care ombuds and representatives of the office of the state long-term care ombuds. [2013 c 23 § 93; 1999 c 133 § 2.]

Additional notes found at www.leg.wa.gov

43.190.070 Referral procedures—Action on complaints. (1) The office of the state long-term care ombuds shall develop referral procedures for all long-term care ombuds programs to refer any complaint to any appropriate state or local government agency. The department of social and health services shall act as quickly as possible on any complaint referred to them by a long-term care ombuds.

(2) The department of social and health services shall respond to any complaint against a long-term care facility which was referred to it by a long-term care ombuds and shall forward to that ombuds a summary of the results of the investigation and action proposed or taken. [2013 c 23 § 94; 1983 c 290 § 7.]

43.190.080 Development of procedures on right of entry to facilities—Access to residents—Preservation of rights. (1) The office of the state long-term care ombuds shall develop procedures governing the right of entry of all long-term care ombuds to long-term care facilities and shall have access to residents with provisions made for privacy for the purpose of hearing, investigating, and resolving complaints of, and rendering advice to, individuals who are patients or residents of the facilities at any time deemed necessary and reasonable by the state ombuds to effectively carry out the provisions of this chapter.

(2) Nothing in this chapter restricts, limits, or increases any existing right of any organizations or individuals not described in subsection (1) of this section to enter or provide assistance to patients or residents of long-term care facilities.

(3) Nothing in this chapter restricts any right or privilege of any patient or resident of a long-term care facility to receive visitors of his or her choice. [2013 c 23 § 95; 1983 c 290 § 8.]

43.190.090 Liability of ombuds—Discriminatory, disciplinary, or retaliatory actions—Communications privileged—Testimony. (1) No long-term care ombuds is

liable for good faith performance of responsibilities under this chapter.

(2) No discriminatory, disciplinary, or retaliatory action may be taken against any employee of a facility or agency, any patient, resident, or client of a long-term care facility, or any volunteer, for any communication made, or information given or disclosed, to aid the long-term care ombuds in carrying out its duties and responsibilities, unless the same was done maliciously or without good faith. This subsection is not intended to infringe on the rights of the employer to supervise, discipline, or terminate an employee for other reasons.

(3) All communications by a long-term care ombuds, if reasonably related to the requirements of that individual's responsibilities under this chapter and done in good faith, are privileged and that privilege shall serve as a defense to any action in libel or slander.

(4) A representative of the office is exempt from being required to testify in court as to any confidential matters except as the court may deem necessary to enforce this chapter. [2013 c 23 § 96; 1983 c 290 § 9.]

43.190.110 Confidentiality of records and files—Disclosures prohibited—Exception. All records and files of long-term care ombuds relating to any complaint or investigation made pursuant to carrying out their duties and the identities of complainants, witnesses, patients, or residents shall remain confidential unless disclosure is authorized by the patient or resident or his or her guardian or legal representative. No disclosures may be made outside the office without the consent of any named witnesses, resident, patient, client, or complainant unless the disclosure is made without the identity of any of these individuals being disclosed. [2013 c 23 § 97; 1983 c 290 § 11.]

43.190.120 Expenditure of funds on long-term care ombuds program. It is the intent that federal requirements be complied with and the department annually expend at least one percent of the state's allotment of social services funds from Title III B of the older Americans act of 1965, as it exists as of July 24, 1983, or twenty thousand dollars, whichever is greater to establish the state long-term care ombuds program established by this chapter if funds are appropriated by the legislature. [2013 c 23 § 98; 1983 c 290 § 12.]

Chapter 43.215 RCW

DEPARTMENT OF EARLY LEARNING

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

(1) "Agency" means any person, firm, partnership, association, corporation, or facility that provides child care and early learning services outside a child's own home and includes the following irrespective of whether there is compensation to the agency:

(a) "Child day care center" means an agency that regularly provides early childhood education and early learning services for a group of children for periods of less than twenty-four hours;

(b) "Early learning" includes but is not limited to programs and services for child care; state, federal, private, and nonprofit preschool; child care subsidies; child care resource and referral; parental education and support; and training and professional development for early learning professionals;

(c) "Family day care provider" means a child care provider who regularly provides early childhood education and early learning services for not more than twelve children in the provider's home in the family living quarters;

(d) "Nongovernmental private-public partnership" means an entity registered as a nonprofit corporation in Washington state with a primary focus on early learning, school readiness, and parental support, and an ability to raise a minimum of five million dollars in contributions;

(e) "Service provider" means the entity that operates a community facility.

(2) "Agency" does not include the following:

(a) Persons related to the child in the following ways:

(i) Any blood relative, including those of half-blood, and including first cousins, nephews or nieces, and persons of preceding generations as denoted by prefixes of grand, great, or great-great;

(ii) Stepfather, stepmother, stepbrother, and stepsister;

(iii) A person who legally adopts a child or the child's parent as well as the natural and other legally adopted children of such persons, and other relatives of the adoptive parents in accordance with state law; or

(iv) Spouses of any persons named in (a)(i), (ii), or (iii) of this subsection, even after the marriage is terminated;

(b) Persons who are legal guardians of the child;

(c) Persons who care for a neighbor's or friend's child or children, with or without compensation, where the person providing care for periods of less than twenty-four hours does not conduct such activity on an ongoing, regularly scheduled basis for the purpose of engaging in business, which includes, but is not limited to, advertising such care;

(d) Parents on a mutually cooperative basis exchange care of one another's children;

(e) Nursery schools that are engaged primarily in early childhood education with preschool children and in which no child is enrolled on a regular basis for more than four hours per day;

(f) Schools, including boarding schools, that are engaged primarily in education, operate on a definite school year schedule, follow a stated academic curriculum, accept only school-age children, and do not accept custody of children;

(g) Seasonal camps of three months' or less duration engaged primarily in recreational or educational activities;

(h) Facilities providing child care for periods of less than twenty-four hours when a parent or legal guardian of the child remains on the premises of the facility for the purpose of participating in:

(i) Activities other than employment; or

(ii) Employment of up to two hours per day when the facility is operated by a nonprofit entity that also operates a licensed child care program at the same facility in another location or at another facility;

(i) Any entity that provides recreational or educational programming for school-aged children only and the entity meets all of the following requirements:

(i) The entity utilizes a drop-in model for programming, where children are able to attend during any or all program hours without a formal reservation;

(ii) The entity does not assume responsibility in lieu of the parent, unless for coordinated transportation;

(iii) The entity is a local affiliate of a national nonprofit; and

(iv) The entity is in compliance with all safety and quality standards set by the associated national agency;

(j) A program operated by any unit of local, state, or federal government or an agency, located within the boundaries of a federally recognized Indian reservation, licensed by the Indian tribe;

(k) A program located on a federal military reservation, except where the military authorities request that such agency be subject to the licensing requirements of this chapter;

(l) A program that offers early learning and support services, such as parent education, and does not provide child care services on a regular basis.

(3) "Applicant" means a person who requests or seeks employment in an agency.

(4) "Conviction information" means criminal history record information relating to an incident which has led to a conviction or other disposition adverse to the applicant.

(5) "Department" means the department of early learning.

(6) "Director" means the director of the department.

(7) "Early achievers" means a program that improves the quality of early learning programs and supports and rewards providers for their participation.

(8) "Early start" means an integrated high quality continuum of early learning programs for children birth-to-five years of age. Components of early start include, but are not limited to, the following:

(a) Home visiting and parent education and support programs;

(b) The early achievers program described in RCW 43.215.100;

(c) Integrated full-day and part-day high quality early learning programs; and

(d) High quality preschool for children whose family income is at or below one hundred ten percent of the federal poverty level.

(9) "Employer" means a person or business that engages the services of one or more people, especially for wages or salary to work in an agency.

(10) "Enforcement action" means denial, suspension, revocation, modification, or nonrenewal of a license pursuant to RCW 43.215.300(1) or assessment of civil monetary penalties pursuant to RCW 43.215.300(3).

(11) "Negative action" means a court order, court judgment, or an adverse action taken by an agency, in any state, federal, tribal, or foreign jurisdiction, which results in a finding against the applicant reasonably related to the individual's character, suitability, and competence to care for or have unsupervised access to children in child care. This may include, but is not limited to:

(a) A decision issued by an administrative law judge;

(b) A final determination, decision, or finding made by an agency following an investigation;

(c) An adverse agency action, including termination, revocation, or denial of a license or certification, or if pending adverse agency action, the voluntary surrender of a license, certification, or contract in lieu of the adverse action;

(d) A revocation, denial, or restriction placed on any professional license; or

(e) A final decision of a disciplinary board.

(12) "Nonconviction information" means arrest, founded allegations of child abuse, or neglect pursuant to chapter 26.44 RCW, or other negative action adverse to the applicant.

(13) "Probationary license" means a license issued as a disciplinary measure to an agency that has previously been issued a full license but is out of compliance with licensing standards.

(14) "Requirement" means any rule, regulation, or standard of care to be maintained by an agency.

(15) "Washington state preschool program" means an education program for children three-to-five years of age who have not yet entered kindergarten, such as the early childhood education and assistance program. [2013 c 323 § 3; 2013 c 130 § 1. Prior: 2011 c 295 § 3; 2011 c 78 § 1; prior: 2007 c 415 § 2; 2007 c 394 § 2; 2006 c 265 § 102.]

Reviser's note: This section was amended by 2013 c 130 § 1 and by 2013 c 323 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Captions not law—2007 c 415: See note following RCW 43.215.005.

Finding—Declaration—2007 c 394: "The legislature finds that education is the single most effective investment that can be made in children, the state, the economy, and the future. A well-educated citizenry is essential both for the preservation of democracy and for enhancing the state's ability to compete in the knowledge-based global economy.

As recommended by Washington learns, the legislature declares that the overarching goal for education in the state is to have a world-class, learner-focused, seamless education system that educates more Washingtonians to the highest levels of educational attainment." [2007 c 394 § 1.]

Captions not law—2007 c 394: "Captions used in this act are not any part of the law." [2007 c 394 § 8.]

43.215.020 Department created—Primary duties.

(1) The department of early learning is created as an executive branch agency. The department is vested with all powers and duties transferred to it under this chapter and such other powers and duties as may be authorized by law.

(2) The primary duties of the department are to implement state early learning policy and to coordinate, consolidate, and integrate child care and early learning programs in order to administer programs and funding as efficiently as possible. The department's duties include, but are not limited to, the following:

(a) To support both public and private sectors toward a comprehensive and collaborative system of early learning that serves parents, children, and providers and to encourage best practices in child care and early learning programs;

(b) To make early learning resources available to parents and caregivers;

(c) To carry out activities, including providing clear and easily accessible information about quality and improving the quality of early learning opportunities for young children, in cooperation with the nongovernmental private-public partnership;

(d) To administer child care and early learning programs;

(e) To apply data already collected comparing the following factors and make biennial recommendations to the legislature regarding working connections subsidy and state-funded preschool rates and compensation models that would attract and retain high quality early learning professionals:

(i) State-funded early learning subsidy rates and market rates of licensed early learning homes and centers;

(ii) Compensation of early learning educators in licensed centers and homes and early learning teachers at state higher education institutions;

(iii) State-funded preschool program compensation rates and Washington state head start program compensation rates; and

(iv) State-funded preschool program compensation to compensation in similar comprehensive programs in other states;

(f) To serve as the state lead agency for Part C of the federal individuals with disabilities education act (IDEA);

(g) To standardize internal financial audits, oversight visits, performance benchmarks, and licensing criteria, so that programs can function in an integrated fashion;

(h) To support the implementation of the nongovernmental private-public partnership and cooperate with that partnership in pursuing its goals including providing data and support necessary for the successful work of the partnership;

(i) To work cooperatively and in coordination with the early learning council;

(j) To collaborate with the K-12 school system at the state and local levels to ensure appropriate connections and smooth transitions between early learning and K-12 programs;

(k) To develop and adopt rules for administration of the program of early learning established in *RCW 43.215.141;

(l) To develop a comprehensive birth-to-three plan to provide education and support through a continuum of options including, but not limited to, services such as: Home visiting; quality incentives for infant and toddler child care subsidies; quality improvements for family home and center-

based child care programs serving infants and toddlers; professional development; early literacy programs; and informal supports for family, friend, and neighbor caregivers; and

(m) Upon the development of an early learning information system, to make available to parents timely inspection and licensing action information and provider comments through the internet and other means.

(3) When additional funds are appropriated for the specific purpose of home visiting and parent and caregiver support, the department must reserve at least eighty percent for home visiting services to be deposited into the home visiting services account and up to twenty percent of the new funds for other parent or caregiver support.

(4) Home visiting services must include programs that serve families involved in the child welfare system.

(5) Subject to the availability of amounts appropriated for this specific purpose, the legislature shall fund the expansion in the Washington state preschool program pursuant to **RCW 43.215.142 in fiscal year 2014.

(6) The department's programs shall be designed in a way that respects and preserves the ability of parents and legal guardians to direct the education, development, and upbringing of their children, and that recognizes and honors cultural and linguistic diversity. The department shall include parents and legal guardians in the development of policies and program decisions affecting their children. [2013 c 323 § 5. Prior: 2010 c 233 § 1; 2010 c 232 § 2; 2010 c 231 § 6; 2007 c 394 § 5; 2006 c 265 § 103.]

Reviser's note: *(1) RCW 43.215.141 was recodified as RCW 43.215.455 pursuant to 2013 2nd sp.s. c 16 § 5.

***(2) RCW 43.215.142 was recodified as RCW 43.215.456 pursuant to 2013 2nd sp.s. c 16 § 5.

Effective date—2010 c 233: "This act takes effect July 1, 2010." [2010 c 233 § 4.]

Finding—Declaration—Captions not law—2007 c 394: See notes following RCW 43.215.010.

43.215.100 Early achievers program—Voluntary quality rating and improvement system—Report to the legislature.

(1) Subject to the availability of amounts appropriated for this specific purpose, the department, in collaboration with community and statewide partners, shall implement a voluntary quality rating and improvement system, called the early achievers program, that is applicable to licensed or certified child care centers and homes and early education programs.

(2) The purpose of the early achievers program is: (a) To give parents clear and easily accessible information about the quality of child care and early education programs, support improvement in early learning programs throughout the state, increase the readiness of children for school, and close the disparity in access to quality care; and (b) to establish a common set of expectations and standards that define, measure, and improve the quality of early learning settings.

(3) Participation in the early achievers program is voluntary for licensed or certified child care centers and homes.

(4) By fiscal year 2015, Washington state preschool programs receiving state funds must enroll in the early achievers program and maintain a minimum score level.

(5) Before final implementation of the early achievers program, the department shall report on program progress, as defined within the race to the top federal grant award, and

expenditures to the appropriate policy and fiscal committees of the legislature. Nothing in this section changes the department's responsibility to collectively bargain over mandatory subjects. [2013 c 323 § 6; 2007 c 394 § 4.]

Finding—Declaration—Captions not law—2007 c 394: See notes following RCW 43.215.010.

43.215.130 Home visiting services account—Purpose—Administration—Funding. (1)(a) The home visiting services account is created in the state treasury. Revenues to the account shall consist of appropriations by the legislature and all other sources deposited in the account. All federal funds received by the department for home visiting activities must be deposited into the account.

(b)(i) Expenditures from the account shall be used for state matching funds for the purposes of the program established in this section and federally funded activities for the home visiting program, including administrative expenses.

(ii) The department oversees the account and is the lead state agency for home visiting system development. The nongovernmental private-public partnership administers the home visiting service delivery system and provides implementation support functions to funded programs.

(iii) It is the intent of the legislature that state funds invested in the account be matched at fifty percent by the private-public partnership each fiscal year. However, state funds in the account may be accessed in the event that the private-public partnership fails to meet the fifty percent match target. Should the private-public partnership not meet the fifty percent match target by the conclusion of the fiscal year ending on June 30th, the department and the private-public partnership, shall jointly submit a report to the relevant legislative committees detailing the reasons why the fifty percent match target was not met, the actual match rate achieved, and a plan to achieve fifty percent match in the subsequent fiscal year. This report shall be submitted as promptly as practicable, but the lack of receipt of this report shall not prevent state funds in the account from being accessed.

(iv) Amounts used for program administration by the department may not exceed an average of four percent in any two consecutive fiscal years.

(v) Authorizations for expenditures may be given only after private funds are committed. The nongovernmental private-public partnership must report to the department quarterly to demonstrate sufficient investment of private match funds.

(c) Expenditures from the account are subject to appropriation and the allotment provisions of chapter 43.88 RCW.

(2) The department must expend moneys from the account to provide state matching funds for partnership activities to implement home visiting services and administer the infrastructure necessary to develop, support, and evaluate evidence-based, research-based, and promising home visiting programs.

(3) Activities eligible for funding through the account include, but are not limited to:

(a) Home visiting services that achieve one or more of the following: (i) Enhancing child development and well-being by alleviating the effects on child development of poverty and other known risk factors; (ii) reducing the incidence

of child abuse and neglect; or (iii) promoting school readiness for young children and their families; and

(b) Development and maintenance of the infrastructure for home visiting programs, including training, quality improvement, and evaluation.

(4) Beginning July 1, 2010, the department shall contract with the nongovernmental private-public partnership designated in RCW 43.215.070 to administer programs funded through the home visiting services account. The department shall monitor performance and provide periodic reports on the use outcomes of the home visiting services account.

(5) The nongovernmental private-public partnership shall, in the administration of the programs:

(a) Fund programs through a competitive bid process or in compliance with the regulations of the funding source; and

(b) Convene an advisory committee of early learning and home visiting experts, including one representative from the department, to advise the partnership regarding research and the distribution of funds from the account to eligible programs. [2013 c 165 § 1; 2010 1st sp.s. c 37 § 933.]

Effective date—2010 1st sp.s. c 37: See note following RCW 13.06.050.

43.215.135 Working connections child care program—Subsidy authorization. (1) The department shall establish and implement policies in the working connections child care program to promote stability and quality of care for children from low-income households. Policies for the expenditure of funds constituting the working connections child care program must be consistent with the outcome measures defined in RCW 74.08A.410 and the standards established in this section intended to promote continuity of care for children.

(2) Beginning in fiscal year 2013, authorizations for the working connections child care subsidy shall be effective for twelve months unless a change in circumstances necessitates reauthorization sooner than twelve months. The twelve-month certification applies only if the enrollments in the child care subsidy or working connections child care program are capped.

(3) Subject to the availability of amounts appropriated for this specific purpose, beginning September 1, 2013, working connections child care providers shall receive a five percent increase in the subsidy rate for enrolling in level 2 in the early achievers programs. Providers must complete level 2 and advance to level 3 within thirty months in order to maintain this increase. [2013 c 323 § 9. Prior: 2012 c 253 § 5; 2012 c 251 § 1; 2011 1st sp.s. c 42 § 11; 2010 c 273 § 2.]

Findings—Purpose—2012 c 253: See note following RCW 74.08.580.

Effective date—2012 c 251: "This act takes effect July 1, 2012." [2012 c 251 § 3.]

Findings—Intent—Effective date—2011 1st sp.s. c 42: See notes following RCW 74.08A.260.

Finding—2011 1st sp.s. c 42: See note following RCW 74.04.004.

Intent—2010 c 273: "It is the intent of the legislature that this act be implemented within the funding appropriated in the 2009-11 biennial budget. No additional appropriations will be provided for its implementation." [2010 c 273 § 7.]

43.215.136 Working connections child care program—Standards and guidelines—Duties of the depart-

ment—Duties of the department of social and health services. (1) The standards and guidelines described in this section are intended for the guidance of the department and the department of social and health services. They are not intended to, do not, and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law by a party in litigation with the state.

(2) When providing services to parents applying for or receiving working connections child care benefits, the department must provide training to departmental employees on professionalism.

(3) When providing services to parents applying for or receiving working connections child care benefits, the department of social and health services has the following responsibilities:

(a) To return all calls from parents receiving working connections child care benefits within two business days of receiving the call;

(b) To develop a process by which parents receiving working connections child care benefits can submit required forms and information electronically by June 30, 2015;

(c) To notify providers and parents ten days before the loss of working connections child care benefits; and

(d) To provide parents with a document that explains in detail and in easily understood language what services they are eligible for, how they can appeal an adverse decision, and the parents' responsibilities in obtaining and maintaining eligibility for working connections child care. [2013 c 337 § 1.]

43.215.141 Recodified as RCW 43.215.455. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.142 Recodified as RCW 43.215.456. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.143 Recodified as RCW 43.215.457. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.210 Fire protection—Powers and duties of chief of the Washington state patrol. The chief of the Washington state patrol, through the director of fire protection, shall have the power and it shall be his or her duty:

(1) In consultation with the director and with the advice and assistance of persons representative of the various type agencies to be licensed, to adopt recognized minimum standard requirements pertaining to each category of agency established pursuant to this chapter necessary to protect all persons residing therein from fire hazards;

(2) To adopt licensing minimum standard requirements to allow children who attend classes in a school building during school hours to remain in the same building to participate in before-school or after-school programs and to allow participation in such before-school and after-school programs by children who attend other schools and are transported to attend such before-school and after-school programs;

(3) To make or cause to be made such inspections and investigations of agencies as he or she deems necessary;

(4) To make a periodic review of requirements under *RCW 43.215.200(5) and to adopt necessary changes after consultation as required in subsection (1) of this section;

(5) To issue to applicants for licenses under this chapter who comply with the requirements, a certificate of compliance, a copy of which shall be presented to the department before a license shall be issued, except that an initial license may be issued as provided in RCW 43.215.280. [2013 c 227 § 1; 2006 c 265 § 302.]

***Reviser's note:** RCW 43.215.200 was amended by 2007 c 415 § 3, changing subsection (5) to subsection (6). RCW 43.215.200 was subsequently amended by 2011 c 359 § 2 and by 2011 c 253 § 3, changing subsection (6) to subsection (8).

43.215.405 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 43.215.400 through 43.215.450, 43.215.455, 43.215.456, 43.215.457, and 43.215.900 through 43.215.903.

(1) "Advisory committee" means the advisory committee under RCW 43.215.420.

(2) "Approved programs" means those state-supported education and special assistance programs which are recognized by the department as meeting the minimum program rules adopted by the department to qualify under RCW 43.215.400 through 43.215.450 and 43.215.900 through 43.215.903 and are designated as eligible for funding by the department under RCW 43.215.430 and 43.215.440.

(3) "Comprehensive" means an assistance program that focuses on the needs of the child and includes education, health, and family support services.

(4) "Department" means the department of early learning.

(5) "Eligible child" means a child not eligible for kindergarten whose family income is at or below one hundred ten percent of the federal poverty level, as published annually by the federal department of health and human services, and includes a child whose family is eligible for public assistance, and who is not a participant in a federal or state program providing comprehensive services; a child eligible for special education due to disability under RCW 28A.155.020; and may include children who are eligible under rules adopted by the department if the number of such children equals not more than ten percent of the total enrollment in the early childhood program. Priority for enrollment shall be given to children from families with the lowest income, children in foster care, or to eligible children from families with multiple needs.

(6) "Family support services" means providing opportunities for parents to:

(a) Actively participate in their child's early childhood program;

(b) Increase their knowledge of child development and parenting skills;

(c) Further their education and training;

(d) Increase their ability to use needed services in the community;

(e) Increase their self-reliance. [2013 2nd sp.s. c 16 § 4. Prior: 2010 c 231 § 7; 2006 c 265 § 210; 1999 c 350 § 1; 1994 c 166 § 2; 1990 c 33 § 213; 1988 c 174 § 2; 1985 c 418 § 2. Formerly RCW 28A.215.110, 28A.34A.020.]

Findings—Intent—2013 2nd sp.s. c 16: "The legislature finds that high quality early learning opportunities are an important factor in lifelong success. The legislature is committed to expanding high quality evidence-based early learning opportunities in order to improve educational outcomes. The legislature further finds that moving toward effective and research-based practices are critical in achieving educational and societal outcomes from early learning investments. The legislature intends to continue improvements in early learning through ongoing evaluation, application of emerging research, and enhanced quality assurance. It is the intent of the legislature that additional investments in early learning will be based on current information regarding the most efficient, research-based, and cost-effective investments." [2013 2nd sp.s. c 16 § 1.]

Findings—1994 c 166; 1988 c 174: "The legislature finds that the early childhood education and assistance program provides for the educational, social, health, nutritional, and cultural development of children at risk of failure when they reach school age. The long-term benefits to society in the form of greater educational attainment, employment, and projected lifetime earnings as well as the savings to be realized, from lower crime rates, welfare support, and reduced teenage pregnancy, have been demonstrated through lifelong research of at-risk children and early childhood programs.

The legislature intends to encourage development of community partnerships for children at risk by authorizing a program of voluntary grants and contributions from business and community organizations to increase opportunities for children to participate in early childhood education." [1994 c 166 § 3; 1988 c 174 § 1.]

Additional notes found at www.leg.wa.gov

43.215.430 Review of applications. The department shall review applications from public or private nonsectarian organizations for state funding of early childhood education and assistance programs. The department shall consider local community needs, demonstrated capacity, and the need to support a mixed delivery system of early learning that includes alternative models for delivery including licensed centers and licensed family child care providers when reviewing applications. [2013 c 323 § 7; 1994 c 166 § 8; 1988 c 174 § 7; 1985 c 418 § 7. Formerly RCW 28A.215.160, 28A.34A.070.]

Findings—1994 c 166; 1988 c 174: See note following RCW 43.215.405.

Additional notes found at www.leg.wa.gov

43.215.455 Early learning program—Voluntary preschool opportunities—Program standards. (1) Beginning September 1, 2011, an early learning program to provide voluntary preschool opportunities for children three and four years of age shall be implemented according to the funding and implementation plan in *RCW 43.215.142. The program must be a comprehensive program providing early childhood education and family support, options for parental involvement, and health information, screening, and referral services, as family need is determined. Participation in the program is voluntary. On a space available basis, the program may allow enrollment of children who are not otherwise eligible by assessing a fee.

(2) The first phase of the program shall be implemented by utilizing the program standards and eligibility criteria in the early childhood education and assistance program.

(3) The director shall adopt rules for the following program components, as appropriate and necessary during the phased implementation of the program:

(a) Minimum program standards, including lead teacher, assistant teacher, and staff qualifications;

(b) Approval of program providers; and

(c) Accountability and adherence to performance standards.

(4) The department has administrative responsibility for:

(a) Approving and contracting with providers according to rules developed by the director under this section;

(b) In partnership with school districts, monitoring program quality and assuring the program is responsive to the needs of eligible children;

(c) Assuring that program providers work cooperatively with school districts to coordinate the transition from preschool to kindergarten so that children and their families are well-prepared and supported; and

(d) Providing technical assistance to contracted providers. [2010 c 231 § 3. Formerly RCW 43.215.141.]

*Reviser's note: RCW 43.215.142 was recodified as RCW 43.215.456 pursuant to 2013 2nd sp.s. c 16 § 5.

43.215.456 Early learning program—Voluntary preschool opportunities—Funding and statewide implementation—Reports. (1) Funding for the program of early learning established under this chapter must be appropriated to the department. Allocations must be made on the basis of eligible children enrolled with eligible providers.

(2) The program shall be implemented in phases, so that full implementation is achieved in the 2018-19 school year.

(3) For the initial phase of the early learning program in school years 2011-12 and 2012-13, the legislature shall appropriate funding to the department for implementation of the program in an amount not less than the 2009-2011 enacted budget for the early childhood education and assistance program. The appropriation shall be sufficient to fund an equivalent number of slots as funded in the 2009-2011 enacted budget.

(4) Beginning in the 2013-14 school year, additional funding for the program must be phased in beginning in school districts providing all-day kindergarten programs under RCW 28A.150.315.

(5) Funding shall continue to be phased in incrementally each year until full statewide implementation of the early learning program is achieved in the 2018-19 school year, at which time any eligible child shall be entitled to be enrolled in the program.

(6) The department and the office of financial management shall annually review the caseload forecasts for the program and, beginning December 1, 2012, and annually thereafter, report to the governor and the appropriate committees of the legislature with recommendations for phasing in additional funding necessary to achieve statewide implementation in the 2018-19 school year.

(7) School districts and approved community-based early learning providers may contract with the department to provide services under the program. The department shall collaborate with school districts, community-based providers, and educational service districts to promote an adequate supply of approved providers. [2010 c 231 § 4. Formerly RCW 43.215.142.]

43.215.457 Short title—2010 c 231. Chapter 231, Laws of 2010 may be known as the ready for school act of 2010. [2010 c 231 § 9. Formerly RCW 43.215.143.]

43.215.460 Findings—Intent—Early start program. The legislature finds that the first five years of a child's life

establish the foundation for educational success. The legislature also finds that children who have high quality early learning opportunities from birth through age five are more likely to succeed throughout their K-12 education and beyond. The legislature further finds that the benefits of high quality early learning experiences are particularly significant for low-income parents and children, and provide an opportunity to narrow the opportunity gap in Washington's K-12 educational system. The legislature understands that early supports for high-risk parents of young children through home visiting services show a high return on investment due to significantly improved chances of better education, health, and life outcomes for children. The legislature further recognizes that, when parents work or go to school, high quality and full-day early learning opportunities should be available and accessible for their children. In order to improve education outcomes, particularly for low-income children, the legislature is committed to expanding high quality early learning opportunities and integrating currently disparate funding streams for all birth-to-five early learning services including, working connections child care and the early childhood education and assistance program, into a single high quality continuum of learning that provides essential services to low-income families and prepares all enrolled children for success in school. The legislature therefore intends to establish the early start program to provide a continuum of high quality and accountable early learning opportunities for Washington's parents and children. [2013 c 323 § 1.]

43.215.510 Child care workers—Career and wage ladder—Wage increases. Child care centers adopting the child care career and wage ladder established pursuant to RCW 43.215.505 shall increase wages for child care workers who have earned a high school diploma or high school equivalency certificate as provided in RCW 28B.50.536, gain additional years of experience, or accept increasing levels of responsibility in providing child care, in accordance with the child care career and wage ladder. The adoption of a child care career and wage ladder shall not prohibit the provision of wage increases based upon merit. The department shall pay wage increments for child care workers employed by child care centers adopting the child care career and wage ladder established pursuant to RCW 43.215.505 who earn early childhood education credits or meet relevant requirements in the state training and registry system, in accordance with the child care career and wage ladder. [2013 c 39 § 20; 2006 c 265 § 206; 2005 c 507 § 3. Formerly RCW 74.13.099.]

43.215.520 Child day care centers, family day care providers—Toll-free information number. (1) The department shall establish and maintain a toll-free telephone number, and an interactive web-based system through which persons may obtain information regarding child day care centers and family day care providers. This number shall be available twenty-four hours a day for persons to request information. The department shall respond to recorded messages left at the number within two business days. The number shall be published in reasonably available printed and electronic media. The number shall be easily identifiable as a number through which persons may obtain information regarding

child day care centers and family day care providers as set forth in this section.

(2) Through the toll-free telephone line established by this section, the department shall provide information to callers about: (a) Whether a day care provider is licensed; (b) whether a day care provider's license is current; (c) the general nature of any enforcement against the providers; (d) how to report suspected or observed noncompliance with licensing requirements; (e) how to report alleged abuse or neglect in a day care; (f) how to report health, safety, and welfare concerns in a day care; (g) how to receive follow-up assistance, including information on the office of the family and children's ombuds; and (h) how to receive referral information on other agencies or entities that may be of further assistance to the caller.

(3) Beginning in January 2006, the department shall print the toll-free number established by this section on the face of new licenses issued to child day care centers and family day care providers.

(4) This section shall not be construed to require the disclosure of any information that is exempt from public disclosure under chapter 42.56 RCW. [2013 c 23 § 99; 2006 c 209 § 10; 2005 c 473 § 3. Formerly RCW 74.15.310.]

Effective date—2006 c 209: See RCW 42.56.903.

Purpose—2005 c 473: See note following RCW 74.15.300.

43.215.545 Child care services. The department of early learning shall:

(1) Work in conjunction with the statewide child care resource and referral network as well as local governments, nonprofit organizations, businesses, and community child care advocates to create local child care resource and referral organizations. These organizations may carry out needs assessments, resource development, provider training, technical assistance, and parent information and training;

(2) Actively seek public and private money for distribution as grants to the statewide child care resource and referral network and to existing or potential local child care resource and referral organizations;

(3) Adopt rules regarding the application for and distribution of grants to local child care resource and referral organizations. The rules shall, at a minimum, require an applicant to submit a plan for achieving the following objectives:

(a) Provide parents with information about child care resources, including location of services and subsidies;

(b) Carry out child care provider recruitment and training programs, including training under RCW 74.25.040;

(c) Offer support services, such as parent and provider seminars, toy-lending libraries, and substitute banks;

(d) Provide information for businesses regarding child care supply and demand;

(e) Advocate for increased public and private sector resources devoted to child care;

(f) Provide technical assistance to employers regarding employee child care services; and

(g) Serve recipients of temporary assistance for needy families and working parents with incomes at or below household incomes of two hundred percent of the federal poverty line;

(4) Provide staff support and technical assistance to the statewide child care resource and referral network and local child care resource and referral organizations;

(5) Maintain a statewide child care licensing data bank and work with department licensors to provide information to local child care resource and referral organizations about licensed child care providers in the state;

(6) Through the statewide child care resource and referral network and local resource and referral organizations, compile data about local child care needs and availability for future planning and development;

(7) Coordinate with the statewide child care resource and referral network and local child care resource and referral organizations for the provision of training and technical assistance to child care providers;

(8) Collect and assemble information regarding the availability of insurance and of federal and other child care funding to assist state and local agencies, businesses, and other child care providers in offering child care services;

(9) Subject to the availability of amounts appropriated for this specific purpose, beginning September 1, 2013, increase the base rate for all child care providers by ten percent;

(10) Subject to the availability of amounts appropriated for this specific purpose, provide tiered subsidy rate enhancements to child care providers if the provider meets the following requirements:

(a) The provider enrolls in quality rating and improvement system levels 2, 3, 4, or 5;

(b) The provider is actively participating in the early achievers program;

(c) The provider continues to advance towards level 5 of the early achievers program; and

(d) The provider must complete level 2 within thirty months or the reimbursement rate returns the level 1 rate; and

(11) Require exempt providers to participate in continuing education, if adequate funding is available. [2013 c 323 § 8; 2006 c 265 § 204; 2005 c 490 § 10; 1997 c 58 § 404; 1993 c 453 § 2; 1991 sp.s. c 16 § 924; 1989 c 381 § 5. Formerly RCW 74.13.0903.]

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

Effective date—2005 c 490: See note following RCW 43.215.540.

Finding—1997 c 58: "The legislature finds that informed choice is consistent with individual responsibility and that parents should be given a range of options for available child care while participating in the program." [1997 c 58 § 401.]

Finding—1993 c 453: "The legislature finds that building a system of quality, affordable child care requires coordinated efforts toward constructing partnerships at state and community levels. Through the office of child care policy, the department of social and health services is responsible for facilitating the coordination of child care efforts and establishing working partnerships among the affected entities within the public and private sectors. Through these collaborative efforts, the office of child care policy encouraged the coalition of locally based child care resource and referral agencies into a statewide network. The statewide network, in existence since 1989, supports the development and operation of community-based resource and referral programs, improves the quality and quantity of child care available in Washington by fostering statewide strategies, and generates then nurtures effective public-private partnerships. The statewide network provides important training, standards of service, and general technical assistance to its locally based child care resource and referral programs. The locally based programs enrich the availability, affordability, and quality of child care in their communities." [1993 c 453 § 1.]

Findings—Severability—1989 c 381: See notes following RCW 43.215.495.

Additional notes found at www.leg.wa.gov

43.215.562 Child care subsidy fraud—Referral—Collection of overpayments. (1) The department must refer all suspected incidents of child care subsidy fraud to the department of social and health services office of fraud and accountability for appropriate investigation and action.

(2) For the purposes of this section, "fraud" has the definition in RCW 74.04.004.

(3) This section does not limit or preclude the department or the department of social and health services from establishing and collecting overpayments consistent with federal regulation or seek other remedies that may be legally available, including but not limited to criminal investigation or prosecution. [2013 2nd sp.s. c 29 § 2.]

Finding—Intent—2013 2nd sp.s. c 29: "The legislature finds that child care providers positively contribute to local communities by offering important services that support the well-being of children and their families. The legislature further recognizes that most child care providers make every effort to ensure that subsidy payments received are correct and align with agency rules. When a child care provider is found to have fraudulently accepted subsidy payments, however, it is the legislature's intent to prohibit such a provider from receiving future child care subsidy payments." [2013 2nd sp.s. c 29 § 1.]

Chapter 43.280 RCW

COMMUNITY TREATMENT SERVICES FOR VICTIMS OF SEXUAL ASSAULT

(Formerly: Community treatment services for victims of sex offenders)

Sections

43.280.091 Statewide coordinating committee on sex trafficking.
43.280.100 Revenue collection under RCW 9.68A.105, 9A.88.120, or 9A.88.140—Expenditure of revenue—Conditions—Report.

43.280.091 Statewide coordinating committee on sex trafficking. (1) The statewide coordinating committee on sex trafficking is established to address the issues of sex trafficking, to examine the practices of local and regional entities involved in addressing sex trafficking, and to develop a statewide plan to address sex trafficking.

(2) The committee is administered by the department of commerce and consists of the following members:

(a) Two members of the house of representatives, one from each caucus, and two members of the senate, one from each caucus, to be appointed by the speaker of the house of representatives and the president of the senate, respectively;

(b) A representative of the Washington attorney general's office;

(c) The president or corporate executive officer of the center for children and youth justice or his or her designee;

(d) The secretary of the children's administration or his or her designee;

(e) The secretary of the juvenile rehabilitation administration or his or her designee;

(f) The superintendent of public instruction or his or her designee;

(g) A representative of the administrative office of the courts appointed by the administrative office of the courts;

(h) The executive director of the Washington association of sheriffs and police chiefs or his or her designee;

(i) The executive director of the Washington state criminal justice training commission or his or her designee;

(j) Representatives of community advocacy groups that work to address the issues of human trafficking, to be appointed by the department of commerce's office of crime victims advocacy;

(k) A representative of the Washington association of prosecuting attorneys appointed by the association;

(l) Representatives of community service providers that serve victims of human trafficking, to be appointed by the department of commerce's office of crime victims advocacy;

(m) The executive director of Washington engage or his or her designee;

(n) A representative from shared hope international or his or her designee;

(o) The executive director of the Washington coalition of crime victim advocates or his or her designee;

(p) The executive director of the Washington coalition of sexual assault programs or his or her designee;

(q) The executive director of the Washington state coalition against domestic violence or his or her designee;

(r) The executive director of the Washington association of cities or his or her designee;

(s) The executive director of the Washington association of counties or his or her designee; and

(t) The director or a representative from the crime victims compensation program.

(3) The duties of the committee include, but are not limited to:

(a) Gathering and assessing service practices from diverse sources regarding service demand and delivery;

(b) Analyzing data regarding the implementation of sex trafficking legislation passed in recent years by the legislature, including reports submitted to the department of commerce pursuant to RCW 9.68A.105, 9A.88.120, and 9A.88.140, and assessing the efficacy of such legislation in addressing sex trafficking, as well as any obstacles to the impact of legislation on the commercial sex trade;

(c) Receiving and reviewing reports, recommendations, and statewide protocols as implemented in the pilot sites selected by the center for children and youth justice regarding commercially sexually exploited youth submitted to the committee by organizations that coordinate local community response practices and regional entities concerned with commercially sexually exploited youth; and

(d) Gathering and reviewing existing data, research, and literature to help shape a plan of action to address human trafficking in Washington to include:

(i) Strategies for Washington to undertake to end sex trafficking; and

(ii) Necessary data collection improvements.

(4) The committee shall meet twice and, by December 2014, produce a report on its activities, together with a statewide plan to address sex trafficking in Washington, to the governor's office and the legislature.

(5) All expenses of the committee shall come from the prostitution prevention and intervention account created in RCW 43.63A.740.

(6) The members of the committee shall serve without compensation, but shall be reimbursed for travel expenses as

provided in RCW 43.03.050 and 43.03.060, within available resources.

(7) The committee expires June 30, 2015. [2013 c 121 § 2.]

Intent—Finding—2013 c 121: "The legislature recognizes there are many state agencies and private organizations that might be called on to provide services to victims of sex trafficking. Victims of human trafficking are often in need of services such as emergency medical attention, food and shelter, vocational and English language training, mental health counseling, and legal support. The state intends to improve the response of state, local, and private entities to incidents of trafficking of humans. Victims would be better served if there is an established, coordinated system of identifying the needs of sex trafficking victims, training of service delivery agencies and staff, timely and appropriate delivery of services, and better investigations and prosecutions of trafficking.

Leadership in providing services to victims of sex trafficking also extends beyond government efforts and is grounded in the work of highly dedicated individuals and community-based groups. Without these efforts the struggle against human trafficking will be very difficult to win. The legislature, therefore, finds that such efforts merit regular public recognition and appreciation. Such recognition and appreciation will encourage the efforts of all persons to end sex trafficking, and provide the public with information and education about the necessity of its involvement in this struggle." [2013 c 121 § 1.]

43.280.100 Revenue collection under RCW 9.68A.105, 9A.88.120, or 9A.88.140—Expenditure of revenue—Conditions—Report. (1) The department of commerce shall prepare and submit an annual report to the legislature on the amount of revenue collected by local jurisdictions under RCW 9.68A.105, 9A.88.120, or 9A.88.140 and the expenditure of that revenue.

(2) Any funds remitted to the department of commerce pursuant to RCW 9.68A.105, 9A.88.120, or 9A.88.140 shall be spent on the fulfillment of the duties described in subsection (1) of this section. Any remaining funds may be spent on the administration of grants for services for victims of the commercial sex trade, consistent with this chapter. [2013 c 121 § 7.]

Intent—Finding—2013 c 121: See note following RCW 43.280.091.

Chapter 43.325 RCW ENERGY FREEDOM PROGRAM

Sections

43.325.040 Energy freedom account—Green energy incentive account—Energy recovery act account. (*Expires June 30, 2016.*)

43.325.040 Energy freedom account—Green energy incentive account—Energy recovery act account. (*Expires June 30, 2016.*) (1) The energy freedom account is created in the state treasury. All receipts from appropriations made to the account and any loan payments of principal and interest derived from loans made under the energy freedom account must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for financial assistance for further funding for projects consistent with this chapter or otherwise authorized by the legislature.

(2) The green energy incentive account is created in the state treasury as a subaccount of the energy freedom account. All receipts from appropriations made to the green energy incentive account shall be deposited into the account, and may be spent only after appropriation. Expenditures from the account may be used only for:

(2) The green energy incentive account is created in the state treasury as a subaccount of the energy freedom account. All receipts from appropriations made to the green energy incentive account shall be deposited into the account, and may be spent only after appropriation. Expenditures from the account may be used only for:

(a) Refueling projects awarded under this chapter;

(b) Pilot projects for plug-in hybrids, including grants provided for the electrification program set forth in RCW 43.325.110; and

(c) Demonstration projects developed with state universities as defined in RCW 28B.10.016 and local governments that result in the design and building of a hydrogen vehicle fueling station.

(3)(a) The energy recovery act account is created in the state treasury. State and federal funds may be deposited into the account and any loan payments of principal and interest derived from loans made from the energy recovery act account must be deposited into the account. Moneys in the account may be spent only after appropriation.

(b) Expenditures from the account may be used only for loans, loan guarantees, and grants that encourage the establishment of innovative and sustainable industries for renewable energy and energy efficiency technology, including but not limited to:

(i) Renewable energy projects or programs that require interim financing to complete project development and implementation;

(ii) Companies with innovative, near-commercial or commercial, clean energy technology; and

(iii) Energy efficiency technologies that have a viable repayment stream from reduced utility costs.

(c) The director shall establish policies and procedures for processing, reviewing, and approving applications for funding under this section. When developing these policies and procedures, the department must consider the clean energy leadership strategy developed under section 2, chapter 318, Laws of 2009.

(d) The director shall enter into agreements with approved applicants to fix the term and rates of funding provided from this account.

(e) The policies and procedures of this subsection (3) do not apply to assistance awarded for projects under RCW 43.325.020(3).

(4) Any state agency receiving funding from the energy freedom account is prohibited from retaining greater than three percent of any funding provided from the energy freedom account for administrative overhead or other deductions not directly associated with conducting the research, projects, or other end products that the funding is designed to produce unless this provision is waived in writing by the director.

(5) Any university, institute, or other entity that is not a state agency receiving funding from the energy freedom account is prohibited from retaining greater than fifteen percent of any funding provided from the energy freedom account for administrative overhead or other deductions not directly associated with conducting the research, projects, or other end products that the funding is designed to produce.

(6) Subsections (2), (4), and (5) of this section do not apply to assistance awarded for projects under RCW 43.325.020(3).

(7) During the 2013-2015 fiscal biennium, the legislature may transfer from the energy freedom account to the state general fund such amounts as reflect the excess fund balance of the account. [2013 2nd sp.s. c 4 § 984. Prior: 2009 c 564 § 942; 2009 c 451 § 5; 2007 c 348 § 305; 2006 c 371 § 223; 2006 c 171 § 6. Formerly RCW 15.110.050.]

Expiration date—2013 2nd sp.s. c 4 § 984: "Section 984 of this act expires June 30, 2016." [2013 2nd sp.s. c 4 § 1906.]

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

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

Expiration dates—2009 c 451 §§ 2, 3, 5, 6, and 7: See note following RCW 43.325.010.

Effective date—Intent—2009 c 451: See notes following RCW 43.325.010.

Part headings not law—2006 c 371: "Part headings in this act are not any part of the law." [2006 c 371 § 240.]

Severability—2006 c 371: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2006 c 371 § 241.]

Effective date—2006 c 371: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 31, 2006]." [2006 c 371 § 242.]

Chapter 43.330 RCW

DEPARTMENT OF COMMERCE

(Formerly: Department of community, trade, and economic development)

Sections

- 43.330.250 Economic development strategic reserve account—Authorized expenditures—Transfer of excess funds to the education construction account.
- 43.330.440 Multijurisdictional regulatory streamlining projects—Establishment—Reports.

43.330.250 Economic development strategic reserve account—Authorized expenditures—Transfer of excess funds to the education construction account. (1) The economic development strategic reserve account is created in the state treasury to be used only for the purposes of this section.

(2) Only the governor, with the recommendation of the director of the department of commerce and the economic development commission, may authorize expenditures from the account.

(3) Expenditures from the account shall be made in an amount sufficient to fund a minimum of one staff position for the economic development commission and to cover any other operational costs of the commission.

(4) During the 2009-2011 and 2011-2013 fiscal biennia, moneys in the account may also be transferred into the state general fund.

(5) Expenditures from the account may be made to prevent closure of a business or facility, to prevent relocation of a business or facility in the state to a location outside the state, or to recruit a business or facility to the state. Expenditures may be authorized for:

(a) Workforce development;

(b) Public infrastructure needed to support or sustain the operations of the business or facility;

(c) Other lawfully provided assistance, including, but not limited to, technical assistance, environmental analysis, relocation assistance, and planning assistance. Funding may be provided for such assistance only when it is in the public interest and may only be provided under a contractual arrangement ensuring that the state will receive appropriate consideration, such as an assurance of job creation or retention; and

(d) The joint center for aerospace technology innovation.

(6) The funds shall not be expended from the account unless:

(a) The circumstances are such that time does not permit the director of the department of commerce or the business or facility to secure funding from other state sources;

(b) The business or facility produces or will produce significant long-term economic benefits to the state, a region of the state, or a particular community in the state;

(c) The business or facility does not require continuing state support;

(d) The expenditure will result in new jobs, job retention, or higher incomes for citizens of the state;

(e) The expenditure will not supplant private investment; and

(f) The expenditure is accompanied by private investment.

(7) No more than three million dollars per year may be expended from the account for the purpose of assisting an individual business or facility pursuant to the authority specified in this section.

(8) If the account balance in the strategic reserve account exceeds fifteen million dollars at any time, the amount in excess of fifteen million dollars shall be transferred to the education construction account. [2013 2nd sp.s. c 24 § 1; 2011 1st sp.s. c 50 § 956. Prior: 2009 c 565 § 13; 2009 c 564 § 943; 2008 c 329 § 914; 2005 c 427 § 1.]

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

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

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

43.330.440 Multijurisdictional regulatory streamlining projects—Establishment—Reports. (1) The department, in collaboration with the office of regulatory assistance and the office of accountability and performance, must conduct multijurisdictional regulatory streamlining projects that each impact a specific industry sector or subsector within a specific geographical location. Planning for an initial pilot project must begin by September 1, 2013, and the initial pilot project must be underway by December 31, 2013. One or more projects must be implemented in each subsequent calendar year through 2019.

(2) The department must establish and implement a competitive process and select a minimum of one applicant comprised of a public-private partnership for participation in each project. The initial pilot project must focus on the manufacturing sector. The department, in consultation with the economic development commission, must determine the sectors for subsequent projects. The criteria to be used to select projects must include:

(a) Evidence of strong business commitment to the project;

(b) Evidence of strong commitment by the local government jurisdictions where the project is located to allocate necessary staff to the project and to streamline laws, rules, and administrative process requirements both within their jurisdictions and collaboratively across jurisdictions;

(c) Willingness to apply lean principles and tools to streamline the business regulatory experience;

(d) Identification of a lead partner capable of providing project management and coordination of partners;

(e) Support of the stakeholders necessary to implement the project;

(f) A plan and capacity to complete the project within the time frame; and

(g) A minimum of fifty percent match must be provided from project partners. The match may be cash, in-kind, or a combination of cash and in-kind.

(3) The department is encouraged to collaborate with nonprofit industry organizations, the private sector, foundations, and other interested entities to successfully complete each project.

(4) The department must pursue opportunities for non-state funding as the match to the fifty percent or more provided by project partners. A maximum of fifty thousand dollars of state funds may be used for a project.

(5) The department may contract with a third party for expertise and facilitation.

(6) All state agencies with regulatory requirements that impact the project's industry sector must participate.

(7) The state agencies, local jurisdictions, business partners, and other participants must jointly:

(a) Develop a project plan to conduct a cross-jurisdictional review process;

(b) Identify and review all laws, rules, and administrative processes and requirements pertaining to the selected sector;

(c) Apply specific criteria to evaluate the extent to which the laws, rules, and administrative processes and requirements provide for consistent, clear, and efficient customer experiences while continuing to maintain public health, safety, and environmental standards;

(d) Develop an implementation plan and schedule that identifies priority streamlining actions;

(e) Present their recommendations to the department for comment and endorsement; and

(f) Present their recommendations to the Washington state economic development commission for comment, endorsement, and evaluation.

(8) The department must document and distribute the streamlined laws, rules, processes, and other potentially replicable information, derived from the projects to the association of Washington cities and Washington state association of counties for distribution to their membership.

(9) The department must brief the economic development committees of the legislature by January 15, 2014, on the status of the initial pilot project, and must submit a report on the outcomes of the projects to the economic development committees of the legislature by January 15th of each calendar year, from 2015 through 2020. The department must include in the reports any streamlining recommendations identified in the projects that require statutory changes for implementation and any potentially replicable models, approaches, and tools that could be applied to other sectors and geographical areas. [2013 c 324 § 2.]

Findings—Intent—2013 c 324: "(1) The legislature finds that: Since 2010, the department of commerce and the office of regulatory assistance have convened and coordinated a number of cross-agency collaborative regulatory streamlining efforts focused on improving the regulatory experience for small businesses, while maintaining public health and safety; the department of commerce has established efficient and effective regulation as one of its four global priorities to support the mission to grow and improve jobs; the

state auditor's office issued a regulatory performance audit in 2012 identifying many agency actions that can also improve the business community's ability to comply with regulatory requirements; and the Washington state economic development commission's 2012 comprehensive statewide strategy emphasized the need for smarter regulations in order to achieve long-term global competitiveness, prosperity, and economic opportunity for all the state's citizens.

(2) The legislature further finds that while individual agency streamlining activities result in improvements, businesses are required to interact with many state and local agencies, all with unique requirements, processes, forms, instructions, payment options, and electronic transaction capabilities. Cross-agency and cross-jurisdictional regulatory improvements are needed to meaningfully improve the overall business customer experience and ability to more easily understand and comply with requirements.

(3) Therefore, the legislature intends to authorize a business regulatory efficiency program administered by the department of commerce with the goal of providing an improved regulatory environment in Washington. By enhancing, simplifying, and better coordinating state and local regulatory processes for specific industry sectors, the amount of time it takes businesses to conduct their interactions with state government will decrease, compliance will increase, and businesses will have the opportunity to generate more revenue and create more jobs, thereby strengthening Washington's economy and overall global competitiveness." [2013 c 324 § 1.]

Chapter 43.338 RCW

WASHINGTON MANUFACTURING INNOVATION AND MODERNIZATION EXTENSION SERVICE PROGRAM

Sections

43.338.030 Repealed.

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

Chapter 43.372 RCW

MARINE WATERS PLANNING AND MANAGEMENT

Sections

43.372.070 Marine resources stewardship trust account.

43.372.070 Marine resources stewardship trust account. (1) The marine resources stewardship trust account is created in the state treasury. All receipts from income derived from the investment of amounts credited to the account, any grants, gifts, or donations to the state for the purposes of marine management planning, marine spatial planning, data compilation, research, or monitoring, and any appropriations made to the account must be deposited in the account. Moneys in the account may be spent only after appropriation.

(2) Expenditures from the account may only be used for the purposes of marine management planning, marine spatial planning, research, monitoring, and implementation of the marine management plan.

(3) Until July 1, 2016, expenditures from the account may only be used for the purposes of:

(a) Conducting ecosystem assessment and mapping activities in marine waters consistent with RCW 43.372.040(6) (a) and (c), with a focus on assessment and mapping activities related to marine resource uses and developing potential economic opportunities;

(b) Developing a marine management plan for the state's coastal waters as that term is defined in RCW 43.143.020; and

(c) Coordination under the west coast governors' agreement on ocean health, entered into on September 18, 2006, and other regional planning efforts consistent with RCW 43.372.030.

(4) Expenditures from the account on projects and activities relating to the state's coastal waters, as defined in RCW 43.143.020, must be made, to the maximum extent possible, consistent with the recommendations of the Washington coastal marine advisory council as provided in RCW 43.143.060. If expenditures relating to coastal waters are made in a manner that differs substantially from the Washington coastal marine advisory council's recommendations, the responsible agency receiving the appropriation shall provide the council and appropriate committees of the legislature with a written explanation. [2013 c 318 § 3; 2012 c 252 § 4; 2011 c 250 § 2; 2010 c 145 § 10.]

Findings—2011 c 250: "(1) The legislature finds that the states of Washington, Oregon, and California have a common interest in the management and protection of ocean and coastal resources. This common interest stems from the many ocean and coastal resources that cross jurisdictional boundaries including winds, currents, fish, and wildlife, as well as the multi-jurisdictional reach of many uses of marine waters. These shared resources provide enormous economic, environmental, and social benefits to the states, and are an integral part of maintaining the high quality of life enjoyed by residents of the west coast.

(2) The legislature finds that the shared nature of ocean and coastal resources make coordination between the states of Washington, Oregon, and California essential in order to achieve effective ocean and coastal resource management and support sustainable coastal communities.

(3) The legislature recognizes the west coast governors' agreement on ocean health, entered into on September 18, 2006, as an important step towards achieving more coordinated management of these ocean and coastal resources.

(4) Ocean and coastal resource planning processes and funding opportunities recently initiated by the federal government contemplate action at the regional level. Early action on the part of Washington, Oregon, and California to collaboratively define and implement such planning efforts and projects will increase the states' ability to determine the course of federal planning processes for the west coast and receive nonstate support for the planning efforts, resource preservation and restoration projects, and projects to support ocean health and sustainable coastal communities.

(5) Therefore, collaboration on ocean and coastal resource management between Washington, Oregon, and California should be continued and enhanced through the respective legislatures, as well as through the respective executive branches through the west coast governors' agreement on ocean health." [2011 c 250 § 1.]

Chapter 43.378 RCW

ALLOCATION OF REVENUES DERIVED FROM CERTAIN GEOTHERMAL RESOURCES

Sections

43.378.010 Purpose of chapter.
 43.378.020 Geothermal account—Created.
 43.378.030 Limitations on distributions from the geothermal account.

43.378.010 Purpose of chapter. The purpose of this chapter is to provide for the allocation of revenues distributed to the state under section 35 of the Mineral Lands Leasing Act of 1920, as amended (30 U.S.C. Sec. 191), with respect to activities of the United States bureau of land management undertaken pursuant to the Geothermal Steam Act of 1970 (30 U.S.C. Sec. 1001 et seq.) in order to accomplish the following general objectives:

(1) Reduction of dependence on nonrenewable energy and stimulation of the state's economy through development of geothermal energy.

(2) Mitigation of the social, economic, and environmental impacts of geothermal development.

(3) Maintenance of the productivity of renewable resources through the investment of proceeds from these resources. [2013 c 274 § 5.]

Findings—Intent—2013 c 274: See note following RCW 78.60.030.

43.378.020 Geothermal account—Created. (1) There is created the geothermal account in the state treasury. All expenditures from this account are subject to appropriation and chapter 43.88 RCW.

(2) All revenues received by the state treasurer under section 35 of the Mineral Lands Leasing Act of 1920, as amended (30 U.S.C. Sec. 191), with respect to activities of the United States bureau of land management undertaken pursuant to the Geothermal Steam Act of 1970 (30 U.S.C. Sec. 1001 et seq.) shall be deposited in the geothermal account in the state treasury immediately upon receipt.

(3) Expenditures from the account may only be used as provided in RCW 43.378.030. [2013 c 274 § 6.]

Findings—Intent—2013 c 274: See note following RCW 78.60.030.

43.378.030 Limitations on distributions from the geothermal account. Distribution of funds from the geothermal account created in RCW 43.378.020 shall be subject to the following limitations:

(1) Seventy percent to the department of natural resources for geothermal exploration and assessment; and

(2) Thirty percent to Washington State University or its statutory successor for the purpose of encouraging the development of geothermal energy. [2013 c 274 § 7.]

Findings—Intent—2013 c 274: See note following RCW 78.60.030.

Title 44

STATE GOVERNMENT—LEGISLATIVE

Chapters

44.04 General provisions.

44.48 Legislative evaluation and accountability program committee.

Chapter 44.04 RCW GENERAL PROVISIONS

Sections

44.04.015 Repealed.
44.04.220 Legislative children's oversight committee.

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

44.04.220 Legislative children's oversight committee. (1) There is created the legislative children's oversight committee for the purpose of monitoring and ensuring compliance with administrative acts, relevant statutes, rules, and policies pertaining to family and children services and the placement, supervision, and treatment of children in the

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state's care or in state-licensed facilities or residences. The committee shall consist of three senators and three representatives from the legislature. The senate members of the committee shall be appointed by the president of the senate. The house members of the committee shall be appointed by the speaker of the house. Not more than two members from each chamber shall be from the same political party. Members shall be appointed before the close of each regular session of the legislature during an odd-numbered year.

(2) The committee shall have the following powers:

(a) Selection of its officers and adopt rules for orderly procedure;

(b) Request investigations by the ombuds of administrative acts;

(c) Receive reports of the ombuds;

(d)(i) Obtain access to all relevant records in the possession of the ombuds, except as prohibited by law; and (ii) make recommendations to all branches of government;

(e) Request legislation;

(f) Conduct hearings into such matters as it deems necessary.

(3) Upon receipt of records from the ombuds, the committee is subject to the same confidentiality restrictions as the ombuds under RCW 43.06A.050. [2013 c 23 § 100; 1996 c 131 § 1.]

Additional notes found at www.leg.wa.gov

Chapter 44.48 RCW

LEGISLATIVE EVALUATION AND ACCOUNTABILITY PROGRAM COMMITTEE

Sections

44.48.150 State expenditure information web site—Access to data—Maintenance—Capital and transportation projects—Web site testing.

44.48.150 State expenditure information web site—Access to data—Maintenance—Capital and transportation projects—Web site testing. (1) By January 1, 2009, in collaboration with the office of financial management, using existing databases and structures currently shared, the office of the legislative evaluation and accountability program committee shall establish and make available to the public a searchable state expenditure information web site. The state expenditure information web site shall provide access to current budget data, access to current accounting data for budgeted expenditures and staff, and access to historical data. At a minimum, the web site will provide access or links to the following information as data are available:

(a) State expenditures by fund or account;

(b) State expenditures by agency, program, and subprogram;

(c) State revenues by major source;

(d) State expenditures by object and subobject;

(e) State agency workloads, caseloads, and performance measures, and recent performance audits;

(f) State agency budget data by activity; and

(g) The inventory of state agency fees required by RCW 43.88.585.

(2) "State agency," as used in this section, includes every state agency, office, board, commission, or institution of the

executive, legislative, or judicial branches, including institutions of higher education.

(3) The state expenditure information web site shall be updated periodically as subsequent fiscal year data become available, and the prior year expenditure data shall be maintained by the legislative evaluation and accountability program committee as part of its ten-year historical budget data.

(4) By January 1, 2014, current and future capital project and transportation project investments must be coded with the geographic information sufficient to permit the public to search and identify appropriation and expenditure data at the parent and subproject level to the extent available by:

- (a) State legislative district;
- (b) County; and
- (c) Agency project identifier.

(5) The office of the legislative evaluation and accountability program committee must, within existing resources, update the state expenditure information web site to allow the public to search for capital budget and transportation projects by selecting from an online geographical map. The map must allow an in-depth examination of financial and other data associated with such projects. Data elements must include:

- (a) Project title;
- (b) Total appropriation;
- (c) Project description;
- (d) Expenditure data; and
- (e) Administering agency.

(6) The web site must be easy to use, contain current and readily available data, and allow for review and analysis by the public. The legislative evaluation and accountability program committee must test the web site with potential users to ensure that it is easy to navigate and comprehend. [2013 c 327 § 2; 2013 c 63 § 2; 2008 c 326 § 2.]

Reviser's note: This section was amended by 2013 c 63 § 2 and by 2013 c 327 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—2013 c 327: "The intent of the legislature is to make state capital budget and transportation budget appropriation and expenditure data as transparent and easy to use by the public as is feasible. It is important to provide information to the public on state capital and transportation investments by legislative district and county in a format that is easy to navigate and comprehend. Providing such information contributes to governmental accountability, public participation, agency efficiency, and open government." [2013 c 327 § 1.]

Intent—2008 c 326: "The intent of the legislature is to make state revenue and expenditure data as open, transparent, and publicly accessible as is feasible. Increasing the ease of public access to state budget data, particularly where the data are currently available from disparate internal government sources but are difficult for the public to collect and efficiently aggregate, significantly contributes to governmental accountability, public participation, agency efficiency, and open government." [2008 c 326 § 1.]

Title 46

MOTOR VEHICLES

Chapters

- 46.01** Department of licensing.
- 46.04** Definitions.
- 46.08** General provisions.
- 46.09** Off-road, nonhighway, and wheeled all-terrain vehicles.
- 46.12** Certificates of title.

- 46.16A** Registration.
- 46.17** Vehicle fees.
- 46.18** Special license plates.
- 46.20** Drivers' licenses—Identicards.
- 46.25** Uniform commercial driver's license act.
- 46.30** Mandatory liability insurance.
- 46.37** Vehicle lighting and other equipment.
- 46.44** Size, weight, load.
- 46.55** Towing and impoundment.
- 46.61** Rules of the road.
- 46.63** Disposition of traffic infractions.
- 46.66** Washington auto theft prevention authority.
- 46.68** Disposition of revenue.
- 46.72A** Limousines.
- 46.81A** Motorcycle skills education program.
- 46.83** Traffic schools.
- 46.87** Proportional registration.

Chapter 46.01 RCW

DEPARTMENT OF LICENSING

Sections

- 46.01.040 Powers, duties, and functions relating to motor vehicle laws vested in department. (*Effective July 1, 2015.*)
- 46.01.130 Powers and duties of director—Vehicle registration, appointments, branch offices, personnel screening. (*Effective until July 8, 2014.*)
- 46.01.130 Powers and duties of director—Vehicle registration, appointments, branch offices, personnel screening. (*Effective July 8, 2014.*)
- 46.01.140 County auditors, agents, and subagents—Powers and duties—Standard contracts—Rules.

46.01.040 Powers, duties, and functions relating to motor vehicle laws vested in department. (*Effective July 1, 2015.*) The department is vested with all powers, functions, and duties with respect to and including the following:

- (1) The fuel tax and aircraft fuel tax as provided in chapters 82.38 and 82.42 RCW;
- (2) The motor vehicle excise tax as provided in chapter 82.44 RCW;
- (3) The travel trailers and campers excise tax as provided in chapter 82.50 RCW;
- (4) All general powers and duties relating to motor vehicles as provided in chapter 46.08 RCW;
- (5) Certificates of title and registration certificates as provided in chapters 46.12 and 46.16A RCW;
- (6) The registration of motor vehicles as provided in chapter 46.16A RCW;
- (7) Dealers' licenses as provided in chapter 46.70 RCW;
- (8) The licensing of motor vehicle transporters as provided in chapter 46.76 RCW;
- (9) The licensing of vehicle wreckers as provided in chapter 46.80 RCW;
- (10) The administration of the laws relating to reciprocal or proportional registration of motor vehicles as provided in chapter 46.85 RCW;
- (11) The licensing of passenger vehicles for hire as provided in chapter 46.72 RCW;
- (12) Drivers' licenses as provided in chapter 46.20 RCW;
- (13) Commercial driver training schools as provided in chapter 46.82 RCW;
- (14) Financial responsibility as provided in chapter 46.29 RCW;

(15) Accident reporting as provided in chapter 46.52 RCW;

(16) Disposition of revenues as provided in chapter 46.68 RCW; and

(17) The administration of all other laws relating to motor vehicles vested in the director of licenses on June 30, 1965. [2013 c 225 § 606; 2011 c 171 § 10; 2010 c 161 § 1108; 1983 c 3 § 117; 1979 c 158 § 115; 1965 c 156 § 4.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

46.01.130 Powers and duties of director—Vehicle registration, appointments, branch offices, personnel screening. (Effective until July 8, 2014.) The director:

(1) Shall supervise and control the issuing of vehicle certificates of title, vehicle registrations, and vehicle license plates, and has the full power to do all things necessary and proper to carry out the provisions of the law relating to the registration of vehicles;

(2) May appoint and employ deputies, assistants, representatives, and clerks;

(3) May establish branch offices in different parts of the state;

(4) May appoint county auditors in Washington state or, in the absence of a county auditor, the department or an official of county government as agents for applications for and the issuance of vehicle certificates of title and vehicle registrations; and

(5)(a) Shall investigate the conviction records and pending charges of any current employee of or prospective employee being considered for any position with the department who has or will have:

(i)(A) The ability to create or modify records of applicants for enhanced drivers' licenses and identicards issued under RCW 46.20.202; and

(B) The ability to issue enhanced drivers' licenses and identicards under RCW 46.20.202; or

(ii) Access to information pertaining to vehicle license plates, drivers' licenses, or identicards under RCW 46.08.066, or vessel registrations issued under RCW 88.02.330 that, alone or in combination with any other information, may reveal the identity of an individual, or reveal that an individual is or was, performing an undercover or covert law enforcement, confidential public health work, public assistance fraud, or child support investigative activity.

(b) The investigation consists of a background check as authorized under RCW 10.97.050, 43.43.833, and 43.43.834, and the federal bureau of investigation. The background check must be conducted through the Washington state patrol criminal identification section and may include a national check from the federal bureau of investigation, which is through the submission of fingerprints. The director shall use the information solely to determine the character, suitability, and competence of current or prospective employees subject to this section.

(c) The director shall investigate the conviction records and pending charges of an employee subject to this subsection every five years.

(d) Criminal justice agencies shall provide the director with information that they may possess and that the director may require solely to determine the employment suitability of current or prospective employees subject to this section. [2013 c 336 § 1; 2010 c 161 § 203; 2009 c 169 § 1; 1979 c 158 § 121; 1973 c 103 § 2; 1971 ex.s. c 231 § 8; 1965 c 156 § 13; 1961 c 12 § 46.08.090. Prior: 1937 c 188 § 26; RRS § 6312-26; prior: 1921 c 96 § 3, part; 1917 c 155 § 2, part; 1915 c 142 § 3, part. Formerly RCW 46.08.090.]

Effective date—2013 c 336: See note following RCW 46.08.066.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Additional notes found at www.leg.wa.gov

46.01.130 Powers and duties of director—Vehicle registration, appointments, branch offices, personnel screening. (Effective July 8, 2014.) The director:

(1) Shall supervise and control the issuing of vehicle certificates of title, vehicle registrations, and vehicle license plates, and has the full power to do all things necessary and proper to carry out the provisions of the law relating to the registration of vehicles;

(2) May appoint and employ deputies, assistants, representatives, and clerks;

(3) May establish branch offices in different parts of the state;

(4) May appoint county auditors in Washington state or, in the absence of a county auditor, the department or an official of county government as agents for applications for and the issuance of vehicle certificates of title and vehicle registrations; and

(5)(a) Shall investigate the conviction records and pending charges of any current employee of or prospective employee being considered for any position with the department who has or will have:

(i)(A) The ability to create or modify records of applicants for enhanced drivers' licenses and identicards issued under RCW 46.20.202; and

(B) The ability to issue enhanced drivers' licenses and identicards under RCW 46.20.202; or

(ii) The ability to conduct examinations under RCW 46.25.060; or

(iii) Access to information pertaining to vehicle license plates, drivers' licenses, or identicards under RCW 46.08.066, or vessel registrations issued under RCW 88.02.330 that, alone or in combination with any other information, may reveal the identity of an individual, or reveal that an individual is or was, performing an undercover or covert law enforcement, confidential public health work, public assistance fraud, or child support investigative activity.

(b) The investigation consists of a background check as authorized under RCW 10.97.050, 43.43.833, and 43.43.834, and the federal bureau of investigation. The background check must be conducted through the Washington state patrol criminal identification section and may include a national check from the federal bureau of investigation, which is through the submission of fingerprints. The director shall use

the information solely to determine the character, suitability, and competence of current or prospective employees subject to this section.

(c) The director shall investigate the conviction records and pending charges of an employee subject to:

(i) Subsection (5)(a)(i) of this section every five years; and

(ii) Subsection (5)(a)(ii) of this section as required under 49 C.F.R. Sec. 384.228 as it existed on July 8, 2014, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section.

(d) Criminal justice agencies shall provide the director with information that they may possess and that the director may require solely to determine the employment suitability of current or prospective employees subject to this section. [2013 c 336 § 1; 2013 c 224 § 1; 2010 c 161 § 203; 2009 c 169 § 1; 1979 c 158 § 121; 1973 c 103 § 2; 1971 ex.s. c 231 § 8; 1965 c 156 § 13; 1961 c 12 § 46.08.090. Prior: 1937 c 188 § 26; RRS § 6312-26; prior: 1921 c 96 § 3, part; 1917 c 155 § 2, part; 1915 c 142 § 3, part. Formerly RCW 46.08.090.]

Reviser's note: This section was amended by 2013 c 224 § 1 and by 2013 c 336 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2013 c 336: See note following RCW 46.08.066.

Effective date—2013 c 224: "Sections 1 and 3 through 14 of this act take effect July 8, 2014." [2013 c 224 § 17.]

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Additional notes found at www.leg.wa.gov

46.01.140 County auditors, agents, and subagents—Powers and duties—Standard contracts—Rules. (1) **County auditor/agent duties.** A county auditor or other agent appointed by the director must:

(a) Enter into a standard contract provided by the director;

(b) Provide all services authorized by the director for vehicle certificates of title and vehicle registration applications and issuance under the direction and supervision of the director including, but not limited to:

(i) Processing reports of sale;

(ii) Processing transitional ownership transactions;

(iii) Processing mail-in vehicle registration renewals until directed otherwise by legislative authority;

(iv) Issuing registrations and temporary ORV use permits for off-road vehicles as required under chapter 46.09 RCW;

(v) Issuing registrations for snowmobiles as required under chapter 46.10 RCW; and

(vi) Collecting fees and taxes as required;

(c) If authorized by the director, offer for sale discover passes as provided in chapter 79A.80 RCW.

(2) **County auditor/agent assistants and subagents.** A county auditor or other agent appointed by the director may, with approval of the director:

(a) Appoint assistants as special deputies to accept applications for vehicle certificates of title and to issue vehicle registrations; and

(b) Recommend and request that the director appoint subagencies within the county to accept applications for vehi-

cle certificates of title and vehicle registration application issuance.

(3) **Appointing subagents.** A county auditor or other agent appointed by the director who requests a subagency must, with approval of the director:

(a) Use an open competitive process including, but not limited to, a written business proposal and oral interview to determine the qualifications of all interested applicants; and

(b) Submit all proposals to the director with a recommendation for appointment of one or more subagents who have applied through the open competitive process. If a qualified successor who is an existing subagent's sibling, spouse, or child, or a subagency employee has applied, the county auditor must provide the name of the qualified successor and the name of one other applicant who is qualified and was chosen through the open competitive process.

(4) **Subagent duties.** A subagent appointed by the director must:

(a) Enter into a standard contract with the county auditor or agent provided by the director;

(b) Provide all services authorized by the director for vehicle certificates of title and vehicle registration applications and issuance under the direction and supervision of the county auditor or agent and the director including, but not limited to:

(i) Processing reports of sale;

(ii) Processing transitional ownership transactions;

(iii) Mailing out vehicle registrations and replacement plates to internet payment option customers until directed otherwise by legislative authority;

(iv) Issuing registrations and temporary ORV use permits for off-road vehicles as required under chapter 46.09 RCW;

(v) Issuing registrations for snowmobiles as required under chapter 46.10 RCW; and

(vi) Collecting fees and taxes as required; and

(c) If authorized by the director, offer for sale discover passes as provided in chapter 79A.80 RCW.

(5) **Subagent successorship.** A subagent appointed by the director who no longer wants his or her appointment may recommend a successor who is the subagent's sibling, spouse, or child, or a subagency employee. The recommended successor must participate in the open competitive process used to select an applicant. In making successor recommendations and appointment determinations, the following provisions apply:

(a) If a subagency is held by a partnership or corporate entity, the nomination must be submitted on behalf of, and agreed to by, all partners or corporate officers;

(b) A subagent may not receive any direct or indirect compensation or remuneration from any party or entity in recognition of a successor nomination. A subagent may not receive any financial benefit from the transfer or termination of an appointment;

(c) The appointment of a successor is intended to assist in the efficient transfer of appointments to minimize public inconvenience. The appointment of a successor does not create a proprietary or property interest in the appointment;

(d) A subagent appointee who is planning to retire within twelve months may recommend a successor without resigning his or her appointment by submitting a letter of intent to

retire with a successor recommendation to the county auditor or other agent appointed by the director. The county auditor or other agent appointed by the director shall, within sixty days, respond in writing to the subagent appointee indicating if the recommended successor would be considered in the open competitive process. If there are negative factors or deficiencies pertaining to the subagency operation or the recommended successor, the county auditor or other agent appointed by the director must state these factors in writing to the subagent appointee. The subagent appointee may withdraw the letter of intent to retire any time prior to the start of the open competitive process by writing to the county auditor or other agent appointed by the director and filing a copy with the director;

(e) A subagent appointee may name a recommended successor at any time during his or her appointment by notifying the county auditor or other agent appointed by the director in writing and filing a copy with the director. The purpose of this recommendation is for the county auditor or other agent appointed by the director to know the wishes of the subagent appointee in the event of the death or incapacitation of a sole subagent appointee or last remaining subagent appointee that could lead to the inability of the subagent to continue to fulfill the obligations of the appointment; and

(f) If the county auditor or other agent appointed by the director does not select the recommended successor for appointment as a result of the open competitive process, the county auditor or other agent appointed by the director must contact the subagent appointee by letter and explain the decision. The subagent appointee must be provided an opportunity to respond in writing. Any response by the subagent appointee must be included in the open competitive process materials submitted to the department.

(6) **Standard contracts.** The standard contracts provided by the director in this section may include provisions that the director deems necessary to ensure that readily accessible and acceptable service is provided to the citizens of the state, including the full collection of fees and taxes. The standard contracts must include provisions that:

(a) Describe responsibilities and liabilities of each party related to service expectations and levels;

(b) Describe the equipment to be supplied by the department and equipment maintenance;

(c) Require specific types of insurance or bonds, or both, to protect the state against any loss of collected revenue or loss of equipment;

(d) Specify the amount of training that will be provided by each of the parties;

(e) Describe allowable costs that may be charged for vehicle registration activities as described in subsection (7) of this section; and

(f) Describe causes and procedures for termination of the contract, which may include mediation and binding arbitration.

(7) **County auditor/agent cost reimbursement.** A county auditor or other agent appointed by the director who does not cover expenses for services provided by the standard contract may submit to the department a request for cost-coverage moneys. The request must be submitted on a form developed by the department. The department must develop procedures to standardize and identify allowable costs and to

verify whether a request is reasonable. Payment must be made on those requests found to be allowable from the licensing services account.

(8) **County auditor/agent revenue disbursement.** County revenues that exceed the cost of providing services described in the standard contract, calculated in accordance with the procedures in subsection (7) of this section, must be expended as determined by the county legislative authority during the process established by law for adoption of county budgets.

(9) **Appointment authority.** The director has final appointment authority for county auditors or other agents or subagents.

(10) **Rules.** The director may adopt rules to implement this section. [2013 c 169 § 1; 2012 c 261 § 10; 2011 c 171 § 11. Prior: 2010 1st sp.s. c 7 § 139; 2010 c 221 § 1; 2010 c 161 § 204; 2005 c 343 § 1; 2003 c 370 § 3; 2001 c 331 § 1; 1996 c 315 § 1; 1992 c 216 § 1; 1991 c 339 § 16; 1990 c 250 § 89; 1988 c 12 § 1; 1987 c 302 § 1; 1985 c 380 § 12; prior: 1983 c 77 § 1; 1983 c 26 § 1; 1980 c 114 § 2; 1979 c 158 § 122; 1975 1st ex.s. c 146 § 1; 1973 c 103 § 1; 1971 ex.s. c 231 § 9; 1971 ex.s. c 91 § 3; 1965 c 156 § 14; 1963 c 85 § 1; 1961 c 12 § 46.08.100; prior: 1955 c 89 § 3; 1937 c 188 § 27; RRS § 6312-27. Formerly RCW 46.08.100.]

Effective date—2012 c 261: See note following RCW 79A.80.010.

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

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

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Application—2003 c 370: "Sections 2 and 3 of this act take effect for renewals that are due or become due on or after November 1, 2003." [2003 c 370 § 6.] Section 2 of this act was vetoed by the governor.

Additional notes found at www.leg.wa.gov

Chapter 46.04 RCW DEFINITIONS

Sections

46.04.181	Farm vehicle.
46.04.330	Motorcycle.
46.04.523	Seattle Seahawks license plates. (<i>Effective January 1, 2014.</i>)
46.04.524	Seattle Sounders FC license plates. (<i>Effective January 1, 2014.</i>)

46.04.181 Farm vehicle. "Farm vehicle" means any vehicle other than a farm tractor or farm implement which is: (1) Designed and/or used primarily in agricultural pursuits on farms for the purpose of transporting machinery, equipment, implements, farm products, supplies and/or farm labor thereon and is only incidentally operated on or moved along public highways for the purpose of going from one farm to another or between locations supporting farming operations; or (2) for purposes of RCW 46.25.050, used to transport agricultural products, farm machinery, farm supplies, or any combination of these materials to or from a farm. [2013 c 299 § 3; 2012 c 130 § 1; 1967 c 202 § 1.]

46.04.330 Motorcycle. "Motorcycle" means a motor vehicle designed to travel on not more than three wheels, not

including any stabilizing conversion kits, on which the driver:

(1) Rides on a seat or saddle and the motor vehicle is designed to be steered with a handlebar; or

(2) Rides on a seat in a partially or completely enclosed seating area that is equipped with safety belts and the motor vehicle is designed to be steered with a steering wheel.

"Motorcycle" excludes a farm tractor, a power wheelchair, an electric personal assistive mobility device, a motorized foot scooter, an electric-assisted bicycle, and a moped. [2013 c 174 § 1; 2009 c 275 § 2; 2003 c 141 § 3; 2002 c 247 § 3; 1990 c 250 § 20; 1979 ex.s. c 213 § 2; 1961 c 12 § 46.04.330. Prior: 1959 c 49 § 34; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part; 1923 c 181 § 1, part; 1921 c 96 § 2, part; 1919 c 59 § 1, part; 1917 c 155 § 1, part; 1915 c 142 § 2, part; RRS § 6313, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part; 1929 c 180 § 1, part; 1927 c 309 § 2, part; RRS § 6362-2, part.]

Additional notes found at www.leg.wa.gov

46.04.523 Seattle Seahawks license plates. (Effective January 1, 2014.) "Seattle Seahawks license plates" means special license plates issued under RCW 46.18.200 that display a symbol or artwork recognizing the Seattle Seahawks. [2013 c 286 § 7.]

Effective date—2013 c 286: See note following RCW 46.18.200.

46.04.524 Seattle Sounders FC license plates. (Effective January 1, 2014.) "Seattle Sounders FC license plates" means special license plates issued under RCW 46.18.200 that display a symbol or artwork recognizing Seattle Sounders FC. [2013 c 286 § 6.]

Effective date—2013 c 286: See note following RCW 46.18.200.

Chapter 46.08 RCW GENERAL PROVISIONS

Sections

- 46.08.066 Publicly owned vehicles—Confidential license plates, drivers' licenses, identicards—Issuance, rules governing.
46.08.185 Electric vehicle charging stations—Signage—Penalty.

46.08.066 Publicly owned vehicles—Confidential license plates, drivers' licenses, identicards—Issuance, rules governing. (1) The department may issue confidential license plates to:

(a) Units of local government and agencies of the federal government for law enforcement purposes only;

(b) Any state official elected on a statewide basis for use on official business. Only one set of confidential license plates may be issued to these elected officials;

(c) Any other public officer or public employee for the personal security of the officer or employee when recommended by the chief of the Washington state patrol. These confidential license plates may only be used on an unmarked publicly owned or controlled vehicle of the employing government agency for the conduct of official business for the period of time that the personal security of the state official, public officer, or other public employee may require; and

(d) The office of the state treasurer. These confidential license plates may only be used on an unmarked state owned

or controlled vehicle when required for the safe transportation of either state funds or negotiable securities to or from the office of the state treasurer.

(2) The use of confidential license plates on other vehicles owned or operated by the state of Washington by any officer or employee of the state is limited to confidential, investigative, or undercover work of state law enforcement agencies, confidential public health work, and confidential public assistance fraud or child support investigations.

(3)(a) The department may issue confidential drivers' licenses and identicards to commissioned officers of state and local law enforcement agencies and agencies of the federal government only for undercover or covert law enforcement activities.

(b) Any driver's license or identicard issued under this subsection shall display an expiration date that complies with the department's rules, but a driver's license or identicard issued under this subsection may be used only during the duration of the officer's assignment to an undercover or covert operation.

(c) Any driver's license or identicard issued under this subsection must be returned to the department within thirty days of the end of the officer's undercover assignment. Any driver's license or identicard issued under this subsection must be returned to the department immediately upon the officer's retirement, termination, dismissal, change in job assignment, or leave from the agency.

(4) The director may adopt rules governing applications for, and the use of, confidential license plates, drivers' licenses, and identicards. [2013 c 336 § 2; 2010 c 161 § 211; 1986 c 158 § 20; 1982 c 163 § 14; 1979 c 158 § 128; 1975 1st ex.s. c 169 § 2.]

Effective date—2013 c 336: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 21, 2013]." [2013 c 336 § 4.]

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Additional notes found at www.leg.wa.gov

46.08.185 Electric vehicle charging stations—Signage—Penalty. (1) An electric vehicle charging station must be indicated by vertical signage identifying the station as an electric vehicle charging station and indicating that it is only for electric vehicle charging. The signage must be consistent with the manual on uniform traffic control devices, as adopted by the department of transportation under RCW 47.36.030. Additionally, the electric vehicle charging station must be indicated by green pavement markings. Supplementary signage may be posted to provide additional information including, but not limited to, the amount of the monetary penalty under subsection (2) of this section for parking in the station while not connected to the charging equipment.

(2) It is a parking infraction, with a monetary penalty of one hundred twenty-four dollars, for any person to park a vehicle in an electric vehicle charging station provided on public or private property if the vehicle is not connected to the charging equipment. The parking infraction must be processed as prescribed under RCW 3.50.100, 35.20.220, 46.16A.120, and *46.20.270(3).

(3) For purposes of this section, "electric vehicle charging station" means a public or private parking space that is served by charging equipment that has as its primary purpose the transfer of electric energy to a battery or other energy storage device in an electric vehicle. [2013 c 60 § 1.]

*Reviser's note: RCW 46.20.270 was amended by 2013 2nd sp.s. c 35 § 17, changing subsection (3) to subsection (2).

Chapter 46.09 RCW
OFF-ROAD, NONHIGHWAY, AND WHEELED
ALL-TERRAIN VEHICLES

Sections

46.09.310	Definitions. <i>(Effective until July 1, 2015.)</i>
46.09.310	Definitions. <i>(Effective July 1, 2015.)</i>
46.09.360	Regulation by local political subdivisions or state agencies.
46.09.385	Separate registration category for wheeled all-terrain vehicles.
46.09.400	Issuance—Decals—Fees.
46.09.410	Registrations—Original and renewal application—Requirements—Decals—Out-of-state operators.
46.09.420	Registrations and decals—Exemptions.
46.09.442	Wheeled all-terrain vehicles—Metal tags—Off-road, on-road registration, tabs.
46.09.444	Wheeled all-terrain vehicles—Driver's license requirement—Penalty—Training course.
46.09.450	Authorized and prohibited uses for off-road vehicles.
46.09.455	Authorized and prohibited uses for wheeled all-terrain vehicles.
46.09.457	Equipment and declaration requirements for wheeled all-terrain vehicles—Exception.
46.09.460	Operation by persons under sixteen.
46.09.470	Operating violations—Exceptions.
46.09.485	Operating violations for wheeled all-terrain vehicles—Notice of infraction, issuance and procedure.
46.09.520	Refunds from motor vehicle fund—Distribution—Use. <i>(Effective July 1, 2015.)</i>
46.09.530	Administration and distribution of off-road vehicle moneys.
46.09.540	Multise roadway safety account.

46.09.310 Definitions. *(Effective until July 1, 2015.)*

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

(1) "Advisory committee" means the nonhighway and off-road vehicle activities advisory committee established in RCW 46.09.340.

(2) "Board" means the recreation and conservation funding board established in RCW 79A.25.110.

(3) "Dealer" means a person, partnership, association, or corporation engaged in the business of selling off-road vehicles at wholesale or retail in this state.

(4) "Direct supervision" means that the supervising adult must be in a position, on another wheeled all-terrain vehicle or specialty off-highway vehicle or motorbike or, if on the ground, within a reasonable distance of the unlicensed operator, to provide close support, assistance, or direction to the unlicensed operator.

(5) "Emergency management" means the carrying out of emergency functions related to responding and recovering from emergencies and disasters, and to aid victims suffering from injury or damage, resulting from disasters caused by all hazards, whether natural, technological, or human caused, and to provide support for search and rescue operations for persons and property in distress.

(6) "Highway," for the purpose of this chapter only, means the entire width between the boundary lines of every roadway publicly maintained by the state department of transportation or any county or city with funding from the

motor vehicle fund. A highway is generally capable of travel by a conventional two-wheel drive passenger automobile during most of the year and in use by such vehicles.

(7) "Nonhighway road" means any road owned or managed by a public agency, a primitive road, or any private road for which the owner has granted an easement for public use for which appropriations from the motor vehicle fund were not used for (a) original construction or reconstruction in the last twenty-five years; or (b) maintenance in the last four years.

(8) "Nonhighway road recreation facilities" means recreational facilities that are adjacent to, or accessed by, a nonhighway road and intended primarily for nonhighway road recreational users.

(9) "Nonhighway road recreational user" means a person whose purpose for consuming fuel on a nonhighway road or off-road is primarily for nonhighway road recreational purposes, including, but not limited to, hunting, fishing, camping, sightseeing, wildlife viewing, picnicking, driving for pleasure, kayaking/canoeing, and gathering berries, firewood, mushrooms, and other natural products.

(10) "Nonhighway vehicle" means any motorized vehicle including an ORV when used for recreational purposes on nonhighway roads, trails, or a variety of other natural terrain.

Nonhighway vehicle does not include:

(a) Any vehicle designed primarily for travel on, over, or in the water;

(b) Snowmobiles or any military vehicles; or

(c) Any vehicle eligible for a motor vehicle fuel tax exemption or rebate under chapter 82.36 RCW while an exemption or rebate is claimed. This exemption includes but is not limited to farm, construction, and logging vehicles.

(11) "Nonmotorized recreational facilities" means recreational trails and facilities that are adjacent to, or accessed by, a nonhighway road and intended primarily for nonmotorized recreational users.

(12) "Nonmotorized recreational user" means a person whose purpose for consuming fuel on a nonhighway road or off-road is primarily for nonmotorized recreational purposes including, but not limited to, walking, hiking, backpacking, climbing, cross-country skiing, snowshoeing, mountain biking, horseback riding, and pack animal activities.

(13) "Organized competitive event" means any competition, advertised in advance through written notice to organized clubs or published in local newspapers, sponsored by recognized clubs, and conducted at a predetermined time and place.

(14) "ORV recreation facilities" include, but are not limited to, ORV trails, trailheads, campgrounds, ORV sports parks, and ORV use areas, designated for ORV use by the managing authority.

(15) "ORV recreational user" means a person whose purpose for consuming fuel on nonhighway roads or off-road is primarily for ORV recreational purposes, including but not limited to riding an all-terrain vehicle, motorcycling, or driving a four-wheel drive vehicle or dune buggy.

(16) "ORV sports park" means a facility designed to accommodate competitive ORV recreational uses including, but not limited to, motocross racing, four-wheel drive competitions, and flat track racing. Use of ORV sports parks can be competitive or noncompetitive in nature.

(17) "ORV trail" means a multiple-use corridor designated by the managing authority and maintained for recreational use by motorized vehicles.

(18) "Primitive road" means a linear route managed for use by four-wheel drive or high-clearance vehicles that is generally not maintained or paved, a road designated by a county as primitive under RCW 36.75.300, or a road designated by a city or town as primitive under a local ordinance.

(19) "Wheeled all-terrain vehicle" means (a) any motorized nonhighway vehicle with handlebars that is fifty inches or less in width, has a seat height of at least twenty inches, weighs less than one thousand five hundred pounds, and has four tires having a diameter of thirty inches or less, or (b) a utility-type vehicle designed for and capable of travel over designated roads that travels on four or more low-pressure tires of twenty psi or less, has a maximum width less than seventy-four inches, has a maximum weight less than two thousand pounds, has a wheelbase of one hundred ten inches or less, and satisfies at least one of the following: (i) Has a minimum width of fifty inches; (ii) has a minimum weight of at least nine hundred pounds; or (iii) has a wheelbase of over sixty-one inches. [2013 2nd sp.s. c 23 § 2; 2010 c 161 § 213; 2007 c 241 § 13; 2004 c 105 § 1; 1986 c 206 § 1; 1979 c 158 § 129; 1977 ex.s. c 220 § 1; 1972 ex.s. c 153 § 3; 1971 ex.s. c 47 § 7. Formerly RCW 46.09.020.]

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

Effective date—2013 2nd sp.s. c 23: "Except for sections 3 and 25 of this act, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 28, 2013." [2013 2nd sp.s. c 23 § 26.]

Expiration date—2013 2nd sp.s. c 23 § 2: "Section 2 of this act expires July 1, 2015." [2013 2nd sp.s. c 23 § 27.]

Finding—Intent—2013 2nd sp.s. c 23: See note following RCW 46.09.442.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

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

Purpose—1972 ex.s. c 153: See RCW 79A.35.070.

Additional notes found at www.leg.wa.gov

46.09.310 Definitions. (Effective July 1, 2015.) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Advisory committee" means the nonhighway and off-road vehicle activities advisory committee established in RCW 46.09.340.

(2) "Board" means the recreation and conservation funding board established in RCW 79A.25.110.

(3) "Dealer" means a person, partnership, association, or corporation engaged in the business of selling off-road vehicles at wholesale or retail in this state.

(4) "Direct supervision" means that the supervising adult must be in a position, on another wheeled all-terrain vehicle or specialty off-highway vehicle or motorbike or, if on the ground, within a reasonable distance of the unlicensed operator, to provide close support, assistance, or direction to the unlicensed operator.

(5) "Emergency management" means the carrying out of emergency functions related to responding and recovering from emergencies and disasters, and to aid victims suffering from injury or damage, resulting from disasters caused by all hazards, whether natural, technological, or human caused, and to provide support for search and rescue operations for persons and property in distress.

(6) "Highway," for the purpose of this chapter only, means the entire width between the boundary lines of every roadway publicly maintained by the state department of transportation or any county or city with funding from the motor vehicle fund. A highway is generally capable of travel by a conventional two-wheel drive passenger automobile during most of the year and in use by such vehicles.

(7) "Nonhighway road" means any road owned or managed by a public agency, a primitive road, or any private road for which the owner has granted an easement for public use for which appropriations from the motor vehicle fund were not used for (a) original construction or reconstruction in the last twenty-five years; or (b) maintenance in the last four years.

(8) "Nonhighway road recreation facilities" means recreational facilities that are adjacent to, or accessed by, a nonhighway road and intended primarily for nonhighway road recreational users.

(9) "Nonhighway road recreational user" means a person whose purpose for consuming fuel on a nonhighway road or off-road is primarily for nonhighway road recreational purposes, including, but not limited to, hunting, fishing, camping, sightseeing, wildlife viewing, picnicking, driving for pleasure, kayaking/canoeing, and gathering berries, firewood, mushrooms, and other natural products.

(10) "Nonhighway vehicle" means any motorized vehicle including an ORV when used for recreational purposes on nonhighway roads, trails, or a variety of other natural terrain.

Nonhighway vehicle does not include:

(a) Any vehicle designed primarily for travel on, over, or in the water;

(b) Snowmobiles or any military vehicles; or

(c) Any vehicle eligible for a motor vehicle fuel tax exemption or rebate under chapter 82.38 RCW while an exemption or rebate is claimed. This exemption includes but is not limited to farm, construction, and logging vehicles.

(11) "Nonmotorized recreational facilities" means recreational trails and facilities that are adjacent to, or accessed by, a nonhighway road and intended primarily for nonmotorized recreational users.

(12) "Nonmotorized recreational user" means a person whose purpose for consuming fuel on a nonhighway road or off-road is primarily for nonmotorized recreational purposes including, but not limited to, walking, hiking, backpacking, climbing, cross-country skiing, snowshoeing, mountain biking, horseback riding, and pack animal activities.

(13) "Organized competitive event" means any competition, advertised in advance through written notice to organized clubs or published in local newspapers, sponsored by recognized clubs, and conducted at a predetermined time and place.

(14) "ORV recreation facilities" include, but are not limited to, ORV trails, trailheads, campgrounds, ORV sports

parks, and ORV use areas, designated for ORV use by the managing authority.

(15) "ORV recreational user" means a person whose purpose for consuming fuel on nonhighway roads or off-road is primarily for ORV recreational purposes, including but not limited to riding an all-terrain vehicle, motorcycling, or driving a four-wheel drive vehicle or dune buggy.

(16) "ORV sports park" means a facility designed to accommodate competitive ORV recreational uses including, but not limited to, motocross racing, four-wheel drive competitions, and flat track racing. Use of ORV sports parks can be competitive or noncompetitive in nature.

(17) "ORV trail" means a multiple-use corridor designated by the managing authority and maintained for recreational use by motorized vehicles.

(18) "Primitive road" means a linear route managed for use by four-wheel drive or high-clearance vehicles that is generally not maintained or paved, a road designated by a county as primitive under RCW 36.75.300, or a road designated by a city or town as primitive under a local ordinance.

(19) "Wheeled all-terrain vehicle" means (a) any motorized nonhighway vehicle with handlebars that is fifty inches or less in width, has a seat height of at least twenty inches, weighs less than one thousand five hundred pounds, and has four tires having a diameter of thirty inches or less, or (b) a utility-type vehicle designed for and capable of travel over designated roads that travels on four or more low-pressure tires of twenty psi or less, has a maximum width less than seventy-four inches, has a maximum weight less than two thousand pounds, has a wheelbase of one hundred ten inches or less, and satisfies at least one of the following: (i) Has a minimum width of fifty inches; (ii) has a minimum weight of at least nine hundred pounds; or (iii) has a wheelbase of over sixty-one inches. [2013 2nd sp.s. c 23 § 3; 2013 c 225 § 607; 2010 c 161 § 213; 2007 c 241 § 13; 2004 c 105 § 1; 1986 c 206 § 1; 1979 c 158 § 129; 1977 ex.s. c 220 § 1; 1972 ex.s. c 153 § 3; 1971 ex.s. c 47 § 7. Formerly RCW 46.09.020.]

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

Effective date—2013 2nd sp.s. c 23 § 3: "Section 3 of this act takes effect July 1, 2015." [2013 2nd sp.s. c 23 § 28.]

Finding—Intent—2013 2nd sp.s. c 23: See note following RCW 46.09.442.

Effective date—2013 c 225: See note following RCW 82.38.010.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

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

Purpose—1972 ex.s. c 153: See RCW 79A.35.070.

Additional notes found at www.leg.wa.gov

46.09.360 Regulation by local political subdivisions or state agencies. (1) Notwithstanding any of the provisions of this chapter, any city, town, county, or other political subdivision of this state, or any state agency, may regulate the operation of nonhighway vehicles on public lands, waters, and other properties under its jurisdiction, and on streets, roads, or highways within its boundaries by adopting regulations or ordinances of its governing body, provided such regulations are not less stringent than the provisions of this chap-

[2013 RCW Supp—page 530]

ter. However, the legislative body of a city or town with a population of less than three thousand persons may, by ordinance, designate a street or highway within its boundaries to be suitable for use by off-road vehicles. The legislative body of a county may, by ordinance, designate a road or highway within its boundaries to be suitable for use by off-road vehicles.

(2) For purposes of this section, "off-road vehicles" does not include wheeled all-terrain vehicles. [2013 2nd sp.s. c 23 § 11; 2006 c 212 § 4; 1977 ex.s. c 220 § 15; 1971 ex.s. c 47 § 23. Formerly RCW 46.09.180.]

Finding—Intent—2013 2nd sp.s. c 23: See note following RCW 46.09.442.

Effective date—2013 2nd sp.s. c 23: See note following RCW 46.09.310.

46.09.385 Separate registration category for wheeled all-terrain vehicles. The department must track wheeled all-terrain vehicles in a separate registration category for reporting purposes. [2013 2nd sp.s. c 23 § 8.]

Finding—Intent—2013 2nd sp.s. c 23: See note following RCW 46.09.442.

Effective date—2013 2nd sp.s. c 23: See note following RCW 46.09.310.

46.09.400 Issuance—Decals—Fees. The department shall:

(1) Issue registrations and temporary ORV use permits for off-road vehicles, excluding wheeled all-terrain vehicles subject to subsection (4) of this section;

(2) Issue decals for off-road vehicles, excluding wheeled all-terrain vehicles subject to subsection (4) of this section. The decals serve the same function as license plates for vehicles registered under chapter 46.16A RCW;

(3) Charge a fee for each decal covering the actual cost of the decal; and

(4) Issue metal tags, off-road vehicle registrations, and on-road vehicle registrations for wheeled all-terrain vehicles. [2013 2nd sp.s. c 23 § 12; 2011 c 171 § 25; 2010 c 161 § 215; 1990 c 250 § 23; 1986 c 206 § 2; 1977 ex.s. c 220 § 2; 1972 ex.s. c 153 § 4; 1971 ex.s. c 47 § 8. Formerly RCW 46.09.030.]

Finding—Intent—2013 2nd sp.s. c 23: See note following RCW 46.09.442.

Effective date—2013 2nd sp.s. c 23: See note following RCW 46.09.310.

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Purpose—1972 ex.s. c 153: See RCW 79A.35.070.

Additional notes found at www.leg.wa.gov

46.09.410 Registrations—Original and renewal application—Requirements—Decals—Out-of-state operators. (1) The application for an original ORV registration has the same requirements as described for original vehicle registrations in RCW 46.16A.040 and must be accompanied by the annual off-road vehicle license fee required under RCW 46.17.350, in addition to any other fees or taxes due for the application.

(2) The application for renewal of an ORV registration has the same requirements as described for the renewal of vehicle registrations in RCW 46.16A.110 and must be accompanied by the annual off-road vehicle license fee required under RCW 46.17.350, in addition to any other fees or taxes due for the application.

(3) The annual ORV registration is valid for one year and may be renewed each subsequent year as prescribed by the department.

(4) A person who acquires an off-road vehicle that has an ORV registration must:

(a) Apply to the department, county auditor or other agent, or subagent appointed by the director for a transfer of the ORV registration within fifteen days of taking possession of the off-road vehicle; and

(b) Pay the ORV registration transfer fee required under RCW 46.17.410, in addition to any other fees or taxes due at the time of application.

(5) The department shall issue an ORV registration, decals, and tabs upon receipt of:

(a) A properly completed application for an original ORV registration; and

(b) The payment of all fees and taxes due at the time of application.

(6) The ORV registration must be carried on the vehicle for which it was issued at all times during its operation in this state.

(7) Off-road vehicle decals must be affixed to the off-road vehicle in a manner prescribed by the department.

(8) Unless exempt under RCW 46.09.420, any out-of-state operator of an off-road vehicle, when operating in this state, must comply with this chapter. If an ORV registration is required under this chapter, the out-of-state operator must obtain an ORV registration and decal or a temporary ORV use permit.

(9) This section does not apply to wheeled all-terrain vehicles registered for use under RCW 46.09.442. [2013 2nd sp.s. c 23 § 13; 2010 c 161 § 218; 2004 c 106 § 1; 2002 c 352 § 1; 1997 c 241 § 1; 1986 c 206 § 4; 1977 ex.s. c 220 § 6; 1972 ex.s. c 153 § 8; 1971 ex.s. c 47 § 12. Formerly RCW 46.09.070.]

Finding—Intent—2013 2nd sp.s. c 23: See note following RCW 46.09.442.

Effective date—2013 2nd sp.s. c 23: See note following RCW 46.09.310.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Effective date—2004 c 106 § 1: "Section 1 of this act takes effect with registrations that are due or become due November 1, 2004, or later." [2004 c 106 § 2.]

Purpose—1972 ex.s. c 153: See RCW 79A.35.070.

Additional notes found at www.leg.wa.gov

46.09.420 Registrations and decals—Exemptions.

ORV registrations and decals are required under this chapter except for the following:

(1) Off-road vehicles owned and operated by the United States, another state, or a political subdivision of the United States or another state.

(2) Off-road vehicles owned and operated by this state, a municipality, or a political subdivision of this state or the municipality.

(3) Off-road vehicles operated on and across agricultural and timber lands owned, leased, or managed by the off-road vehicle owner or operator or operator's employer.

(4) Off-road vehicles owned by a resident of another state that have a valid ORV use permit or vehicle registration issued in accordance with the laws of the other state. This exemption applies only to the extent that a similar exemption or privilege is granted under the laws of that state.

(5) Off-road vehicles while being used for emergency management purposes under the authority or direction of an appropriate agency that engages in emergency management, as defined in RCW 46.09.310, or search and rescue, as defined in RCW 38.52.010, or a law enforcement agency as defined in RCW 16.52.011.

(6) Vehicles registered under chapter 46.16A RCW or, in the case of nonresidents, vehicles validly registered for operation over public highways in the jurisdiction of the owner's residence.

(7) Off-road vehicles operated by persons who, in good faith, render emergency care or assistance with respect to an incident involving off-road vehicles. Persons who operate off-road vehicles to render such care, assistance, or advice are not liable for civil damages resulting from any act or omission in the rendering of such care, assistance, or advice, other than acts or omissions constituting gross negligence or willful or wanton misconduct. [2013 2nd sp.s. c 23 § 14; 2011 c 171 § 26; 2010 c 161 § 217; 2004 c 105 § 9; 1986 c 206 § 3; 1977 ex.s. c 220 § 4; 1972 ex.s. c 153 § 6; 1971 ex.s. c 47 § 10. Formerly RCW 46.09.050.]

Finding—Intent—2013 2nd sp.s. c 23: See note following RCW 46.09.442.

Effective date—2013 2nd sp.s. c 23: See note following RCW 46.09.310.

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Purpose—1972 ex.s. c 153: See RCW 79A.35.070.

Additional notes found at www.leg.wa.gov

46.09.442 Wheeled all-terrain vehicles—Metal tags—Off-road, on-road registration, tabs.

(1) Any wheeled all-terrain vehicle operated within this state must display a metal tag to be affixed to the rear of the wheeled all-terrain vehicle. The initial metal tag must be issued with an original off-road vehicle registration and upon payment of the initial vehicle license fee under RCW 46.17.350(1)(s). The metal tag must be replaced every seven years at a cost of two dollars. Revenue from replacement metal tags must be deposited into the nonhighway and off-road vehicle activities program account. The department must design the metal tag, which must:

(a) Be the same size as a motorcycle license plate;

(b) Have the words "RESTRICTED VEHICLE" listed at the top of the tag;

(c) Contain designated identification through a combination of letters and numbers;

(d) Leave space at the bottom left corner of the tag for an off-road tab issued under subsection (2) of this section; and

(e) Leave space at the bottom right corner of the tag for an on-road tab, when required, issued under subsection (3) of this section.

(2) A person who operates a wheeled all-terrain vehicle must have a current and proper off-road vehicle registration, with the appropriate off-road tab, and pay the annual vehicle license fee as provided in RCW 46.17.350(1)(s), which must be deposited into the nonhighway and off-road vehicle activities program account. The off-road tab must be issued annually by the department upon payment of initial and renewal vehicle license fees under RCW 46.17.350(1)(s).

(3) A person who operates a wheeled all-terrain vehicle upon a public roadway must have a current and proper on-road vehicle registration, with the appropriate on-road tab, which must be of a bright color that can be seen from a reasonable distance, and pay the annual vehicle license fee as provided in RCW 46.17.350(1)(r). The on-road tab must be issued annually by the department upon payment of initial and renewal vehicle license fees under RCW 46.17.350(1)(r).

(4) A wheeled all-terrain vehicle may not be registered for commercial use. [2013 2nd sp.s. c 23 § 4.]

Finding—Intent—2013 2nd sp.s. c 23: "(1) The legislature finds that off-road vehicle users have been overwhelmed with varied confusing rules, regulations, and ordinances from federal, state, county, and city land managers throughout the state to the extent standardization statewide is needed to maintain public safety and good order.

(2) It is the intent of the legislature to: (a) Increase opportunities for safe, legal, and environmentally acceptable motorized recreation; (b) decrease the amount of unlawful or environmentally harmful motorized recreation; (c) generate funds for use in maintenance, signage, education, and enforcement of motorized recreation opportunities; (d) advance a culture of self-policing and abuse intolerance among motorized recreationists; (e) cause no change in the policies of any governmental agency with respect to public land; (f) not change any current ORV usage routes as authorized in chapter 213, Laws of 2005; (g) stimulate rural economies by opening certain roadways to use by motorized recreationists which will in turn stimulate economic activity through expenditures on gasoline, lodging, food and drink, and other entertainment purposes; and (h) require all wheeled all-terrain vehicles to obtain a metal tag." [2013 2nd sp.s. c 23 § 1.]

Effective date—2013 2nd sp.s. c 23: See note following RCW 46.09.310.

46.09.444 Wheeled all-terrain vehicles—Driver's license requirement—Penalty—Training course. (1) A person may not operate a wheeled all-terrain vehicle upon a public roadway of this state, not including nonhighway roads and trails, without (a) first obtaining a valid driver's license issued to Washington residents in compliance with chapter 46.20 RCW or (b) possessing a valid driver's license issued by the state of the person's residence if the person is a nonresident.

(2) A person who operates a wheeled all-terrain vehicle under this section is granted all rights and is subject to all duties applicable to the operator of a motorcycle under RCW 46.37.530 and chapter 46.61 RCW, unless otherwise stated in chapter 23, Laws of 2013 2nd sp. sess., except that wheeled all-terrain vehicles may not be operated side-by-side in a single lane of traffic.

(3) Wheeled all-terrain vehicles are subject to chapter 46.55 RCW.

(4) Any person who violates this section commits a traffic infraction.

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(5) The department may develop and implement an online training course for persons that register wheeled all-terrain vehicles and utility-type vehicles for use on a public roadway of this state. The department is granted rule-making authority for the training course. Any future costs associated with the training course must be appropriated from the highway safety account and any fees collected must be distributed to the highway safety account. [2013 2nd sp.s. c 23 § 5.]

Finding—Intent—2013 2nd sp.s. c 23: See note following RCW 46.09.442.

Effective date—2013 2nd sp.s. c 23: See note following RCW 46.09.310.

46.09.450 Authorized and prohibited uses for off-road vehicles. (1) Except as otherwise provided in this section, it is lawful to operate an off-road vehicle upon:

(a) A nonhighway road and in parking areas serving designated off-road vehicle areas if the state, federal, local, or private authority responsible for the management of the nonhighway road authorizes the use of off-road vehicles;

(b) A street, road, or highway as authorized under RCW 46.09.360; and

(c) Any trail, nonhighway road, or highway within the state while being used under the authority or direction of an appropriate agency that engages in emergency management, as defined in RCW 46.09.310, or search and rescue, as defined in RCW 38.52.010, or a law enforcement agency, as defined in RCW 16.52.011, within the scope of the agency's official duties.

(2) An off-road vehicle operated on a nonhighway road or on a street, road, or highway as authorized under RCW 46.09.360 and this section is exempt from both registration requirements of chapter 46.16A RCW and vehicle lighting and equipment requirements of chapter 46.37 RCW.

(3) It is unlawful to operate an off-road vehicle upon a private nonhighway road if the road owner has not authorized the use of off-road vehicles.

(4) Nothing in this section authorizes trespass on private property.

(5) The provisions of RCW 4.24.210(5) apply to public and private landowners who allow members of the public to use public facilities accessed by a highway, street, or nonhighway road for recreational off-road vehicle use. [2013 2nd sp.s. c 23 § 15; 2011 c 171 § 27; 2010 c 161 § 221; 2006 c 212 § 2; 2005 c 213 § 4. Formerly RCW 46.09.115.]

Finding—Intent—2013 2nd sp.s. c 23: See note following RCW 46.09.442.

Effective date—2013 2nd sp.s. c 23: See note following RCW 46.09.310.

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Findings—Construction—Effective date—2005 c 213: See notes following RCW 46.09.300.

46.09.455 Authorized and prohibited uses for wheeled all-terrain vehicles. (1) A person may operate a wheeled all-terrain vehicle upon any public roadway of this state, not including nonhighway roads and trails, having a

speed limit of thirty-five miles per hour or less subject to the following restrictions and requirements:

(a) A person may not operate a wheeled all-terrain vehicle upon state highways that are listed in chapter 47.17 RCW; however, a person may operate a wheeled all-terrain vehicle upon a segment of a state highway listed in chapter 47.17 RCW if the segment is within the limits of a city or town and the speed limit on the segment is thirty-five miles per hour or less;

(b) A person operating a wheeled all-terrain vehicle may not cross a public roadway, not including nonhighway roads and trails, with a speed limit in excess of thirty-five miles per hour, unless the crossing begins and ends on a public roadway, not including nonhighway roads and trails, or an ORV trail, with a speed limit of thirty-five miles per hour or less and occurs at an intersection of approximately ninety degrees, except that the operator of a wheeled all-terrain vehicle may not cross at an uncontrolled intersection of a public highway listed under chapter 47.17 RCW;

(c)(i) A person may not operate a wheeled all-terrain vehicle on a public roadway within the boundaries of a county, not including nonhighway roads and trails, with a population of fifteen thousand or more unless the county by ordinance has approved the operation of wheeled all-terrain vehicles on county roadways, not including nonhighway roads and trails.

(ii) The legislative body of a county with a population of fewer than fifteen thousand may, by ordinance, designate roadways or highways within its boundaries to be unsuitable for use by wheeled all-terrain vehicles.

(iii) Any public roadways, not including nonhighway roads and trails, authorized by a legislative body of a county under (c)(i) of this subsection or designated as unsuitable under (c)(ii) of this subsection must be listed publicly and made accessible from the main page of the county web site.

(iv) This subsection (1)(c) does not affect any roadway that was designated as open or closed as of January 1, 2013;

(d)(i) A person may not operate a wheeled all-terrain vehicle on a public roadway within the boundaries of a city or town, not including nonhighway roads and trails, unless the city or town by ordinance has approved the operation of wheeled all-terrain vehicles on city or town roadways, not including nonhighway roads and trails.

(ii) Any public roadways, not including nonhighway roads and trails, authorized by a legislative body of a city or town under (d)(i) of this subsection must be listed publicly and made accessible from the main page of the city or town web site.

(iii) This subsection (1)(d) does not affect any roadway that was designated as open or closed as of January 1, 2013;

(e) Any person who violates this subsection commits a traffic infraction.

(2) Local authorities may not establish requirements for the registration of wheeled all-terrain vehicles.

(3) A person may operate a wheeled all-terrain vehicle upon any public roadway, trail, nonhighway road, or highway within the state while being used under the authority or direction of an appropriate agency that engages in emergency management, as defined in RCW 46.09.310, or search and rescue, as defined in RCW 38.52.010, or a law enforcement

agency, as defined in RCW 16.52.011, within the scope of the agency's official duties.

(4) A wheeled all-terrain vehicle is an off-road vehicle for the purposes of chapter 4.24 RCW. [2013 2nd sp.s. c 23 § 6.]

Finding—Intent—2013 2nd sp.s. c 23: See note following RCW 46.09.442.

Effective date—2013 2nd sp.s. c 23: See note following RCW 46.09.310.

46.09.457 Equipment and declaration requirements for wheeled all-terrain vehicles—Exception. (1) A person may operate a wheeled all-terrain vehicle upon any public roadway of this state, not including nonhighway roads and trails, subject to the following equipment and declaration requirements:

(a) A person who operates a wheeled all-terrain vehicle must comply with the following equipment requirements:

(i) Headlights meeting the requirements of RCW 46.37.030 and 46.37.040 and used at all times when the vehicle is in motion upon a highway;

(ii) One tail lamp meeting the requirements of RCW 46.37.525 and used at all times when the vehicle is in motion upon a highway; however, a utility-type vehicle, as described under RCW 46.09.310, must have two tail lamps meeting the requirements of RCW 46.37.070(1) and to be used at all times when the vehicle is in motion upon a highway;

(iii) A stop lamp meeting the requirements of RCW 46.37.200;

(iv) Reflectors meeting the requirements of RCW 46.37.060;

(v) During hours of darkness, as defined in RCW 46.04.200, turn signals meeting the requirements of RCW 46.37.200. Outside of hours of darkness, the operator must comply with RCW 46.37.200 or 46.61.310;

(vi) A mirror attached to either the right or left handlebar, which must be located to give the operator a complete view of the highway for a distance of at least two hundred feet to the rear of the vehicle; however, a utility-type vehicle, as described under RCW 46.09.310(19), must have two mirrors meeting the requirements of RCW 46.37.400;

(vii) A windshield meeting the requirements of RCW 46.37.430, unless the operator wears glasses, goggles, or a face shield while operating the vehicle, of a type conforming to rules adopted by the Washington state patrol;

(viii) A horn or warning device meeting the requirements of RCW 46.37.380;

(ix) Brakes in working order;

(x) A spark arrester and muffling device meeting the requirements of RCW 46.09.470; and

(xi) For utility-type vehicles, as described under RCW 46.09.310(19), seatbelts meeting the requirements of RCW 46.37.510.

(b) A person who operates a wheeled all-terrain vehicle upon a public roadway must provide a declaration that includes the following:

(i) Documentation of a safety inspection to be completed by a licensed wheeled all-terrain vehicle dealer or repair shop in the state of Washington that must outline the vehicle information and certify under oath that all wheeled all-terrain vehicle equipment as required under this section meets the

requirements outlined in state and federal law. A person who makes a false statement regarding the inspection of equipment required under this section is guilty of false swearing, a gross misdemeanor, under RCW 9A.72.040;

(ii) Documentation that the licensed wheeled all-terrain vehicle dealer or repair shop did not charge more than fifty dollars per safety inspection and that the entire safety inspection fee is paid directly and only to the licensed wheeled all-terrain vehicle dealer or repair shop;

(iii) A statement that the licensed wheeled all-terrain vehicle dealer or repair shop is entitled to the full amount charged for the safety inspection;

(iv) A vehicle identification number verification that must be completed by a licensed wheeled all-terrain vehicle dealer or repair shop in the state of Washington; and

(v) A release signed by the owner of the wheeled all-terrain vehicle and verified by the department, county auditor or other agent, or subagent appointed by the director that releases the state from any liability and outlines that the owner understands that the original wheeled all-terrain vehicle was not manufactured for on-road use and that it has been modified for use on public roadways.

(2) This section does not apply to emergency services vehicles, vehicles used for emergency management purposes, or vehicles used in the production of agricultural and timber products on and across lands owned, leased, or managed by the owner or operator of the wheeled all-terrain vehicle or the operator's employer. [2013 2nd sp.s. c 23 § 7.]

Finding—Intent—2013 2nd sp.s. c 23: See note following RCW 46.09.442.

Effective date—2013 2nd sp.s. c 23: See note following RCW 46.09.310.

46.09.460 Operation by persons under sixteen. (1) Except as specified in subsection (2) of this section, no person under sixteen years of age may operate an off-road vehicle on or across a highway or nonhighway road in this state without direct supervision of a person eighteen years of age or older possessing a valid license to operate a motor vehicle under chapter 46.20 RCW. This prohibition does not apply when a person under sixteen years of age is acting in accordance with RCW 46.09.420 (5) and (7).

(2) Persons under sixteen years of age may operate an off-road vehicle across a highway, if at that crossing signs indicate that wheeled all-terrain vehicles or off-road vehicles may be crossing, or on a nonhighway road designated for off-road vehicle use, under the direct supervision of a person eighteen years of age or older possessing a valid license to operate a motor vehicle under chapter 46.20 RCW.

(3) This section does not apply to vehicles used in the production of agricultural or timber products on and across lands owned, leased, or managed by the owner or operator of a wheeled all-terrain vehicle or the operator's employer. [2013 2nd sp.s. c 23 § 16; 2005 c 213 § 5. Formerly RCW 46.09.117.]

Finding—Intent—2013 2nd sp.s. c 23: See note following RCW 46.09.442.

Effective date—2013 2nd sp.s. c 23: See note following RCW 46.09.310.

Findings—Construction—Effective date—2005 c 213: See notes following RCW 46.09.300.

[2013 RCW Supp—page 534]

46.09.470 Operating violations—Exceptions. (1) Except as provided in subsection (4) of this section, it is a traffic infraction for any person to operate any nonhighway vehicle:

(a) In such a manner as to endanger the property of another;

(b) On lands not owned by the operator or owner of the nonhighway vehicle without a lighted headlight and taillight between the hours of dusk and dawn, or when otherwise required for the safety of others regardless of ownership;

(c) On lands not owned by the operator or owner of the nonhighway vehicle without an adequate braking device or when otherwise required for the safety of others regardless of ownership;

(d) Without a spark arrester approved by the department of natural resources;

(e) Without an adequate, and operating, muffling device which effectively limits vehicle noise to no more than eighty-six decibels on the "A" scale at fifty feet as measured by the Society of Automotive Engineers (SAE) test procedure J 331a, except that a maximum noise level of one hundred and five decibels on the "A" scale at a distance of twenty inches from the exhaust outlet shall be an acceptable substitute in lieu of the Society of Automotive Engineers test procedure J 331a when measured:

(i) At a forty-five degree angle at a distance of twenty inches from the exhaust outlet;

(ii) With the vehicle stationary and the engine running at a steady speed equal to one-half of the manufacturer's maximum allowable ("red line") engine speed or where the manufacturer's maximum allowable engine speed is not known the test speed in revolutions per minute calculated as sixty percent of the speed at which maximum horsepower is developed; and

(iii) With the microphone placed ten inches from the side of the vehicle, one-half way between the lowest part of the vehicle body and the ground plane, and in the same lateral plane as the rearmost exhaust outlet where the outlet of the exhaust pipe is under the vehicle;

(f) On lands not owned by the operator or owner of the nonhighway vehicle upon the shoulder or inside bank or slope of any nonhighway road or highway, or upon the median of any divided highway;

(g) On lands not owned by the operator or owner of the nonhighway vehicle in any area or in such a manner so as to unreasonably expose the underlying soil, or to create an erosion condition, or to injure, damage, or destroy trees, growing crops, or other vegetation;

(h) On lands not owned by the operator or owner of the nonhighway vehicle or on any nonhighway road or trail, when these are restricted to pedestrian or animal travel;

(i) On any public lands in violation of rules and regulations of the agency administering such lands; and

(j) On a private nonhighway road in violation of RCW 46.09.450(3).

(2) It is a misdemeanor for any person to operate any nonhighway vehicle while under the influence of intoxicating liquor or a controlled substance.

(3)(a) Except for an off-road vehicle equipped with seat belts and roll bars or an enclosed passenger compartment, it is a traffic infraction for any person to operate or ride an off-

road vehicle on a nonhighway road without wearing upon his or her head a motorcycle helmet fastened securely while in motion. For purposes of this section, "motorcycle helmet" has the same meaning as provided in RCW 46.37.530.

(b) Subsection (3)(a) of this section does not apply to an off-road vehicle operator operating on his or her own land.

(c) Subsection (3)(a) of this section does not apply to an off-road vehicle used in production of agricultural and timber products on and across lands owned, leased, or managed by the owner or operator of the off-road vehicle or the operator's employer.

(4) It is not a traffic infraction to operate an off-road vehicle on a street, road, or highway as authorized under RCW 46.09.360, 46.61.705, or 46.09.455. [2013 2nd sp.s. c 23 § 17. Prior: 2011 c 171 § 28; 2011 c 121 § 4; 2006 c 212 § 3; 2005 c 213 § 3; 2003 c 377 § 1; 1979 ex.s. c 136 § 41; 1977 ex.s. c 220 § 10; 1972 ex.s. c 153 § 12; 1971 ex.s. c 47 § 17. Formerly RCW 46.09.120.]

Rules of court: *Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.*

Finding—Intent—2013 2nd sp.s. c 23: See note following RCW 46.09.442.

Effective date—2013 2nd sp.s. c 23: See note following RCW 46.09.310.

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—2011 c 121: See note following RCW 46.04.363.

Findings—Construction—Effective date—2005 c 213: See notes following RCW 46.09.300.

Purpose—1972 ex.s. c 153: See RCW 79A.35.070.

Additional notes found at www.leg.wa.gov

46.09.485 Operating violations for wheeled all-terrain vehicles—Notice of infraction, issuance and procedure. (1) A person who operates a wheeled all-terrain vehicle consistent with RCW 46.09.470(1) (g), (h), or (i) or inconsistent with the emergency exemption under RCW 46.09.420 is [commits] a traffic infraction.

(2) Any law enforcement officer may issue a notice of traffic infraction for a violation of subsection (1) of this section whether or not the infraction was committed in the officer's presence, as long as there is reasonable evidence presented that the operator of the wheeled all-terrain vehicle committed a violation of subsection (1) of this section. At a minimum, the evidence must include information relating to the time and location at which the violation occurred, and the wheeled all-terrain vehicle metal tag number or a description of the vehicle involved in the violation. If, after an investigation of a reported violation of subsection (1) of this section, the law enforcement officer is able to identify the operator and has probable cause to believe a violation of subsection (1) of this section has occurred, the law enforcement officer shall prepare a notice of traffic infraction and have it served upon the operator of the wheeled all-terrain vehicle. [2013 2nd sp.s. c 23 § 9.]

Finding—Intent—2013 2nd sp.s. c 23: See note following RCW 46.09.442.

Effective date—2013 2nd sp.s. c 23: See note following RCW 46.09.310.

46.09.520 Refunds from motor vehicle fund—Distribution—Use. (Effective July 1, 2015.) (1) From time to time, but at least once each year, the state treasurer must refund from the motor vehicle fund one percent of the motor vehicle fuel tax revenues collected under chapter 82.38 RCW, based on a tax rate of: (a) Nineteen cents per gallon of motor vehicle fuel from July 1, 2003, through June 30, 2005; (b) twenty cents per gallon of motor vehicle fuel from July 1, 2005, through June 30, 2007; (c) twenty-one cents per gallon of motor vehicle fuel from July 1, 2007, through June 30, 2009; (d) twenty-two cents per gallon of motor vehicle fuel from July 1, 2009, through June 30, 2011; and (e) twenty-three cents per gallon of motor vehicle fuel beginning July 1, 2011, and thereafter, less proper deductions for refunds and costs of collection as provided in RCW 46.68.090.

(2) The treasurer must place these funds in the general fund as follows:

(a) Thirty-six percent must be credited to the ORV and nonhighway vehicle account and administered by the department of natural resources solely for acquisition, planning, development, maintenance, and management of ORV, nonmotorized, and nonhighway road recreation facilities, and information programs and maintenance of nonhighway roads;

(b) Three and one-half percent must be credited to the ORV and nonhighway vehicle account and administered by the department of fish and wildlife solely for the acquisition, planning, development, maintenance, and management of ORV, nonmotorized, and nonhighway road recreation facilities and the maintenance of nonhighway roads;

(c) Two percent must be credited to the ORV and nonhighway vehicle account and administered by the parks and recreation commission solely for the acquisition, planning, development, maintenance, and management of ORV, nonmotorized, and nonhighway road recreation facilities; and

(d) Fifty-eight and one-half percent must be credited to the nonhighway and off-road vehicle activities program account to be administered by the board for planning, acquisition, development, maintenance, and management of ORV, nonmotorized, and nonhighway road recreation facilities and for education, information, and law enforcement programs. The funds under this subsection must be expended in accordance with the following limitations:

(i) Not more than thirty percent may be expended for education, information, and law enforcement programs under this chapter;

(ii) Not less than seventy percent may be expended for ORV, nonmotorized, and nonhighway road recreation facilities. Except as provided in (d)(iii) of this subsection, of this amount:

(A) Not less than thirty percent, together with the funds the board receives under RCW 46.68.045, may be expended for ORV recreation facilities;

(B) Not less than thirty percent may be expended for nonmotorized recreation facilities. Funds expended under this subsection (2)(d)(ii)(B) are known as Ira Spring outdoor recreation facilities funds; and

(C) Not less than thirty percent may be expended for nonhighway road recreation facilities;

(iii) The board may waive the minimum percentage cited in (d)(ii) of this subsection due to insufficient requests for

funds or projects that score low in the board's project evaluation. Funds remaining after such a waiver must be allocated in accordance with board policy.

(3) On a yearly basis an agency may not, except as provided in RCW 46.68.045, expend more than ten percent of the funds it receives under this chapter for general administration expenses incurred in carrying out this chapter.

(4) During the 2009-2011 fiscal biennium, the legislature may appropriate such amounts as reflect the excess fund balance in the NOVA account to the department of natural resources to install consistent off-road vehicle signage at department-managed recreation sites, and to implement the recreation opportunities on department-managed lands in the Reiter block and Ahtanum state forest, and to the state parks and recreation commission. The legislature finds that the appropriation of funds from the NOVA account during the 2009-2011 fiscal biennium for maintenance and operation of state parks or to improve accessibility for boaters and off-road vehicle users at state parks will benefit boaters and off-road vehicle users and others who use nonhighway and non-motorized recreational facilities. The appropriations under this subsection are not required to follow the specific distribution specified in subsection (2) of this section. [2013 c 225 § 608. Prior: 2010 1st sp.s. c 37 § 936; 2010 c 161 § 222; prior: 2009 c 564 § 944; 2009 c 187 § 2; prior: 2007 c 522 § 953; 2007 c 241 § 16; 2004 c 105 § 6; (2004 c 105 § 5 expired June 30, 2005); prior: (2003 1st sp.s. c 26 § 920 expired June 30, 2005); 2003 1st sp.s. c 25 § 922; 2003 c 361 § 407; 1995 c 166 § 9; 1994 c 264 § 36; 1990 c 42 § 115; 1988 c 36 § 25; 1986 c 206 § 8; 1979 c 158 § 130; 1977 ex.s. c 220 § 14; 1975 1st ex.s. c 34 § 1; 1974 ex.s. c 144 § 3; 1972 ex.s. c 153 § 15; 1971 ex.s. c 47 § 22. Formerly RCW 46.09.170.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Effective date—2010 1st sp.s. c 37: See note following RCW 13.06.050.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

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

Severability—Effective date—2007 c 522: See notes following RCW 15.64.050.

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

Expiration dates—Effective dates—2004 c 105 §§ 3-6: See note following RCW 46.09.480.

Expiration date—Severability—Effective dates—2003 1st sp.s. c 26: See notes following RCW 43.135.045.

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

Findings—Part headings not law—Severability—2003 c 361: See notes following RCW 82.36.025.

Effective dates—2003 c 361: See note following RCW 82.08.020.

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Purpose—1972 ex.s. c 153: See RCW 79A.35.070.

Additional notes found at www.leg.wa.gov

46.09.530 Administration and distribution of off-road vehicle moneys. (1) After deducting administrative expenses and the expense of any programs conducted under this chapter, the board shall, at least once each year, distribute the funds it receives under RCW 46.68.045 and 46.09.520 to

state agencies, counties, municipalities, federal agencies, nonprofit off-road vehicle organizations, and Indian tribes. Funds distributed under this section to nonprofit off-road vehicle organizations may be spent only on projects or activities that benefit off-road vehicle recreation on publicly owned lands or lands once publicly owned that come into private ownership in a federally approved land exchange completed between January 1, 1998, and January 1, 2005.

(2) The board shall adopt rules governing applications for funds administered by the recreation and conservation office under this chapter and shall determine the amount of money distributed to each applicant. Agencies receiving funds under this chapter for capital purposes shall consider the possibility of contracting with the state parks and recreation commission, the department of natural resources, or other federal, state, and local agencies to employ the youth development and conservation corps or other youth crews in completing the project.

(3) The board shall require each applicant for acquisition or development funds under this section to comply with the requirements of either the state environmental policy act, chapter 43.21C RCW, or the national environmental policy act (42 U.S.C. Sec. 4321 et seq.). [2013 2nd sp.s. c 23 § 18; 2010 c 161 § 223; 2007 c 241 § 17; 2004 c 105 § 7; 1998 c 144 § 1; 1991 c 363 § 122; 1986 c 206 § 9; 1977 ex.s. c 220 § 17. Formerly RCW 46.09.240.]

Finding—Intent—2013 2nd sp.s. c 23: See note following RCW 46.09.442.

Effective date—2013 2nd sp.s. c 23: See note following RCW 46.09.310.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

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

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

Additional notes found at www.leg.wa.gov

46.09.540 Multiuse roadway safety account. (1) The multiuse roadway safety account is created in the motor vehicle fund. All receipts from vehicle license fees under RCW 46.17.350(1)(r) must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for grants administered by the department of transportation to: (a) Counties to perform safety engineering analysis of mixed vehicle use on any road within a county; (b) local governments to provide funding to erect signs providing notice to the motoring public that (i) wheeled all-terrain vehicles are present or (ii) wheeled all-terrain vehicles may be crossing; (c) the state patrol or local law enforcement for purposes of defraying the costs of enforcement of chapter 23, Laws of 2013 2nd sp. sess.; and (d) law enforcement to investigate accidents involving wheeled all-terrain vehicles.

(2) The department of transportation must prioritize grant awards in the following priority order:

(a) For the purpose of marking highway crossings with signs warning motorists that wheeled all-terrain vehicles may be crossing when an ORV recreation facility parking lot is on the other side of a public roadway from the actual ORV recreation facility; and

(b) For the purpose of marking intersections with signs where a wheeled all-terrain vehicle may cross a public road to advise motorists of the upcoming intersection. Such signs must conform to the manual on uniform traffic control devices. [2013 2nd sp.s. c 23 § 10.]

Finding—Intent—2013 2nd sp.s. c 23: See note following RCW 46.09.442.

Effective date—2013 2nd sp.s. c 23: See note following RCW 46.09.310.

Chapter 46.12 RCW

CERTIFICATES OF TITLE

(Formerly: Certificates of ownership and registration)

Sections

- 46.12.630 Lists of registered and legal owners of vehicles—Furnished for certain purposes—Penalty for unauthorized use.
- 46.12.635 Disclosure of names and addresses of individual vehicle owners. (*Effective January 1, 2014.*)

46.12.630 Lists of registered and legal owners of vehicles—Furnished for certain purposes—Penalty for unauthorized use. In addition to any other authority which it may have, the department of licensing may furnish lists of registered and legal owners of motor vehicles only for the purposes specified in this section to:

(1)(a) The manufacturers of motor vehicles, or their authorized agents, to be used:

(i) To enable those manufacturers to carry out the provisions of the national traffic and motor vehicle safety act of 1966 (15 U.S.C. Sec. 1382-1418), including amendments or additions thereto, respecting safety-related defects in motor vehicles; or

(ii) During the 2011-2013 fiscal biennium, in research activities, and in producing statistical reports, as long as the personal information is not published, redisclosed, or used to contact individuals; or

(b) During fiscal year 2014, an entity that is an authorized agent of a motor vehicle manufacturer, for purposes of using lists of registered and legal owner information to conduct research activities and produce statistical reports, as long as the entity does not allow personal information received under this section to be published, redisclosed, or used to contact individuals. The department must charge an amount sufficient to cover the full cost of providing the data requested under this subsection (1)(b). Full cost of providing the data includes the information technology, administrative, and contract oversight costs;

(2) Any governmental agency of the United States or Canada, or political subdivisions thereof, to be used by it or by its authorized commercial agents or contractors only in connection with the enforcement of motor vehicle or traffic laws by, or programs related to traffic safety of, that government agency. Only such parts of the list as are required for completion of the work required of the agent or contractor shall be provided to such agent or contractor;

(3) A commercial parking company requiring the names and addresses of registered owners to notify them of outstanding parking violations. Subject to the disclosure agreement provisions of RCW 46.12.635 and the requirements of Executive Order 97-01, the department may provide only the

parts of the list that are required for completion of the work required of the company;

(4) An authorized agent or contractor of the department, to be used only in connection with providing motor vehicle excise tax, licensing, title, and registration information to motor vehicle dealers;

(5) Any business regularly making loans to other persons to finance the purchase of motor vehicles, to be used to assist the person requesting the list to determine ownership of specific vehicles for the purpose of determining whether or not to provide such financing; or

(6) A company or its agents operating a toll facility under chapter 47.46 RCW or other applicable authority requiring the names, addresses, and vehicle information of motor vehicle registered owners to identify toll violators.

Where both a mailing address and residence address are recorded on the vehicle record and are different, only the mailing address will be disclosed. Both addresses will be disclosed in response to requests for disclosure from courts, law enforcement agencies, or government entities with enforcement, investigative, or taxing authority and only for use in the normal course of conducting their business.

If a list of registered and legal owners of motor vehicles is used for any purpose other than that authorized in this section, the manufacturer, governmental agency, commercial parking company, authorized agent, contractor, financial institution, toll facility operator, or their authorized agents or contractors responsible for the unauthorized disclosure or use will be denied further access to such information by the department of licensing. [2013 c 306 § 702; 2012 c 86 § 803; 2011 c 171 § 37; 2005 c 340 § 1; 2004 c 230 § 1. Prior: 1997 c 432 § 6; 1997 c 33 § 1; 1982 c 215 § 1. Formerly RCW 46.12.370.]

Effective date—2013 c 306 § 702: "Section 702 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2013." [2013 c 306 § 1403.]

Effective date—2012 c 86: See note following RCW 47.76.360.

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

46.12.635 Disclosure of names and addresses of individual vehicle owners. (*Effective January 1, 2014.*) (1) Notwithstanding the provisions of chapter 42.56 RCW, the name or address of an individual vehicle owner shall not be released by the department, county auditor, or agency or firm authorized by the department except under the following circumstances:

(a) The requesting party is a business entity that requests the information for use in the course of business;

(b) The request is a written request that is signed by the person requesting disclosure that contains the full legal name and address of the requesting party, that specifies the purpose for which the information will be used; and

(c) The requesting party enters into a disclosure agreement with the department in which the party promises that the party will use the information only for the purpose stated in the request for the information; and that the party does not intend to use, or facilitate the use of, the information for the purpose of making any unsolicited business contact with a person named in the disclosed information. The term "unso-

licited business contact" means a contact that is intended to result in, or promote, the sale of any goods or services to a person named in the disclosed information. The term does not apply to situations where the requesting party and such person have been involved in a business transaction prior to the date of the disclosure request and where the request is made in connection with the transaction.

(2) Where both a mailing address and residence address are recorded on the vehicle record and are different, only the mailing address will be disclosed. Both addresses will be disclosed in response to requests for disclosure from courts, law enforcement agencies, or government entities with enforcement, investigative, or taxing authority and only for use in the normal course of conducting their business.

(3) The disclosing entity shall retain the request for disclosure for three years.

(4)(a) Whenever the disclosing entity grants a request for information under this section by an attorney or private investigator, the disclosing entity shall provide notice to the vehicle owner, to whom the information applies, that the request has been granted. The notice must only include: (i) That the disclosing entity has disclosed the vehicle owner's name and address pursuant to a request made under this section; (ii) the date that the disclosure was made; and (iii) that the vehicle owner has five days from receipt of the notice to contact the disclosing entity to determine the occupation of the requesting party.

(b) Except as provided in (c) of this subsection, the only information about the requesting party that the disclosing entity may disclose in response to a request made by a vehicle owner under (a) of this subsection is whether the requesting party was an attorney or private investigator. The request by the vehicle owner must be submitted to the disclosing entity within five days of receipt of the original notice.

(c) In the case of a vehicle owner who submits to the disclosing entity a copy of a valid court order restricting another person from contacting the vehicle owner or his or her family or household member, the disclosing entity shall provide the vehicle owner with the name and address of the requesting party.

(5) Any person who is furnished vehicle owner information under this section shall be responsible for assuring that the information furnished is not used for a purpose contrary to the agreement between the person and the department.

(6) This section shall not apply to requests for information by governmental entities or requests that may be granted under any other provision of this title expressly authorizing the disclosure of the names or addresses of vehicle owners.

(7) This section shall not apply to title history information under RCW 19.118.170.

(8) The department shall charge a fee of two dollars for each record returned pursuant to a request made by a business entity under subsection (1) of this section and deposit the fee into the highway safety account. [2013 c 232 § 1. Prior: 2005 c 340 § 2; 2005 c 274 § 304; 1995 c 254 § 10; 1990 c 232 § 2; 1987 c 299 § 1; 1984 c 241 § 2. Formerly RCW 46.12.380.]

Effective date—2013 c 232: "This act takes effect January 1, 2014." [2013 c 232 § 2.]

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

Legislative finding and purpose—1990 c 232: "The legislature recognizes the extraordinary value of the vehicle title and registration records for law enforcement and commerce within the state. The legislature also recognizes that indiscriminate release of the vehicle owner information to be an infringement upon the rights of the owner and can subject owners to intrusions on their privacy. The purpose of this act is to limit the release of vehicle owners' names and addresses while maintaining the availability of the vehicle records for the purposes of law enforcement and commerce." [1990 c 232 § 1.]

Additional notes found at www.leg.wa.gov

Chapter 46.16A RCW REGISTRATION

Sections

46.16A.080 Registration—Exemptions.

46.16A.180 Registration certificates—Formats—Requirements—Penalty—Exception.

46.16A.420 Farm vehicles—Farm exempt decal—Fee—Rules.

46.16A.080 Registration—Exemptions. The following vehicles are not required to be registered under this chapter:

(1) Converter gears used to convert a semitrailer into a trailer or a two-axle truck or tractor into a three or more axle truck or tractor or used in any other manner to increase the number of axles of a vehicle;

(2) Electric-assisted bicycles;

(3)(a) Farm vehicles operated within a radius of twenty-five miles of the farm where it is principally used or garaged for the purposes of traveling between farms or other locations to engage in activities that support farming operations, (b) farm tractors and farm implements including trailers designed as cook or bunk houses used exclusively for animal herding temporarily operating or drawn upon the public highways, and (c) trailers used exclusively to transport farm implements from one farm to another during daylight hours or at night when the trailer is equipped with lights that comply with applicable law;

(4) Forklifts operated during daylight hours on public highways adjacent to and within five hundred feet of the warehouses they serve;

(5) Golf carts, as defined in RCW 46.04.1945, operating within a designated golf cart zone as described in RCW 46.08.175;

(6) Motor vehicles operated solely within a national recreation area that is not accessible by a state highway, including motorcycles, motor homes, passenger cars, and sport utility vehicles. This exemption applies only after initial registration;

(7) Motorized foot scooters;

(8) Nurse rigs or equipment auxiliary for the use of and designed or modified for the fueling, repairing, or loading of spray and fertilizer applicator rigs and not used, designed, or modified primarily for the purpose of transportation;

(9) Off-road vehicles operated on a street, road, or highway as authorized under RCW 46.09.360, or nonhighway roads under RCW 46.09.450;

(10) Special highway construction equipment;

(11) Dump trucks and tractor-dump trailer combinations that are:

(a) Designed and used primarily for construction work on highways;

(b) Not designed or used primarily for the transportation of persons or property on a public highway; and

(c) Only incidentally operated or moved over the highways;

(12) Spray or fertilizer applicator rigs designed and used exclusively for spraying or fertilization in the conduct of agricultural operations and not primarily for the purpose of transportation;

(13) Tow dollies;

(14) Trams used for transporting persons to and from facilities related to the horse racing industry as regulated in chapter 67.16 RCW, as long as the public right-of-way routes over which the trams operate are not more than one mile from end to end, the public rights-of-way over which the tram operates have average daily traffic of not more than fifteen thousand vehicles per day, and the activity is in conformity with federal law. The operator must be a licensed driver and at least eighteen years old. For the purposes of this section, "tram" also means a vehicle, or combination of vehicles linked together with a single mode of propulsion, used to transport persons from one location to another; and

(15) Vehicles used by the state parks and recreation commission exclusively for park maintenance and operations upon public highways within state parks. [2013 c 299 § 2; 2011 c 171 § 45; 2010 c 161 § 404.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

46.16A.180 Registration certificates—Formats—Requirements—Penalty—Exception. (1) A registration certificate must be:

(a) Signed by the registered owner, or if a firm or corporation, the signature of one of its officers or other authorized agent, to be valid;

(b) Carried in the vehicle for which it is issued; and

(c) Provided to law enforcement and the department by the operator of the vehicle upon demand.

(d) The registration certificate required by this section may be provided in either paper or electronic format. Acceptable electronic formats include the display of electronic images on a cellular phone or any other type of portable electronic device.

(2) It is unlawful for any person to operate or be in possession of a vehicle without carrying a registration certificate for the vehicle. Any person in charge of a vehicle shall, upon demand of any of the local authorities or of any police officer or of any representative of the department, permit an inspection of the vehicle registration certificate. This section does not apply to a vehicle for which registration is not required to be renewed annually and is a publicly owned vehicle marked as required under RCW 46.08.065. [2013 c 157 § 3; 2010 c 161 § 432; 2010 c 8 § 9014; 1986 c 18 § 16; 1979 ex.s. c 113 § 3; 1969 ex.s. c 170 § 11; 1967 c 32 § 19; 1961 c 12 § 46.16.260. Prior: 1955 c 384 § 18; 1937 c 188 § 8; RRS § 6312-8. Formerly RCW 46.16.260.]

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

46.16A.420 Farm vehicles—Farm exempt decal—Fee—Rules. (1) A farmer shall apply to the department, county auditor or other agent, or subagent appointed by the director for a farm exempt decal for a farm vehicle if the farm vehicle is exempt under RCW 46.16A.080(3). The farm exempt decal:

(a) Allows the farm vehicle to be operated on public highways as identified under RCW 46.16A.080(3);

(b) Must be displayed on the farm vehicle so that it is clearly visible from outside of the farm vehicle;

(c) Must identify that the farm vehicle is exempt from the registration requirements of this chapter; and

(d) Must be visible from the rear of the farm vehicle. This requirement for a farm exempt decal to be visible from the rear of the vehicle applies only to farm exempt decals issued after July 28, 2013.

(2) A farmer or the farmer's representative must apply for a farm exempt decal on a form furnished or approved by the department. The application must show:

(a) The name and address of the person who is the owner of the vehicle;

(b) A full description of the vehicle, including its make, model, year, the motor number or the vehicle identification number if the vehicle is a motor vehicle, or the serial number if the vehicle is a trailer;

(c) The purpose for which the vehicle is principally used;

(d) The place where the farm vehicle is principally used or garaged; and

(e) Other information as required by the department upon application.

(3) The department, county auditor or other agent, or subagent appointed by the director shall collect the fee required under RCW 46.17.325 when issuing a farm exempt decal.

(4) A farm exempt decal may not be renewed. The status as an exempt vehicle continues until suspended or revoked for misuse, or when the vehicle is no longer used as a farm vehicle.

(5) The department may adopt rules to implement this section. [2013 c 299 § 1. Prior: 2010 c 161 § 409; 2010 c 8 § 9010; 1979 c 158 § 139; 1967 c 202 § 3. Formerly RCW 46.16.025]

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Chapter 46.17 RCW

VEHICLE FEES

(Formerly: Vehicle weight fees)

Sections

46.17.210	Personalized license plate fees.
46.17.220	Special license plate fees. (<i>Effective January 1, 2014.</i>)
46.17.350	License fees by vehicle type.

46.17.210 Personalized license plate fees. In addition to all fees and taxes required to be paid upon application for a vehicle registration under chapter 46.16A RCW, the holder of a personalized license plate shall pay an initial fee of fifty-two dollars and forty-two dollars for each renewal. The personalized license plate fee must be distributed as provided in

RCW 46.68.435. [2013 c 329 § 6; 2011 c 171 § 57; 2010 c 161 § 520.]

Application—2013 c 329 § 6: "Section 6 of this act applies only to vehicle registrations that are due or become due on or after October 1, 2013." [2013 c 329 § 7.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

46.17.220 Special license plate fees. (Effective January 1, 2014.) (1) In addition to all fees and taxes required to be paid upon application for a vehicle registration in chapter 46.16A RCW, the holder of a special license plate shall pay the appropriate special license plate fee as listed in this section.

PLATE TYPE	INITIAL FEE	RENEWAL FEE	DISTRIBUTED UNDER
(a) 4-H	\$ 40.00	\$ 30.00	RCW 46.68.420
(b) Amateur radio license	\$ 5.00	N/A	RCW 46.68.070
(c) Armed forces	\$ 40.00	\$ 30.00	RCW 46.68.425
(d) Baseball stadium	\$ 40.00	\$ 30.00	Subsection(2) of this section
(e) Collector vehicle	\$ 35.00	N/A	RCW 46.68.030
(f) Collegiate	\$ 40.00	\$ 30.00	RCW 46.68.430
(g) Endangered wildlife	\$ 40.00	\$ 30.00	RCW 46.68.425
(h) Gonzaga University alumni association	\$ 40.00	\$ 30.00	RCW 46.68.420
(i) Helping kids speak	\$ 40.00	\$ 30.00	RCW 46.68.420
(j) Horseless carriage	\$ 35.00	N/A	RCW 46.68.030
(k) Keep kids safe	\$ 45.00	\$ 30.00	RCW 46.68.425
(l) Law enforcement memorial	\$ 40.00	\$ 30.00	RCW 46.68.420
(m) Military affiliate radio system	\$ 5.00	N/A	RCW 46.68.070
(n) Music matters	\$ 40.00	\$ 30.00	RCW 46.68.420
(o) Professional firefighters and paramedics	\$ 40.00	\$ 30.00	RCW 46.68.420
(p) Ride share	\$ 25.00	N/A	RCW 46.68.030
(q) Seattle Seahawks	\$ 40.00	\$ 30.00	RCW 46.68.420
(r) Seattle Sounders FC	\$ 40.00	\$ 30.00	RCW 46.68.420
(s) Share the road	\$ 40.00	\$ 30.00	RCW 46.68.420
(t) Ski & ride Washington	\$ 40.00	\$ 30.00	RCW 46.68.420
(u) Square dancer	\$ 40.00	N/A	RCW 46.68.070
(v) State flower	\$ 40.00	\$ 30.00	RCW 46.68.420
(w) Volunteer firefighters	\$ 40.00	\$ 30.00	RCW 46.68.420
(x) Washington light-houses	\$ 40.00	\$ 30.00	RCW 46.68.420
(y) Washington state parks	\$ 40.00	\$ 30.00	RCW 46.68.425
(z) Washington's national parks	\$ 40.00	\$ 30.00	RCW 46.68.420
(aa) Washington's wildlife collection	\$ 40.00	\$ 30.00	RCW 46.68.425
(bb) We love our pets	\$ 40.00	\$ 30.00	RCW 46.68.420
(cc) Wild on Washington	\$ 40.00	\$ 30.00	RCW 46.68.425

(2) After deducting administration and collection expenses for the sale of baseball stadium license plates, the remaining proceeds must be distributed to a county for the purpose of paying the principal and interest payments on bonds issued by the county to construct a baseball stadium, as

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defined in RCW 82.14.0485, including reasonably necessary preconstruction costs, while the taxes are being collected under RCW 82.14.360. After this date, the state treasurer shall credit the funds to the state general fund. [2013 c 286 § 2; 2012 c 65 § 4. Prior: 2011 c 229 § 3; 2011 c 225 § 2; 2011 c 171 § 58; 2010 c 161 § 521.]

Effective date—2013 c 286: See note following RCW 46.18.200.

Effective date—2012 c 65: See note following RCW 46.18.200.

Effective date—2011 c 229: See note following RCW 46.18.200.

Effective date—2011 c 225: See note following RCW 46.18.200.

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

46.17.350 License fees by vehicle type. (1) Before accepting an application for a vehicle registration, the department, county auditor or other agent, or subagent appointed by the director shall require the applicant, unless specifically exempt, to pay the following vehicle license fee by vehicle type:

VEHICLE TYPE	INITIAL FEE	RENEWAL FEE	DISTRIBUTED UNDER
(a) Auto stage, six seats or less	\$ 30.00	\$ 30.00	RCW 46.68.030
(b) Camper	\$ 4.90	\$ 3.50	RCW 46.68.030
(c) Commercial trailer	\$ 34.00	\$ 30.00	RCW 46.68.035
(d) For hire vehicle, six seats or less	\$ 30.00	\$ 30.00	RCW 46.68.030
(e) Mobile home (if registered)	\$ 30.00	\$ 30.00	RCW 46.68.030
(f) Moped	\$ 30.00	\$ 30.00	RCW 46.68.030
(g) Motor home	\$ 30.00	\$ 30.00	RCW 46.68.030
(h) Motorcycle	\$ 30.00	\$ 30.00	RCW 46.68.030
(i) Off-road vehicle	\$ 18.00	\$ 18.00	RCW 46.68.045
(j) Passenger car	\$ 30.00	\$ 30.00	RCW 46.68.030
(k) Private use single-axle trailer	\$ 15.00	\$ 15.00	RCW 46.68.035
(l) Snowmobile	\$ 30.00	\$ 30.00	RCW 46.68.350
(m) Snowmobile, vintage	\$ 12.00	\$ 12.00	RCW 46.68.350
(n) Sport utility vehicle	\$ 30.00	\$ 30.00	RCW 46.68.030
(o) Tow truck	\$ 30.00	\$ 30.00	RCW 46.68.030
(p) Trailer, over 2000 pounds	\$ 30.00	\$ 30.00	RCW 46.68.030
(q) Travel trailer	\$ 30.00	\$ 30.00	RCW 46.68.030
(r) Wheeled all-terrain vehicle, on-road use	\$ 12.00	\$ 12.00	RCW 46.09.540
(s) Wheeled all-terrain vehicle, off-road use	\$ 18.00	\$ 18.00	RCW 46.09.510

(2) The vehicle license fee required in subsection (1) of this section is in addition to the filing fee required under RCW 46.17.005, and any other fee or tax required by law. [2013 2nd sp.s. c 23 § 19; 2010 c 161 § 531.]

Finding—Intent—2013 2nd sp.s. c 23: See note following RCW 46.09.442.

Effective date—2013 2nd sp.s. c 23: See note following RCW 46.09.310.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Chapter 46.18 RCW
SPECIAL LICENSE PLATES

Sections

- 46.18.060 Department duties continued—Moratorium on issuance of special license plates, exceptions. (*Effective until January 1, 2014.*)
- 46.18.060 Department duties continued—Moratorium on issuance of special license plates, exceptions. (*Effective January 1, 2014.*)
- 46.18.100 Sponsoring organization requirements. (*Effective January 1, 2014.*)
- 46.18.200 Department-approved plate types. (*Effective January 1, 2014.*)
- 46.18.245 Gold star license plates.

46.18.060 Department duties continued—Moratorium on issuance of special license plates, exceptions. (*Effective until January 1, 2014.*) (1) The department must review and either approve or reject special license plate applications submitted by sponsoring organizations.

(2) Duties of the department include, but are not limited to, the following:

(a) Review and approve the annual financial reports submitted by sponsoring organizations with active special license plate series and present those annual financial reports to the joint transportation committee;

(b) Report annually to the joint transportation committee on the special license plate applications that were considered by the department;

(c) Issue approval and rejection notification letters to sponsoring organizations, the executive committee of the joint transportation committee, and the legislative sponsors identified in each application. The letters must be issued within seven days of making a determination on the status of an application; and

(d) Review annually the number of plates sold for each special license plate series created after January 1, 2003. The department may submit a recommendation to discontinue a special plate series to the executive committee of the joint transportation committee.

(3) Except as provided in RCW 46.18.245, in order to assess the effects and impact of the proliferation of special license plates, the legislature declares a temporary moratorium on the issuance of any additional plates until July 1, 2015. During this period of time, the department is prohibited from accepting, reviewing, processing, or approving any applications. Additionally, a special license plate may not be enacted by the legislature during the moratorium, unless the proposed license plate has been approved by the former special license plate review board before February 15, 2005.

(4) The limitations under subsection (3) of this section do not apply to the following special license plates:

- (a) 4-H license plates created under RCW 46.18.200;
- (b) Music Matters license plates created under RCW 46.18.200;
- (c) State flower license plates created under RCW 46.18.200;
- (d) Volunteer firefighter license plates created under RCW 46.18.200. [2013 c 306 § 703; 2012 c 65 § 6. Prior: 2011 c 367 § 703; 2011 c 229 § 5; 2011 c 225 § 4; 2011 c 171 § 66; prior: 2010 1st sp.s. c 7 § 94; 2010 c 161 § 604; 2009 c 470 § 710; 2008 c 72 § 2; 2007 c 518 § 711; prior: 2005 c 319

§ 119; 2005 c 210 § 7; 2003 c 196 § 103. Formerly RCW 46.16.725.]

Effective date—2013 c 306: See note following RCW 47.64.170.

Effective date—2012 c 65: See note following RCW 46.18.200.

Effective date—2011 c 367 §§ 703, 704, 716, and 719: "Sections 703, 704, 716, and 719 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 2011." [2011 c 367 § 1103.]

Effective date—2011 c 229: See note following RCW 46.18.200.

Effective date—2011 c 225: See note following RCW 46.18.200.

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

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

Severability—Effective date—2007 c 518: See notes following RCW 46.68.170.

Findings—Intent—Part headings—Effective dates—2005 c 319: See notes following RCW 43.17.020.

Part headings not law—2003 c 196: See note following RCW 46.18.005.

46.18.060 Department duties continued—Moratorium on issuance of special license plates, exceptions. (*Effective January 1, 2014.*) (1) The department must review and either approve or reject special license plate applications submitted by sponsoring organizations.

(2) Duties of the department include, but are not limited to, the following:

(a) Review and approve the annual financial reports submitted by sponsoring organizations with active special license plate series and present those annual financial reports to the joint transportation committee;

(b) Report annually to the joint transportation committee on the special license plate applications that were considered by the department;

(c) Issue approval and rejection notification letters to sponsoring organizations, the executive committee of the joint transportation committee, and the legislative sponsors identified in each application. The letters must be issued within seven days of making a determination on the status of an application; and

(d) Review annually the number of plates sold for each special license plate series created after January 1, 2003. The department may submit a recommendation to discontinue a special plate series to the executive committee of the joint transportation committee.

(3) In order to assess the effects and impact of the proliferation of special license plates, the legislature declares a temporary moratorium on the issuance of any additional plates until July 1, 2015. During this period of time, the department is prohibited from accepting, reviewing, processing, or approving any applications. Additionally, a special license plate may not be enacted by the legislature during the moratorium, unless the proposed license plate has been approved by the former special license plate review board before February 15, 2005.

(4) The limitations under subsection (3) of this section do not apply to the following special license plates:

- (a) 4-H license plates created under RCW 46.18.200;

(b) Gold star license plates created under RCW 46.18.245;

(c) Music Matters license plates created under RCW 46.18.200;

(d) Seattle Seahawks license plates created under RCW 46.18.200;

(e) Seattle Sounders FC license plates created under RCW 46.18.200;

(f) State flower license plates created under RCW 46.18.200;

(g) Volunteer firefighter license plates created under RCW 46.18.200. [2013 c 306 § 703; 2013 c 286 § 5; 2012 c 65 § 6. Prior: 2011 c 367 § 703; 2011 c 229 § 5; 2011 c 225 § 4; 2011 c 171 § 66; prior: 2010 1st sp.s. c 7 § 94; 2010 c 161 § 604; 2009 c 470 § 710; 2008 c 72 § 2; 2007 c 518 § 711; prior: 2005 c 319 § 119; 2005 c 210 § 7; 2003 c 196 § 103. Formerly RCW 46.16.725.]

Reviser's note: This section was amended by 2013 c 286 § 5 and by 2013 c 306 § 703, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2013 c 306: See note following RCW 47.64.170.

Effective date—2013 c 286: See note following RCW 46.18.200.

Effective date—2012 c 65: See note following RCW 46.18.200.

Effective date—2011 c 367 §§ 703, 704, 716, and 719: "Sections 703, 704, 716, and 719 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 2011." [2011 c 367 § 1103.]

Effective date—2011 c 229: See note following RCW 46.18.200.

Effective date—2011 c 225: See note following RCW 46.18.200.

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

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

Severability—Effective date—2007 c 518: See notes following RCW 46.68.170.

Findings—Intent—Part headings—Effective dates—2005 c 319: See notes following RCW 43.17.020.

Part headings not law—2003 c 196: See note following RCW 46.18.005.

46.18.100 Sponsoring organization requirements. (Effective January 1, 2014.) (1) For an organization to qualify for a special license plate under the special license plate approval program created in this chapter, the sponsoring organization must submit documentation to the department that verifies that the organization is:

(a)(i) A nonprofit organization, as defined in 26 U.S.C. Sec. 501(c)(3). The department may request a copy of an Internal Revenue Service ruling to verify an organization's nonprofit status; and

(ii) Located in Washington state and has registered as a charitable organization with the secretary of state's office as required by law; or

(b)(i) A professional sports franchise located in Washington state; and

(ii) Using the proceeds from a special license plate in conjunction with a nonprofit organization, as defined in 26

U.S.C. Sec. 501(c)(3), solely for the purposes outlined under RCW 46.68.420.

(2) For a governmental body to qualify for a special license plate under the special license plate approval program created in this chapter, a governmental body must be:

(a) A political subdivision including, but not limited to, any county, city, town, municipal corporation, or special purpose taxing district that has the express permission of the political subdivision's executive body to sponsor a special license plate;

(b) A federally recognized tribal government that has received the approval of the executive body of that government to sponsor a special license plate;

(c) A state agency that has received approval from the director of the agency or the department head; or

(d) A community or technical college that has the express permission of the college's board of trustees to sponsor a special license plate. [2013 c 286 § 4; 2010 c 161 § 605; 2004 c 222 § 3; 2003 c 196 § 201. Formerly RCW 46.16.735.]

Effective date—2013 c 286: See note following RCW 46.18.200.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Part headings not law—2003 c 196: See note following RCW 46.18.005.

46.18.200 Department-approved plate types. (Effective January 1, 2014.) (1) Special license plate series reviewed and approved by the department:

(a) May be issued in lieu of standard issue or personalized license plates for vehicles required to display one and two license plates unless otherwise specified;

(b) Must be issued under terms and conditions established by the department;

(c) Must not be issued for vehicles registered under chapter 46.87 RCW; and

(d) Must display a symbol or artwork approved by the department.

(2) The department approves and shall issue the following special license plates:

LICENSE PLATE	DESCRIPTION, SYMBOL, OR ARTWORK
4-H	Displays the "4-H" logo.
Armed forces collection	Recognizes the contribution of veterans, active duty military personnel, reservists, and members of the national guard, and includes six separate designs, each containing a symbol representing a different branch of the armed forces to include army, navy, air force, marine corps, coast guard, and national guard.
Endangered wildlife	Displays a symbol or artwork symbolizing endangered wildlife in Washington state.
Gonzaga University alumni association	Recognizes the Gonzaga University alumni association.
Helping kids speak	Recognizes an organization that supports programs that provide no-cost speech pathology programs to children.

Keep kids safe	Recognizes efforts to prevent child abuse and neglect.
Law enforcement memorial	Honors law enforcement officers in Washington killed in the line of duty.
Music matters	Displays the "Music Matters" logo.
Professional firefighters and paramedics	Recognizes professional firefighters and paramedics who are members of the Washington state council of firefighters.
Seattle Seahawks	Displays the "Seattle Seahawks" logo.
Seattle Sounders FC	Displays the "Seattle Sounders FC" logo.
Share the road	Recognizes an organization that promotes bicycle safety and awareness education.
Ski & ride Washington	Recognizes the Washington snow-sports industry.
State flower	Recognizes the Washington state flower.
Volunteer firefighters	Recognizes volunteer firefighters.
Washington lighthouses	Recognizes an organization that supports selected Washington state lighthouses and provides environmental education programs.
Washington state parks	Recognizes Washington state parks as premier destinations of uncommon quality that preserve significant natural, cultural, historical, and recreational resources.
Washington's national park fund	Builds awareness of Washington's national parks and supports priority park programs and projects in Washington's national parks, such as enhancing visitor experience, promoting volunteerism, engaging communities, and providing educational opportunities related to Washington's national parks.
Washington's wildlife collection	Recognizes Washington's wildlife.
We love our pets	Recognizes an organization that assists local member agencies of the federation of animal welfare and control agencies to promote and perform spay/neuter surgery on Washington state pets to reduce pet overpopulation.
Wild on Washington	Symbolizes wildlife viewing in Washington state.

(3) Applicants for initial and renewal professional firefighters and paramedics special license plates must show proof eligibility by providing a certificate of current membership from the Washington state council of firefighters.

(4) Applicants for initial volunteer firefighters special license plates must (a) have been a volunteer firefighter for at least ten years or be a volunteer firefighter for one or more years and (b) have documentation of service from the district of the appropriate fire service. If the volunteer firefighter leaves firefighting service before ten years of service have been completed, the volunteer firefighter shall surrender the license plates to the department on the registration renewal date. If the volunteer firefighter stays in service for at least ten years and then leaves, the license plate may be retained by the former volunteer firefighter and as long as the license plate is retained for use the person will continue to pay the future registration renewals. A qualifying volunteer fire-

fighter may have no more than one set of license plates per vehicle, and a maximum of two sets per applicant, for their personal vehicles. If the volunteer firefighter is convicted of a violation of RCW 46.61.502 or a felony, the license plates must be surrendered upon conviction. [2013 c 286 § 1; 2012 c 65 § 1. Prior: 2011 c 229 § 1; 2011 c 225 § 1; 2011 c 171 § 69; 2010 c 161 § 611.]

Effective date—2013 c 286: "This act takes effect January 1, 2014." [2013 c 286 § 8.]

Effective date—2012 c 65: "This act takes effect January 1, 2013." [2012 c 65 § 7.]

Effective date—2011 c 229: "This act takes effect January 1, 2012." [2011 c 229 § 6.]

Effective date—2011 c 225: "This act takes effect January 1, 2012." [2011 c 225 § 5.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

46.18.245 Gold star license plates. (1) A registered owner who is an eligible family member of a member of the United States armed forces who died while in service to his or her country, or as a result of his or her service, may apply to the department for special gold star license plates for use on a motor vehicle. The registered owner must:

(a) Be a resident of this state;

(b) Provide proof to the satisfaction of the department that the registered owner is an eligible family member, which includes:

(i) A widow;

(ii) A widower;

(iii) A biological parent;

(iv) An adoptive parent;

(v) A stepparent;

(vi) An adult in loco parentis or foster parent;

(vii) A biological child; or

(viii) An adopted child;

(c) Provide certification from the Washington state department of veterans affairs that the registered owner qualifies for the special license plate under this section;

(d) Be recorded as the registered owner of the motor vehicle on which the gold star license plates will be displayed; and

(e) Pay all fees and taxes required by law for registering the motor vehicle.

(2) Gold star license plates must be issued:

(a) Only for motor vehicles owned by qualifying applicants; and

(b) Without payment of any license plate fee.

(3) Gold star license plates must be replaced, free of charge, if the license plates become lost, stolen, damaged, defaced, or destroyed.

(4) Gold star license plates may be transferred from one motor vehicle to another motor vehicle owned by the eligible family member, as described in subsection (1) of this section, upon application to the department, county auditor or other agent, or subagent appointed by the director. [2013 c 137 § 1; 2010 c 161 § 621.]

Effective date—2013 c 137: "This act takes effect August 1, 2013." [2013 c 137 § 2.]

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Chapter 46.20 RCW DRIVERS' LICENSES—IDENTICARDS

Sections

46.20.155	Voter registration, update—Services.
46.20.270	Driving offenses—Procedures—Definitions.
46.20.308	Implied consent—Test refusal—Procedures.
46.20.385	Ignition interlock driver's license—Application—Eligibility—Cancellation—Costs—Rules.
46.20.500	Special endorsement—Exceptions.
46.20.720	Drivers convicted of alcohol offenses.
46.20.745	Ignition interlock device revolving account program—Pilot program.

46.20.155 Voter registration, update—Services. (1) Before issuing an original license or identicard or renewing a license or identicard under this chapter, the licensing agent shall determine if the applicant wants to register to vote or update his or her voter registration by asking the following question:

"Do you want to register to vote or update your voter registration?"

If the applicant chooses to register or update a registration, the agent shall ask the following:

- (1) "Are you a United States citizen?"
- (2) "Are you or will you be eighteen years of age on or before the next election?"

If the applicant answers in the affirmative to both questions, the agent shall then submit the registration or update. If the applicant answers in the negative to either question, the agent shall not submit a voter registration application.

(2) The department shall establish a procedure that substantially meets the requirements of subsection (1) of this section when permitting an applicant to renew a license or identicard by mail or by electronic commerce. [2013 c 11 § 90; 2009 c 369 § 42; 2005 c 246 § 24; 2004 c 249 § 7; 2001 c 41 § 14; 1990 c 143 § 6.]

Effective date—2005 c 246: See note following RCW 10.64.140.

Voter registration with driver licensing: RCW 29A.08.340 and 29A.08.350.

Additional notes found at www.leg.wa.gov

46.20.270 Driving offenses—Procedures—Definitions. (1) Every court having jurisdiction over offenses committed under this chapter, or any other act of this state or municipal ordinance adopted by a local authority regulating the operation of motor vehicles on highways, or any federal authority having jurisdiction over offenses substantially the same as those set forth in this title which occur on federal installations within this state, shall immediately forward to the department a forfeiture of bail or collateral deposited to secure the defendant's appearance in court, a payment of a fine, penalty, or court cost, a plea of guilty or nolo contendere or a finding of guilt, or a finding that any person has committed a traffic infraction an abstract of the court record in the form prescribed by rule of the supreme court, showing the conviction of any person or the finding that any person has committed a traffic infraction in said court for a violation of

any said laws other than regulations governing standing, stopping, parking, and pedestrian offenses.

(2) Every state agency or municipality having jurisdiction over offenses committed under this chapter, or under any other act of this state or municipal ordinance adopted by a state or local authority regulating the operation of motor vehicles on highways, may forward to the department within ten days of failure to respond, failure to pay a penalty, failure to appear at a hearing to contest the determination that a violation of any statute, ordinance, or regulation relating to standing, stopping, parking, or civil penalties issued under RCW 46.63.160 has been committed, or failure to appear at a hearing to explain mitigating circumstances, an abstract of the citation record in the form prescribed by rule of the department, showing the finding by such municipality that two or more violations of laws governing standing, stopping, and parking or one or more civil penalties issued under RCW 46.63.160 have been committed and indicating the nature of the defendant's failure to act. Such violations or infractions may not have occurred while the vehicle is stolen from the registered owner or is leased or rented under a bona fide commercial vehicle lease or rental agreement between a lessor engaged in the business of leasing vehicles and a lessee who is not the vehicle's registered owner. The department may enter into agreements of reciprocity with the duly authorized representatives of the states for reporting to each other violations of laws governing standing, stopping, and parking.

(3) For the purposes of this title and except as defined in RCW 46.25.010, "conviction" means a final conviction in a state or municipal court or by any federal authority having jurisdiction over offenses substantially the same as those set forth in this title which occur on federal installations in this state, an unvacated forfeiture of bail or collateral deposited to secure a defendant's appearance in court, the payment of a fine or court cost, a plea of guilty or nolo contendere, or a finding of guilt on a traffic law violation charge, regardless of whether the imposition of sentence or sanctions are deferred or the penalty is suspended, but not including entry into a deferred prosecution agreement under chapter 10.05 RCW.

(4) Perfection of a notice of appeal shall stay the execution of the sentence pertaining to the withholding of the driving privilege.

(5) For the purposes of this title, "finding that a traffic infraction has been committed" means a failure to respond to a notice of infraction or a determination made by a court pursuant to this chapter. Payment of a monetary penalty made pursuant to RCW 46.63.070(2) is deemed equivalent to such a finding. [2013 2nd sp.s. c 35 § 17; 2010 c 249 § 11; 2009 c 181 § 1; 2006 c 327 § 1; 2005 c 288 § 3; 2004 c 231 § 5; 1990 2nd ex.s. c 1 § 402; 1990 c 250 § 42; 1982 1st ex.s. c 14 § 5; 1979 ex.s. c 136 § 58; 1979 c 61 § 7; 1977 ex.s. c 3 § 1; 1967 ex.s. c 145 § 55; 1965 ex.s. c 121 § 22; 1961 c 12 § 46.20.270. Prior: 1937 c 188 § 68; RRS § 6312-68; prior: 1923 c 122 § 2, part; 1921 c 108 § 9, part; RRS § 6371, part.]

Contingent effective date—2010 c 249: See note following RCW 47.56.795.

Effective date—2005 c 288: See note following RCW 46.20.245.

Additional notes found at www.leg.wa.gov

46.20.308 Implied consent—Test refusal—Procedures. (1) Any person who operates a motor vehicle within

this state is deemed to have given consent, subject to the provisions of RCW 46.61.506, to a test or tests of his or her breath for the purpose of determining the alcohol concentration, THC concentration, or presence of any drug in his or her breath if arrested for any offense where, at the time of the arrest, the arresting officer has reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug or was in violation of RCW 46.61.503. Neither consent nor this section precludes a police officer from obtaining a search warrant for a person's breath or blood.

(2) The test or tests of breath shall be administered at the direction of a law enforcement officer having reasonable grounds to believe the person to have been driving or in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or any drug or the person to have been driving or in actual physical control of a motor vehicle while having alcohol or THC in a concentration in violation of RCW 46.61.503 in his or her system and being under the age of twenty-one. The officer shall inform the person of his or her right to refuse the breath test, and of his or her right to have additional tests administered by any qualified person of his or her choosing as provided in RCW 46.61.506. The officer shall warn the driver, in substantially the following language, that:

(a) If the driver refuses to take the test, the driver's license, permit, or privilege to drive will be revoked or denied for at least one year; and

(b) If the driver refuses to take the test, the driver's refusal to take the test may be used in a criminal trial; and

(c) If the driver submits to the test and the test is administered, the driver's license, permit, or privilege to drive will be suspended, revoked, or denied for at least ninety days if:

(i) The driver is age twenty-one or over and the test indicates either that the alcohol concentration of the driver's breath is 0.08 or more or that the THC concentration of the driver's blood is 5.00 or more; or

(ii) The driver is under age twenty-one and the test indicates either that the alcohol concentration of the driver's breath is 0.02 or more or that the THC concentration of the driver's blood is above 0.00; or

(iii) The driver is under age twenty-one and the driver is in violation of RCW 46.61.502 or 46.61.504; and

(d) If the driver's license, permit, or privilege to drive is suspended, revoked, or denied the driver may be eligible to immediately apply for an ignition interlock driver's license.

(3) Except as provided in this section, the test administered shall be of the breath only. If an individual is unconscious or is under arrest for the crime of felony driving under the influence of intoxicating liquor or drugs under RCW 46.61.502(6), felony physical control of a motor vehicle while under the influence of intoxicating liquor or any drug under RCW 46.61.504(6), vehicular homicide as provided in RCW 46.61.520, or vehicular assault as provided in RCW 46.61.522, or if an individual is under arrest for the crime of driving while under the influence of intoxicating liquor or drugs as provided in RCW 46.61.502, which arrest results from an accident in which there has been serious bodily injury to another person, a breath or blood test may be administered without the consent of the individual so arrested pur-

suant to a search warrant, a valid waiver of the warrant requirement, or when exigent circumstances exist.

(4) If, following his or her arrest and receipt of warnings under subsection (2) of this section, the person arrested refuses upon the request of a law enforcement officer to submit to a test or tests of his or her breath, no test shall be given except as authorized by a search warrant.

(5) If, after arrest and after the other applicable conditions and requirements of this section have been satisfied, a test or tests of the person's blood or breath is administered and the test results indicate that the alcohol concentration of the person's breath or blood is 0.08 or more, or the THC concentration of the person's blood is 5.00 or more, if the person is age twenty-one or over, or that the alcohol concentration of the person's breath or blood is 0.02 or more, or the THC concentration of the person's blood is above 0.00, if the person is under the age of twenty-one, or the person refuses to submit to a test, the arresting officer or other law enforcement officer at whose direction any test has been given, or the department, where applicable, if the arrest results in a test of the person's blood, shall:

(a) Serve notice in writing on the person on behalf of the department of its intention to suspend, revoke, or deny the person's license, permit, or privilege to drive as required by subsection (6) of this section;

(b) Serve notice in writing on the person on behalf of the department of his or her right to a hearing, specifying the steps he or she must take to obtain a hearing as provided by subsection (7) of this section and that the person waives the right to a hearing if he or she receives an ignition interlock driver's license;

(c) Serve notice in writing that the license or permit, if any, is a temporary license that is valid for sixty days from the date of arrest or from the date notice has been given in the event notice is given by the department following a blood test, or until the suspension, revocation, or denial of the person's license, permit, or privilege to drive is sustained at a hearing pursuant to subsection (7) of this section, whichever occurs first. No temporary license is valid to any greater degree than the license or permit that it replaces; and

(d) Immediately notify the department of the arrest and transmit to the department within seventy-two hours, except as delayed as the result of a blood test, a sworn report or report under a declaration authorized by RCW 9A.72.085 that states:

(i) That the officer had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or drugs, or both, or was under the age of twenty-one years and had been driving or was in actual physical control of a motor vehicle while having an alcohol or THC concentration in violation of RCW 46.61.503;

(ii) That after receipt of the warnings required by subsection (2) of this section the person refused to submit to a test of his or her breath, or a test was administered and the results indicated that the alcohol concentration of the person's breath or blood was 0.08 or more, or the THC concentration of the person's blood was 5.00 or more, if the person is age twenty-one or over, or that the alcohol concentration of the person's breath or blood was 0.02 or more, or the THC concentration

of the person's blood was above 0.00, if the person is under the age of twenty-one; and

(iii) Any other information that the director may require by rule.

(6) The department of licensing, upon the receipt of a sworn report or report under a declaration authorized by RCW 9A.72.085 under subsection (5)(d) of this section, shall suspend, revoke, or deny the person's license, permit, or privilege to drive or any nonresident operating privilege, as provided in RCW 46.20.3101, such suspension, revocation, or denial to be effective beginning sixty days from the date of arrest or from the date notice has been given in the event notice is given by the department following a blood test, or when sustained at a hearing pursuant to subsection (7) of this section, whichever occurs first.

(7) A person receiving notification under subsection (5)(b) of this section may, within twenty days after the notice has been given, request in writing a formal hearing before the department. The person shall pay a fee of three hundred seventy-five dollars as part of the request. If the request is mailed, it must be postmarked within twenty days after receipt of the notification. Upon timely receipt of such a request for a formal hearing, including receipt of the required three hundred seventy-five dollar fee, the department shall afford the person an opportunity for a hearing. The department may waive the required three hundred seventy-five dollar fee if the person is an indigent as defined in RCW 10.101.010. Except as otherwise provided in this section, the hearing is subject to and shall be scheduled and conducted in accordance with RCW 46.20.329 and 46.20.332. The hearing shall be conducted in the county of the arrest, except that all or part of the hearing may, at the discretion of the department, be conducted by telephone or other electronic means. The hearing shall be held within sixty days following the arrest or following the date notice has been given in the event notice is given by the department following a blood test, unless otherwise agreed to by the department and the person, in which case the action by the department shall be stayed, and any valid temporary license marked under subsection (5) of this section extended, if the person is otherwise eligible for licensing. For the purposes of this section, the scope of the hearing shall cover the issues of whether a law enforcement officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or any drug or had been driving or was in actual physical control of a motor vehicle within this state while having alcohol in his or her system in a concentration of 0.02 or more, or THC in his or her system in a concentration above 0.00, if the person was under the age of twenty-one, whether the person was placed under arrest, and (a) whether the person refused to submit to the test or tests upon request of the officer after having been informed that such refusal would result in the revocation of the person's license, permit, or privilege to drive, or (b) if a test or tests were administered, whether the applicable requirements of this section were satisfied before the administration of the test or tests, whether the person submitted to the test or tests, or whether a test was administered without express consent as permitted under this section, and whether the test or tests indicated that the alcohol concentration of the person's breath or blood was 0.08 or

more, or the THC concentration of the person's blood was 5.00 or more, if the person was age twenty-one or over at the time of the arrest, or that the alcohol concentration of the person's breath or blood was 0.02 or more, or the THC concentration of the person's blood was above 0.00, if the person was under the age of twenty-one at the time of the arrest. The sworn report or report under a declaration authorized by RCW 9A.72.085 submitted by a law enforcement officer is prima facie evidence that the officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or drugs, or both, or the person had been driving or was in actual physical control of a motor vehicle within this state while having alcohol in his or her system in a concentration of 0.02 or more, or THC in his or her system in a concentration above 0.00, and was under the age of twenty-one and that the officer complied with the requirements of this section.

A hearing officer shall conduct the hearing, may issue subpoenas for the attendance of witnesses and the production of documents, and shall administer oaths to witnesses. The hearing officer shall not issue a subpoena for the attendance of a witness at the request of the person unless the request is accompanied by the fee required by RCW 5.56.010 for a witness in district court. The sworn report or report under a declaration authorized by RCW 9A.72.085 of the law enforcement officer and any other evidence accompanying the report shall be admissible without further evidentiary foundation and the certifications authorized by the criminal rules for courts of limited jurisdiction shall be admissible without further evidentiary foundation. The person may be represented by counsel, may question witnesses, may present evidence, and may testify. The department shall order that the suspension, revocation, or denial either be rescinded or sustained.

(8) If the suspension, revocation, or denial is sustained after such a hearing, the person whose license, privilege, or permit is suspended, revoked, or denied has the right to file a petition in the superior court of the county of arrest to review the final order of revocation by the department in the same manner as an appeal from a decision of a court of limited jurisdiction. Notice of appeal must be filed within thirty days after the date the final order is served or the right to appeal is waived. Notwithstanding RCW 46.20.334, RALJ 1.1, or other statutes or rules referencing de novo review, the appeal shall be limited to a review of the record of the administrative hearing. The appellant must pay the costs associated with obtaining the record of the hearing before the hearing officer. The filing of the appeal does not stay the effective date of the suspension, revocation, or denial. A petition filed under this subsection must include the petitioner's grounds for requesting review. Upon granting petitioner's request for review, the court shall review the department's final order of suspension, revocation, or denial as expeditiously as possible. The review must be limited to a determination of whether the department has committed any errors of law. The superior court shall accept those factual determinations supported by substantial evidence in the record: (a) That were expressly made by the department; or (b) that may reasonably be inferred from the final order of the department. The superior court may reverse, affirm, or modify the decision of the department or remand the case back to the department for fur-

ther proceedings. The decision of the superior court must be in writing and filed in the clerk's office with the other papers in the case. The court shall state the reasons for the decision. If judicial relief is sought for a stay or other temporary remedy from the department's action, the court shall not grant such relief unless the court finds that the appellant is likely to prevail in the appeal and that without a stay the appellant will suffer irreparable injury. If the court stays the suspension, revocation, or denial it may impose conditions on such stay.

(9)(a) If a person whose driver's license, permit, or privilege to drive has been or will be suspended, revoked, or denied under subsection (6) of this section, other than as a result of a breath test refusal, and who has not committed an offense for which he or she was granted a deferred prosecution under chapter 10.05 RCW, petitions a court for a deferred prosecution on criminal charges arising out of the arrest for which action has been or will be taken under subsection (6) of this section, or notifies the department of licensing of the intent to seek such a deferred prosecution, then the license suspension or revocation shall be stayed pending entry of the deferred prosecution. The stay shall not be longer than one hundred fifty days after the date charges are filed, or two years after the date of the arrest, whichever time period is shorter. If the court stays the suspension, revocation, or denial, it may impose conditions on such stay. If the person is otherwise eligible for licensing, the department shall issue a temporary license, or extend any valid temporary license under subsection (5) of this section, for the period of the stay. If a deferred prosecution treatment plan is not recommended in the report made under RCW 10.05.050, or if treatment is rejected by the court, or if the person declines to accept an offered treatment plan, or if the person violates any condition imposed by the court, then the court shall immediately direct the department to cancel the stay and any temporary marked license or extension of a temporary license issued under this subsection.

(b) A suspension, revocation, or denial imposed under this section, other than as a result of a breath test refusal, shall be stayed if the person is accepted for deferred prosecution as provided in chapter 10.05 RCW for the incident upon which the suspension, revocation, or denial is based. If the deferred prosecution is terminated, the stay shall be lifted and the suspension, revocation, or denial reinstated. If the deferred prosecution is completed, the stay shall be lifted and the suspension, revocation, or denial canceled.

(c) The provisions of (b) of this subsection relating to a stay of a suspension, revocation, or denial and the cancellation of any suspension, revocation, or denial do not apply to the suspension, revocation, denial, or disqualification of a person's commercial driver's license or privilege to operate a commercial motor vehicle.

(10) When it has been finally determined under the procedures of this section that a nonresident's privilege to operate a motor vehicle in this state has been suspended, revoked, or denied, the department shall give information in writing of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which he or she has a license. [2013 2nd sp.s. c 35 § 36. Prior: 2013 c 3 § 31 (Initiative Measure No. 502, approved November 6, 2012); 2012 c 183 § 7; 2012 c 80 § 12; 2008 c 282 § 2; prior: 2005 c 314 § 307; 2005 c 269 § 1; prior: 2004 c 187 § 1; 2004 c 95

§ 2; 2004 c 68 § 2; prior: 1999 c 331 § 2; 1999 c 274 § 2; prior: 1998 c 213 § 1; 1998 c 209 § 1; 1998 c 207 § 7; 1998 c 41 § 4; 1995 c 332 § 1; 1994 c 275 § 13; 1989 c 337 § 8; 1987 c 22 § 1; prior: 1986 c 153 § 5; 1986 c 64 § 1; 1985 c 407 § 3; 1983 c 165 § 2; 1983 c 165 § 1; 1981 c 260 § 11; prior: 1979 ex.s. c 176 § 3; 1979 ex.s. c 136 § 59; 1979 c 158 § 151; 1975 1st ex.s. c 287 § 4; 1969 c 1 § 1 (Initiative Measure No. 242, approved November 5, 1968).]

Intent—2013 c 3 (Initiative Measure No. 502): See note following RCW 69.50.101.

Effective date—2012 c 183: See note following RCW 2.28.175.

Effective date—2012 c 80 §§ 5-13: See note following RCW 46.20.055.

Effective date—2008 c 282: "Sections 2, 4 through 8, and 11 through 14 of this act take effect January 1, 2009." [2008 c 282 § 23.]

Effective date—2005 c 314 §§ 101-107, 109, 303-309, and 401: See note following RCW 46.68.290.

Part headings not law—2005 c 314: See note following RCW 46.68.035.

Effective date—2004 c 187 §§ 1, 5, 7, 8, and 10: "Sections 1, 5, 7, 8, and 10 of this act take effect July 1, 2005." [2004 c 187 § 11.]

Contingent effect—2004 c 95 § 2: "Section 2 of this act takes effect if section 2 of Substitute House Bill No. 3055 is enacted into law." [2004 c 95 § 17.] 2004 c 68 § 2 was enacted into law, effective June 10, 2004.

Finding—Intent—2004 c 68: "The legislature finds that previous attempts to curtail the incidence of driving while intoxicated have been inadequate. The legislature further finds that property loss, injury, and death caused by drinking drivers continue at unacceptable levels. This act is intended to convey the seriousness with which the legislature views this problem. To that end the legislature seeks to ensure swift and certain consequences for those who drink and drive.

To accomplish this goal, the legislature adopts standards governing the admissibility of tests of a person's blood or breath. These standards will provide a degree of uniformity that is currently lacking, and will reduce the delays caused by challenges to various breath test instrument components and maintenance procedures. Such challenges, while allowed, will no longer go to admissibility of test results. Instead, such challenges are to be considered by the finder of fact in deciding what weight to place upon an admitted blood or breath test result.

The legislature's authority to adopt standards governing the admissibility of evidence involving alcohol is well established by the Washington Supreme Court. See generally *State v. Long*, 113 Wn.2d 266, 778 P.2d 1027 (1989); *State v. Sears*, 4 Wn.2d 200, 215, 103 P.2d 337 (1940) (the legislature has the power to enact laws which create rules of evidence); *State v. Pavelich*, 153 Wash. 379, 279 P. 1102 (1929) ("rules of evidence are substantive law"). [2004 c 68 § 1.]

Intent—Construction—Effective date—1998 c 41: See notes following RCW 46.20.265.

Legislative finding, intent—1983 c 165: "The legislature finds that previous attempts to curtail the incidence of driving while intoxicated have been inadequate. The legislature further finds that property loss, injury, and death caused by drinking drivers have reached unacceptable levels. This act is intended to convey the seriousness with which the legislature views this problem. To that end the legislature seeks to insure swift and certain punishment for those who drink and drive. The legislature does not intend to discourage or deter courts and other agencies from directing or providing treatment for problem drinkers. However, it is the intent that such treatment, where appropriate, be in addition to and not in lieu of the sanctions to be applied to all those convicted of driving while intoxicated." [1983 c 165 § 44.]

Liability of medical personnel withdrawing blood: RCW 46.61.508.

Refusal of test—Admissibility as evidence: RCW 46.61.517.

Additional notes found at www.leg.wa.gov

46.20.385 Ignition interlock driver's license—Application—Eligibility—Cancellation—Costs—Rules. (1)(a) Beginning January 1, 2009, any person licensed under this chapter who is convicted of a violation of RCW 46.61.502 or

46.61.504 or an equivalent local or out-of-state statute or ordinance, or a violation of RCW 46.61.520(1)(a) or 46.61.522(1)(b), or who has had or will have his or her license suspended, revoked, or denied under RCW 46.20.3101, or who is otherwise permitted under subsection (8) of this section, may submit to the department an application for an ignition interlock driver's license. The department, upon receipt of the prescribed fee and upon determining that the petitioner is eligible to receive the license, may issue an ignition interlock driver's license.

(b) A person may apply for an ignition interlock driver's license anytime, including immediately after receiving the notices under RCW 46.20.308 or after his or her license is suspended, revoked, or denied. A person receiving an ignition interlock driver's license waives his or her right to a hearing or appeal under RCW 46.20.308.

(c) An applicant under this subsection shall provide proof to the satisfaction of the department that a functioning ignition interlock device has been installed on all vehicles operated by the person.

(i) The department shall require the person to maintain the device on all vehicles operated by the person and shall restrict the person to operating only vehicles equipped with the device, for the remainder of the period of suspension, revocation, or denial. Subject to the provisions of RCW 46.20.720(3)(b)(ii), the installation of an ignition interlock device is not necessary on vehicles owned, leased, or rented by a person's employer and on those vehicles whose care and/or maintenance is the temporary responsibility of the employer, and driven at the direction of a person's employer as a requirement of employment during working hours. The person must provide the department with a declaration pursuant to RCW 9A.72.085 from his or her employer stating that the person's employment requires the person to operate a vehicle owned by the employer or other persons during working hours.

(ii) Subject to any periodic renewal requirements established by the department under this section and subject to any applicable compliance requirements under this chapter or other law, an ignition interlock driver's license granted upon a suspension or revocation under RCW 46.61.5055 or 46.20.3101 extends through the remaining portion of any concurrent or consecutive suspension or revocation that may be imposed as the result of administrative action and criminal conviction arising out of the same incident.

(iii) The time period during which the person is licensed under this section shall apply on a day-for-day basis toward satisfying the period of time the ignition interlock device restriction is required under RCW 46.20.720 and 46.61.5055. Beginning with incidents occurring on or after September 1, 2011, when calculating the period of time for the restriction under RCW 46.20.720(3), the department must also give the person a day-for-day credit for the time period, beginning from the date of the incident, during which the person kept an ignition interlock device installed on all vehicles the person operates. For the purposes of this subsection (1)(c)(iii), the term "all vehicles" does not include vehicles that would be subject to the employer exception under RCW 46.20.720(3).

(2) An applicant for an ignition interlock driver's license who qualifies under subsection (1) of this section is eligible

to receive a license only if the applicant files satisfactory proof of financial responsibility under chapter 46.29 RCW.

(3) Upon receipt of evidence that a holder of an ignition interlock driver's license granted under this subsection no longer has a functioning ignition interlock device installed on all vehicles operated by the driver, the director shall give written notice by first-class mail to the driver that the ignition interlock driver's license shall be canceled. If at any time before the cancellation goes into effect the driver submits evidence that a functioning ignition interlock device has been installed on all vehicles operated by the driver, the cancellation shall be stayed. If the cancellation becomes effective, the driver may obtain, at no additional charge, a new ignition interlock driver's license upon submittal of evidence that a functioning ignition interlock device has been installed on all vehicles operated by the driver.

(4) A person aggrieved by the decision of the department on the application for an ignition interlock driver's license may request a hearing as provided by rule of the department.

(5) The director shall cancel an ignition interlock driver's license after receiving notice that the holder thereof has been convicted of operating a motor vehicle in violation of its restrictions, no longer meets the eligibility requirements, or has been convicted of or found to have committed a separate offense or any other act or omission that under this chapter would warrant suspension or revocation of a regular driver's license. The department must give notice of the cancellation as provided under RCW 46.20.245. A person whose ignition interlock driver's license has been canceled under this section may reapply for a new ignition interlock driver's license if he or she is otherwise qualified under this section and pays the fee required under RCW 46.20.380.

(6)(a) Unless costs are waived by the ignition interlock company or the person is indigent under RCW 10.101.010, the applicant shall pay the cost of installing, removing, and leasing the ignition interlock device and shall pay an additional fee of twenty dollars per month. Payments shall be made directly to the ignition interlock company. The company shall remit the additional twenty dollar fee to the department.

(b) The department shall deposit the proceeds of the twenty dollar fee into the ignition interlock device revolving account. Expenditures from the account may be used only to administer and operate the ignition interlock device revolving account program. The department shall adopt rules to provide monetary assistance according to greatest need and when funds are available.

(7) The department shall adopt rules to implement ignition interlock licensing. The department shall consult with the administrative office of the courts, the state patrol, the Washington association of sheriffs and police chiefs, ignition interlock companies, and any other organization or entity the department deems appropriate.

(8)(a) Any person licensed under this chapter who is convicted of a violation of RCW 46.61.500 when the charge was originally filed as a violation of RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, may submit to the department an application for an ignition interlock driver's license under this section.

(b) A person who does not have any driver's license under this chapter, but who would otherwise be eligible under

this section to apply for an ignition interlock license, may submit to the department an application for an ignition interlock license. The department may require the person to take any driver's licensing examination under this chapter and may require the person to also apply and qualify for a temporary restricted driver's license under RCW 46.20.391. [2013 2nd sp.s. c 35 § 20; 2012 c 183 § 8; 2011 c 293 § 1; 2010 c 269 § 1; 2008 c 282 § 9.]

Effective date—2012 c 183: See note following RCW 2.28.175.

Effective date—2011 c 293 §§ 1-9: "Sections 1 through 9 of this act take effect September 1, 2011." [2011 c 293 § 16.]

Effective date—2010 c 269: "This act takes effect January 1, 2011." [2010 c 269 § 12.]

46.20.500 Special endorsement—Exceptions. (1) No person may drive either a two-wheeled or a three-wheeled motorcycle, or a motor-driven cycle unless such person has a valid driver's license specially endorsed by the director to enable the holder to drive such vehicles.

(2) However, a person sixteen years of age or older, holding a valid driver's license of any class issued by the state of the person's residence, may operate a moped without taking any special examination for the operation of a moped.

(3) No driver's license is required for operation of an electric-assisted bicycle if the operator is at least sixteen years of age. Persons under sixteen years of age may not operate an electric-assisted bicycle.

(4) No driver's license is required to operate an electric personal assistive mobility device or a power wheelchair.

(5) No driver's license is required to operate a motorized foot scooter. Motorized foot scooters may not be operated at any time from a half hour after sunset to a half hour before sunrise without reflectors of a type approved by the state patrol.

(6) A person holding a valid driver's license may operate a motorcycle as defined under RCW 46.04.330(2) without a motorcycle endorsement.

(7) A person operating a motorcycle with a stabilizing conversion kit must have a valid driver's license specially endorsed by the director for a three-wheeled motorcycle to enable the holder to operate such a motorcycle. [2013 c 174 § 2; 2009 c 275 § 4. Prior: 2003 c 353 § 9; 2003 c 141 § 7; 2003 c 41 § 1; 2002 c 247 § 6; 1999 c 274 § 8; 1997 c 328 § 3; 1982 c 77 § 1; 1979 ex.s. c 213 § 6; 1967 c 232 § 1.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Effective date—2003 c 353: See note following RCW 46.04.320.

Short title—2003 c 41: "This act shall be known as the Monty Lish Memorial Act." [2003 c 41 § 6.]

Effective date—2003 c 41: "This act takes effect January 1, 2004." [2003 c 41 § 7.]

Mopeds

operation and safety standards: RCW 46.61.710, 46.61.720.
registration: RCW 46.16A.405(2).

Additional notes found at www.leg.wa.gov

46.20.720 Drivers convicted of alcohol offenses. (1) The court may order that after a period of suspension, revocation, or denial of driving privileges, and for up to as long as the court has jurisdiction, any person convicted of any offense involving the use, consumption, or possession of alcohol while operating a motor vehicle may drive only a

motor vehicle equipped with a functioning ignition interlock. The court shall establish a specific calibration setting at which the interlock will prevent the vehicle from being started. The court shall also establish the period of time for which interlock use will be required.

(2) Under RCW 46.61.5055 and subject to the exceptions listed in that statute, the court shall order any person convicted of a violation of RCW 46.61.502 or 46.61.504 or an equivalent local ordinance to comply with the rules and requirements of the department regarding the installation and use of a functioning ignition interlock device installed on all motor vehicles operated by the person. The court shall order any person participating in a deferred prosecution program under RCW 10.05.020 for a violation of RCW 46.61.502 or 46.61.504 or an equivalent local ordinance to have a functioning ignition interlock device installed on all motor vehicles operated by the person.

(3)(a) The department shall require that, after any applicable period of suspension, revocation, or denial of driving privileges, a person may drive only a motor vehicle equipped with a functioning ignition interlock device if the person is convicted of a violation of RCW 46.61.502 or 46.61.504 or an equivalent local or out-of-state statute or ordinance. The department shall require that a person may drive only a motor vehicle equipped with a functioning ignition interlock device if the person is convicted of a violation of RCW 46.61.5249 or 46.61.500 and is required under RCW 46.61.5249(4) or 46.61.500(3) (a) or (b) to install an ignition interlock device on all vehicles operated by the person.

(b)(i) Except as provided in (b)(ii) of this subsection, the installation of an ignition interlock device is not necessary on vehicles owned, leased, or rented by a person's employer and on those vehicles whose care and/or maintenance is the temporary responsibility of the employer, and driven at the direction of a person's employer as a requirement of employment during working hours. The person must provide the department with a declaration pursuant to RCW 9A.72.085 from his or her employer stating that the person's employment requires the person to operate a vehicle owned by the employer or other persons during working hours.

(ii) The employer exemption does not apply:

(A) When the employer's vehicle is assigned exclusively to the restricted driver and used solely for commuting to and from employment;

(B) For the first thirty days after an ignition interlock device has been installed as the result of a first conviction of a violation of RCW 46.61.502 or 46.61.504 or an equivalent local or out-of-state statute or ordinance; or

(C) For the first three hundred sixty-five days after an ignition interlock device has been installed as the result of a second or subsequent conviction of a violation of RCW 46.61.502 or 46.61.504 or an equivalent local or out-of-state statute or ordinance.

(c) The ignition interlock device shall be calibrated to prevent the motor vehicle from being started when the breath sample provided has an alcohol concentration of 0.025 or more. Subject to the provisions of subsections (4) and (5) of this section, the period of time of the restriction will be no less than:

(i) For a person who has not previously been restricted under this section, a period of one year;

(ii) For a person who has previously been restricted under (c)(i) of this subsection, a period of five years;

(iii) For a person who has previously been restricted under (c)(ii) of this subsection, a period of ten years.

(4) A restriction imposed under subsection (3) of this section shall remain in effect until the department receives a declaration from the person's ignition interlock device vendor, in a form provided or approved by the department, certifying that there have been none of the following incidents in the four consecutive months prior to the date of release:

(a) Any attempt to start the vehicle with a breath alcohol concentration of 0.04 or more unless a subsequent test performed within ten minutes registers a breath alcohol concentration lower than 0.04 and the digital image confirms the same person provided both samples;

(b) Failure to take any random test unless a review of the digital image confirms that the vehicle was not occupied by the driver at the time of the missed test;

(c) Failure to pass any random retest with a breath alcohol concentration of 0.025 or lower unless a subsequent test performed within ten minutes registers a breath alcohol concentration lower than 0.025, and the digital image confirms the same person provided both samples; or

(d) Failure of the person to appear at the ignition interlock device vendor when required for maintenance, repair, calibration, monitoring, inspection, or replacement of the device.

(5) For a person required to install an ignition interlock device pursuant to RCW 46.61.5249(4) or 46.61.500(3), the period of time of the restriction shall be for six months and shall be subject to subsection (4) of this section.

(6) In addition to any other costs associated with the use of an ignition interlock device imposed on the person restricted under this section, the person shall pay an additional fee of twenty dollars per month. Payments must be made directly to the ignition interlock company. The company shall remit the additional twenty dollar fee to the department to be deposited into the ignition interlock device revolving account. [2013 2nd sp.s. c 35 § 19; 2012 c 183 § 9; 2011 c 293 § 6; 2010 c 269 § 3; 2008 c 282 § 12; 2004 c 95 § 11; 2003 c 366 § 1; 2001 c 247 § 1; 1999 c 331 § 3; 1998 c 210 § 2; 1997 c 229 § 8; 1994 c 275 § 22; 1987 c 247 § 2.]

Effective date—2012 c 183: See note following RCW 2.28.175.

Effective date—2011 c 293 §§ 1-9: See note following RCW 46.20.385.

Effective date—2010 c 269: See note following RCW 46.20.385.

Effective date—2008 c 282: See note following RCW 46.20.308.

Finding—Intent—1998 c 210: "The legislature finds that driving is a privilege and that the state may restrict that privilege in the interests of public safety. One such reasonable restriction is requiring certain individuals, if they choose to drive, to drive only vehicles equipped with ignition interlock devices. The legislature further finds that the costs of these devices are minimal and are affordable. It is the intent of the legislature that these devices be paid for by the drivers using them and that neither the state nor entities of local government provide any public funding for this purpose." [1998 c 210 § 7.]

Additional notes found at www.leg.wa.gov

46.20.745 Ignition interlock device revolving account program—Pilot program. (1) The ignition interlock device revolving account program is created within the department to assist in covering the monetary costs of installing, remov-

ing, and leasing an ignition interlock device, and applicable licensing, for indigent persons who are required under RCW 46.20.385, 46.20.720, and 46.61.5055 to install an ignition interlock device in all vehicles owned or operated by the person. For purposes of this subsection, "indigent" has the same meaning as in RCW 10.101.010, as determined by the department. During the 2013-2015 fiscal biennium, the ignition interlock device revolving account program also includes ignition interlock enforcement work conducted by the Washington state patrol.

(2) A pilot program is created within the ignition interlock device revolving account program for the purpose of monitoring compliance by persons required to use ignition interlock devices and by ignition interlock companies and vendors.

(3) The department, the state patrol, and the Washington traffic safety commission shall coordinate to establish a compliance pilot program that will target at least one county from eastern Washington and one county from western Washington, as determined by the department, state patrol, and Washington traffic safety commission.

(4) At a minimum, the compliance pilot program shall:

(a) Review the number of ignition interlock devices that are required to be installed in the targeted county and the number of ignition interlock devices actually installed;

(b) Work to identify those persons who are not complying with ignition interlock requirements or are repeatedly violating ignition interlock requirements; and

(c) Identify ways to track compliance and reduce non-compliance.

(5) As part of monitoring compliance, the Washington traffic safety commission shall also track recidivism for violations of RCW 46.61.502 and 46.61.504 by persons required to have an ignition interlock driver's license under RCW 46.20.385 and 46.20.720. [2013 c 306 § 712; 2012 c 183 § 10; 2008 c 282 § 10.]

Effective date—2013 c 306: See note following RCW 47.64.170.

Effective date—2012 c 183: See note following RCW 2.28.175.

Chapter 46.25 RCW

UNIFORM COMMERCIAL DRIVER'S LICENSE ACT

Sections

46.25.010	Definitions. (<i>Effective until July 8, 2014.</i>)
46.25.010	Definitions. (<i>Effective July 8, 2014.</i>)
46.25.050	Commercial driver's license required—Exceptions, restrictions, reciprocity. (<i>Effective July 8, 2014.</i>)
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46.25.060	Knowledge and skills examination, exemptions. (<i>Effective July 8, 2014.</i>)
46.25.070	Application—Change of address, name—Residency—Hazardous materials endorsement. (<i>Effective July 8, 2014.</i>)
46.25.075	Certification—Recordkeeping and administration—Downgrade. (<i>Effective July 8, 2014.</i>)
46.25.080	License contents, classifications, endorsements, restrictions. (<i>Effective July 8, 2014.</i>)
46.25.082	Driving record information. (<i>Effective July 8, 2014.</i>)
46.25.088	Expiration—Renewal. (<i>Effective July 8, 2014.</i>)
46.25.090	Disqualification—Grounds for, period of—Records.
46.25.100	Restoration after disqualification. (<i>Effective July 8, 2014.</i>)
46.25.110	Driving with alcohol or THC in system.
46.25.120	Test for alcohol or drugs—Disqualification for refusal of test or positive test—Procedures.

- 46.25.130 Report of violation, disqualification by nonresident. (*Effective July 8, 2014.*)
- 46.25.160 Licenses issued by other jurisdictions. (*Effective July 8, 2014.*)

46.25.010 Definitions. (*Effective until July 8, 2014.*)

The definitions set forth in this section apply throughout this chapter.

(1) "Alcohol" means any substance containing any form of alcohol, including but not limited to ethanol, methanol, propanol, and isopropanol.

(2) "Alcohol concentration" means:

(a) The number of grams of alcohol per one hundred milliliters of blood; or

(b) The number of grams of alcohol per two hundred ten liters of breath.

(3) "Commercial driver's license" (CDL) means a license issued to an individual under chapter 46.20 RCW that has been endorsed in accordance with the requirements of this chapter to authorize the individual to drive a class of commercial motor vehicle.

(4) The "commercial driver's license information system" (CDLIS) is the information system established pursuant to 49 U.S.C. Sec. 31309 to serve as a clearinghouse for locating information related to the licensing and identification of commercial motor vehicle drivers.

(5) "Commercial driver's instruction permit" means a permit issued under RCW 46.25.060(5).

(6) "Commercial motor vehicle" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

(a) Has a gross combination weight rating or gross combination weight of 11,794 kilograms or more (26,001 pounds or more), whichever is greater, inclusive of any towed unit or units with a gross vehicle weight rating or gross vehicle weight of more than 4,536 kilograms (10,000 pounds or more), whichever is greater; or

(b) Has a gross vehicle weight rating or gross vehicle weight of 11,794 kilograms or more (26,001 pounds or more), whichever is greater; or

(c) Is designed to transport sixteen or more passengers, including the driver; or

(d) Is of any size and is used in the transportation of hazardous materials as defined in this section; or

(e) Is a school bus regardless of weight or size.

(7) "Conviction" means an unvacated adjudication of guilt, or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, a plea of guilty or nolo contendere accepted by the court, the payment of a fine or court cost, entry into a deferred prosecution program under chapter 10.05 RCW, or violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated.

(8) "Disqualification" means a prohibition against driving a commercial motor vehicle.

(9) "Drive" means to drive, operate, or be in physical control of a motor vehicle in any place open to the general public for purposes of vehicular traffic. For purposes of RCW 46.25.100, 46.25.110, and 46.25.120, "drive" includes

operation or physical control of a motor vehicle anywhere in the state.

(10) "Drugs" are those substances as defined by RCW 69.04.009, including, but not limited to, those substances defined by 49 C.F.R. Sec. 40.3.

(11) "Employer" means any person, including the United States, a state, or a political subdivision of a state, who owns or leases a commercial motor vehicle, or assigns a person to drive a commercial motor vehicle.

(12) "Gross vehicle weight rating" (GVWR) means the value specified by the manufacturer as the maximum loaded weight of a single vehicle. The GVWR of a combination or articulated vehicle, commonly referred to as the "gross combined weight rating" or GCWR, is the GVWR of the power unit plus the GVWR of the towed unit or units. If the GVWR of any unit cannot be determined, the actual gross weight will be used. If a vehicle with a GVWR of less than 11,794 kilograms (26,001 pounds or less) has been structurally modified to carry a heavier load, then the actual gross weight capacity of the modified vehicle, as determined by RCW 46.44.041 and 46.44.042, will be used as the GVWR.

(13) "Hazardous materials" means any material that has been designated as hazardous under 49 U.S.C. Sec. 5103 and is required to be placarded under subpart F of 49 C.F.R. Part 172 or any quantity of a material listed as a select agent or toxin in 42 C.F.R. Part 73.

(14) "Motor vehicle" means a vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power used on highways, or any other vehicle required to be registered under the laws of this state, but does not include a vehicle, machine, tractor, trailer, or semitrailer operated exclusively on a rail.

(15) "Out-of-service order" means a declaration by an authorized enforcement officer of a federal, state, Canadian, Mexican, or local jurisdiction that a driver, a commercial motor vehicle, or a motor carrier operation is out-of-service pursuant to 49 C.F.R. Secs. 386.72, 392.5, 395.13, 396.9, or compatible laws, or the North American uniform out-of-service criteria.

(16) "Positive alcohol confirmation test" means an alcohol confirmation test that:

(a) Has been conducted by a breath alcohol technician under 49 C.F.R. Part 40; and

(b) Indicates an alcohol concentration of 0.04 or more.

A report that a person has refused an alcohol test, under circumstances that constitute the refusal of an alcohol test under 49 C.F.R. Part 40, will be considered equivalent to a report of a positive alcohol confirmation test for the purposes of this chapter.

(17) "School bus" means a commercial motor vehicle used to transport preprimary, primary, or secondary school students from home to school, from school to home, or to and from school-sponsored events. School bus does not include a bus used as a common carrier.

(18) "Serious traffic violation" means:

(a) Excessive speeding, defined as fifteen miles per hour or more in excess of the posted limit;

(b) Reckless driving, as defined under state or local law;

(c) Driving while using a hand-held mobile telephone, defined as a violation of RCW 46.61.667(1)(b) or an equivalent

lent administrative rule or local law, ordinance, rule, or resolution;

(d) Texting, defined as a violation of RCW 46.61.668(1)(b) or an equivalent administrative rule or local law, ordinance, rule, or resolution;

(e) A violation of a state or local law relating to motor vehicle traffic control, other than a parking violation, arising in connection with an accident or collision resulting in death to any person;

(f) Driving a commercial motor vehicle without obtaining a commercial driver's license;

(g) Driving a commercial motor vehicle without a commercial driver's license in the driver's possession; however, any individual who provides proof to the court by the date the individual must appear in court or pay any fine for such a violation, that the individual held a valid CDL on the date the citation was issued, is not guilty of a "serious traffic violation";

(h) Driving a commercial motor vehicle without the proper class of commercial driver's license endorsement or endorsements for the specific vehicle group being operated or for the passenger or type of cargo being transported; and

(i) Any other violation of a state or local law relating to motor vehicle traffic control, other than a parking violation, that the department determines by rule to be serious.

(19) "State" means a state of the United States and the District of Columbia.

(20) "Substance abuse professional" means an alcohol and drug specialist meeting the credentials, knowledge, training, and continuing education requirements of 49 C.F.R. Sec. 40.281.

(21) "Tank vehicle" means any commercial motor vehicle that is designed to transport any liquid or gaseous materials within a tank or tanks having an individual rated capacity of more than one hundred nineteen gallons and an aggregate rated capacity of one thousand gallons or more that is either permanently or temporarily attached to the vehicle or the chassis. A commercial motor vehicle transporting an empty storage container tank, not designed for transportation, with a rated capacity of one thousand gallons or more that is temporarily attached to a flatbed trailer is not considered a tank vehicle.

(22) "Type of driving" means one of the following:

(a) "Nonexcepted interstate," which means the CDL holder or applicant operates or expects to operate in interstate commerce, is both subject to and meets the qualification requirements under 49 C.F.R. Part 391 as it existed on January 30, 2012, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section, and is required to obtain a medical examiner's certificate under 49 C.F.R. Sec. 391.45 as it existed on January 30, 2012, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section;

(b) "Excepted interstate," which means the CDL holder or applicant operates or expects to operate in interstate commerce, but engages exclusively in transportation or operations excepted under 49 C.F.R. Secs. 390.3(f), 391.2, 391.68, or 398.3, as they existed on January 30, 2012, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section, from all or parts

of the qualification requirements of 49 C.F.R. Part 391 as it existed on January 30, 2012, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section, and is therefore not required to obtain a medical examiner's certificate under 49 C.F.R. Sec. 391.45 as it existed on January 30, 2012, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section;

(c) "Nonexcepted intrastate," which means the CDL holder or applicant operates only in intrastate commerce and is therefore subject to state driver qualification requirements; or

(d) "Excepted intrastate," which means the CDL holder or applicant operates in intrastate commerce, but engages exclusively in transportation or operations excepted from all or parts of the state driver qualification requirements.

(23) "United States" means the fifty states and the District of Columbia.

(24) "Verified positive drug test" means a drug test result or validity testing result from a laboratory certified under the authority of the federal department of health and human services that:

(a) Indicates a drug concentration at or above the cutoff concentration established under 49 C.F.R. Sec. 40.87; and

(b) Has undergone review and final determination by a medical review officer.

A report that a person has refused a drug test, under circumstances that constitute the refusal of a federal department of transportation drug test under 49 C.F.R. Part 40, will be considered equivalent to a report of a verified positive drug test for the purposes of this chapter. [2013 c 224 § 2; 2011 c 227 § 1; 2009 c 181 § 2. Prior: 2006 c 327 § 2; 2006 c 50 § 1; 2005 c 325 § 2; 2004 c 187 § 2; 1996 c 30 § 1; 1989 c 178 § 3.]

Effective date—2011 c 227 §§ 1-3: See note following RCW 46.25.075.

Intent—2005 c 325: "It is the intent of the legislature to promote the safety of drivers and passengers on Washington roads and public transportation systems. To this end, Washington has established a reporting requirement for employers of commercial drivers who test positive for unlawful substances. The legislature recognizes that transit operators and their employers are an asset to the public transportation system and continuously strive to provide a safe and efficient mode of travel. In light of this, the legislature further intends that the inclusion of transit employers in the reporting requirements serve only to enhance the current efforts of these dedicated employers and employees as they continue to provide a safe public transportation system to the citizens of Washington." [2005 c 325 § 1.]

Additional notes found at www.leg.wa.gov

46.25.010 Definitions. (Effective July 8, 2014.) The definitions set forth in this section apply throughout this chapter.

(1) "Alcohol" means any substance containing any form of alcohol, including but not limited to ethanol, methanol, propanol, and isopropanol.

(2) "Alcohol concentration" means:

(a) The number of grams of alcohol per one hundred milliliters of blood; or

(b) The number of grams of alcohol per two hundred ten liters of breath.

(3) "Commercial driver's license" (CDL) means a license issued to an individual under chapter 46.20 RCW that has been endorsed in accordance with the requirements of

this chapter to authorize the individual to drive a class of commercial motor vehicle.

(4) The "commercial driver's license information system" (CDLIS) is the information system established pursuant to 49 U.S.C. Sec. 31309 to serve as a clearinghouse for locating information related to the licensing and identification of commercial motor vehicle drivers.

(5) "Commercial learner's permit" (CLP) means a permit issued under RCW 46.25.052 for the purposes of behind-the-wheel training.

(6) "Commercial motor vehicle" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

(a) Has a gross combination weight rating or gross combination weight of 11,794 kilograms or more (26,001 pounds or more), whichever is greater, inclusive of a [any] towed unit [or units] with a gross vehicle weight rating or gross vehicle weight of more than 4,536 kilograms (10,000 pounds or more), whichever is greater; or

(b) Has a gross vehicle weight rating or gross vehicle weight of 11,794 kilograms or more (26,001 pounds or more), whichever is greater; or

(c) Is designed to transport sixteen or more passengers, including the driver; or

(d) Is of any size and is used in the transportation of hazardous materials as defined in this section; or

(e) Is a school bus regardless of weight or size.

(7) "Conviction" means an unvacated adjudication of guilt, or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, a plea of guilty or nolo contendere accepted by the court, the payment of a fine or court cost, entry into a deferred prosecution program under chapter 10.05 RCW, or violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated.

(8) "Disqualification" means a prohibition against driving a commercial motor vehicle.

(9) "Drive" means to drive, operate, or be in physical control of a motor vehicle in any place open to the general public for purposes of vehicular traffic. For purposes of RCW 46.25.100, 46.25.110, and 46.25.120, "drive" includes operation or physical control of a motor vehicle anywhere in the state.

(10) "Drugs" are those substances as defined by RCW 69.04.009, including, but not limited to, those substances defined by 49 C.F.R. Sec. 40.3.

(11) "Employer" means any person, including the United States, a state, or a political subdivision of a state, who owns or leases a commercial motor vehicle, or assigns a person to drive a commercial motor vehicle.

(12) "Gross vehicle weight rating" (GVWR) means the value specified by the manufacturer as the maximum loaded weight of a single vehicle. The GVWR of a combination or articulated vehicle, commonly referred to as the "gross combined weight rating" or GCWR, is the GVWR of the power unit plus the GVWR of the towed unit or units. If the GVWR of any unit cannot be determined, the actual gross weight will be used. If a vehicle with a GVWR of less than 11,794 kilograms (26,001 pounds or less) has been structurally modified

to carry a heavier load, then the actual gross weight capacity of the modified vehicle, as determined by RCW 46.44.041 and 46.44.042, will be used as the GVWR.

(13) "Hazardous materials" means any material that has been designated as hazardous under 49 U.S.C. Sec. 5103 and is required to be placarded under subpart F of 49 C.F.R. Part 172 or any quantity of a material listed as a select agent or toxin in 42 C.F.R. Part 73.

(14) "Motor vehicle" means a vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power used on highways, or any other vehicle required to be registered under the laws of this state, but does not include a vehicle, machine, tractor, trailer, or semitrailer operated exclusively on a rail.

(15) "Out-of-service order" means a declaration by an authorized enforcement officer of a federal, state, Canadian, Mexican, or local jurisdiction that a driver, a commercial motor vehicle, or a motor carrier operation is out-of-service pursuant to 49 C.F.R. Secs. 386.72, 392.5, 395.13, 396.9, or compatible laws, or the North American uniform out-of-service criteria.

(16) "Positive alcohol confirmation test" means an alcohol confirmation test that:

(a) Has been conducted by a breath alcohol technician under 49 C.F.R. Part 40; and

(b) Indicates an alcohol concentration of 0.04 or more.

A report that a person has refused an alcohol test, under circumstances that constitute the refusal of an alcohol test under 49 C.F.R. Part 40, will be considered equivalent to a report of a positive alcohol confirmation test for the purposes of this chapter.

(17) "School bus" means a commercial motor vehicle used to transport preprimary, primary, or secondary school students from home to school, from school to home, or to and from school-sponsored events. School bus does not include a bus used as a common carrier.

(18) "Serious traffic violation" means:

(a) Excessive speeding, defined as fifteen miles per hour or more in excess of the posted limit;

(b) Reckless driving, as defined under state or local law;

(c) Driving while using a hand-held wireless communications device [hand-held mobile telephone], defined as a violation of RCW 46.61.667(1)(b) or an equivalent administrative rule or local law, ordinance, rule, or resolution;

(d) Texting, defined as a violation of RCW 46.61.668(1)(b) or an equivalent administrative rule or local law, ordinance, rule, or resolution;

(e) A violation of a state or local law relating to motor vehicle traffic control, other than a parking violation, arising in connection with an accident or collision resulting in death to any person;

(f) Driving a commercial motor vehicle without obtaining a commercial driver's license;

(g) Driving a commercial motor vehicle without a commercial driver's license in the driver's possession; however, any individual who provides proof to the court by the date the individual must appear in court or pay any fine for such a violation, that the individual held a valid CDL on the date the citation was issued, is not guilty of a "serious traffic violation";

(h) Driving a commercial motor vehicle without the proper class of commercial driver's license endorsement or endorsements for the specific vehicle group being operated or for the passenger or type of cargo being transported; and

(i) Any other violation of a state or local law relating to motor vehicle traffic control, other than a parking violation, that the department determines by rule to be serious.

(19) "State" means a state of the United States and the District of Columbia.

(20) "Substance abuse professional" means an alcohol and drug specialist meeting the credentials, knowledge, training, and continuing education requirements of 49 C.F.R. Sec. 40.281.

(21) "Tank vehicle" means any commercial motor vehicle that is designed to transport any liquid or gaseous materials within a tank or tanks having an individual rated capacity of more than one hundred nineteen gallons and an aggregate rated capacity of one thousand gallons or more that is either permanently or temporarily attached to the vehicle or the chassis. A commercial motor vehicle transporting an empty storage container tank, not designed for transportation, with a rated capacity of one thousand gallons or more that is temporarily attached to a flatbed trailer is not considered a tank vehicle.

(22) "Type of driving" means one of the following:

(a) "Nonexcepted interstate," which means the CDL or CLP holder or applicant operates or expects to operate in interstate commerce, is both subject to and meets the qualification requirements under 49 C.F.R. Part 391 as it existed on July 8, 2014, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section, and is required to obtain a medical examiner's certificate under 49 C.F.R. Sec. 391.45 as it existed on July 8, 2014, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section;

(b) "Excepted interstate," which means the CDL or CLP holder or applicant operates or expects to operate in interstate commerce, but engages exclusively in transportation or operations excepted under 49 C.F.R. Secs. 390.3(f), 391.2, 391.68, or 398.3, as they existed on July 8, 2014, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section, from all or parts of the qualification requirements of 49 C.F.R. Part 391 as it existed on July 8, 2014, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section, and is therefore not required to obtain a medical examiner's certificate under 49 C.F.R. Sec. 391.45 as it existed on July 8, 2014, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section;

(c) "Nonexcepted intrastate," which means the CDL or CLP holder or applicant operates only in intrastate commerce and is therefore subject to state driver qualification requirements; or

(d) "Excepted intrastate," which means the CDL or CLP holder or applicant operates in intrastate commerce, but engages exclusively in transportation or operations excepted from all or parts of the state driver qualification requirements.

(23) "United States" means the fifty states and the District of Columbia.

(24) "Verified positive drug test" means a drug test result or validity testing result from a laboratory certified under the authority of the federal department of health and human services that:

(a) Indicates a drug concentration at or above the cutoff concentration established under 49 C.F.R. Sec. 40.87; and

(b) Has undergone review and final determination by a medical review officer.

A report that a person has refused a drug test, under circumstances that constitute the refusal of a federal department of transportation drug test under 49 C.F.R. Part 40, will be considered equivalent to a report of a verified positive drug test for the purposes of this chapter. [2013 c 224 § 3; 2013 c 224 § 2; 2011 c 227 § 1; 2009 c 181 § 2. Prior: 2006 c 327 § 2; 2006 c 50 § 1; 2005 c 325 § 2; 2004 c 187 § 2; 1996 c 30 § 1; 1989 c 178 § 3.]

Reviser's note: Due to a drafting error, the bracketed words in subsections (6) and (18) were omitted when 2013 c 224 § 3 amended 2013 c 224 § 2.

Effective date—2013 c 224: See note following RCW 46.01.130.

Effective date—2011 c 227 §§ 1-3: See note following RCW 46.25.075.

Intent—2005 c 325: "It is the intent of the legislature to promote the safety of drivers and passengers on Washington roads and public transportation systems. To this end, Washington has established a reporting requirement for employers of commercial drivers who test positive for unlawful substances. The legislature recognizes that transit operators and their employers are an asset to the public transportation system and continuously strive to provide a safe and efficient mode of travel. In light of this, the legislature further intends that the inclusion of transit employers in the reporting requirements serve only to enhance the current efforts of these dedicated employers and employees as they continue to provide a safe public transportation system to the citizens of Washington." [2005 c 325 § 1.]

Additional notes found at www.leg.wa.gov

46.25.050 Commercial driver's license required—Exceptions, restrictions, reciprocity. (Effective July 8, 2014.)

(1) Drivers of commercial motor vehicles must obtain a commercial driver's license as required under this chapter. Except when driving under a commercial learner's permit and a valid driver's license and accompanied by the holder of a commercial driver's license valid for the vehicle being driven, no person may drive a commercial motor vehicle unless the person holds and is in immediate possession of a commercial driver's license and applicable endorsements valid for the vehicle they are driving. However, this requirement does not apply to any person:

(a) Who is the operator of a farm vehicle, and the vehicle is:

(i) Controlled and operated by a farmer;

(ii) Used to transport either agricultural products, which in this section include Christmas trees and wood products harvested from private tree farms and transported by vehicles weighing no more than forty thousand pounds licensed gross vehicle weight, farm machinery, farm supplies, animal manure, animal manure compost, or any combination of those materials to or from a farm;

(iii) Not used in the operations of a common or contract motor carrier; and

(iv) Used within one hundred fifty miles of the person's farm; or

(b) Who is a firefighter or law enforcement officer operating emergency equipment, and:

(i) The firefighter or law enforcement officer has successfully completed a driver training course approved by the director; and

(ii) The firefighter or law enforcement officer carries a certificate attesting to the successful completion of the approved training course; or

(c) Who is operating a recreational vehicle for noncommercial purposes. As used in this section, "recreational vehicle" includes a vehicle towing a horse trailer for a noncommercial purpose; or

(d) Who is operating a commercial motor vehicle for military purposes. This exception is applicable to active duty military personnel; members of the military reserves; members of the national guard on active duty, including personnel on full-time national guard duty, personnel on part-time national guard training, and national guard military technicians (civilians who are required to wear military uniforms); and active duty United States coast guard personnel. This exception is not applicable to United States reserve technicians.

(2) No person may drive a commercial motor vehicle while his or her driving privilege is suspended, revoked, or canceled, while subject to disqualification, or in violation of an out-of-service order. Violations of this subsection shall be punished in the same way as violations of RCW 46.20.342(1).

(3) The department must, to the extent possible, enter into reciprocity agreements with adjoining states to allow the waivers described in subsection (1) of this section to apply to drivers holding commercial driver's licenses from those adjoining states. [2013 c 224 § 4; 2011 c 142 § 1; 2006 c 327 § 3; 1995 c 393 § 1; 1990 c 56 § 1; 1989 c 178 § 7.]

Effective date—2013 c 224: See note following RCW 46.01.130.

46.25.052 Commercial learner's permit—Qualifications, authorized use, endorsements, restrictions. (Effective July 8, 2014.) (1) The department may issue a CLP to an applicant who is at least eighteen years of age and holds a valid Washington state driver's license and who has:

(a) Submitted an application on a form or in a format provided by the department;

(b) Passed the general knowledge examination required for issuance of a CDL under RCW 46.25.060 for the commercial motor vehicle classification in which the applicant operates or expects to operate; and

(c) Paid the appropriate examination fee or fees and an application fee of ten dollars.

(2) A CLP must be marked "commercial learner's permit" or "CLP," and must be, to the maximum extent practicable, tamperproof. Other than a photograph of the applicant, it must include, but not be limited to, the information required on a CDL under RCW 46.25.080(1).

(3) The holder of a CLP may drive a commercial motor vehicle on a highway only when in possession of a valid driver's license and accompanied by the holder of a valid CDL who has the proper CDL classification and endorsement or endorsements necessary to operate the commercial motor vehicle. The CDL holder must at all times be physically present in the front seat of the vehicle next to the CLP holder or, in the case of a passenger vehicle, directly behind or in the

first row behind the driver and must have the CLP holder under observation and direct supervision.

(4) A CLP may be classified in the same manner as a CDL under RCW 46.25.080(2)(a).

(5) CLPs may be issued with only P, S, or N endorsements as described in RCW 46.25.080(2)(b).

(a) The holder of a CLP with a P endorsement must have taken and passed the P endorsement knowledge examination. The holder of a CLP with a P endorsement is prohibited from operating a commercial motor vehicle carrying passengers other than authorized employees or representatives of the department and the federal motor carrier safety administration, examiners, other trainees, and the CDL holder accompanying the CLP holder as required under subsection (2) of this section. The P endorsement must be class specific.

(b) The holder of a CLP with an S endorsement must have taken and passed the S endorsement knowledge examination. The holder of a CLP with an S endorsement is prohibited from operating a school bus with passengers other than authorized employees or representatives of the department and the federal motor carrier safety administration, examiners, other trainees, and the CDL holder accompanying the CLP holder as required under subsection (2) of this section.

(c) The holder of a CLP with an N endorsement must have taken and passed the N endorsement knowledge examination. The holder of a CLP with an N endorsement may only operate an empty tank vehicle and is prohibited from operating any tank vehicle that previously contained hazardous materials and has not been purged of any residue.

(6) A CLP may be issued with appropriate restrictions as described in RCW 46.25.080(2)(c). In addition, a CLP may be issued with the following restrictions:

(a) "P" restricts the driver from operating a bus with passengers;

(b) "X" restricts the driver from operating a tank vehicle that contains cargo; and

(c) Any restriction as established by rule of the department.

(7) The holder of a CLP is not authorized to operate a commercial motor vehicle transporting hazardous materials.

(8) A CLP may not be issued for a period to exceed one hundred eighty days. The department may renew the CLP for one additional one hundred eighty-day period without requiring the CLP holder to retake the general and endorsement knowledge examinations.

(9) The department must transmit the fees collected for CLPs to the state treasurer for deposit in the highway safety fund. [2013 c 224 § 5.]

Effective date—2013 c 224: See note following RCW 46.01.130.

46.25.060 Knowledge and skills examination, exemptions. (Effective July 8, 2014.) (1)(a) No person may be issued a commercial driver's license unless that person:

(i) Is a resident of this state;

(ii) Has successfully completed a course of instruction in the operation of a commercial motor vehicle that has been approved by the director or has been certified by an employer as having the skills and training necessary to operate a commercial motor vehicle safely;

(iii) If he or she does not hold a valid commercial driver's license of the appropriate classification, has been issued a commercial learner's permit under RCW 46.25.052; and

(iv) Has passed a knowledge and skills examination for driving a commercial motor vehicle that complies with minimum federal standards established by federal regulation enumerated in 49 C.F.R. Part 383, subparts F, G, and H, in addition to other requirements imposed by state law or federal regulation. The department may not allow the person to take the skills examination during the first fourteen days after initial issuance of the person's commercial learner's permit. The examinations must be prescribed and conducted by the department.

(b) In addition to the fee charged for issuance or renewal of any license, the applicant shall pay a fee of no more than ten dollars for each classified knowledge examination, classified endorsement knowledge examination, or any combination of classified license and endorsement knowledge examinations. The applicant shall pay a fee of no more than one hundred dollars for each classified skill examination or combination of classified skill examinations conducted by the department.

(c) The department may authorize a person, including an agency of this or another state, an employer, a private driver training facility, or other private institution, or a department, agency, or instrumentality of local government, to administer the skills examination specified by this section under the following conditions:

(i) The examination is the same which would otherwise be administered by the state;

(ii) The third party has entered into an agreement with the state that complies with the requirements of 49 C.F.R. Sec. 383.75; and

(iii) The director has adopted rules as to the third party testing program and the development and justification for fees charged by any third party.

(d) If the applicant's primary use of a commercial driver's license is for any of the following, then the applicant shall pay a fee of no more than seventy-five dollars for each classified skill examination or combination of classified skill examinations whether conducted by the department or a third-party tester:

(i) Public benefit not-for-profit corporations that are federally supported head start programs; or

(ii) Public benefit not-for-profit corporations that support early childhood education and assistance programs as described in RCW 43.215.405(2).

(2)(a) The department may waive the skills examination and the requirement for completion of a course of instruction in the operation of a commercial motor vehicle specified in this section for a commercial driver's license applicant who meets the requirements of 49 C.F.R. Sec. 383.77.

(b) An applicant who operates a commercial motor vehicle for agribusiness purposes is exempt from the course of instruction completion and employer skills and training certification requirements under this section. By January 1, 2010, the department shall submit recommendations regarding the continuance of this exemption to the transportation committees of the legislature. For purposes of this subsection (2)(b),

"agribusiness" means a private carrier who in the normal course of business primarily transports:

(i) Farm machinery, farm equipment, implements of husbandry, farm supplies, and materials used in farming;

(ii) Agricultural inputs, such as seed, feed, fertilizer, and crop protection products;

(iii) Unprocessed agricultural commodities, as defined in RCW 17.21.020, where such commodities are produced by farmers, ranchers, vineyardists, or orchardists; or

(iv) Any combination of (b)(i) through (iii) of this subsection.

The department shall notify the transportation committees of the legislature if the federal government takes action affecting the exemption provided in this subsection (2)(b).

(3) A commercial driver's license or commercial learner's permit may not be issued to a person while the person is subject to a disqualification from driving a commercial motor vehicle, or while the person's driver's license is suspended, revoked, or canceled in any state, nor may a commercial driver's license be issued to a person who has a commercial driver's license issued by any other state unless the person first surrenders all such licenses, which must be returned to the issuing state for cancellation. [2013 c 224 § 6; 2011 c 153 § 1; 2009 c 339 § 1; 2007 c 418 § 1; 2004 c 187 § 3; 2002 c 352 § 18; 1989 c 178 § 8.]

Effective date—2013 c 224: See note following RCW 46.01.130.

Effective date—2011 c 153: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2011." [2011 c 153 § 2.]

Effective date—2007 c 418: "This act takes effect January 15, 2008." [2007 c 418 § 2.]

Additional notes found at www.leg.wa.gov

46.25.070 Application—Change of address, name—Residency—Hazardous materials endorsement. (Effective July 8, 2014.) (1) The application for a commercial driver's license or commercial learner's permit must include the following:

(a) The full name and current mailing and residential address of the person;

(b) A physical description of the person, including sex, height, weight, and eye color;

(c) Date of birth;

(d) The applicant's social security number;

(e) The person's signature;

(f) Certifications including those required by 49 C.F.R. Sec. 383.71;

(g) The names of all states where the applicant has previously been licensed to drive any type of motor vehicle during the previous ten years;

(h) Any other information required by the department; and

(i) A consent to release driving record information to parties identified in chapter 46.52 RCW and this chapter.

(2) An applicant for a commercial driver's license or commercial learner's permit, and every licensee seeking to renew his or her license, must meet the requirements of 49 C.F.R. Sec. 383.71 as it existed on July 8, 2014, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section.

(3) An applicant for a hazardous materials endorsement must submit an application and comply with federal transportation security administration requirements as specified in 49 C.F.R. Part 1572.

(4) When a licensee changes his or her name, mailing address, or residence address, the person shall notify the department as provided in RCW 46.20.205.

(5) No person who has been a resident of this state for thirty days may drive a commercial motor vehicle under the authority of a commercial driver's license issued by another jurisdiction. [2013 c 224 § 7; 2004 c 187 § 4; 2003 c 195 § 2; 1991 c 73 § 2; 1989 c 178 § 9.]

Effective date—2013 c 224: See note following RCW 46.01.130.

Findings—2003 c 195: "The legislature finds that current economic conditions impose severe hardships on many commercial vehicle drivers. The legislature finds that commercial drivers who may not currently be working may not be able to afford the expense of a required physical in order to maintain their commercial driver's license. The legislature finds that Washington's commercial driver's license statutes should be harmonized with federal requirements, which require proof of a physical capacity to drive a commercial vehicle, along with a valid commercial driver's license, but do not link the two requirements. The legislature finds that allowing commercial drivers to delay getting a physical until they are actually driving a commercial vehicle will prevent the imposition of unnecessary expense and hardship on Washington's commercial vehicle drivers." [2003 c 195 § 1.]

46.25.075 Certification—Recordkeeping and administration—Downgrade. (Effective July 8, 2014.) (1) Any person applying for a CDL or CLP must certify that he or she is or expects to be engaged in one of the following types of driving:

- (a) Nonexcepted interstate;
- (b) Excepted interstate;
- (c) Nonexcepted intrastate; or
- (d) Excepted intrastate.

(2) A CDL or CLP applicant or holder who certifies under subsection (1)(a) of this section that he or she is or expects to be engaged in nonexcepted interstate commerce must provide a copy of a medical examiner's certificate prepared by a medical examiner, as defined in 49 C.F.R. Sec. 390.5 as it existed on July 8, 2014, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section. Upon submission, a copy of the medical examiner's certificate must be date-stamped by the department. A CDL or CLP holder who certifies under subsection (1)(a) of this section must submit a copy of each subsequently issued medical examiner's certificate.

(3) For each operator of a commercial motor vehicle required to have a CDL or CLP, the department must meet the following requirements:

(a)(i) The driver's self-certification of type of driving under subsection (1) of this section must be maintained on the driver's record and the CDLIS driver record;

(ii) The copy of a medical examiner's certificate, when submitted under subsection (2) of this section, must be retained for three years beyond the date the certificate was issued; and

(iii) When a medical examiner's certificate is submitted under subsection (2) of this section, the information required under 49 C.F.R. Sec. 383.73 as it existed on July 8, 2014, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section must be

posted to the CDLIS driver record within ten calendar days from the date submitted. The indicator of medical certification status, such as "certified" or "not-certified," must be maintained on the driver's record.

(b) Within ten calendar days of the driver's medical certification status expiring or a medical variance expiring or being rescinded, the medical certification status of the driver must be updated to "not-certified."

(c) Within ten calendar days of receiving information from the federal motor carrier safety administration regarding issuance or renewal of a medical variance for a driver, the department must update the CDLIS driver record to include the medical variance information.

(4)(a) If a driver's medical certification or medical variance expires, or the federal motor carrier safety administration notifies the department that a medical variance was removed or rescinded, the department must:

(i) Notify the driver of his or her "not-certified" medical certification status and that the privilege of operating a commercial motor vehicle will be removed from the CDL or CLP unless the driver submits a current medical certificate or medical variance, or changes his or her self-certification to driving only in excepted or intrastate commerce; and

(ii) Initiate procedures for downgrading the CDL or CLP. The CDL or CLP downgrade must be completed and recorded within sixty days of the driver's medical certification status becoming "not-certified" to operate a commercial motor vehicle.

(b) If a driver fails to provide the department with the certification required in subsection (1) of this section, or a current medical examiner's certificate if the driver self-certifies under subsection (1)(a) of this section that he or she is operating in nonexcepted interstate commerce as required in subsection (2) of this section, the department must mark the CDLIS driver record as "not-certified" and initiate a CDL or CLP downgrade in accordance with (a)(ii) of this subsection.

(c) A driver whose CDL or CLP has been downgraded under this subsection may restore the CDL or CLP privilege by providing the necessary certifications or medical variance information to the department. [2013 c 224 § 8; 2011 c 227 § 3.]

Effective date—2013 c 224: See note following RCW 46.01.130.

Effective date—2011 c 227 §§ 1-3: "Sections 1 through 3 of this act take effect January 30, 2012." [2011 c 227 § 7.]

46.25.080 License contents, classifications, endorsements, restrictions. (Effective July 8, 2014.) (1) The commercial driver's license must be marked "commercial driver's license" or "CDL," and must be, to the maximum extent practicable, tamperproof. It must include, but not be limited to, the following information:

- (a) The name and residence address of the person;
- (b) The person's color photograph;
- (c) A physical description of the person including sex, height, weight, and eye color;
- (d) Date of birth;
- (e) The person's social security number or any number or identifier deemed appropriate by the department;
- (f) The person's signature;

(g) The class or type of commercial motor vehicle or vehicles that the person is authorized to drive, together with any endorsements or restrictions;

(h) The name of the state; and

(i) The dates between which the license is valid.

(2) Commercial driver's licenses may be issued with the classifications, endorsements, and restrictions set forth in this subsection. The holder of a valid commercial driver's license may drive all vehicles in the class for which that license is issued and all lesser classes of vehicles except motorcycles and vehicles that require an endorsement, unless the proper endorsement appears on the license.

(a) Licenses may be classified as follows:

(i) Class A is a combination vehicle.

(ii) Class B is a heavy straight vehicle.

(iii) Class C is a small vehicle that is:

(A) Designed to transport sixteen or more passengers, including the driver; or

(B) Used in the transportation of hazardous materials.

(b) The following endorsements may be placed on a license:

(i) "H" authorizes the driver to drive a vehicle transporting hazardous materials.

(ii) "T" authorizes driving double and triple trailers.

(iii) "P" authorizes driving vehicles carrying passengers, other than school buses.

(iv) "N" authorizes driving tank vehicles.

(v) "X" represents a combination of hazardous materials and tank vehicle endorsements.

(vi) "S" authorizes driving school buses.

(c) The following restrictions may be placed on a license:

(i) "E" restricts the driver from operating a commercial motor vehicle equipped with a manual transmission.

(ii) "K" restricts the driver from interstate operation of a commercial motor vehicle.

(iii) "L" restricts the driver from operating a commercial motor vehicle equipped with air brakes.

(iv) "M" restricts the driver from operating class A passenger vehicles.

(v) "N" restricts the driver from operating class A and B passenger vehicles.

(vi) "O" restricts the driver from operating tractor-trailer commercial motor vehicles.

(vii) "V" means that the driver has been issued a medical variance.

(viii) "Z" restricts the driver from operating a commercial motor vehicle equipped with full air brakes.

(d) The license may be issued with additional endorsements and restrictions as established by rule of the director. [2013 c 224 § 9; 2011 c 227 § 2. Prior: 2004 c 249 § 8; 2004 c 187 § 5; 1996 c 30 § 2; 1989 c 178 § 10.]

Effective date—2013 c 224: See note following RCW 46.01.130.

Effective date—2011 c 227 §§ 1-3: See note following RCW 46.25.075.

Effective date—2004 c 187 §§ 1, 5, 7, 8, and 10: See note following RCW 46.20.308.

Additional notes found at www.leg.wa.gov

46.25.082 Driving record information. (Effective July 8, 2014.) (1)(a) Before issuing a CDL or CLP, the department must obtain driving record information:

(i) Through the commercial driver's license information system;

(ii) Through the national driver register;

(iii) From the current state of record; and

(iv) From all states where the applicant was previously licensed over the last ten years to drive any type of motor vehicle.

(b) A driving record check under (a)(iv) of this subsection need only be performed once at the time of initial issuance of a CDL or CLP, provided a notation is made on the driver's record confirming that the driving record check has been made and noting the date it was completed.

(2) Within ten days after issuing a CDL or CLP, the department must notify the commercial driver's license information system of the information required under 49 C.F.R. Sec. 383.73 as it existed on July 8, 2014, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section and provide all information required to ensure identification of the person. [2013 c 224 § 10.]

Effective date—2013 c 224: See note following RCW 46.01.130.

46.25.088 Expiration—Renewal. (Effective July 8, 2014.) (1) A CDL expires in the same manner as provided in RCW 46.20.181.

(2) When applying for renewal of a CDL, the applicant must:

(a) Complete the application form required under RCW 46.25.070(1), providing updated information and required certifications, and meet all the requirements of RCW 46.25.070 and 49 C.F.R. Sec. 383.71;

(b) Submit the application to the department in person; and

(c) If the applicant wishes to retain a hazardous materials endorsement, take and pass the written test for a hazardous materials endorsement. [2013 c 224 § 11.]

Effective date—2013 c 224: See note following RCW 46.01.130.

46.25.090 Disqualification—Grounds for, period of—Records. (1) A person is disqualified from driving a commercial motor vehicle for a period of not less than one year if a report has been received by the department pursuant to RCW 46.20.308 or 46.25.120, or if the person has been convicted of a first violation, within this or any other jurisdiction, of:

(a) Driving a motor vehicle under the influence of alcohol or any drug;

(b) Driving a commercial motor vehicle while the alcohol concentration in the person's system is 0.04 or more or any measurable amount of THC concentration, or driving a noncommercial motor vehicle while the alcohol concentration in the person's system is 0.08 or more, or is 0.02 or more if the person is under age twenty-one, or with a THC concentration of 5.00 nanograms per milliliter of whole blood or more, or a THC concentration above 0.00 if the person is under the age of twenty-one, as determined by any testing methods approved by law in this state or any other state or jurisdiction;

(c) Leaving the scene of an accident involving a motor vehicle driven by the person;

(d) Using a motor vehicle in the commission of a felony;

(e) Refusing to submit to a test or tests to determine the driver's alcohol concentration or the presence of any drug while driving a motor vehicle;

(f) Driving a commercial motor vehicle when, as a result of prior violations committed while operating a commercial motor vehicle, the driver's commercial driver's license is revoked, suspended, or canceled, or the driver is disqualified from operating a commercial motor vehicle;

(g) Causing a fatality through the negligent operation of a commercial motor vehicle, including but not limited to the crimes of vehicular homicide and negligent homicide.

If any of the violations set forth in this subsection occurred while transporting hazardous material, the person is disqualified for a period of not less than three years.

(2) A person is disqualified for life if it has been determined that the person has committed or has been convicted of two or more violations of any of the offenses specified in subsection (1) of this section, or any combination of those offenses, arising from two or more separate incidents.

(3) The department may adopt rules, in accordance with federal regulations, establishing guidelines, including conditions, under which a disqualification for life under subsection (2) of this section may be reduced to a period of not less than ten years.

(4) A person is disqualified from driving a commercial motor vehicle for life who uses a motor vehicle in the commission of a felony involving the manufacture, distribution, or dispensing of a controlled substance, as defined by chapter 69.50 RCW, or possession with intent to manufacture, distribute, or dispense a controlled substance, as defined by chapter 69.50 RCW.

(5)(a) A person is disqualified from driving a commercial motor vehicle for a period of:

(i) Not less than sixty days if:

(A) Convicted of or found to have committed a second serious traffic violation while driving a commercial motor vehicle; or

(B) Convicted of reckless driving, where there has been a prior serious traffic violation; or

(ii) Not less than one hundred twenty days if:

(A) Convicted of or found to have committed a third or subsequent serious traffic violation while driving a commercial motor vehicle; or

(B) Convicted of reckless driving, where there has been two or more prior serious traffic violations.

(b) The disqualification period under (a)(ii) of this subsection must be in addition to any other previous period of disqualification.

(c) For purposes of determining prior serious traffic violations under this subsection, each conviction of or finding that a driver has committed a serious traffic violation while driving a commercial motor vehicle or noncommercial motor vehicle, arising from a separate incident occurring within a three-year period, must be counted.

(6) A person is disqualified from driving a commercial motor vehicle for a period of:

(a) Not less than one hundred eighty days nor more than one year if convicted of or found to have committed a first

violation of an out-of-service order while driving a commercial vehicle;

(b) Not less than two years nor more than five years if, during a ten-year period, the person is convicted of or is found to have committed two violations of out-of-service orders while driving a commercial motor vehicle in separate incidents;

(c) Not less than three years nor more than five years if, during a ten-year period, the person is convicted of or is found to have committed three or more violations of out-of-service orders while driving commercial motor vehicles in separate incidents;

(d) Not less than one hundred eighty days nor more than two years if the person is convicted of or is found to have committed a first violation of an out-of-service order while transporting hazardous materials, or while operating motor vehicles designed to transport sixteen or more passengers, including the driver. A person is disqualified for a period of not less than three years nor more than five years if, during a ten-year period, the person is convicted of or is found to have committed subsequent violations of out-of-service orders, in separate incidents, while transporting hazardous materials, or while operating motor vehicles designed to transport sixteen or more passengers, including the driver.

(7) A person is disqualified from driving a commercial motor vehicle if a report has been received by the department under RCW 46.25.125 that the person has received a verified positive drug test or positive alcohol confirmation test as part of the testing program conducted under 49 C.F.R. 40. A disqualification under this subsection remains in effect until the person undergoes a drug and alcohol assessment by a substance abuse professional meeting the requirements of 49 C.F.R. 40, and the person presents evidence of satisfactory participation in or successful completion of a drug or alcohol treatment and/or education program as recommended by the substance abuse professional, and until the person has met the requirements of RCW 46.25.100. The substance abuse professional shall forward a diagnostic evaluation and treatment recommendation to the department of licensing for use in determining the person's eligibility for driving a commercial motor vehicle. Persons who are disqualified under this subsection more than twice in a five-year period are disqualified for life.

(8)(a) A person is disqualified from driving a commercial motor vehicle for the period of time specified in (b) of this subsection if he or she is convicted of or is found to have committed one of the following six offenses at a railroad-highway grade crossing while operating a commercial motor vehicle in violation of a federal, state, or local law or regulation:

(i) For drivers who are not required to always stop, failing to slow down and check that the tracks are clear of an approaching train;

(ii) For drivers who are not required to always stop, failing to stop before reaching the crossing, if the tracks are not clear;

(iii) For drivers who are always required to stop, failing to stop before driving onto the crossing;

(iv) For all drivers, failing to have sufficient space to drive completely through the crossing without stopping;

(v) For all drivers, failing to obey a traffic control device or the directions of an enforcement officer at the crossing;

(vi) For all drivers, failing to negotiate a crossing because of insufficient undercarriage clearance.

(b) A person is disqualified from driving a commercial motor vehicle for a period of:

(i) Not less than sixty days if the driver is convicted of or is found to have committed a first violation of a railroad-highway grade crossing violation;

(ii) Not less than one hundred twenty days if the driver is convicted of or is found to have committed a second railroad-highway grade crossing violation in separate incidents within a three-year period;

(iii) Not less than one year if the driver is convicted of or is found to have committed a third or subsequent railroad-highway grade crossing violation in separate incidents within a three-year period.

(9) A person is disqualified from driving a commercial motor vehicle for not more than one year if a report has been received by the department from the federal motor carrier safety administration that the person's driving has been determined to constitute an imminent hazard as defined by 49 C.F.R. 383.5. A person who is simultaneously disqualified from driving a commercial motor vehicle under this subsection and under other provisions of this chapter, or under 49 C.F.R. 383.52, shall serve those disqualification periods concurrently.

(10) Within ten days after suspending, revoking, or canceling a commercial driver's license or disqualifying a driver from operating a commercial motor vehicle, the department shall update its records to reflect that action. [2013 2nd sp.s. c 35 § 10; 2011 c 227 § 4; 2006 c 327 § 4; 2005 c 325 § 5; 2004 c 187 § 7. Prior: 2002 c 272 § 3; 2002 c 193 § 1; 1996 c 30 § 3; 1989 c 178 § 11.]

Intent—2005 c 325: See note following RCW 46.25.010.

Effective date—2004 c 187 §§ 1, 5, 7, 8, and 10: See note following RCW 46.20.308.

Additional notes found at www.leg.wa.gov

46.25.100 Restoration after disqualification. (Effective July 8, 2014.) When a person has been disqualified from operating a commercial motor vehicle, the person is not entitled to have the commercial driver's license or commercial learner's permit restored until after the expiration of the appropriate disqualification period required under RCW 46.25.090 or until the department has received a drug and alcohol assessment and evidence is presented of satisfactory participation in or completion of any required drug or alcohol treatment program for ending the disqualification under RCW 46.25.090(7). After expiration of the appropriate period and upon payment of a requalification fee of twenty dollars, or one hundred fifty dollars if the person has been disqualified under RCW 46.25.090(7), the person may apply for a new, duplicate, or renewal commercial driver's license or commercial learner's permit as provided by law. If the person has been disqualified for a period of one year or more, the person shall demonstrate that he or she meets the commercial driver's license or commercial learner's permit qualification standards specified in RCW 46.25.060. [2013 c 224 § 12; 2002 c 272 § 4; 1989 c 178 § 12.]

Effective date—2013 c 224: See note following RCW 46.01.130.

46.25.110 Driving with alcohol or THC in system. (1) Notwithstanding any other provision of Title 46 RCW, a person may not drive, operate, or be in physical control of a commercial motor vehicle while having alcohol or THC in his or her system.

(2) Law enforcement or appropriate officials shall issue an out-of-service order valid for twenty-four hours against a person who drives, operates, or is in physical control of a commercial motor vehicle while having alcohol or THC in his or her system or who refuses to take a test to determine his or her alcohol content or THC concentration as provided by RCW 46.25.120. [2013 2nd sp.s. c 35 § 11; 1989 c 178 § 13.]

46.25.120 Test for alcohol or drugs—Disqualification for refusal of test or positive test—Procedures. (1) A person who drives a commercial motor vehicle within this state is deemed to have given consent, subject to RCW 46.61.506, to take a test or tests of that person's blood or breath for the purpose of determining that person's alcohol concentration or the presence of other drugs.

(2) A test or tests may be administered at the direction of a law enforcement officer, who after stopping or detaining the commercial motor vehicle driver, has probable cause to believe that driver was driving a commercial motor vehicle while having alcohol in his or her system or while under the influence of any drug.

(3) The law enforcement officer requesting the test under subsection (1) of this section shall warn the person requested to submit to the test that a refusal to submit will result in that person being disqualified from operating a commercial motor vehicle under RCW 46.25.090.

(4) If the person refuses testing, or submits to a test that discloses an alcohol concentration of 0.04 or more or any measurable amount of THC concentration, the law enforcement officer shall submit a sworn report to the department certifying that the test was requested pursuant to subsection (1) of this section and that the person refused to submit to testing, or submitted to a test that disclosed an alcohol concentration of 0.04 or more or any measurable amount of THC concentration.

(5) Upon receipt of the sworn report of a law enforcement officer under subsection (4) of this section, the department shall disqualify the driver from driving a commercial motor vehicle under RCW 46.25.090, subject to the hearing provisions of RCW 46.20.329 and 46.20.332. The hearing shall be conducted in the county of the arrest. For the purposes of this section, the hearing shall cover the issues of whether a law enforcement officer had reasonable grounds to believe the person had been driving or was in actual physical control of a commercial motor vehicle within this state while having alcohol in the person's system or while under the influence of any drug, whether the person refused to submit to the test or tests upon request of the officer after having been informed that the refusal would result in the disqualification of the person from driving a commercial motor vehicle, and, if the test was administered, whether the results indicated an alcohol concentration of 0.04 percent or more or any measurable amount of THC concentration. The department shall order that the disqualification of the person either be rescinded or sustained. Any decision by the department disqualifying a person from driving a commercial motor vehicle

is stayed and does not take effect while a formal hearing is pending under this section or during the pendency of a subsequent appeal to superior court so long as there is no conviction for a moving violation or no finding that the person has committed a traffic infraction that is a moving violation during the pendency of the hearing and appeal. If the disqualification of the person is sustained after the hearing, the person who is disqualified may file a petition in the superior court of the county of arrest to review the final order of disqualification by the department in the manner provided in RCW 46.20.334.

(6) If a motor carrier or employer who is required to have a testing program under 49 C.F.R. 382 knows that a commercial driver in his or her employ has refused to submit to testing under this section and has not been disqualified from driving a commercial motor vehicle, the employer may notify law enforcement or his or her medical review officer or breath alcohol technician that the driver has refused to submit to the required testing.

(7) The hearing provisions of this section do not apply to those persons disqualified from driving a commercial motor vehicle under RCW 46.25.090(7). [2013 2nd sp.s. c 35 § 12; 2006 c 327 § 5; 2002 c 272 § 5; 1998 c 41 § 6; 1990 c 250 § 50; 1989 c 178 § 14.]

Intent—Construction—Effective date—1998 c 41: See notes following RCW 46.20.265.

Additional notes found at www.leg.wa.gov

46.25.130 Report of violation, disqualification by nonresident. (Effective July 8, 2014.) (1) Within ten days after receiving a report of the conviction of or finding that a traffic infraction has been committed by any nonresident holder of a commercial driver's license or commercial learner's permit, or any nonresident operating a commercial motor vehicle, for any violation of state law or local ordinance relating to motor vehicle traffic control, other than parking violations, the department shall notify the driver licensing authority in the licensing state of the conviction.

(2)(a) No later than ten days after disqualifying any nonresident holder of a commercial driver's license or commercial learner's permit from operating a commercial motor vehicle, or revoking, suspending, or canceling the nonresident driving privileges of the nonresident holder of a commercial driver's license or commercial learner's permit for at least sixty days, the department must notify the state that issued the license of the disqualification, revocation, suspension, or cancellation.

(b) The notification must include both the disqualification and the violation that resulted in the disqualification, revocation, suspension, or cancellation. The notification and the information it provides must be recorded on the driver's record. [2013 c 224 § 13; 2004 c 187 § 8; 1989 c 178 § 15.]

Effective date—2013 c 224: See note following RCW 46.01.130.

Effective date—2004 c 187 §§ 1, 5, 7, 8, and 10: See note following RCW 46.20.308.

46.25.160 Licenses issued by other jurisdictions. (Effective July 8, 2014.) Notwithstanding any law to the contrary, a person may drive a commercial motor vehicle if the person has a commercial driver's license or commercial learner's permit issued by any state or jurisdiction in accor-

dance with the minimum federal standards for the issuance of commercial motor vehicle driver's licenses or permits, if the person's license or permit is not suspended, revoked, or canceled, and if the person is not disqualified from driving a commercial motor vehicle or is subject to an out-of-service order. [2013 c 224 § 14; 2004 c 187 § 9; 1989 c 178 § 18.]

Effective date—2013 c 224: See note following RCW 46.01.130.

Chapter 46.30 RCW

MANDATORY LIABILITY INSURANCE

Sections

- 46.30.020 Liability insurance or other financial responsibility required—Violations—Exceptions.
- 46.30.030 Insurance identification card.

46.30.020 Liability insurance or other financial responsibility required—Violations—Exceptions. (1)(a) No person may operate a motor vehicle subject to registration under chapter 46.16A RCW in this state unless the person is insured under a motor vehicle liability policy with liability limits of at least the amounts provided in RCW 46.29.090, is self-insured as provided in RCW 46.29.630, is covered by a certificate of deposit in conformance with RCW 46.29.550, or is covered by a liability bond of at least the amounts provided in RCW 46.29.090. Proof of financial responsibility for motor vehicle operation must be provided on the request of a law enforcement officer in the format specified under RCW 46.30.030.

(b) A person who drives a motor vehicle that is required to be registered in another state that requires drivers and owners of vehicles in that state to maintain insurance or financial responsibility shall, when requested by a law enforcement officer, provide evidence of financial responsibility or insurance as is required by the laws of the state in which the vehicle is registered.

(c) When asked to do so by a law enforcement officer, failure to display proof of financial responsibility for motor vehicle operation as specified under RCW 46.30.030 creates a presumption that the person does not have motor vehicle insurance.

(d) Failure to provide proof of motor vehicle insurance is a traffic infraction and is subject to penalties as set by the supreme court under RCW 46.63.110 or community restitution.

(e) For the purposes of this section, when a person uses a portable electronic device to display proof of financial security to a law enforcement officer, the officer may only view the proof of financial security and is otherwise prohibited from viewing any other content on the portable electronic device.

(f) Whenever a person presents a portable electronic device pursuant to this section, that person assumes all liability for any damage to the portable electronic device.

(2) If a person cited for a violation of subsection (1) of this section appears in person before the court or a violations bureau and provides written evidence that at the time the person was cited, he or she was in compliance with the financial responsibility requirements of subsection (1) of this section, the citation shall be dismissed and the court or violations bureau may assess court administrative costs of twenty-five

dollars at the time of dismissal. In lieu of personal appearance, a person cited for a violation of subsection (1) of this section may, before the date scheduled for the person's appearance before the court or violations bureau, submit by mail to the court or violations bureau written evidence that at the time the person was cited, he or she was in compliance with the financial responsibility requirements of subsection (1) of this section, in which case the citation shall be dismissed without cost, except that the court or violations bureau may assess court administrative costs of twenty-five dollars at the time of dismissal.

(3) The provisions of this chapter shall not govern:

(a) The operation of a motor vehicle registered under RCW 46.18.220 or 46.18.255, governed by RCW 46.16A.170, or registered with the Washington utilities and transportation commission as common or contract carriers; or

(b) The operation of a motorcycle as defined in RCW 46.04.330, a motor-driven cycle as defined in RCW 46.04.332, a moped as defined in RCW 46.04.304, or a wheeled all-terrain vehicle as defined in RCW 46.09.310.

(4) RCW 46.29.490 shall not be deemed to govern all motor vehicle liability policies required by this chapter but only those certified for the purposes stated in chapter 46.29 RCW. [2013 2nd sp.s. c 23 § 20; 2013 c 157 § 1; 2011 c 171 § 76; 2010 c 161 § 1115; 2003 c 221 § 1; 2002 c 175 § 35; 1991 sp.s. c 25 § 1; 1991 c 339 § 24; 1989 c 353 § 2.]

Finding—Intent—2013 2nd sp.s. c 23: See note following RCW 46.09.442.

Effective date—2013 2nd sp.s. c 23: See note following RCW 46.09.310.

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Notice of liability insurance requirement: RCW 46.16A.130.

Additional notes found at www.leg.wa.gov

46.30.030 Insurance identification card. (1) Whenever an insurance company issues or renews a motor vehicle liability insurance policy, the company shall provide the policyholder with an identification card as specified by the department of licensing. At the policyholder's request, the insurer shall provide the policyholder a card for each vehicle covered under the policy. The card required by this section may be provided in either paper or electronic format. Acceptable electronic formats include the display of electronic images on a cellular phone or any other type of portable electronic device.

(2) The department of licensing shall adopt rules specifying the type, style, and content of insurance identification cards to be used for proof of compliance with RCW 46.30.020, including the method for issuance of such identification cards by persons or organizations providing proof of compliance through self-insurance, certificate of deposit, or bond. In adopting such rules the department shall consider the guidelines for insurance identification cards developed by the insurance industry committee on motor vehicle administration. [2013 c 157 § 2; 1989 c 353 § 3.]

[2013 RCW Supp—page 562]

Chapter 46.37 RCW

VEHICLE LIGHTING AND OTHER EQUIPMENT

Sections

46.37.685 License plate flipping device—Unlawful use, display, sale—Penalty.

46.37.685 License plate flipping device—Unlawful use, display, sale—Penalty. (1)(a) It is unlawful for a person to display a license plate on a vehicle that does not match or correspond with the registration of the vehicle unless the vehicle is inventory for a properly licensed vehicle dealer.

(b) It is unlawful for a person to have an installed license plate flipping device on a vehicle, use technology to flip a license plate on a vehicle, or use technology to change the appearance of a license plate on a vehicle.

(c) It is unlawful for a person or entity to sell a license plate flipping device or sell technology that will change the appearance of a license plate in the state of Washington.

(d) For purposes of this section, "license plate flipping device" means a device that enables a license plate on a vehicle to be changed to another license plate either manually or electronically. "License plate flipping device" includes technology that is capable of changing the appearance of a license plate to appear as a different license plate.

(2) A person who switches or flips license plates on a vehicle physically, utilizes technology to flip or change the appearance of a license plate on a vehicle, sells a license plate flipping device or technology that will change the appearance of a license plate, or falsifies a vehicle registration in violation of this section, in addition to any traffic infraction, is guilty of a gross misdemeanor punishable by confinement of up to three hundred sixty-four days in the county jail and a fine of one thousand dollars for the first offense, two thousand five hundred dollars for a second offense, and five thousand dollars for any subsequent offense, which may not be suspended, deferred, or reduced.

(3) A vehicle that is found with an installed license plate flipping device or technology to change the appearance of a license plate may be impounded by a law enforcement officer as evidence.

(4) Citizens are encouraged to notify law enforcement immediately if they observe a vehicle with a license plate flipping device. [2013 c 135 § 1.]

Chapter 46.44 RCW

SIZE, WEIGHT, LOAD

Sections

46.44.0915 Heavy haul industrial corridors—Overweight sealed containers and vehicles.

46.44.170 Mobile home or park model trailer movement special permit and decal—Responsibility for taxes—License plates—Rules.

46.44.0915 Heavy haul industrial corridors—Overweight sealed containers and vehicles. (1)(a) Except as provided in (b) of this subsection, the department of transportation, with respect to state highways maintained within port district property, may, at the request of a port commission, make and enter into agreements with port districts and adjacent jurisdictions or agencies of the districts, for the purpose of identifying, managing, and maintaining short heavy haul

industrial corridors within port district property for the movement of overweight sealed containers used in international trade.

(b) The department of transportation shall designate that portion of state route number 97 from the Canadian border to milepost 331.12 as a heavy haul industrial corridor for the movement of overweight vehicles to and from the Oroville railhead. The department may issue special permits to vehicles operating in the heavy haul industrial corridor to carry weight in excess of weight limits established in RCW 46.44.041, but not to exceed a gross vehicle weight of 139,994 pounds.

(2) Except as provided in subsection (1)(b) of this section, the department may issue special permits to vehicles operating in a heavy haul industrial corridor to carry weight in excess of weight limits established in RCW 46.44.041. However, the excess weight on a single axle, tandem axle, or any axle group must not exceed that allowed by RCW 46.44.091 (1) and (2), weight per tire must not exceed six hundred pounds per inch width of tire, and gross vehicle weight must not exceed one hundred five thousand five hundred pounds.

(3) The entity operating or hiring vehicles under subsection (1)(b) of this section or moving overweight sealed containers used in international trade must pay a fee for each special permit of one hundred dollars per month or one thousand dollars annually, beginning from the date of issue, for all movements under the special permit made on state highways within a heavy haul industrial corridor. Within a port district property, under no circumstances are the for hire carriers or rail customers responsible for the purchase or cost of the permits. All funds collected, except the amount retained by authorized agents of the department under RCW 46.44.096, must be forwarded to the state treasurer and deposited in the motor vehicle fund.

(4) For purposes of this section, an overweight sealed container used in international trade, including its contents, is considered nondivisible when transported within a heavy haul industrial corridor defined by the department.

(5) Any agreement entered into by the department as authorized under this section with a port district adjacent to Puget Sound and located within a county that has a population of more than seven hundred thousand, but less than one million, must limit the applicability of any established heavy haul corridor to that portion of state route no. 509 beginning at milepost 0.25 in the vicinity of East 'D' Street and ending at milepost 5.7 in the vicinity of Norpoint Way Northeast.

(6) The department of transportation may adopt reasonable rules to implement this section. [2013 c 115 § 1; 2012 c 86 § 804; 2011 c 115 § 1; 2008 c 89 § 1; 2005 c 311 § 1.]

Effective date—2013 c 115: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2013." [2013 c 115 § 2.]

Effective date—2012 c 86: See note following RCW 47.76.360.

46.44.170 Mobile home or park model trailer movement special permit and decal—Responsibility for taxes—License plates—Rules. (1) Any person moving a mobile home as defined in RCW 46.04.302 or a park model

trailer as defined in RCW 46.04.622 upon public highways of the state must obtain:

(a) A special permit from the department of transportation and local authorities pursuant to RCW 46.44.090 and 46.44.093 and must pay the proper fee as prescribed by RCW 46.44.0941 and 46.44.096; and

(b) For mobile homes constructed before June 15, 1976, and already situated in the state: (i) A certification from the department of labor and industries that the mobile home was inspected for fire safety; or (ii) an affidavit in the form prescribed by the department of commerce signed by the owner at the county treasurer's office at the time of the application for the movement permit stating that the mobile home is being moved by the owner for his or her continued occupation or use; or (iii) a copy of the certificate of title together with an affidavit signed under penalty of perjury by the certified owner stating that the mobile home is being transferred to a wrecking yard or similar facility for disposal. In addition, the destroyed mobile home must be removed from the assessment rolls of the county and any outstanding taxes on the destroyed mobile home must be removed by the county treasurer.

(2) A special permit issued as provided in subsection (1) of this section for the movement of any mobile home or a park model trailer that is assessed for purposes of property taxes is not valid until the county treasurer of the county in which the mobile home or park model trailer is located must endorse or attach his or her certificate that all property taxes which are a lien or which are delinquent, or both, upon the mobile home or park model trailer being moved have been satisfied. Further, any mobile home or park model trailer required to have a special movement permit under this section must display an easily recognizable decal. However, endorsement or certification by the county treasurer and the display of the decal is not required:

(a) When a mobile home or park model trailer is to enter the state or is being moved from a manufacturer or distributor to a retail sales outlet or directly to the purchaser's designated location or between retail and sales outlets;

(b) When a signed affidavit of destruction is filed with the county assessor and the mobile home or park model trailer is being moved to a disposal site by a landlord as defined in RCW 59.20.030 after (i) the mobile home or park model trailer has been abandoned as defined in RCW 59.20.030; or (ii) a final judgment for restitution of the premises under RCW 59.18.410 has been executed in favor of the landlord with regard to the mobile home or park model trailer and title has been lawfully transferred to the landlord. The mobile home or park model trailer will be removed from the tax rolls and, upon notification by the assessor, any outstanding taxes on the destroyed mobile home or park model trailer will be removed by the county treasurer; or

(c) When a signed affidavit of destruction is filed with the county assessor by any mobile home or park model trailer owner or any property owner with an abandoned mobile home or park model trailer, the same must be removed from the tax rolls and upon notification by the assessor, any outstanding taxes on the destroyed mobile home or park model trailer must be removed by the county treasurer.

(3) Except as provided in RCW 84.56.335(1), if the landlord of a manufactured/mobile home park takes ownership of

a manufactured/mobile home or park model trailer with the intent to resell or rent the same under RCW 59.20.030 after (a) the manufactured/mobile home or park model trailer has been abandoned as defined in RCW 59.20.030; or (b) a final judgment for restitution of the premises under RCW 59.18.410 has been executed in favor of the landlord with regard to the manufactured/mobile home or park model trailer and title has been lawfully transferred to the landlord, the outstanding taxes become the responsibility of the landlord.

(4) It is the responsibility of the owner of the mobile home or park model trailer subject to property taxes or the agent to obtain the endorsement and decal from the county treasurer before a mobile home or park model trailer is moved.

(5) This section does not prohibit the issuance of vehicle license plates for a mobile home or park model trailer subject to property taxes, but plates may not be issued unless the mobile home or park model trailer subject to property taxes for which plates are sought has been listed for property tax purposes in the county in which it is principally located and the appropriate fee for the license has been paid.

(6) The department of transportation, the department of labor and industries, and local authorities are authorized to adopt reasonable rules for implementing the provisions of this section. The department of transportation must adopt rules specifying the design, reflective characteristics, annual coloration, and for the uniform implementation of the decal required by this section. The department of labor and industries must adopt procedures for notifying destination local jurisdictions concerning the arrival of mobile homes that failed safety inspections. [2013 c 198 § 2; 2010 c 161 § 1118; 2005 c 399 § 1; 2004 c 79 § 4; 2003 c 61 § 1; 2002 c 168 § 6; 1986 c 211 § 4. Prior: 1985 c 395 § 1; 1985 c 22 § 1; 1980 c 152 § 1; 1977 ex.s. c 22 § 2.]

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Additional notes found at www.leg.wa.gov

Chapter 46.55 RCW

TOWING AND IMPOUNDMENT

Sections

- 46.55.118 Rate, fee limitations for certain private impounds.
46.55.120 Redemption of vehicles—Sale of unredeemed property—Improper impoundment.

46.55.118 Rate, fee limitations for certain private impounds. (1) For a private impound performed by any registered tow truck operator using tow trucks classified by the Washington state patrol by rule under RCW 46.55.050(1) as class A, class E, or class D only, the following limitations apply:

(a) The maximum towing hourly rate listed on the fee schedule filed with the department under RCW 46.55.063(1) may not exceed one hundred thirty-five percent of the maximum hourly rate for a class A tow truck at the time of filing as negotiated by the Washington state patrol, pursuant to rule, and contained in the letter of contractual agreement and letter

of appointment authorizing a registered tow truck operator to respond to state patrol-originated calls.

(b) The maximum daily storage rate listed on the fee schedule filed with the department under RCW 46.55.063(1) may not exceed one hundred thirty-five percent of the maximum daily storage rate for an impound at the time of filing as negotiated by the Washington state patrol, pursuant to rule, and contained in the letter of contractual agreement and letter of appointment authorizing a registered tow truck operator to respond to state patrol-originated calls.

(c) The maximum after hours release fee listed on the fee schedule filed with the department under RCW 46.55.063(1) may not exceed one hundred percent of the maximum after hours release fee for an impound at the time of filing as negotiated by the Washington state patrol, pursuant to rule, and contained in the letter of contractual agreement and letter of appointment authorizing a registered tow truck operator to respond to state patrol-originated calls.

(2) The limitations set forth in subsection (1) of this section apply to all registered tow truck operators whether or not they hold, have applied for, or received letters of appointment from the Washington state patrol to respond to state patrol-originated calls.

(3) The limitations set forth in subsection (1) of this section do not apply to:

(a) Any other classes of tow trucks classified by the Washington state patrol by rule under RCW 46.55.050(1); or

(b) Law enforcement impounds or private voluntary towing.

(4) The limitations set forth in subsection (1) of this section only apply if the vehicle is parked and upright, has all its wheels and tires attached, does not have a broken axle, and has not been involved in an accident at the location from which it is being impounded.

(5) This section does not affect the authority of any city, town, or county to enforce, maintain, or amend any ordinance, enacted prior to January 1, 2013, and valid under state law in existence at the time of its enactment, that regulates maximum allowable rates and related charges for private impounds by registered tow truck operators. [2013 c 37 § 2.]

Findings—2013 c 37: "The legislature finds that the use of a motor vehicle is often a necessity for residents' livelihood and families. Therefore, the legislature finds it is important for the public to know what the charges and fees will be for the private impound of cars and other vehicles parked on private property, and that those charges should be reasonable to ensure that residents may retrieve impounded vehicles." [2013 c 37 § 1.]

46.55.120 Redemption of vehicles—Sale of unredeemed property—Improper impoundment. (1)(a) Vehicles or other items of personal property registered or titled with the department that are impounded by registered tow truck operators pursuant to RCW 46.55.080, 46.55.085, 46.55.113, or 9A.88.140 may be redeemed only by the following persons or entities:

- (i) The legal owner;
- (ii) The registered owner;
- (iii) A person authorized in writing by the registered owner;
- (iv) The vehicle's insurer or a vendor working on behalf of the vehicle's insurer;
- (v) A third-party insurer that has a duty to repair or replace the vehicle, has obtained consent from the registered

owner or the owner's agent to move the vehicle, and has documented that consent in the insurer's claim file, or a vendor working on behalf of a third-party insurer that has received such consent; provided, however, that at all times the registered owner must be granted access to and may reclaim possession of the vehicle. For the purposes of this subsection, "owner's agent" means the legal owner of the vehicle, a driver in possession of the vehicle with the registered owner's permission, or an adult member of the registered owner's family;

(vi) A person who is determined and verified by the operator to have the permission of the registered owner of the vehicle or other item of personal property registered or titled with the department; or

(vii) A person who has purchased a vehicle or item of personal property registered or titled with the department from the registered owner who produces proof of ownership or written authorization and signs a receipt therefor.

(b) In addition, a vehicle impounded because the operator is in violation of RCW 46.20.342(1)(c) shall not be released until a person eligible to redeem it under (a) of this subsection satisfies the requirements of (f) of this subsection, including paying all towing, removal, and storage fees, notwithstanding the fact that the hold was ordered by a government agency. If the department's records show that the operator has been convicted of a violation of RCW 46.20.342 or a similar local ordinance within the past five years, the vehicle may be held for up to thirty days at the written direction of the agency ordering the vehicle impounded. A vehicle impounded because the operator is arrested for a violation of RCW 46.20.342 may be released only pursuant to a written order from the agency that ordered the vehicle impounded or from the court having jurisdiction. An agency shall issue a written order to release pursuant to a provision of an applicable state agency rule or local ordinance authorizing release on the basis of the following:

(i) Economic or personal hardship to the spouse of the operator, taking into consideration public safety factors, including the operator's criminal history and driving record; or

(ii) The owner of the vehicle was not the driver, the owner did not know that the driver's license was suspended or revoked, and the owner has not received a prior release under this subsection or RCW 46.55.113(3).

In order to avoid discriminatory application, other than for the reasons for release set forth in (b)(i) and (ii) of this subsection, an agency shall, under a provision of an applicable state agency rule or local ordinance, deny release in all other circumstances without discretion.

If a vehicle is impounded because the operator is in violation of RCW 46.20.342(1) (a) or (b), the vehicle may be held for up to thirty days at the written direction of the agency ordering the vehicle impounded. However, if the department's records show that the operator has been convicted of a violation of RCW 46.20.342(1) (a) or (b) or a similar local ordinance within the past five years, the vehicle may be held at the written direction of the agency ordering the vehicle impounded for up to sixty days, and for up to ninety days if the operator has two or more such prior offenses. If a vehicle is impounded because the operator is arrested for a violation of RCW 46.20.342, the vehicle may not be released until a

person eligible to redeem it under (a) of this subsection satisfies the requirements of (f) of this subsection, including paying all towing, removal, and storage fees, notwithstanding the fact that the hold was ordered by a government agency.

(c) If the vehicle is directed to be held for a suspended license impound, a person who desires to redeem the vehicle at the end of the period of impound shall within five days of the impound at the request of the tow truck operator pay a security deposit to the tow truck operator of not more than one-half of the applicable impound storage rate for each day of the proposed suspended license impound. The tow truck operator shall credit this amount against the final bill for removal, towing, and storage upon redemption. The tow truck operator may accept other sufficient security in lieu of the security deposit. If the person desiring to redeem the vehicle does not pay the security deposit or provide other security acceptable to the tow truck operator, the tow truck operator may process and sell at auction the vehicle as an abandoned vehicle within the normal time limits set out in RCW 46.55.130(1). The security deposit required by this section may be paid and must be accepted at any time up to twenty-four hours before the beginning of the auction to sell the vehicle as abandoned. The registered owner is not eligible to purchase the vehicle at the auction, and the tow truck operator shall sell the vehicle to the highest bidder who is not the registered owner.

(d) Notwithstanding (c) of this subsection, a rental car business may immediately redeem a rental vehicle it owns by payment of the costs of removal, towing, and storage, whereupon the vehicle will not be held for a suspended license impound.

(e) Notwithstanding (c) of this subsection, a motor vehicle dealer or lender with a perfected security interest in the vehicle may redeem or lawfully repossess a vehicle immediately by payment of the costs of removal, towing, and storage, whereupon the vehicle will not be held for a suspended license impound. A motor vehicle dealer or lender with a perfected security interest in the vehicle may not knowingly and intentionally engage in collusion with a registered owner to repossess and then return or resell a vehicle to the registered owner in an attempt to avoid a suspended license impound. However, this provision does not preclude a vehicle dealer or a lender with a perfected security interest in the vehicle from repossessing the vehicle and then selling, leasing, or otherwise disposing of it in accordance with chapter 62A.9A RCW, including providing redemption rights to the debtor under RCW 62A.9A-623. If the debtor is the registered owner of the vehicle, the debtor's right to redeem the vehicle under chapter 62A.9A RCW is conditioned upon the debtor obtaining and providing proof from the impounding authority or court having jurisdiction that any fines, penalties, and forfeitures owed by the registered owner, as a result of the suspended license impound, have been paid, and proof of the payment must be tendered to the vehicle dealer or lender at the time the debtor tenders all other obligations required to redeem the vehicle. Vehicle dealers or lenders are not liable for damages if they rely in good faith on an order from the impounding agency or a court in releasing a vehicle held under a suspended license impound.

(f) The vehicle or other item of personal property registered or titled with the department shall be released upon the

presentation to any person having custody of the vehicle of commercially reasonable tender sufficient to cover the costs of towing, storage, or other services rendered during the course of towing, removing, impounding, or storing any such vehicle, with credit being given for the amount of any security deposit paid under (c) of this subsection. In addition, if a vehicle is impounded because the operator was arrested for a violation of RCW 46.20.342 or 46.20.345 and was being operated by the registered owner when it was impounded under local ordinance or agency rule, it must not be released to any person until the registered owner establishes with the agency that ordered the vehicle impounded or the court having jurisdiction that any penalties, fines, or forfeitures owed by him or her have been satisfied. Registered tow truck operators are not liable for damages if they rely in good faith on an order from the impounding agency or a court in releasing a vehicle held under a suspended license impound. Commercially reasonable tender shall include, without limitation, cash, major bank credit cards issued by financial institutions, or personal checks drawn on Washington state branches of financial institutions if accompanied by two pieces of valid identification, one of which may be required by the operator to have a photograph. If the towing firm cannot determine through the customer's bank or a check verification service that the presented check would be paid by the bank or guaranteed by the service, the towing firm may refuse to accept the check. Any person who stops payment on a personal check or credit card, or does not make restitution within ten days from the date a check becomes insufficient due to lack of funds, to a towing firm that has provided a service pursuant to this section or in any other manner defrauds the towing firm in connection with services rendered pursuant to this section shall be liable for damages in the amount of twice the towing and storage fees, plus costs and reasonable attorney's fees.

(2)(a) The registered tow truck operator shall give to each person who seeks to redeem an impounded vehicle, or item of personal property registered or titled with the department, written notice of the right of redemption and opportunity for a hearing, which notice shall be accompanied by a form to be used for requesting a hearing, the name of the person or agency authorizing the impound, and a copy of the towing and storage invoice. The registered tow truck operator shall maintain a record evidenced by the redeeming person's signature that such notification was provided.

(b) Any person seeking to redeem an impounded vehicle under this section has a right to a hearing in the district or municipal court for the jurisdiction in which the vehicle was impounded to contest the validity of the impoundment or the amount of towing and storage charges. The district court has jurisdiction to determine the issues involving all impoundments including those authorized by the state or its agents. The municipal court has jurisdiction to determine the issues involving impoundments authorized by agents of the municipality. Any request for a hearing shall be made in writing on the form provided for that purpose and must be received by the appropriate court within ten days of the date the opportunity was provided for in (a) of this subsection and more than five days before the date of the auction. At the time of the filing of the hearing request, the petitioner shall pay to the court clerk a filing fee in the same amount required for the filing of

a suit in district court. If the hearing request is not received by the court within the ten-day period, the right to a hearing is waived and the registered owner is liable for any towing, storage, or other impoundment charges permitted under this chapter. Upon receipt of a timely hearing request, the court shall proceed to hear and determine the validity of the impoundment.

(3)(a) The court, within five days after the request for a hearing, shall notify the registered tow truck operator, the person requesting the hearing if not the owner, the registered and legal owners of the vehicle or other item of personal property registered or titled with the department, and the person or agency authorizing the impound in writing of the hearing date and time.

(b) At the hearing, the person or persons requesting the hearing may produce any relevant evidence to show that the impoundment, towing, or storage fees charged were not proper. The court may consider a written report made under oath by the officer who authorized the impoundment in lieu of the officer's personal appearance at the hearing.

(c) At the conclusion of the hearing, the court shall determine whether the impoundment was proper, whether the towing or storage fees charged were in compliance with the posted rates, and who is responsible for payment of the fees. The court may not adjust fees or charges that are in compliance with the posted or contracted rates.

(d) If the impoundment is found proper, the impoundment, towing, and storage fees as permitted under this chapter together with court costs shall be assessed against the person or persons requesting the hearing, unless the operator did not have a signed and valid impoundment authorization from a private property owner or an authorized agent.

(e) If the impoundment is determined to be in violation of this chapter, then the registered and legal owners of the vehicle or other item of personal property registered or titled with the department shall bear no impoundment, towing, or storage fees, and any security shall be returned or discharged as appropriate, and the person or agency who authorized the impoundment shall be liable for any towing, storage, or other impoundment fees permitted under this chapter. The court shall enter judgment in favor of the registered tow truck operator against the person or agency authorizing the impound for the impoundment, towing, and storage fees paid. In addition, the court shall enter judgment in favor of the registered and legal owners of the vehicle, or other item of personal property registered or titled with the department, for the amount of the filing fee required by law for the impound hearing petition as well as reasonable damages for loss of the use of the vehicle during the time the same was impounded against the person or agency authorizing the impound. However, if an impoundment arising from an alleged violation of RCW 46.20.342 or 46.20.345 is determined to be in violation of this chapter, then the law enforcement officer directing the impoundment and the government employing the officer are not liable for damages if the officer relied in good faith and without gross negligence on the records of the department in ascertaining that the operator of the vehicle had a suspended or revoked driver's license. If any judgment entered is not paid within fifteen days of notice in writing of its entry, the court shall award reasonable attorneys' fees and costs against the defendant in any action to enforce the judgment. Notice

of entry of judgment may be made by registered or certified mail, and proof of mailing may be made by affidavit of the party mailing the notice. Notice of the entry of the judgment shall read essentially as follows:

TO:
YOU ARE HEREBY NOTIFIED JUDGMENT was entered against you in the Court located at in the sum of \$....., in an action entitled, Case No. YOU ARE FURTHER NOTIFIED that attorneys fees and costs will be awarded against you under RCW ... if the judgment is not paid within 15 days of the date of this notice. DATED this day of, (year) ...
Signature
Typed name and address
of party mailing notice

(4) Any impounded abandoned vehicle or item of personal property registered or titled with the department that is not redeemed within fifteen days of mailing of the notice of custody and sale as required by RCW 46.55.110(3) shall be sold at public auction in accordance with all the provisions and subject to all the conditions of RCW 46.55.130. A vehicle or item of personal property registered or titled with the department may be redeemed at any time before the start of the auction upon payment of the applicable towing and storage fees. [2013 c 150 § 1; 2009 c 387 § 3; 2004 c 250 § 1; 2003 c 177 § 2; 2000 c 193 § 1. Prior: 1999 c 398 § 7; 1999 c 327 § 5; 1998 c 203 § 5; 1996 c 89 § 2; 1995 c 360 § 7; 1993 c 121 § 3; 1989 c 111 § 11; 1987 c 311 § 12; 1985 c 377 § 12.]

Findings—Intent—1999 c 327: See note following RCW 9A.88.130.

Finding—1998 c 203: See note following RCW 46.55.105.

**Chapter 46.61 RCW
RULES OF THE ROAD**

Sections

- 46.61.165 High occupancy vehicle lanes—Definition.
- 46.61.415 When local authorities may establish or alter maximum limits.
- 46.61.419 Private roads—Speed enforcement.
- 46.61.5055 Alcohol and drug violators—Penalty schedule.
- 46.61.5058 Alcohol violators—Vehicle seizure and forfeiture.
- 46.61.5249 Negligent driving—First degree.
- 46.61.608 Operating motorcycles on roadways laned for traffic.
- 46.61.625 Riding in trailers or towed vehicles.
- 46.61.667 Using a wireless communications device or hand-held mobile telephone while driving.
- 46.61.668 Sending, reading, or writing a text message while driving.

46.61.165 High occupancy vehicle lanes—Definition.

(1) The state department of transportation and the local authorities are authorized to reserve all or any portion of any highway under their respective jurisdictions, including any designated lane or ramp, for the exclusive or preferential use of one or more of the following: (a) Public transportation vehicles; (b) motorcycles; (c) private motor vehicles carrying no fewer than a specified number of passengers; or (d) the following private transportation provider vehicles if the vehicle has the capacity to carry eight or more passengers, regardless of the number of passengers in the vehicle, and if such use does not interfere with the efficiency, reliability, and safety of public transportation operations: (i) Auto transportation company vehicles regulated under chapter 81.68

RCW; (ii) passenger charter carrier vehicles regulated under chapter 81.70 RCW, except marked or unmarked stretch limousines and stretch sport utility vehicles as defined under department of licensing rules; (iii) private nonprofit transportation provider vehicles regulated under chapter 81.66 RCW; and (iv) private employer transportation service vehicles, when such limitation will increase the efficient utilization of the highway or will aid in the conservation of energy resources.

(2) Any transit-only lanes that allow other vehicles to access abutting businesses that are authorized pursuant to subsection (1) of this section may not be authorized for the use of private transportation provider vehicles as described under subsection (1) of this section.

(3) The state department of transportation and the local authorities authorized to reserve all or any portion of any highway under their respective jurisdictions, for exclusive or preferential use, may prohibit the use of a high occupancy vehicle lane by the following private transportation provider vehicles: (a) Auto transportation company vehicles regulated under chapter 81.68 RCW; (b) passenger charter vehicles regulated under chapter 81.70 RCW, and marked or unmarked limousines and stretch sport utility vehicles as defined under department of licensing rules; (c) private nonprofit transportation provider vehicles regulated under chapter 81.66 RCW; and (d) private employer transportation service vehicles, when the average transit speed in the high occupancy vehicle lane fails to meet department of transportation standards and falls below forty-five miles per hour at least ninety percent of the time during the peak hours, as determined by the department of transportation or the local authority, whichever operates the facility.

(4) Regulations authorizing such exclusive or preferential use of a highway facility may be declared to be effective at all times or at specified times of day or on specified days. Violation of a restriction of highway usage prescribed by the appropriate authority under this section is a traffic infraction.

(5) Local authorities are encouraged to establish a process for private transportation providers, as described under subsections (1) and (3) of this section, to apply for the use of public transportation facilities reserved for the exclusive or preferential use of public transportation vehicles. The application and review processes should be uniform and should provide for an expeditious response by the local authority. Whenever practicable, local authorities should enter into agreements with such private transportation providers to allow for the reasonable use of these facilities.

(6) For the purposes of this section, "private employer transportation service" means regularly scheduled, fixed-route transportation service that is similarly marked or identified to display the business name or logo on the driver and passenger sides of the vehicle, meets the annual certification requirements of the department of transportation, and is offered by an employer for the benefit of its employees. [2013 c 26 § 2; 2011 c 379 § 1; 1999 c 206 § 1; 1998 c 245 § 90; 1991 sp.s. c 15 § 67; 1984 c 7 § 65; 1974 ex.s. c 133 § 2.]

Conflict with state and federal environmental mitigation requirements—2011 c 379: "If any part of this act is found to be in conflict with mitigation requirements under the state environmental policy act (chapter 43.21C RCW) or the national environmental policy act (42 U.S.C. Secs. 4321 through 4347) or in any other way conflicts with federal requirements that are a condition or part of the allocation of federal funds to the state or

local facilities, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or local authorities." [2011 c 379 § 5.]

Limited access facilities: RCW 47.52.025.

Additional notes found at www.leg.wa.gov

46.61.415 When local authorities may establish or alter maximum limits. (1) Whenever local authorities in their respective jurisdictions determine on the basis of an engineering and traffic investigation that the maximum speed permitted under RCW 46.61.400 or 46.61.440 is greater or less than is reasonable and safe under the conditions found to exist upon a highway or part of a highway, the local authority may determine and declare a reasonable and safe maximum limit thereon which

- (a) Decreases the limit at intersections; or
- (b) Increases the limit but not to more than sixty miles per hour; or
- (c) Decreases the limit but not to less than twenty miles per hour.

(2) Local authorities in their respective jurisdictions shall determine by an engineering and traffic investigation the proper maximum speed for all arterial streets and shall declare a reasonable and safe maximum limit thereon which may be greater or less than the maximum speed permitted under RCW 46.61.400(2) but shall not exceed sixty miles per hour.

(3)(a) Cities and towns in their respective jurisdictions may establish a maximum speed limit of twenty miles per hour on a nonarterial highway, or part of a nonarterial highway, that is within a residence district or business district.

(b) A speed limit established under this subsection by a city or town does not need to be determined on the basis of an engineering and traffic investigation if the city or town has developed procedures regarding establishing a maximum speed limit under this subsection. Any speed limit established under this subsection may be canceled within one year of its establishment, and the previous speed limit reestablished, without an engineering and traffic investigation. This subsection does not otherwise affect the requirement that cities and towns conduct an engineering and traffic investigation to determine whether to increase speed limits.

(c) When establishing speed limits under this subsection, cities and towns shall consult the manual on uniform traffic control devices as adopted by the Washington state department of transportation.

(4) The secretary of transportation is authorized to establish speed limits on county roads and city and town streets as shall be necessary to conform with any federal requirements which are a prescribed condition for the allocation of federal funds to the state.

(5) Any altered limit established as hereinbefore authorized shall be effective when appropriate signs giving notice thereof are erected. Such maximum speed limit may be declared to be effective at all times or at such times as are indicated upon such signs; and differing limits may be established for different times of day, different types of vehicles, varying weather conditions, and other factors bearing on safe

speeds, which shall be effective when posted upon appropriate fixed or variable signs.

(6) Any alteration of maximum limits on state highways within incorporated cities or towns by local authorities shall not be effective until such alteration has been approved by the secretary of transportation. [2013 c 264 § 1; 1977 ex.s. c 151 § 36; 1974 ex.s. c 103 § 3; 1963 c 16 § 4. Formerly RCW 46.48.014.]

Additional notes found at www.leg.wa.gov

46.61.419 Private roads—Speed enforcement. State, local, or county law enforcement personnel may enforce speeding violations under RCW 46.61.400 on private roads within a community organized under chapter 64.34, 64.32, or 64.38 RCW if:

(1) A majority of the homeowner's association's, association of apartment owners', or condominium association's board of directors votes to authorize the issuance of speeding infractions on its private roads, and declares a speed limit not lower than twenty miles per hour;

(2) A written agreement regarding the speeding enforcement is signed by the homeowner's association, association of apartment owners, or condominium association president and the chief law enforcement official of the city or county within whose jurisdiction the private road is located;

(3) The homeowner's association, association of apartment owners, or condominium association has provided written notice to all of the homeowners, apartment owners, or unit owners describing the new authority to issue speeding infractions; and

(4) Signs have been posted declaring the speed limit at all vehicle entrances to the community. [2013 c 269 § 1; 2003 c 193 § 1.]

46.61.5055 Alcohol and drug violators—Penalty schedule. (1) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has no prior offense within seven years shall be punished as follows:

(a) In the case of a person whose alcohol concentration was less than 0.15, or for whom for reasons other than the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than one day nor more than three hundred sixty-four days. Twenty-four consecutive hours of the imprisonment may not be suspended unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended, the court shall state in writing the reason for granting the suspension and the facts upon which the suspension is based. In lieu of the mandatory minimum term of imprisonment required under this subsection (1)(a)(i), the court may order not less than fifteen days of electronic home monitoring. The offender shall pay the cost of electronic home monitoring. The county or municipality in which the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device or other separate alcohol monitoring device to include an alcohol detection breathalyzer, and the

court may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring; and

(ii) By a fine of not less than three hundred fifty dollars nor more than five thousand dollars. Three hundred fifty dollars of the fine may not be suspended unless the court finds the offender to be indigent; or

(b) In the case of a person whose alcohol concentration was at least 0.15, or for whom by reason of the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than two days nor more than three hundred sixty-four days. Forty-eight consecutive hours of the imprisonment may not be suspended unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended, the court shall state in writing the reason for granting the suspension and the facts upon which the suspension is based. In lieu of the mandatory minimum term of imprisonment required under this subsection (1)(b)(i), the court may order not less than thirty days of electronic home monitoring. The offender shall pay the cost of electronic home monitoring. The county or municipality in which the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device to include an alcohol detection breathalyzer or other separate alcohol monitoring device, and the court may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring; and

(ii) By a fine of not less than five hundred dollars nor more than five thousand dollars. Five hundred dollars of the fine may not be suspended unless the court finds the offender to be indigent.

(2) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has one prior offense within seven years shall be punished as follows:

(a) In the case of a person whose alcohol concentration was less than 0.15, or for whom for reasons other than the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than thirty days nor more than three hundred sixty-four days and sixty days of electronic home monitoring. In lieu of the mandatory minimum term of sixty days electronic home monitoring, the court may order at least an additional four days in jail or, if available in that county or city, a six-month period of 24/7 sobriety program monitoring pursuant to RCW 36.28A.300 through 36.28A.390, and the court shall order an expanded alcohol assessment and treatment, if deemed appropriate by the assessment. The offender shall pay for the cost of the electronic monitoring. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer or other separate alcohol monitoring device, and may restrict the amount of alcohol the offender may consume during the time the

offender is on electronic home monitoring. Thirty days of imprisonment and sixty days of electronic home monitoring may not be suspended unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended, the court shall state in writing the reason for granting the suspension and the facts upon which the suspension is based; and

(ii) By a fine of not less than five hundred dollars nor more than five thousand dollars. Five hundred dollars of the fine may not be suspended unless the court finds the offender to be indigent; or

(b) In the case of a person whose alcohol concentration was at least 0.15, or for whom by reason of the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than forty-five days nor more than three hundred sixty-four days and ninety days of electronic home monitoring. In lieu of the mandatory minimum term of ninety days electronic home monitoring, the court may order at least an additional six days in jail or, if available in that county or city, a six-month period of 24/7 sobriety program monitoring pursuant to RCW 36.28A.300 through 36.28A.390, and the court shall order an expanded alcohol assessment and treatment, if deemed appropriate by the assessment. The offender shall pay for the cost of the electronic monitoring. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer or other separate alcohol monitoring device, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring. Forty-five days of imprisonment and ninety days of electronic home monitoring may not be suspended unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended, the court shall state in writing the reason for granting the suspension and the facts upon which the suspension is based; and

(ii) By a fine of not less than seven hundred fifty dollars nor more than five thousand dollars. Seven hundred fifty dollars of the fine may not be suspended unless the court finds the offender to be indigent.

(3) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has two or three prior offenses within seven years shall be punished as follows:

(a) In the case of a person whose alcohol concentration was less than 0.15, or for whom for reasons other than the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than ninety days nor more than three hundred sixty-four days, if available in that county or city, a six-month period of 24/7 sobriety program monitoring pursuant to RCW 36.28A.300 through 36.28A.390, and one hundred twenty days of electronic home

monitoring. In lieu of the mandatory minimum term of one hundred twenty days of electronic home monitoring, the court may order at least an additional eight days in jail. The court shall order an expanded alcohol assessment and treatment, if deemed appropriate by the assessment. The offender shall pay for the cost of the electronic monitoring. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer or other separate alcohol monitoring device, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring. Ninety days of imprisonment and one hundred twenty days of electronic home monitoring may not be suspended unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended, the court shall state in writing the reason for granting the suspension and the facts upon which the suspension is based; and

(ii) By a fine of not less than one thousand dollars nor more than five thousand dollars. One thousand dollars of the fine may not be suspended unless the court finds the offender to be indigent; or

(b) In the case of a person whose alcohol concentration was at least 0.15, or for whom by reason of the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than one hundred twenty days nor more than three hundred sixty-four days, if available in that county or city, a six-month period of 24/7 sobriety program monitoring pursuant to RCW 36.28A.300 through 36.28A.390, and one hundred fifty days of electronic home monitoring. In lieu of the mandatory minimum term of one hundred fifty days of electronic home monitoring, the court may order at least an additional ten days in jail. The offender shall pay for the cost of the electronic monitoring. The court shall order an expanded alcohol assessment and treatment, if deemed appropriate by the assessment. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer or other separate alcohol monitoring device, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring. One hundred twenty days of imprisonment and one hundred fifty days of electronic home monitoring may not be suspended unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended, the court shall state in writing the reason for granting the suspension and the facts upon which the suspension is based; and

(ii) By a fine of not less than one thousand five hundred dollars nor more than five thousand dollars. One thousand five hundred dollars of the fine may not be suspended unless the court finds the offender to be indigent.

(4) A person who is convicted of a violation of RCW 46.61.502 or 46.61.504 shall be punished under chapter 9.94A RCW if:

(a) The person has four or more prior offenses within ten years; or

(b) The person has ever previously been convicted of:

(i) A violation of RCW 46.61.520 committed while under the influence of intoxicating liquor or any drug;

(ii) A violation of RCW 46.61.522 committed while under the influence of intoxicating liquor or any drug;

(iii) An out-of-state offense comparable to the offense specified in (b)(i) or (ii) of this subsection; or

(iv) A violation of RCW 46.61.502(6) or 46.61.504(6).

(5)(a) The court shall require any person convicted of a violation of RCW 46.61.502 or 46.61.504 or an equivalent local ordinance to comply with the rules and requirements of the department regarding the installation and use of a functioning ignition interlock device installed on all motor vehicles operated by the person.

(b) If the court orders that a person refrain from consuming any alcohol, the court may order the person to submit to alcohol monitoring through an alcohol detection breathalyzer device, transdermal sensor device, or other technology designed to detect alcohol in a person's system. The person shall pay for the cost of the monitoring, unless the court specifies that the cost of monitoring will be paid with funds that are available from an alternative source identified by the court. The county or municipality where the penalty is being imposed shall determine the cost.

(6) If a person who is convicted of a violation of RCW 46.61.502 or 46.61.504 committed the offense while a passenger under the age of sixteen was in the vehicle, the court shall:

(a) Order the use of an ignition interlock or other device for an additional six months;

(b) In any case in which the person has no prior offenses within seven years, and except as provided in RCW 46.61.502(6) or 46.61.504(6), order an additional twenty-four hours of imprisonment and a fine of not less than one thousand dollars and not more than five thousand dollars. One thousand dollars of the fine may not be suspended unless the court finds the offender to be indigent;

(c) In any case in which the person has one prior offense within seven years, and except as provided in RCW 46.61.502(6) or 46.61.504(6), order an additional five days of imprisonment and a fine of not less than two thousand dollars and not more than five thousand dollars. One thousand dollars of the fine may not be suspended unless the court finds the offender to be indigent;

(d) In any case in which the person has two or three prior offenses within seven years, and except as provided in RCW 46.61.502(6) or 46.61.504(6), order an additional ten days of imprisonment and a fine of not less than three thousand dollars and not more than ten thousand dollars. One thousand dollars of the fine may not be suspended unless the court finds the offender to be indigent.

(7) In exercising its discretion in setting penalties within the limits allowed by this section, the court shall particularly consider the following:

(a) Whether the person's driving at the time of the offense was responsible for injury or damage to another or another's property;

(b) Whether at the time of the offense the person was driving or in physical control of a vehicle with one or more passengers;

(c) Whether the driver was driving in the opposite direction of the normal flow of traffic on a multiple lane highway, as defined by RCW 46.04.350, with a posted speed limit of forty-five miles per hour or greater; and

(d) Whether a child passenger under the age of sixteen was an occupant in the driver's vehicle.

(8) An offender punishable under this section is subject to the alcohol assessment and treatment provisions of RCW 46.61.5056.

(9) The license, permit, or nonresident privilege of a person convicted of driving or being in physical control of a motor vehicle while under the influence of intoxicating liquor or drugs must:

(a) If the person's alcohol concentration was less than 0.15, or if for reasons other than the person's refusal to take a test offered under RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) Where there has been no prior offense within seven years, be suspended or denied by the department for ninety days;

(ii) Where there has been one prior offense within seven years, be revoked or denied by the department for two years; or

(iii) Where there have been two or more prior offenses within seven years, be revoked or denied by the department for three years;

(b) If the person's alcohol concentration was at least 0.15:

(i) Where there has been no prior offense within seven years, be revoked or denied by the department for one year;

(ii) Where there has been one prior offense within seven years, be revoked or denied by the department for nine hundred days; or

(iii) Where there have been two or more prior offenses within seven years, be revoked or denied by the department for four years; or

(c) If by reason of the person's refusal to take a test offered under RCW 46.20.308, there is no test result indicating the person's alcohol concentration:

(i) Where there have been no prior offenses within seven years, be revoked or denied by the department for two years;

(ii) Where there has been one prior offense within seven years, be revoked or denied by the department for three years; or

(iii) Where there have been two or more previous offenses within seven years, be revoked or denied by the department for four years.

The department shall grant credit on a day-for-day basis for any portion of a suspension, revocation, or denial already served under this subsection for a suspension, revocation, or denial imposed under RCW 46.20.3101 arising out of the same incident.

Upon its own motion or upon motion by a person, a court may find, on the record, that notice to the department under RCW 46.20.270 has been delayed for three years or more as

a result of a clerical or court error. If so, the court may order that the person's license, permit, or nonresident privilege shall not be revoked, suspended, or denied for that offense. The court shall send notice of the finding and order to the department and to the person. Upon receipt of the notice from the court, the department shall not revoke, suspend, or deny the license, permit, or nonresident privilege of the person for that offense.

For purposes of this subsection (9), the department shall refer to the driver's record maintained under RCW 46.52.120 when determining the existence of prior offenses.

(10) After expiration of any period of suspension, revocation, or denial of the offender's license, permit, or privilege to drive required by this section, the department shall place the offender's driving privilege in probationary status pursuant to RCW 46.20.355.

(11)(a) In addition to any nonsuspendable and nondeferable jail sentence required by this section, whenever the court imposes up to three hundred sixty-four days in jail, the court shall also suspend but shall not defer a period of confinement for a period not exceeding five years. The court shall impose conditions of probation that include: (i) Not driving a motor vehicle within this state without a valid license to drive and proof of liability insurance or other financial responsibility for the future pursuant to RCW 46.30.020; (ii) not driving or being in physical control of a motor vehicle within this state while having an alcohol concentration of 0.08 or more or a THC concentration of 5.00 nanograms per milliliter of whole blood or higher, within two hours after driving; and (iii) not refusing to submit to a test of his or her breath or blood to determine alcohol or drug concentration upon request of a law enforcement officer who has reasonable grounds to believe the person was driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or drug. The court may impose conditions of probation that include non-repetition, installation of an ignition interlock device on the probationer's motor vehicle, alcohol or drug treatment, supervised probation, or other conditions that may be appropriate. The sentence may be imposed in whole or in part upon violation of a condition of probation during the suspension period.

(b) For each violation of mandatory conditions of probation under (a)(i), (ii), or (iii) of this subsection, the court shall order the convicted person to be confined for thirty days, which shall not be suspended or deferred.

(c) For each incident involving a violation of a mandatory condition of probation imposed under this subsection, the license, permit, or privilege to drive of the person shall be suspended by the court for thirty days or, if such license, permit, or privilege to drive already is suspended, revoked, or denied at the time the finding of probation violation is made, the suspension, revocation, or denial then in effect shall be extended by thirty days. The court shall notify the department of any suspension, revocation, or denial or any extension of a suspension, revocation, or denial imposed under this subsection.

(12) A court may waive the electronic home monitoring requirements of this chapter when:

(a) The offender does not have a dwelling, telephone service, or any other necessity to operate an electronic home

monitoring system. However, if a court determines that an alcohol monitoring device utilizing wireless reporting technology is reasonably available, the court may require the person to obtain such a device during the period of required electronic home monitoring;

(b) The offender does not reside in the state of Washington; or

(c) The court determines that there is reason to believe that the offender would violate the conditions of the electronic home monitoring penalty.

Whenever the mandatory minimum term of electronic home monitoring is waived, the court shall state in writing the reason for granting the waiver and the facts upon which the waiver is based, and shall impose an alternative sentence with similar punitive consequences. The alternative sentence may include, but is not limited to, use of an ignition interlock device, the 24/7 sobriety program monitoring, additional jail time, work crew, or work camp.

Whenever the combination of jail time and electronic home monitoring or alternative sentence would exceed three hundred sixty-four days, the offender shall serve the jail portion of the sentence first, and the electronic home monitoring or alternative portion of the sentence shall be reduced so that the combination does not exceed three hundred sixty-four days.

(13) An offender serving a sentence under this section, whether or not a mandatory minimum term has expired, may be granted an extraordinary medical placement by the jail administrator subject to the standards and limitations set forth in RCW 9.94A.728(3).

(14) For purposes of this section and RCW 46.61.502 and 46.61.504:

(a) A "prior offense" means any of the following:

(i) A conviction for a violation of RCW 46.61.502 or an equivalent local ordinance;

(ii) A conviction for a violation of RCW 46.61.504 or an equivalent local ordinance;

(iii) A conviction for a violation of RCW 46.61.520 committed while under the influence of intoxicating liquor or any drug, or a conviction for a violation of RCW 46.61.520 committed in a reckless manner or with the disregard for the safety of others if the conviction is the result of a charge that was originally filed as a violation of RCW 46.61.520 committed while under the influence of intoxicating liquor or any drug;

(iv) A conviction for a violation of RCW 46.61.522 committed while under the influence of intoxicating liquor or any drug, or a conviction for a violation of RCW 46.61.522 committed in a reckless manner or with the disregard for the safety of others if the conviction is the result of a charge that was originally filed as a violation of RCW 46.61.522 committed while under the influence of intoxicating liquor or any drug;

(v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or 9A.36.050 or an equivalent local ordinance, if the conviction is the result of a charge that was originally filed as a violation of RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or 46.61.522;

(vi) An out-of-state conviction for a violation that would have been a violation of (a)(i), (ii), (iii), (iv), or (v) of this subsection if committed in this state;

(vii) A deferred prosecution under chapter 10.05 RCW granted in a prosecution for a violation of RCW 46.61.502, 46.61.504, or an equivalent local ordinance;

(viii) A deferred prosecution under chapter 10.05 RCW granted in a prosecution for a violation of RCW 46.61.5249, or an equivalent local ordinance, if the charge under which the deferred prosecution was granted was originally filed as a violation of RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or 46.61.522;

(ix) A deferred prosecution granted in another state for a violation of driving or having physical control of a vehicle while under the influence of intoxicating liquor or any drug if the out-of-state deferred prosecution is equivalent to the deferred prosecution under chapter 10.05 RCW, including a requirement that the defendant participate in a chemical dependency treatment program; or

(x) A deferred sentence imposed in a prosecution for a violation of RCW 46.61.5249, 46.61.500, or 9A.36.050, or an equivalent local ordinance, if the charge under which the deferred sentence was imposed was originally filed as a violation of RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, or a violation of RCW 46.61.520 or 46.61.522;

If a deferred prosecution is revoked based on a subsequent conviction for an offense listed in this subsection (14)(a), the subsequent conviction shall not be treated as a prior offense of the revoked deferred prosecution for the purposes of sentencing;

(b) "Treatment" means alcohol or drug treatment approved by the department of social and health services;

(c) "Within seven years" means that the arrest for a prior offense occurred within seven years before or after the arrest for the current offense; and

(d) "Within ten years" means that the arrest for a prior offense occurred within ten years before or after the arrest for the current offense. [2013 2nd sp.s. c 35 § 13. Prior: 2012 c 183 § 12; 2012 c 42 § 2; 2012 c 28 § 1; prior: 2011 c 293 § 7; 2011 c 96 § 35; 2010 c 269 § 4; 2008 c 282 § 14; 2007 c 474 § 1; 2006 c 73 § 3; 2004 c 95 § 13; 2003 c 103 § 1. Prior: 1999 c 324 § 5; 1999 c 274 § 6; 1999 c 5 § 1; prior: 1998 c 215 § 1; 1998 c 214 § 1; 1998 c 211 § 1; 1998 c 210 § 4; 1998 c 207 § 1; 1998 c 206 § 1; prior: 1997 c 229 § 11; 1997 c 66 § 14; 1996 c 307 § 3; 1995 1st sp.s. c 17 § 2; 1995 c 332 § 5.]

Effective date—2012 c 183: See note following RCW 2.28.175.

Effective date—2011 c 293 §§ 1-9: See note following RCW 46.20.385.

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

Effective date—2010 c 269: See note following RCW 46.20.385.

Effective date—2008 c 282: See note following RCW 46.20.308.

Effective date—2007 c 474: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2007." [2007 c 474 § 2.]

Effective date—2006 c 73: See note following RCW 46.61.502.

Short title—Finding—Intent—Effective date—1998 c 210: See notes following RCW 46.20.720.

Additional notes found at www.leg.wa.gov

46.61.5058 Alcohol violators—Vehicle seizure and forfeiture. (1) Upon the arrest of a person or upon the filing of a complaint, citation, or information in a court of competent jurisdiction, based upon probable cause to believe that a person has violated RCW 46.20.740, 46.61.502, or 46.61.504 or any similar municipal ordinance, if such person has a prior offense within seven years as defined in RCW 46.61.5055, and where the person has been provided written notice that any transfer, sale, or encumbrance of such person's interest in the vehicle over which that person was actually driving or had physical control when the violation occurred, is unlawful pending either acquittal, dismissal, sixty days after conviction, or other termination of the charge, such person shall be prohibited from encumbering, selling, or transferring his or her interest in such vehicle, except as otherwise provided in (a), (b), and (c) of this subsection, until either acquittal, dismissal, sixty days after conviction, or other termination of the charge. The prohibition against transfer of title shall not be stayed pending the determination of an appeal from the conviction.

(a) A vehicle encumbered by a bona fide security interest may be transferred to the secured party or to a person designated by the secured party;

(b) A leased or rented vehicle may be transferred to the lessor, rental agency, or to a person designated by the lessor or rental agency; and

(c) A vehicle may be transferred to a third party or a vehicle dealer who is a bona fide purchaser or may be subject to a bona fide security interest in the vehicle unless it is established that (i) in the case of a purchase by a third party or vehicle dealer, such party or dealer had actual notice that the vehicle was subject to the prohibition prior to the purchase, or (ii) in the case of a security interest, the holder of the security interest had actual notice that the vehicle was subject to the prohibition prior to the encumbrance of title.

(2) On conviction for a violation of either RCW 46.20.740, 46.61.502, or 46.61.504 or any similar municipal ordinance where the person convicted has a prior offense within seven years as defined in RCW 46.61.5055, the motor vehicle the person was driving or over which the person had actual physical control at the time of the offense, if the person has a financial interest in the vehicle, the court shall consider at sentencing whether the vehicle shall be seized and forfeited pursuant to this section if a seizure or forfeiture has not yet occurred.

(3) A vehicle subject to forfeiture under this chapter may be seized by a law enforcement officer of this state upon process issued by a court of competent jurisdiction. Seizure of a vehicle may be made without process if the vehicle subject to seizure has been the subject of a prior judgment in favor of the state in a forfeiture proceeding based upon this section.

(4) Seizure under subsection (3) of this section automatically commences proceedings for forfeiture. The law enforcement agency under whose authority the seizure was made shall cause notice of the seizure and intended forfeiture of the seized vehicle to be served within fifteen days after the seizure on the owner of the vehicle seized, on the person in charge of the vehicle, and on any person having a known right or interest in the vehicle, including a community property interest. The notice of seizure may be served by any method authorized by law or court rule, including but not

limited to service by certified mail with return receipt requested. Service by mail is complete upon mailing within the fifteen-day period after the seizure. Notice of seizure in the case of property subject to a security interest that has been perfected on a certificate of title shall be made by service upon the secured party or the secured party's assignee at the address shown on the financing statement or the certificate of title.

(5) If no person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of the seized vehicle within forty-five days of the seizure, the vehicle is deemed forfeited.

(6) If a person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of the seized vehicle within forty-five days of the seizure, the law enforcement agency shall give the person or persons a reasonable opportunity to be heard as to the claim or right. The hearing shall be before the chief law enforcement officer of the seizing agency or the chief law enforcement officer's designee, except where the seizing agency is a state agency as defined in RCW 34.12.020, the hearing shall be before the chief law enforcement officer of the seizing agency or an administrative law judge appointed under chapter 34.12 RCW, except that any person asserting a claim or right may remove the matter to a court of competent jurisdiction. Removal may only be accomplished according to the rules of civil procedure. The person seeking removal of the matter must serve process against the state, county, political subdivision, or municipality that operates the seizing agency, and any other party of interest, in accordance with RCW 4.28.080 or 4.92.020, within forty-five days after the person seeking removal has notified the seizing law enforcement agency of the person's claim of ownership or right to possession. The court to which the matter is to be removed shall be the district court when the aggregate value of the vehicle is within the jurisdictional limit set forth in RCW 3.66.020. A hearing before the seizing agency and any appeal therefrom shall be under Title 34 RCW. In a court hearing between two or more claimants to the vehicle involved, the prevailing party shall be entitled to a judgment for costs and reasonable attorneys' fees. The burden of producing evidence shall be upon the person claiming to be the legal owner or the person claiming to have the lawful right to possession of the vehicle. The seizing law enforcement agency shall promptly return the vehicle to the claimant upon a determination by the administrative law judge or court that the claimant is the present legal owner under this title or is lawfully entitled to possession of the vehicle.

(7) When a vehicle is forfeited under this chapter the seizing law enforcement agency may sell the vehicle, retain it for official use, or upon application by a law enforcement agency of this state release the vehicle to that agency for the exclusive use of enforcing this title; provided, however, that the agency shall first satisfy any bona fide security interest to which the vehicle is subject under subsection (1)(a) or (c) of this section.

(8) When a vehicle is forfeited, the seizing agency shall keep a record indicating the identity of the prior owner, if known, a description of the vehicle, the disposition of the vehicle, the value of the vehicle at the time of seizure, and the amount of proceeds realized from disposition of the vehicle.

(9) Each seizing agency shall retain records of forfeited vehicles for at least seven years.

(10) Each seizing agency shall file a report including a copy of the records of forfeited vehicles with the state treasurer each calendar quarter.

(11) The quarterly report need not include a record of a forfeited vehicle that is still being held for use as evidence during the investigation or prosecution of a case or during the appeal from a conviction.

(12) By January 31st of each year, each seizing agency shall remit to the state treasurer an amount equal to ten percent of the net proceeds of vehicles forfeited during the preceding calendar year. Money remitted shall be deposited in the state general fund.

(13) The net proceeds of a forfeited vehicle is the value of the forfeitable interest in the vehicle after deducting the cost of satisfying a bona fide security interest to which the vehicle is subject at the time of seizure; and in the case of a sold vehicle, after deducting the cost of sale, including reasonable fees or commissions paid to independent selling agents.

(14) The value of a sold forfeited vehicle is the sale price. The value of a retained forfeited vehicle is the fair market value of the vehicle at the time of seizure, determined when possible by reference to an applicable commonly used index, such as the index used by the department of licensing. A seizing agency may, but need not, use an independent qualified appraiser to determine the value of retained vehicles. If an appraiser is used, the value of the vehicle appraised is net of the cost of the appraisal. [2013 2nd sp.s. c 35 § 18; 2009 c 479 § 38; 1998 c 207 § 2; 1995 c 332 § 6; 1994 c 139 § 1.]

Effective date—2009 c 479: See note following RCW 2.56.030.

Additional notes found at www.leg.wa.gov

46.61.5249 Negligent driving—First degree. (1)(a) A person is guilty of negligent driving in the first degree if he or she operates a motor vehicle in a manner that is both negligent and endangers or is likely to endanger any person or property, and exhibits the effects of having consumed liquor or marijuana or any drug or exhibits the effects of having inhaled or ingested any chemical, whether or not a legal substance, for its intoxicating or hallucinatory effects.

(b) It is an affirmative defense to negligent driving in the first degree by means of exhibiting the effects of having consumed any drug that must be proved by the defendant by a preponderance of the evidence, that the driver has a valid prescription for the drug consumed, and has been consuming it according to the prescription directions and warnings.

(c) Negligent driving in the first degree is a misdemeanor.

(2) For the purposes of this section:

(a) "Negligent" means the failure to exercise ordinary care, and is the doing of some act that a reasonably careful person would not do under the same or similar circumstances or the failure to do something that a reasonably careful person would do under the same or similar circumstances.

(b) "Exhibiting the effects of having consumed liquor, marijuana, or any drug" means that a person has the odor of liquor, marijuana, or any drug on his or her breath, or that by speech, manner, appearance, behavior, lack of coordination,

or otherwise exhibits that he or she has consumed liquor, marijuana, or any drug, and either:

(i) Is in possession of or in close proximity to a container that has or recently had liquor, marijuana, or any drug in it; or

(ii) Is shown by other evidence to have recently consumed liquor, marijuana, or any drug.

(c) "Exhibiting the effects of having inhaled or ingested any chemical, whether or not a legal substance, for its intoxicating or hallucinatory effects" means that a person by speech, manner, appearance, behavior, or lack of coordination or otherwise exhibits that he or she has inhaled or ingested a chemical and either:

(i) Is in possession of the canister or container from which the chemical came; or

(ii) Is shown by other evidence to have recently inhaled or ingested a chemical for its intoxicating or hallucinatory effects.

(3) Any act prohibited by this section that also constitutes a crime under any other law of this state may be the basis of prosecution under such other law notwithstanding that it may also be the basis for prosecution under this section.

(4) A person convicted of negligent driving in the first degree who has one or more prior offenses as defined in RCW 46.61.5055(14) within seven years shall be required, under RCW 46.20.720, to install an ignition interlock device on all vehicles operated by the person. [2013 2nd sp.s. c 35 § 16; 2012 c 183 § 13; 2011 c 293 § 5; 1997 c 66 § 4.]

Effective date—2012 c 183: See note following RCW 2.28.175.

Effective date—2011 c 293 §§ 1-9: See note following RCW 46.20.385.

Criminal history and driving record: RCW 46.61.513.

46.61.608 Operating motorcycles on roadways laned for traffic. (1) All motorcycles are entitled to full use of a lane and no motor vehicle shall be driven in such a manner as to deprive any motorcycle of the full use of a lane. This subsection shall not apply to motorcycles operated two abreast in a single lane.

(2) The operator of a motorcycle shall not overtake and pass in the same lane occupied by the vehicle being overtaken. However, this subsection shall not apply when the operator of a motorcycle overtakes and passes a pedestrian or bicyclist while maintaining a safe passing distance of at least three feet.

(3) No person shall operate a motorcycle between lanes of traffic or between adjacent lines or rows of vehicles.

(4) Motorcycles shall not be operated more than two abreast in a single lane.

(5) Subsections (2) and (3) of this section shall not apply to police officers in the performance of their official duties. [2013 c 139 § 1; 1975 c 62 § 46.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Additional notes found at www.leg.wa.gov

46.61.625 Riding in trailers or towed vehicles. (1) No person or persons shall occupy any trailer while it is being moved upon a public highway, except a person occupying a proper position for steering a trailer designed to be steered from a rear-end position.

(2) Except as provided in subsection (3) of this section, no person or persons may occupy a vehicle while it is being towed by a tow truck as defined in RCW 46.55.010.

(3)(a) A tow truck operator may allow passengers to ride in a vehicle that is carried on the deck of a flatbed tow truck only when the following conditions are met:

(i) The number of people that need to be transported exceeds the seating capacity of the tow truck or a person needing to be transported has a disability that limits that person's ability to enter the tow truck;

(ii) All passengers in the carried vehicle and in the tow truck comply with RCW 46.61.687 and 46.61.688;

(iii) Any passenger under sixteen years of age is accompanied by an adult riding in the same vehicle; and

(iv) There is a way for the passengers in the carried vehicle to immediately communicate, either verbally, audibly, or visually, with the tow truck operator in case of an emergency.

(b) No passenger of such a carried vehicle may exit the carried vehicle, ride outside of the passenger compartment of the carried vehicle, or exhibit dangerous or distracting behaviors while in the carried vehicle. [2013 c 155 § 1; 1999 c 398 § 9; 1995 c 360 § 10; 1965 ex.s. c 155 § 73.]

46.61.667 Using a wireless communications device or hand-held mobile telephone while driving. (1)(a) Except as provided in subsections (2)(a) and (3)(a) of this section, a person operating a moving motor vehicle while holding a wireless communications device to his or her ear is guilty of a traffic infraction.

(b) Except as provided in subsection (2)(b) and (3)(b) of this section, a person driving a commercial motor vehicle, as defined in RCW 46.25.010, including while temporarily stationary because of traffic, a traffic control device, or other momentary delays, while using a hand-held mobile telephone is guilty of a traffic infraction. For purposes of this subsection, "driving" does not include operating a commercial motor vehicle with or without the motor running when the driver has moved the vehicle to the side of, or off, a highway and has stopped in a location where the vehicle can safely remain stationary.

(2)(a) Subsection (1)(a) of this section does not apply to a person operating:

(i) An authorized emergency vehicle, or a tow truck responding to a disabled vehicle;

(ii) A moving motor vehicle using a wireless communications device in hands-free mode;

(iii) A moving motor vehicle using a hand-held wireless communications device to:

(A) Report illegal activity;

(B) Summon medical or other emergency help;

(C) Prevent injury to a person or property; or

(D) Relay information that is time sensitive between a transit or for-hire operator and that operator's dispatcher, in which the device is permanently affixed to the vehicle; or

(iv) A moving motor vehicle while using a hearing aid.

(b) Subsection (1)(b) of this section does not apply to a person operating a commercial motor vehicle:

(i) When necessary to communicate with law enforcement officials or other emergency services; or

(ii) Using a mobile telephone in hands-free mode.

(3)(a) Subsection (1)(a) of this section does not restrict the operation of an amateur radio station by a person who holds a valid amateur radio operator license issued by the federal communications commission.

(b) Subsection (1)(b) of this section does not restrict the operation of two-way or citizens band radio services.

(4) For purposes of this section, "hands-free mode" means the use of a wireless communications device with a speaker phone, headset, or earpiece.

(5) The state preempts the field of regulating the use of wireless communications devices in motor vehicles, and this section supersedes any local laws, ordinances, orders, rules, or regulations enacted by a political subdivision or municipality to regulate the use of wireless communications devices by the operator of a motor vehicle.

(6) Infractions that result from the use of a wireless communications device while operating a motor vehicle under subsection (1)(a) of this section shall not become part of the driver's record under RCW 46.52.101 and 46.52.120. Additionally, a finding that a person has committed a traffic infraction under subsection (1)(a) of this section shall not be made available to insurance companies or employers. [2013 c 224 § 15; 2010 c 223 § 3; 2007 c 417 § 2.]

Intent—2007 c 417: "The use of wireless communications devices by motorists has increased in recent years. While wireless communications devices have assisted with quick reporting of road emergencies, their use has also contributed to accidents and other mishaps on Washington state roadways. When motorists hold a wireless communications device in one hand and drive with the other, their chances of becoming involved in a traffic mishap increase. It is the legislature's intent to phase out the use of hand-held wireless communications devices by motorists while operating a vehicle." [2007 c 417 § 1.]

Effective date—2007 c 417: "This act takes effect July 1, 2008." [2007 c 417 § 3.]

46.61.668 Sending, reading, or writing a text message while driving. (1)(a) Except as provided in subsection (2)(a) of this section, a person operating a moving noncommercial motor vehicle who, by means of an electronic wireless communications device, sends, reads, or writes a text message, is guilty of a traffic infraction.

(b) Except as provided in subsection (2)(b) of this section, a person driving a commercial motor vehicle, as defined in RCW 46.25.010, including while temporarily stationary because of traffic, a traffic control device, or other momentary delays, who, by means of an electronic wireless communications device, sends, reads, or writes a text message, is guilty of a traffic infraction. For purposes of this subsection, "driving" does not include operating a commercial motor vehicle with or without the motor running when the driver has moved the vehicle to the side of, or off, a highway and has stopped in a location where the vehicle can safely remain stationary.

(c) A person does not send, read, or write a text message when he or she reads, selects, or enters a phone number or name in a wireless communications device for the purpose of making a phone call.

(2)(a) Subsection (1)(a) of this section does not apply to a person operating:

(i) An authorized emergency vehicle;

(ii) A voice-operated global positioning or navigation system that is affixed to the vehicle and that allows the user

to send or receive messages without diverting visual attention from the road or engaging the use of either hand; or

(iii) A moving motor vehicle while using an electronic wireless communications device to:

- (A) Report illegal activity;
- (B) Summon medical or other emergency help;
- (C) Prevent injury to a person or property; or
- (D) Relay information that is time sensitive between a transit or for-hire operator and that operator's dispatcher, in which the device is permanently affixed to the vehicle.

(b) Subsection (1)(b) of this section does not apply to a person operating a commercial motor vehicle when necessary to communicate with law enforcement officials or other emergency services.

(3) Infractions under subsection (1)(a) of this section shall not become part of the driver's record under RCW 46.52.101 and 46.52.120. Additionally, a finding that a person has committed a traffic infraction under subsection (1)(a) of this section shall not be made available to insurance companies or employers. [2013 c 224 § 16; 2010 c 223 § 4; 2007 c 416 § 1.]

Effective date—2007 c 416: "This act takes effect January 1, 2008." [2007 c 416 § 2.]

Chapter 46.63 RCW

DISPOSITION OF TRAFFIC INFRACTIONS

Sections

46.63.020	Violations as traffic infractions—Exceptions.
46.63.030	Notice of traffic infraction—Issuance—Abandoned vehicles.
46.63.060	Notice of traffic infraction—Determination final unless contested—Form.
46.63.160	Photo toll systems—Civil penalties for nonpayment of tolls—System requirements—Rules.
46.63.170	Automated traffic safety cameras—Definition.
46.63.180	Automated school bus safety cameras—Definition.

46.63.020 Violations as traffic infractions—Exceptions. Failure to perform any act required or the performance of any act prohibited by this title or an equivalent administrative regulation or local law, ordinance, regulation, or resolution relating to traffic including parking, standing, stopping, and pedestrian offenses, is designated as a traffic infraction and may not be classified as a criminal offense, except for an offense contained in the following provisions of this title or a violation of an equivalent administrative regulation or local law, ordinance, regulation, or resolution:

(1) RCW 46.09.457(1)(b)(i) relating to a false statement regarding the inspection of and installation of equipment on wheeled all-terrain vehicles;

(2) RCW 46.09.470(2) relating to the operation of a non-highway vehicle while under the influence of intoxicating liquor or a controlled substance;

(3) RCW 46.09.480 relating to operation of nonhighway vehicles;

(4) RCW 46.10.490(2) relating to the operation of a snowmobile while under the influence of intoxicating liquor or narcotics or habit-forming drugs or in a manner endangering the person of another;

(5) RCW 46.10.495 relating to the operation of snowmobiles;

(6) Chapter 46.12 RCW relating to certificates of title, registration certificates, and markings indicating that a vehicle has been destroyed or declared a total loss;

(7) RCW 46.16A.030 and 46.16A.050(3) relating to the nonpayment of taxes and fees by failure to register a vehicle and falsifying residency when registering a motor vehicle;

(8) RCW 46.16A.520 relating to permitting unauthorized persons to drive;

(9) RCW 46.16A.320 relating to vehicle trip permits;

(10) RCW 46.19.050 relating to knowingly providing false information in conjunction with an application for a special placard or license plate for disabled persons' parking;

(11) RCW 46.20.005 relating to driving without a valid driver's license;

(12) RCW 46.20.091 relating to false statements regarding a driver's license or instruction permit;

(13) RCW 46.20.0921 relating to the unlawful possession and use of a driver's license;

(14) RCW 46.20.342 relating to driving with a suspended or revoked license or status;

(15) RCW 46.20.345 relating to the operation of a motor vehicle with a suspended or revoked license;

(16) RCW 46.20.410 relating to the violation of restrictions of an occupational driver's license, temporary restricted driver's license, or ignition interlock driver's license;

(17) RCW 46.20.740 relating to operation of a motor vehicle without an ignition interlock device in violation of a license notation that the device is required;

(18) RCW 46.20.750 relating to circumventing an ignition interlock device;

(19) RCW 46.25.170 relating to commercial driver's licenses;

(20) Chapter 46.29 RCW relating to financial responsibility;

(21) RCW 46.30.040 relating to providing false evidence of financial responsibility;

(22) RCW 46.35.030 relating to recording device information;

(23) RCW 46.37.435 relating to wrongful installation of sunscreening material;

(24) RCW 46.37.650 relating to the sale, resale, distribution, or installation of a previously deployed air bag;

(25) RCW 46.37.671 through 46.37.675 relating to signal preemption devices;

(26) RCW 46.37.685 relating to switching or flipping license plates, utilizing technology to flip or change the appearance of a license plate, selling a license plate flipping device or technology used to change the appearance of a license plate, or falsifying a vehicle registration;

(27) RCW 46.44.180 relating to operation of mobile home pilot vehicles;

(28) RCW 46.48.175 relating to the transportation of dangerous articles;

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

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

(31) RCW 46.52.090 relating to reports by repairers, storage persons, and appraisers;

(32) RCW 46.52.130 relating to confidentiality of the driving record to be furnished to an insurance company, an

employer, and an alcohol/drug assessment or treatment agency;

(33) RCW 46.55.020 relating to engaging in the activities of a registered tow truck operator without a registration certificate;

(34) RCW 46.55.035 relating to prohibited practices by tow truck operators;

(35) RCW 46.55.300 relating to vehicle immobilization;

(36) RCW 46.61.015 relating to obedience to police officers, flaggers, or firefighters;

(37) RCW 46.61.020 relating to refusal to give information to or cooperate with an officer;

(38) RCW 46.61.022 relating to failure to stop and give identification to an officer;

(39) RCW 46.61.024 relating to attempting to elude pursuing police vehicles;

(40) RCW 46.61.212(4) relating to reckless endangerment of emergency zone workers;

(41) RCW 46.61.500 relating to reckless driving;

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

(43) RCW 46.61.503 relating to a person under age twenty-one driving a motor vehicle after consuming alcohol;

(44) RCW 46.61.520 relating to vehicular homicide by motor vehicle;

(45) RCW 46.61.522 relating to vehicular assault;

(46) RCW 46.61.5249 relating to first degree negligent driving;

(47) RCW 46.61.527(4) relating to reckless endangerment of roadway workers;

(48) RCW 46.61.530 relating to racing of vehicles on highways;

(49) RCW 46.61.655(7) (a) and (b) relating to failure to secure a load;

(50) RCW 46.61.685 relating to leaving children in an unattended vehicle with the motor running;

(51) RCW 46.61.740 relating to theft of motor vehicle fuel;

(52) RCW 46.64.010 relating to unlawful cancellation of or attempt to cancel a traffic citation;

(53) RCW 46.64.048 relating to attempting, aiding, abetting, coercing, and committing crimes;

(54) Chapter 46.65 RCW relating to habitual traffic offenders;

(55) RCW 46.68.010 relating to false statements made to obtain a refund;

(56) Chapter 46.70 RCW relating to unfair motor vehicle business practices, except where that chapter provides for the assessment of monetary penalties of a civil nature;

(57) Chapter 46.72 RCW relating to the transportation of passengers in for hire vehicles;

(58) RCW 46.72A.060 relating to limousine carrier insurance;

(59) RCW 46.72A.070 relating to operation of a limousine without a vehicle certificate;

(60) RCW 46.72A.080 relating to false advertising by a limousine carrier;

(61) Chapter 46.80 RCW relating to motor vehicle wreckers;

(62) Chapter 46.82 RCW relating to driver's training schools;

(63) RCW 46.87.260 relating to alteration or forgery of a cab card, letter of authority, or other temporary authority issued under chapter 46.87 RCW;

(64) RCW 46.87.290 relating to operation of an unregistered or unlicensed vehicle under chapter 46.87 RCW. [2013 2nd sp.s. c 23 § 21; 2013 c 135 § 2; 2010 c 252 § 3; 2010 c 161 § 1125; 2010 c 8 § 9077; 2009 c 485 § 6; 2008 c 282 § 11. Prior: 2005 c 431 § 2; 2005 c 323 § 3; 2005 c 183 § 10; 2004 c 95 § 14; 2003 c 33 § 4; 2001 c 325 § 4; 1999 c 86 § 6; 1998 c 294 § 3; prior: 1997 c 229 § 13; 1997 c 66 § 8; prior: 1996 c 307 § 6; 1996 c 287 § 7; 1996 c 93 § 3; 1996 c 87 § 21; 1996 c 31 § 3; prior: 1995 1st sp.s. c 16 § 1; 1995 c 332 § 16; 1995 c 256 § 25; prior: 1994 c 275 § 33; 1994 c 141 § 2; 1993 c 501 § 8; 1992 c 32 § 4; 1991 c 339 § 27; prior: 1990 c 250 § 59; 1990 c 95 § 3; prior: 1989 c 353 § 8; 1989 c 178 § 27; 1989 c 111 § 20; prior: 1987 c 388 § 11; 1987 c 247 § 6; 1987 c 244 § 55; 1987 c 181 § 2; 1986 c 186 § 3; prior: 1985 c 377 § 28; 1985 c 353 § 2; 1985 c 302 § 7; 1983 c 164 § 6; 1982 c 10 § 12; prior: 1981 c 318 § 2; 1981 c 19 § 1; 1980 c 148 § 7; 1979 ex.s. c 136 § 2.]

Finding—Intent—2013 2nd sp.s. c 23: See note following RCW 46.09.442.

Effective date—2013 2nd sp.s. c 23: See note following RCW 46.09.310.

Effective date—2010 c 252: See note following RCW 46.61.212.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Effective date—2010 c 8 § 9077: "Section 9077 of this act takes effect July 1, 2010." [2010 c 8 § 20001.]

Effective date—2009 c 485: See note following RCW 46.35.010.

Effective date—2008 c 282: See note following RCW 46.20.308.

Declaration and intent—Effective date—Application—2005 c 323: See notes following RCW 46.16A.030.

Additional notes found at www.leg.wa.gov

46.63.030 Notice of traffic infraction—Issuance—Abandoned vehicles. (1) A law enforcement officer has the authority to issue a notice of traffic infraction:

(a) When the infraction is committed in the officer's presence, except as provided in RCW 46.09.485;

(b) When the officer is acting upon the request of a law enforcement officer in whose presence the traffic infraction was committed;

(c) If an officer investigating at the scene of a motor vehicle accident has reasonable cause to believe that the driver of a motor vehicle involved in the accident has committed a traffic infraction;

(d) When the infraction is detected through the use of an automated traffic safety camera under RCW 46.63.170; or

(e) When the infraction is detected through the use of an automated school bus safety camera under RCW 46.63.180.

(2) A court may issue a notice of traffic infraction upon receipt of a written statement of the officer that there is reasonable cause to believe that an infraction was committed.

(3) If any motor vehicle without a driver is found parked, standing, or stopped in violation of this title or an equivalent administrative regulation or local law, ordinance, regulation, or resolution, the officer finding the vehicle shall take its registration number and may take any other information displayed on the vehicle which may identify its user, and shall

conspicuously affix to the vehicle a notice of traffic infraction.

(4) In the case of failure to redeem an abandoned vehicle under RCW 46.55.120, upon receiving a complaint by a registered tow truck operator that has incurred costs in removing, storing, and disposing of an abandoned vehicle, an officer of the law enforcement agency responsible for directing the removal of the vehicle shall send a notice of infraction by certified mail to the last known address of the person responsible under RCW 46.55.105. The notice must be entitled "Littering—Abandoned Vehicle" and give notice of the monetary penalty. The officer shall append to the notice of infraction, on a form prescribed by the department of licensing, a notice indicating the amount of costs incurred as a result of removing, storing, and disposing of the abandoned vehicle, less any amount realized at auction, and a statement that monetary penalties for the infraction will not be considered as having been paid until the monetary penalty payable under this chapter has been paid and the court is satisfied that the person has made restitution in the amount of the deficiency remaining after disposal of the vehicle. [2013 2nd sp.s. c 23 § 23; 2011 c 375 § 5; 2011 c 375 § 4; 2010 c 249 § 5; 2007 c 101 § 1; 2005 c 167 § 2; 2004 c 231 § 2; 2002 c 279 § 14; 1995 c 219 § 5; 1994 c 176 § 3; 1987 c 66 § 2; 1980 c 128 § 10; 1979 ex.s. c 136 § 3.]

Finding—Intent—2013 2nd sp.s. c 23: See note following RCW 46.09.442.

Effective date—2013 2nd sp.s. c 23: See note following RCW 46.09.310.

Contingent effective date—2011 c 375 §§ 5, 7, and 9: "Sections 5, 7, and 9 of this act take effect upon certification by the secretary of transportation that the new statewide tolling operations center and photo toll system are fully operational. A notice of certification must be filed with the code reviser for publication in the state register. If a certificate is not issued by the secretary of transportation by December 1, 2012, sections 5, 7, and 9 of this act are null and void." [2011 c 375 § 10.] A notice of certification was filed with the code reviser on December 2, 2011, becoming effective December 3, 2011 (see WSR 11-24-042).

Intent—2011 c 375: See note following RCW 46.63.180.

Contingent effective date—2010 c 249: See note following RCW 47.56.795.

Additional notes found at www.leg.wa.gov

46.63.060 Notice of traffic infraction—Determination final unless contested—Form. (1) A notice of traffic infraction represents a determination that an infraction has been committed. The determination will be final unless contested as provided in this chapter.

(2) The form for the notice of traffic infraction shall be prescribed by rule of the supreme court and shall include the following:

(a) A statement that the notice represents a determination that a traffic infraction has been committed by the person named in the notice and that the determination shall be final unless contested as provided in this chapter;

(b) A statement that a traffic infraction is a noncriminal offense for which imprisonment may not be imposed as a sanction; that the penalty for a traffic infraction may include sanctions against the person's driver's license including suspension, revocation, or denial; that the penalty for a traffic infraction related to standing, stopping, or parking may include nonrenewal of the vehicle registration;

(c) A statement of the specific traffic infraction for which the notice was issued;

(d) A statement of the monetary penalty established for the traffic infraction;

(e) A statement of the options provided in this chapter for responding to the notice and the procedures necessary to exercise these options;

(f) A statement that at any hearing to contest the determination the state has the burden of proving, by a preponderance of the evidence, that the infraction was committed; and that the person may subpoena witnesses including the officer who issued the notice of infraction;

(g) A statement that at any hearing requested for the purpose of explaining mitigating circumstances surrounding the commission of the infraction the person will be deemed to have committed the infraction and may not subpoena witnesses;

(h) A statement that the person must respond to the notice as provided in this chapter within fifteen days or the person's driver's license or driving privilege may be suspended by the department until any penalties imposed pursuant to this chapter have been satisfied; and

(i) A statement that failure to appear at a hearing requested for the purpose of contesting the determination or for the purpose of explaining mitigating circumstances may result in the suspension of the person's driver's license or driving privilege, or in the case of a standing, stopping, or parking violation, refusal of the department to renew the vehicle registration, until any penalties imposed pursuant to this chapter have been satisfied.

(3)(a) A form for a notice of traffic infraction printed after July 22, 2011, must include a statement that the person may be able to enter into a payment plan with the court under RCW 46.63.110.

(b) The forms for a notice of traffic infraction must include the changes in section 1, chapter 170, Laws of 2013 by July 1, 2015. [2013 c 170 § 1; 2011 c 233 § 1; 2006 c 270 § 2; 1993 c 501 § 9; 1984 c 224 § 2; 1982 1st ex.s. c 14 § 2; 1980 c 128 § 1; 1979 ex.s. c 136 § 8.]

Additional notes found at www.leg.wa.gov

46.63.160 Photo toll systems—Civil penalties for nonpayment of tolls—System requirements—Rules. (1) This section applies only to civil penalties for nonpayment of tolls detected through use of photo toll systems.

(2) Nothing in this section prohibits a law enforcement officer from issuing a notice of traffic infraction to a person in control of a vehicle at the time a violation occurs under RCW 46.63.030(1) (a), (b), or (c).

(3) A notice of civil penalty may be issued by the department of transportation when a toll is assessed through use of a photo toll system and the toll is not paid by the toll payment due date, which is eighty days from the date the vehicle uses the toll facility and incurs the toll charge.

(4) Any registered owner or renter of a vehicle traveling upon a toll facility operated under chapter 47.56 or 47.46 RCW is subject to a civil penalty governed by the administrative procedures set forth in this section when the vehicle incurs a toll charge and the toll is not paid by the toll payment due date, which is eighty days from the date the vehicle uses the toll facility and incurs the toll charge.

(5)(a) Consistent with chapter 34.05 RCW, the department of transportation shall develop an administrative adjudication process to review appeals of civil penalties issued by the department of transportation for toll nonpayment detected through the use of a photo toll system under this section. The department of transportation shall submit to the transportation committees of the legislature an annual report on the number of times adjudicators reduce or dismiss the civil penalty as provided in (b) of this subsection and the total amount of the civil penalties dismissed. The report must be submitted by December 1st of each year.

(b) During the adjudication process, the alleged violator must have an opportunity to explain mitigating circumstances. Hospitalization, a divorce decree or legal separation agreement resulting in a transfer of the vehicle, an active duty member of the military or national guard covered by the federal service members civil relief act, 50 U.S.C. Sec. 501 et seq., or state service members' civil relief act, chapter 38.42 RCW, eviction, homelessness, the death of the alleged violator or of an immediate family member, or if the alleged violator did not receive a toll charge bill or notice of civil penalty are valid mitigating circumstances. All of these reasons that constitute mitigating circumstances must occur within a reasonable time of the alleged toll violation. In response to these circumstances, the adjudicator may reduce or dismiss the civil penalty.

(c) The use of a photo toll system is subject to the following requirements:

(a) Photo toll systems may take photographs, digital photographs, microphotographs, videotapes, or other recorded images of the vehicle and vehicle license plate only.

(b) A notice of civil penalty must include with it a certificate or facsimile thereof, based upon inspection of photographs, microphotographs, videotape, or other recorded images produced by a photo toll system, stating the facts supporting the notice of civil penalty. This certificate or facsimile is prima facie evidence of the facts contained in it and is admissible in a proceeding established under subsection (5) of this section. The photographs, digital photographs, microphotographs, videotape, or other recorded images evidencing the toll nonpayment civil penalty must be available for inspection and admission into evidence in a proceeding to adjudicate the liability for the civil penalty.

(c) Notwithstanding any other provision of law, all photographs, digital photographs, microphotographs, videotape, other recorded images, or other records identifying a specific instance of travel prepared under this section are for the exclusive use of the tolling agency for toll collection and enforcement purposes and are not open to the public and may not be used in a court in a pending action or proceeding unless the action or proceeding relates to a civil penalty under this section. No photograph, digital photograph, microphotograph, videotape, other recorded image, or other record identifying a specific instance of travel may be used for any purpose other than toll collection or enforcement of civil penalties under this section. Records identifying a specific instance of travel by a specific person or vehicle must be retained only as required to ensure payment and enforcement of tolls and to comply with state records retention policies.

(d) All locations where a photo toll system is used must be clearly marked by placing signs in locations that clearly

indicate to a driver that he or she is entering a zone where tolls are assessed and enforced by a photo toll system.

(e) Within existing resources, the department of transportation shall conduct education and outreach efforts at least six months prior to activating an all-electronic photo toll system. Methods of outreach shall include a department presence at community meetings in the vicinity of a toll facility, signage, and information published in local media. Information provided shall include notice of when all electronic photo tolling shall begin and methods of payment. Additionally, the department shall provide quarterly reporting on education and outreach efforts and other data related to the issuance of civil penalties.

(f) The envelope containing a toll charge bill or related notice issued pursuant to RCW 47.46.105 or 47.56.795, or a notice of civil penalty issued under this section, must prominently indicate that the contents are time sensitive and related to a toll violation.

(7) Civil penalties for toll nonpayment detected through the use of photo toll systems must be issued to the registered owner of the vehicle identified by the photo toll system, but are not part of the registered owner's driving record under RCW 46.52.101 and 46.52.120.

(8) The civil penalty for toll nonpayment detected through the use of a photo toll system is forty dollars plus the photo toll and associated fees.

(9) Except as provided otherwise in this subsection, all civil penalties, including the photo toll and associated fees, collected under this section must be deposited into the toll facility account of the facility on which the toll was assessed. However, through June 30, 2013, civil penalties deposited into the Tacoma Narrows toll bridge account created under RCW 47.56.165 that are in excess of amounts necessary to support the toll adjudication process applicable to toll collection on the Tacoma Narrows bridge must first be allocated toward repayment of operating loans and reserve payments provided to the account from the motor vehicle account under section 1005(15), chapter 518, Laws of 2007. Additionally, all civil penalties, resulting from nonpayment of tolls on the state route number 520 corridor, shall be deposited into the state route number 520 civil penalties account created under section 4, chapter 248, Laws of 2010 but only if chapter 248, Laws of 2010 is enacted by June 30, 2010.

(10) If the registered owner of the vehicle is a rental car business, the department of transportation shall, before a toll bill is issued, provide a written notice to the rental car business that a toll bill may be issued to the rental car business if the rental car business does not, within thirty days of the mailing of the written notice, provide to the issuing agency by return mail:

(a) A statement under oath stating the name and known mailing address of the individual driving or renting the vehicle when the toll was assessed; or

(b) A statement under oath that the business is unable to determine who was driving or renting the vehicle at the time the toll was assessed because the vehicle was stolen at the time the toll was assessed. A statement provided under this subsection must be accompanied by a copy of a filed police report regarding the vehicle theft; or

(c) In lieu of identifying the vehicle operator, the rental car business may pay the applicable toll and fee.

Timely mailing of this statement to the issuing agency relieves a rental car business of any liability under this section for the payment of the toll.

(11) Consistent with chapter 34.05 RCW, the department of transportation shall develop rules to implement this section.

(12) For the purposes of this section, "photo toll system" means the system defined in RCW 47.56.010 and 47.46.020. [2013 c 226 § 1; 2011 c 367 § 705; 2010 c 249 § 6; (2010 c 161 § 1126 repealed by 2012 c 83 § 8); 2009 c 272 § 1. Prior: 2007 c 372 § 2; 2007 c 101 § 2; 2004 c 231 § 6.]

Contingent effective date—2011 c 367 §§ 705 and 722: "Sections 705 and 722 of this act take effect upon certification by the secretary of transportation that the new statewide tolling operations center and photo toll system are fully operational. A notice of certification must be filed with the code reviser for publication in the state register. If a certificate is not issued by the secretary of transportation by December 1, 2012, sections 705 and 722 of this act are null and void." [2011 c 367 § 1104.] A notice of certification was filed with the code reviser on December 2, 2011, becoming effective December 3, 2011 (see WSR 11-24-042).

Contingent effective date—2010 c 249: See note following RCW 47.56.795.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Report to legislature—2009 c 272: "The department shall report to the transportation committees of the legislature by December 1, 2009, with recommendations regarding implementing a time period for the payment of tolls after crossing the Tacoma Narrows bridge in which individuals without a transponder could pay the toll due prior to the issuance of an infraction." [2009 c 272 § 2.]

46.63.170 Automated traffic safety cameras—Definition. (1) The use of automated traffic safety cameras for issuance of notices of infraction is subject to the following requirements:

(a) The appropriate local legislative authority must prepare an analysis of the locations within the jurisdiction where automated traffic safety cameras are proposed to be located: (i) Before enacting an ordinance allowing for the initial use of automated traffic safety cameras; and (ii) before adding additional cameras or relocating any existing camera to a new location within the jurisdiction. Automated traffic safety cameras may be used to detect one or more of the following: Stoplight, railroad crossing, or school speed zone violations. At a minimum, the local ordinance must contain the restrictions described in this section and provisions for public notice and signage. Cities and counties using automated traffic safety cameras before July 24, 2005, are subject to the restrictions described in this section, but are not required to enact an authorizing ordinance. Beginning one year after June 7, 2012, cities and counties using automated traffic safety cameras must post an annual report of the number of traffic accidents that occurred at each location where an automated traffic safety camera is located as well as the number of notices of infraction issued for each camera and any other relevant information about the automated traffic safety cameras that the city or county deems appropriate on the city's or county's web site.

(b) Use of automated traffic safety cameras is restricted to the following locations only: (i) Intersections of two arterials with traffic control signals that have yellow change interval durations in accordance with RCW 47.36.022, which

interval durations may not be reduced after placement of the camera; (ii) railroad crossings; and (iii) school speed zones.

(c) During the 2011-2013 and 2013-2015 fiscal biennia, automated traffic safety cameras may be used to detect speed violations for the purposes of section 201(2), chapter 367, Laws of 2011 and section 201(4), chapter 306, Laws of 2013 if the local legislative authority first enacts an ordinance authorizing the use of cameras to detect speed violations.

(d) Automated traffic safety cameras may only take pictures of the vehicle and vehicle license plate and only while an infraction is occurring. The picture must not reveal the face of the driver or of passengers in the vehicle. The primary purpose of camera placement is to take pictures of the vehicle and vehicle license plate when an infraction is occurring. Cities and counties shall consider installing cameras in a manner that minimizes the impact of camera flash on drivers.

(e) A notice of infraction must be mailed to the registered owner of the vehicle within fourteen days of the violation, or to the renter of a vehicle within fourteen days of establishing the renter's name and address under subsection (3)(a) of this section. The law enforcement officer issuing the notice of infraction shall include with it a certificate or facsimile thereof, based upon inspection of photographs, microphotographs, or electronic images produced by an automated traffic safety camera, stating the facts supporting the notice of infraction. This certificate or facsimile is prima facie evidence of the facts contained in it and is admissible in a proceeding charging a violation under this chapter. The photographs, microphotographs, or electronic images evidencing the violation must be available for inspection and admission into evidence in a proceeding to adjudicate the liability for the infraction. A person receiving a notice of infraction based on evidence detected by an automated traffic safety camera may respond to the notice by mail.

(f) The registered owner of a vehicle is responsible for an infraction under RCW 46.63.030(1)(d) unless the registered owner overcomes the presumption in RCW 46.63.075, or, in the case of a rental car business, satisfies the conditions under subsection (3) of this section. If appropriate under the circumstances, a renter identified under subsection (3)(a) of this section is responsible for an infraction.

(g) Notwithstanding any other provision of law, all photographs, microphotographs, or electronic images prepared under this section are for the exclusive use of law enforcement in the discharge of duties under this section and are not open to the public and may not be used in a court in a pending action or proceeding unless the action or proceeding relates to a violation under this section. No photograph, microphotograph, or electronic image may be used for any purpose other than enforcement of violations under this section nor retained longer than necessary to enforce this section.

(h) All locations where an automated traffic safety camera is used must be clearly marked at least thirty days prior to activation of the camera by placing signs in locations that clearly indicate to a driver that he or she is entering a zone where traffic laws are enforced by an automated traffic safety camera. Signs placed in automated traffic safety camera locations after June 7, 2012, must follow the specifications and guidelines under the manual of uniform traffic control

devices for streets and highways as adopted by the department of transportation under chapter 47.36 RCW.

(i) If a county or city has established an authorized automated traffic safety camera program under this section, the compensation paid to the manufacturer or vendor of the equipment used must be based only upon the value of the equipment and services provided or rendered in support of the system, and may not be based upon a portion of the fine or civil penalty imposed or the revenue generated by the equipment.

(2) Infractions detected through the use of automated traffic safety cameras are not part of the registered owner's driving record under RCW 46.52.101 and 46.52.120. Additionally, infractions generated by the use of automated traffic safety cameras under this section shall be processed in the same manner as parking infractions, including for the purposes of RCW 3.50.100, 35.20.220, 46.16A.120, and *46.20.270(3). The amount of the fine issued for an infraction generated through the use of an automated traffic safety camera shall not exceed the amount of a fine issued for other parking infractions within the jurisdiction. However, the amount of the fine issued for a traffic control signal violation detected through the use of an automated traffic safety camera shall not exceed the monetary penalty for a violation of RCW 46.61.050 as provided under RCW 46.63.110, including all applicable statutory assessments.

(3) If the registered owner of the vehicle is a rental car business, the law enforcement agency shall, before a notice of infraction being issued under this section, provide a written notice to the rental car business that a notice of infraction may be issued to the rental car business if the rental car business does not, within eighteen days of receiving the written notice, provide to the issuing agency by return mail:

(a) A statement under oath stating the name and known mailing address of the individual driving or renting the vehicle when the infraction occurred; or

(b) A statement under oath that the business is unable to determine who was driving or renting the vehicle at the time the infraction occurred because the vehicle was stolen at the time of the infraction. A statement provided under this subsection must be accompanied by a copy of a filed police report regarding the vehicle theft; or

(c) In lieu of identifying the vehicle operator, the rental car business may pay the applicable penalty.

Timely mailing of this statement to the issuing law enforcement agency relieves a rental car business of any liability under this chapter for the notice of infraction.

(4) Nothing in this section prohibits a law enforcement officer from issuing a notice of traffic infraction to a person in control of a vehicle at the time a violation occurs under RCW 46.63.030(1) (a), (b), or (c).

(5) For the purposes of this section, "automated traffic safety camera" means a device that uses a vehicle sensor installed to work in conjunction with an intersection traffic control system, a railroad grade crossing control system, or a speed measuring device, and a camera synchronized to automatically record one or more sequenced photographs, microphotographs, or electronic images of the rear of a motor vehicle at the time the vehicle fails to stop when facing a steady red traffic control signal or an activated railroad grade crossing control signal, or exceeds a speed limit in a school speed

zone as detected by a speed measuring device. During the 2011-2013 and 2013-2015 fiscal biennia, an automated traffic safety camera includes a camera used to detect speed violations for the purposes of section 201(2), chapter 367, Laws of 2011 and section 201(4), chapter 306, Laws of 2013.

(6) During the 2011-2013 and 2013-2015 fiscal biennia, this section does not apply to automated traffic safety cameras for the purposes of section 216(5), chapter 367, Laws of 2011 and section 216(6), chapter 306, Laws of 2013. [2013 c 306 § 711. Prior: 2012 c 85 § 3; 2012 c 83 § 7; 2011 c 367 § 704; 2010 c 161 § 1127; 2009 c 470 § 714; 2007 c 372 § 3; 2005 c 167 § 1.]

***Reviser's note:** RCW 46.20.270 was amended by 2013 2nd sp.s. c 35 § 17, changing subsection (3) to subsection (2).

Effective date—2013 c 306: See note following RCW 47.64.170.

Findings—Intent—2012 c 85: "The legislature finds that it is in the interests of the driving public to continue to provide for a uniform system of traffic control signals, including provisions relative to yellow light durations, fine amounts for certain traffic control signal violations, and signage and reporting requirements at certain traffic control signal locations. The legislature further finds that a uniform system of traffic control signals greatly enhances the public's confidence in a safe and equitable highway network. Therefore, it is the intent of the legislature to harmonize and make uniform certain legal provisions relating to traffic control signals." [2012 c 85 § 1.]

Effective date—2011 c 367 §§ 703, 704, 716, and 719: See note following RCW 46.18.060.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

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

46.63.180 Automated school bus safety cameras—

Definition. (1) School districts may install and operate automated school bus safety cameras on school buses to be used for the detection of violations of RCW 46.61.370(1) if the use of the cameras is approved by a vote of the school district board of directors. School districts are not required to take school buses out of service if the buses are not equipped with automated school bus safety cameras or functional automated safety cameras. Further, school districts shall be held harmless from and not liable for any criminal or civil liability arising under the provisions of this section.

(a) Automated school bus safety cameras may only take pictures of the vehicle and vehicle license plate and only while an infraction is occurring. The picture must not reveal the face of the driver or of passengers in the vehicle.

(b) A notice of infraction must be mailed to the registered owner of the vehicle within fourteen days of the violation, or to the renter of a vehicle within fourteen days of establishing the renter's name and address under subsection (2)(a)(i) of this section. The law enforcement officer issuing the notice of infraction shall include a certificate or facsimile of the notice, based upon inspection of photographs, microphotographs, or electronic images produced by an automated school bus safety camera, stating the facts supporting the notice of infraction. This certificate or facsimile is prima facie evidence of the facts contained in it and is admissible in a proceeding charging a violation under this chapter. The photographs, microphotographs, or electronic images evidencing the violation must be available for inspection and admission into evidence in a proceeding to adjudicate the liability for the infraction. A person receiving a notice of infrac-

tion based on evidence detected by an automated school bus safety camera may respond to the notice by mail.

(c) The registered owner of a vehicle is responsible for an infraction under RCW 46.63.030(1)(e) unless the registered owner overcomes the presumption in RCW 46.63.075, or, in the case of a rental car business, satisfies the conditions under subsection (2) of this section. If appropriate under the circumstances, a renter identified under subsection (2)(a)(i) of this section is responsible for an infraction.

(d) Notwithstanding any other provision of law, all photographs, microphotographs, or electronic images prepared under this section are for the exclusive use of law enforcement in the discharge of duties under this section and are not open to the public and may not be used in a court in a pending action or proceeding unless the action or proceeding relates to a violation under this section. No photograph, microphotograph, or electronic image may be used for any purpose other than enforcement of violations under this section nor retained longer than necessary to enforce this section.

(e) If a school district installs and operates an automated school bus safety camera under this section, the compensation paid to the manufacturer or vendor of the equipment used must be based only upon the value of the equipment and services provided or rendered in support of the system, and may not be based upon a portion of the fine or civil penalty imposed or the revenue generated by the equipment. Further, any repair, replacement, or administrative work costs related to installing or repairing automated school bus safety cameras must be solely paid for by the manufacturer or vendor [vendor] of the cameras. Before entering into a contract with the manufacturer or vendor of the equipment used under this subsection (1)(e), the school district must follow the competitive bid process as outlined in RCW 28A.335.190(1).

(f) Any revenue collected from infractions detected through the use of automated school bus safety cameras, less the administration and operating costs of the cameras, must be remitted to school districts for school zone safety projects as determined by the school district using the automated school bus safety cameras. The administration and operating costs of the cameras includes infraction enforcement and processing costs that are incurred by local law enforcement or local courts. During the 2013-2015 fiscal biennium, the infraction revenue may also be used for school bus safety projects by those school districts eligible to apply for funding from the school zone safety account appropriation in section 201, chapter 306, Laws of 2013.

(2)(a) If the registered owner of the vehicle is a rental car business, the law enforcement agency shall, before a notice of infraction is issued under this section, provide a written notice to the rental car business that a notice of infraction may be issued to the rental car business if the rental car business does not, within eighteen days of receiving the written notice, provide to the issuing agency by return mail:

(i) A statement under oath stating the name and known mailing address of the individual driving or renting the vehicle when the infraction occurred;

(ii) A statement under oath that the business is unable to determine who was driving or renting the vehicle at the time the infraction occurred because the vehicle was stolen at the time of the infraction. A statement provided under this sub-

section (2)(a)(ii) must be accompanied by a copy of a filed police report regarding the vehicle theft; or

(iii) In lieu of identifying the vehicle operator, the rental car business may pay the applicable penalty.

(b) Timely mailing of a statement under this subsection to the issuing law enforcement agency relieves a rental car business of any liability under this chapter for the notice of infraction.

(3) For purposes of this section, "automated school bus safety camera" means a device that is affixed to a school bus that is synchronized to automatically record one or more sequenced photographs, microphotographs, or electronic images of the rear of a vehicle at the time the vehicle is detected for an infraction identified in RCW 46.61.370(1). [2013 c 306 § 716; 2011 c 375 § 2.]

Effective date—2013 c 306: See note following RCW 47.64.170.

Intent—2011 c 375: "The legislature recognizes that the safe transportation of children to and from school is a shared responsibility of the school district and the driving public. In order to increase public awareness of their responsibility, it is the intent of the legislature that the state superintendent of public instruction coordinate with school districts and any other relevant agencies who voluntarily choose to participate in a national stop arm violation day annually between March 1st and May 15th." [2011 c 375 § 1.]

Chapter 46.66 RCW

WASHINGTON AUTO THEFT PREVENTION AUTHORITY

Sections

46.66.080 Washington auto theft prevention authority account.

46.66.080 Washington auto theft prevention authority account. (1) The Washington auto theft prevention authority account is created in the state treasury, subject to appropriation. All revenues from the traffic infraction surcharge in RCW 46.63.110(7)(b) and all receipts from gifts, grants, bequests, devises, or other funds from public and private sources to support the activities of the auto theft prevention authority must be deposited into the account. Expenditures from the account may be used only for activities relating to motor vehicle theft, including education, prevention, law enforcement, investigation, prosecution, and confinement. During the 2011-2013 and 2013-2015 fiscal biennia, the legislature may appropriate moneys from the Washington auto theft prevention authority account for criminal justice purposes and community building and may transfer funds to the state general fund such amounts as reflect the excess fund balance of the account.

(2) The authority shall allocate moneys appropriated from the account to public agencies for the purpose of establishing, maintaining, and supporting programs that are designed to prevent motor vehicle theft, including:

(a) Financial support to prosecution agencies to increase the effectiveness of motor vehicle theft prosecution;

(b) Financial support to a unit of local government or a team consisting of units of local governments to increase the effectiveness of motor vehicle theft enforcement;

(c) Financial support for the procurement of equipment and technologies for use by law enforcement agencies for the purpose of enforcing motor vehicle theft laws; and

(d) Financial support for programs that are designed to educate and assist the public in the prevention of motor vehicle theft.

(3) The costs of administration shall not exceed ten percent of the moneys in the account in any one year so that the greatest possible portion of the moneys available to the authority is expended on combating motor vehicle theft.

(4) Prior to awarding any moneys from the Washington auto theft prevention authority account for motor vehicle theft enforcement, the auto theft prevention authority must verify that the financial award includes sufficient funding to cover proposed activities, which include, but are not limited to: (a) State, municipal, and county offender and juvenile confinement costs; (b) administration costs; (c) law enforcement costs; (d) prosecutor costs; and (e) court costs, with a priority being given to ensuring that sufficient funding is available to cover state, municipal, and county offender and juvenile confinement costs.

(5) Moneys expended from the Washington auto theft prevention authority account under subsection (2) of this section shall be used to supplement, not supplant, other moneys that are available for motor vehicle theft prevention.

(6) Grants provided under subsection (2) of this section constitute reimbursement for purposes of RCW 43.135.060(1). [2013 2nd sp.s. c 4 § 985; 2011 1st sp.s. c 50 § 958; 2011 c 5 § 915; 2009 c 564 § 945; 2007 c 199 § 27.]

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

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

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

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

Chapter 46.68 RCW DISPOSITION OF REVENUE

Sections

46.68.060	Highway safety fund.
46.68.080	Refund of vehicle license fees and fuel taxes to island counties—Deposit of fuel taxes into Puget Sound ferry operations account. (<i>Effective July 1, 2015.</i>)
46.68.090	Distribution of statewide fuel taxes. (<i>Effective July 1, 2015.</i>)
46.68.113	Preservation rating.
46.68.170	RV account.
46.68.210	Repealed.
46.68.300	Freight mobility investment account.
46.68.310	Freight mobility multimodal account.
46.68.325	Rural mobility grant program account.
46.68.330	Repealed.
46.68.340	Ignition interlock device revolving account (<i>as amended by 2013 2nd sp.s. c 4</i>).
46.68.340	Ignition interlock device revolving account (<i>as amended by 2013 2nd sp.s. c 35</i>).
46.68.350	Snowmobile account—Disposition of snowmobile moneys.
46.68.370	License plate technology account.
46.68.420	Special license plate fees by account—Disposition. (<i>Effective January 1, 2014.</i>)

46.68.060 Highway safety fund. There is hereby created in the state treasury a fund to be known as the highway safety fund to the credit of which must be deposited all moneys directed by law to be deposited therein. This fund must be used for carrying out the provisions of law relating to driver licensing, driver improvement, financial responsibility, cost of furnishing abstracts of driving records and maintaining such case records, and to carry out the purposes set

forth in RCW 43.59.010, and chapters 46.72 and 46.72A RCW. During the 2011-2013 and 2013-2015 fiscal biennia, the legislature may transfer from the highway safety fund to the Puget Sound ferry operations account, the motor vehicle fund, and the multimodal transportation account such amounts as reflect the excess fund balance of the highway safety fund. [2013 c 306 § 717. Prior: 2011 c 367 § 718; 2011 c 298 § 26; 2009 c 470 § 711; 2007 c 518 § 714; 1969 c 99 § 11; 1967 c 174 § 4; 1965 c 25 § 3; 1961 c 12 § 46.68.060; prior: 1957 c 104 § 1; 1937 c 188 § 81; RRS § 6312-81; 1921 c 108 § 13; RRS § 6375.]

Effective date—2013 c 306: See note following RCW 47.64.170.

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

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

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

Severability—Effective date—2007 c 518: See notes following RCW 46.68.170.

Deposits into account: RCW 46.20.505, 46.20.510, 46.81A.030.

Additional notes found at www.leg.wa.gov

46.68.080 Refund of vehicle license fees and fuel taxes to island counties—Deposit of fuel taxes into Puget Sound ferry operations account. (*Effective July 1, 2015.*)

(1) Vehicle license fees collected under RCW 46.17.350 and 46.17.355 and fuel taxes collected under RCW 82.38.030(1) and directly or indirectly paid by the residents of those counties composed entirely of islands and which have neither a fixed physical connection with the mainland nor any state highways on any of the islands of which they are composed, must be paid into the motor vehicle fund of the state of Washington and must monthly, as they accrue, and after deducting therefrom the expenses of issuing such licenses and the cost of collecting such fuel tax, be paid to the county treasurer of each such county to be by him or her disbursed as hereinafter provided.

(2) One-half of the vehicle license fees collected under RCW 46.17.350 and 46.17.355 and one-half of the fuel taxes collected under RCW 82.38.030(1) and directly or indirectly paid by the residents of those counties composed entirely of islands and which have either a fixed physical connection with the mainland or state highways on any of the islands of which they are composed, must be paid into the motor vehicle fund of the state of Washington and must monthly, as they accrue, and after deducting therefrom the expenses of issuing such licenses and the cost of collecting such fuel tax, be paid to the county treasurer of each such county to be by him or her disbursed as hereinafter provided.

(3) All funds paid to the county treasurer of the counties of either class referred to in subsections (1) and (2) of this section, must be distributed and credited by the county treasurer to the several road districts of each such county and paid to the city treasurer of each incorporated city and town within each such county, in the direct proportion that the assessed valuation of each such road district and incorporated city and town bears to the total assessed valuation of each such county.

(4) The amount of motor vehicle fuel tax paid by the residents of those counties composed entirely of islands must, for the purposes of this section, be that percentage of the total amount of motor vehicle fuel tax collected in the state that the

vehicle license fees paid by the residents of counties composed entirely of islands bears to the total vehicle license fees paid by the residents of the state.

(5)(a) An amount of fuel taxes must be deposited into the Puget Sound ferry operations account. This amount must equal the difference between the total amount of fuel taxes collected in the state under RCW 82.38.030 less the total amount of fuel taxes collected in the state under RCW 82.38.030(1) and be multiplied by a fraction. The fraction must equal the amount of vehicle license fees collected under RCW 46.17.350 and 46.17.355 from counties described in subsection (1) of this section divided by the total amount of vehicle license fees collected in the state under RCW 46.17.350 and 46.17.355.

(b) An additional amount of fuel taxes must be deposited into the Puget Sound ferry operations account. This amount must equal the difference between the total amount of fuel taxes collected in the state under RCW 82.38.030 less the total amount of fuel taxes collected in the state under RCW 82.38.030(1) and be multiplied by a fraction. The fraction must equal the amount of vehicle license fees collected under RCW 46.17.350 and 46.17.355 from counties described in subsection (2) of this section divided by the total amount of vehicle license fees collected in the state under RCW 46.17.350 and 46.17.355, and this must be multiplied by one-half. [2013 c 225 § 644; 2010 c 161 § 1128; 2010 c 8 § 9081; 2006 c 337 § 12; 1961 c 12 § 46.68.080. Prior: 1939 c 181 § 9; RRS § 6450-54a.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

46.68.090 Distribution of statewide fuel taxes. (Effective July 1, 2015.) (1) All moneys that have accrued or may accrue to the motor vehicle fund from the motor vehicle fuel tax and special fuel tax must be first expended for purposes enumerated in (a) and (b) of this subsection. The remaining net tax amount must be distributed monthly by the state treasurer in accordance with subsections (2) through (7) of this section.

(a) For payment of refunds of motor vehicle fuel tax and special fuel tax that has been paid and is refundable as provided by law;

(b) For payment of amounts to be expended pursuant to appropriations for the administrative expenses of the offices of state treasurer, state auditor, and the department of licensing of the state of Washington in the administration of the motor vehicle fuel tax and the special fuel tax, which sums must be distributed monthly.

(2) All of the remaining net tax amount collected under RCW 82.38.030(1) must be distributed as set forth in (a) through (j) of this section.

(a) For distribution to the motor vehicle fund an amount equal to 44.387 percent to be expended for highway purposes of the state as defined in RCW 46.68.130;

(b)(i) For distribution to the special category C account, hereby created in the motor vehicle fund, an amount equal to 3.2609 percent to be expended for special category C projects. Special category C projects are category C projects

that, due to high cost only, will require bond financing to complete construction.

(ii) The following criteria, listed in order of priority, must be used in determining which special category C projects have the highest priority:

(A) Accident experience;

(B) Fatal accident experience;

(C) Capacity to move people and goods safely and at reasonable speeds without undue congestion; and

(D) Continuity of development of the highway transportation network.

(iii) Moneys deposited in the special category C account in the motor vehicle fund may be used for payment of debt service on bonds the proceeds of which are used to finance special category C projects under this subsection (2)(b);

(c) For distribution to the Puget Sound ferry operations account in the motor vehicle fund an amount equal to 2.3283 percent;

(d) For distribution to the Puget Sound capital construction account in the motor vehicle fund an amount equal to 2.3726 percent;

(e) For distribution to the transportation improvement account in the motor vehicle fund an amount equal to 7.5597 percent;

(f) For distribution to the transportation improvement account in the motor vehicle fund an amount equal to 5.6739 percent and expended in accordance with RCW 47.26.086;

(g) For distribution to the cities and towns from the motor vehicle fund an amount equal to 10.6961 percent in accordance with RCW 46.68.110;

(h) For distribution to the counties from the motor vehicle fund an amount equal to 19.2287 percent: (i) Out of which there must be distributed from time to time, as directed by the department of transportation, those sums as may be necessary to carry out the provisions of RCW 47.56.725; and (ii) less any amounts appropriated to the county road administration board to implement the provisions of RCW 47.56.725(4), with the balance of such county share to be distributed monthly as the same accrues for distribution in accordance with RCW 46.68.120;

(i) For distribution to the county arterial preservation account, hereby created in the motor vehicle fund an amount equal to 1.9565 percent. These funds must be distributed by the county road administration board to counties in proportions corresponding to the number of paved arterial lane miles in the unincorporated area of each county and must be used for improvements to sustain the structural, safety, and operational integrity of county arterials. The county road administration board must adopt reasonable rules and develop policies to implement this program and to assure that a pavement management system is used;

(j) For distribution to the rural arterial trust account in the motor vehicle fund an amount equal to 2.5363 percent and expended in accordance with RCW 36.79.020.

(3) The remaining net tax amount collected under RCW 82.38.030(2) must be distributed to the transportation 2003 account (nickel account).

(4) The remaining net tax amount collected under RCW 82.38.030(3) must be distributed as follows:

(a) 8.3333 percent must be distributed to the incorporated cities and towns of the state in accordance with RCW 46.68.110;

(b) 8.3333 percent must be distributed to counties of the state in accordance with RCW 46.68.120; and

(c) The remainder must be distributed to the transportation partnership account created in RCW 46.68.290.

(5) The remaining net tax amount collected under RCW 82.38.030(4) must be distributed as follows:

(a) 8.3333 percent must be distributed to the incorporated cities and towns of the state in accordance with RCW 46.68.110;

(b) 8.3333 percent must be distributed to counties of the state in accordance with RCW 46.68.120; and

(c) The remainder must be distributed to the transportation partnership account created in RCW 46.68.290.

(6) The remaining net tax amount collected under RCW 82.38.030 (5) and (6) must be distributed to the transportation partnership account created in RCW 46.68.290.

(7) Nothing in this section or in RCW 46.68.130 may be construed so as to violate any terms or conditions contained in any highway construction bond issues now or hereafter authorized by statute and whose payment is by such statute pledged to be paid from any excise taxes on motor vehicle fuel and special fuels. [2013 c 225 § 645; 2011 c 120 § 4; 2005 c 314 § 103; 2003 c 361 § 403. Prior: 1999 c 269 § 2; 1999 c 94 § 6; prior: 1994 c 225 § 2; 1994 c 179 § 3; 1991 c 342 § 56; 1990 c 42 § 102; 1983 1st ex.s. c 49 § 21; 1979 c 158 § 184; 1977 ex.s. c 317 § 8; 1967 c 32 § 74; 1961 ex.s. c 7 § 5; 1961 c 12 § 46.68.090; prior: 1943 c 115 § 3; 1939 c 181 § 2; Rem. Supp. 1943 § 6600-1d; 1937 c 208 §§ 2, part, 3, part.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Effective date—2005 c 314 §§ 101-107, 109, 303-309, and 401: See note following RCW 46.68.290.

Part headings not law—2005 c 314: See note following RCW 46.68.035.

Findings—Part headings not law—Severability—2003 c 361: See notes following RCW 82.36.025.

Effective dates—2003 c 361: See note following RCW 82.08.020.

Legislative finding—Effective dates—1999 c 94: See notes following RCW 43.84.092.

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Rural arterial trust account: RCW 36.79.020.

Additional notes found at www.leg.wa.gov

46.68.113 Preservation rating. (1) During the 2013-2015 fiscal biennium, cities and towns shall provide to the transportation commission, or its successor entity, preservation rating information on at least seventy percent of the total city and town arterial network. Thereafter, the preservation rating information requirement shall increase in five percent increments in subsequent biennia, but in no case shall it exceed eighty percent. The rating system used by cities and towns must be based upon the Washington state pavement rating method or an equivalent standard approved by the department of transportation. Beginning January 1, 2007, the preservation rating information shall be submitted to the department.

(2) Cities and towns are exempt from the requirement to report preservation rating information to the department or the transportation commission through the 2013-2015 fiscal biennium. [2013 c 306 § 704; 2011 c 353 § 7; 2006 c 334 § 21; 2003 c 363 § 305.]

Effective date—2013 c 306: See note following RCW 47.64.170.

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

Effective date—2006 c 334: See note following RCW 47.01.051.

Finding—Intent—2003 c 363: See note following RCW 35.84.060.

Part headings not law—Severability—2003 c 363: See notes following RCW 47.28.241.

46.68.170 RV account. There is hereby created in the motor vehicle fund the RV account. All moneys hereafter deposited in said account shall be used by the department of transportation for the construction, maintenance, and operation of recreational vehicle sanitary disposal systems at safety rest areas in accordance with the department's highway system plan as prescribed in chapter 47.06 RCW. During the 2011-2013 and 2013-2015 fiscal biennia, the legislature may transfer from the RV account to the motor vehicle fund such amounts as reflect the excess fund balance of the RV account to accomplish the purposes identified in this section. [2013 c 306 § 705; 2011 c 367 § 715; 2009 c 470 § 701; 2007 c 518 § 701; 1996 c 237 § 2; 1980 c 60 § 3.]

Effective date—2013 c 306: See note following RCW 47.64.170.

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

Effective date—2009 c 470: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 13, 2009]." [2009 c 470 § 802.]

Severability—2007 c 518: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2007 c 518 § 1101.]

Effective date—2007 c 518: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 15, 2007]." [2007 c 518 § 1102.]

Additional license fees for recreational vehicles: RCW 46.17.375 and 47.01.460.

Additional notes found at www.leg.wa.gov

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

46.68.300 Freight mobility investment account. The freight mobility investment account is hereby created in the state treasury. Money in the account may be spent only after appropriation. Expenditures from the account may be used only for freight mobility projects that have been approved by the freight mobility strategic investment board in RCW 47.06A.020 and may include any principal and interest on bonds authorized for the projects or improvements. [2013 c 104 § 3; 2005 c 314 § 105.]

Effective date—2005 c 314 §§ 101-107, 109, 303-309, and 401: See note following RCW 46.68.290.

Part headings not law—2005 c 314: See note following RCW 46.68.035.

46.68.310 Freight mobility multimodal account. The freight mobility multimodal account is created in the state treasury. Money in the account may be spent only after

appropriation. Expenditures from the account may be used only for freight mobility projects that have been approved by the freight mobility strategic investment board in RCW 47.06A.020 and may include any principal and interest on bonds authorized for the projects or improvements. [2013 c 104 § 4; 2006 c 337 § 7.]

Effective date—2006 c 337 § 7: "Section 7 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect March 24, 2006." [2006 c 337 § 16.]

46.68.325 Rural mobility grant program account. (1) The rural mobility grant program account is created in the state treasury. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for the grants provided under RCW 47.66.100.

(2) Beginning September 2011, by the last day of September, December, March, and June of each year, the state treasurer shall transfer from the multimodal transportation account to the rural mobility grant program account two million five hundred thousand dollars.

(3) During the 2011-2013 and 2013-2015 fiscal biennia, the legislature may transfer from the rural mobility grant program account to the multimodal transportation account such amounts as reflect the excess fund balance of the rural mobility grant program account. [2013 c 306 § 706; 2011 c 367 § 721; 2011 c 272 § 1.]

Effective date—2013 c 306: See note following RCW 47.64.170.

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

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

46.68.340 Ignition interlock device revolving account (as amended by 2013 2nd sp.s. c 4). The ignition interlock device revolving account is created in the state treasury. All receipts from the fee assessed under RCW 46.20.385(6) must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for administering and operating the ignition interlock device revolving account program and during the 2013-2015 fiscal biennium, the legislature may appropriate moneys from the ignition interlock device revolving account for substance abuse programs for offenders. [2013 2nd sp.s. c 4 § 986; 2008 c 282 § 3.]

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

46.68.340 Ignition interlock device revolving account (as amended by 2013 2nd sp.s. c 35). The ignition interlock device revolving account is created in the state treasury. All receipts from the fee assessed under RCW 46.20.385(6) must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used ((only)) for administering and operating the ignition interlock device revolving account program and implementing effective strategies to reduce motor vehicle-related deaths and serious injuries, such as those found in the Washington state strategic highway safety plan: Target Zero. [2013 2nd sp.s. c 35 § 14; 2008 c 282 § 3.]

Reviser's note: RCW 46.68.340 was amended twice during the 2013 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

46.68.350 Snowmobile account—Disposition of snowmobile moneys. (1) The snowmobile account is created within the state treasury. Snowmobile registration fees, monetary civil penalties from snowmobile dealers, and snowmobile fuel tax moneys collected under this chapter and

chapter 46.17 RCW and in excess of the amounts fixed for the administration of the registration and fuel tax provisions of this chapter must be deposited into the account and must be appropriated only to the state parks and recreation commission for the administration and coordination of this chapter.

(2) The moneys collected by the department as snowmobile registration fees, monetary civil penalties from snowmobile dealers, and fuel tax moneys placed into the account must be distributed in the following manner:

(a) Actual expenses not to exceed three percent for each year must be retained by the department to cover expenses incurred in the administration of the registration and fuel tax provisions of this chapter; and

(b) The remainder of funds each year must be remitted to the state treasurer to be deposited into the snowmobile account of the general fund and must be appropriated only to the commission to be expended for snowmobile purposes. Purposes may include, but not necessarily be limited to, the administration, acquisition, development, operation, and maintenance of snowmobile facilities and development and implementation of snowmobile safety, enforcement, and education programs. During the 2013-2015 biennium the legislature may appropriate funds from the account to the department of natural resources for purpose of planning and supporting snowmobile activities on lands purchased by the department in the Yakima river basin.

(3) This section is not intended to discourage any public agency in this state from developing and implementing snowmobile programs. The commission may award grants to public agencies and contract with any public or private agency or person for the purpose of developing and implementing snowmobile programs, as long as the programs are not inconsistent with the rules adopted by the commission. [2013 2nd sp.s. c 19 § 7040; 2010 c 161 § 823; 1991 sp.s. c 13 § 9; 1985 c 57 § 61; 1982 c 17 § 6; 1979 ex.s. c 182 § 7. Formerly RCW 46.10.075.]

Effective date—2013 2nd sp.s. c 19: See note following RCW 43.34.080.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Additional notes found at www.leg.wa.gov

46.68.370 License plate technology account. The license plate technology account is created in the state treasury. All receipts collected under RCW 46.17.015 must be deposited into this account. Expenditures from this account must support current and future license plate technology and systems integration upgrades for both the department and correctional industries. Moneys in the account may be spent only after appropriation. Additionally, the moneys in this account may be used to reimburse the motor vehicle account for any appropriation made to implement the digital license plate system. During the 2011-2013 and 2013-2015 fiscal biennia, the legislature may transfer from the license plate technology account to the highway safety account [fund] such amounts as reflect the excess fund balance of the license plate technology account. [2013 c 306 § 713; 2011 c 367 § 716; 2010 c 161 § 818; 2009 c 470 § 704; 2007 c 518 § 704; 2003 c 370 § 4. Formerly RCW 46.16.685.]

Effective date—2013 c 306: See note following RCW 46.68.170.

Effective date—2011 c 367 §§ 703, 704, 716, and 719: See note following RCW 46.18.060.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

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

Severability—Effective date—2007 c 518: See notes following RCW 46.68.170.

46.68.420 Special license plate fees by account—Disposition. (Effective January 1, 2014.) (1) The department shall:

(a) Collect special license plate fees established under RCW 46.17.220;

(b) Deduct an amount not to exceed twelve dollars for initial issue and two dollars for renewal issue for administration and collection expenses incurred by it; and

(c) Remit the remaining proceeds to the custody of the state treasurer with a proper identifying detailed report.

(2) The state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the special license plate. Upon determination by the department that the state has been reimbursed, the state treasurer shall credit the remaining special license plate fee amounts for each special license plate to the following appropriate account as created in this section in the custody of the state treasurer:

ACCOUNT	CONDITIONS FOR USE OF FUNDS
4-H programs	Support Washington 4-H programs
Gonzaga University alumni association	Scholarship funds to needy and qualified students attending or planning to attend Gonzaga University
Helping kids speak	Provide free diagnostic and therapeutic services to families of children who suffer from a delay in language or speech development
Law enforcement memorial	Provide support and assistance to survivors and families of law enforcement officers in Washington killed in the line of duty and to organize, finance, fund, construct, utilize, and maintain a memorial on the state capitol grounds to honor those fallen officers
Lighthouse environmental programs	Support selected Washington state lighthouses that are accessible to the public and staffed by volunteers; provide environmental education programs; provide grants for other Washington lighthouses to assist in funding infrastructure preservation and restoration; encourage and support interpretive programs by lighthouse docents
Music matters awareness	Promote music education in schools throughout Washington
Seattle Seahawks	Provide funds to InvestED to encourage secondary students who have economic needs to stay in school, return to school, or get involved within their learning community

Seattle Sounders FC

Provide funds to Washington state mentors and the association of Washington generals created in RCW 43.15.030 in the following manner: (a) Seventy percent and the remaining proceeds, if any, to Washington state mentors, to increase the number of mentors in the state by offering mentoring grants throughout Washington state that foster positive youth development and academic success, with up to twenty percent of these proceeds authorized for program administration costs; and (b) up to thirty percent, not to exceed forty-thousand dollars annually as adjusted for inflation by the office of financial management, to the association of Washington generals, to develop Washington state educational, veterans, international relations, and civics projects and to recognize the outstanding public service of individuals or groups in the state of Washington

Share the road

Promote bicycle safety and awareness education in communities throughout Washington

Ski & ride Washington

Promote winter snowsports, such as skiing and snowboarding, and related programs, such as ski and ride safety programs, underprivileged youth ski and ride programs, and active, healthy lifestyle programs

State flower

Support Meerkerk Rhododendron Gardens and provide for grants to other qualified nonprofit organizations' efforts to preserve rhododendrons

Volunteer firefighters

Receive and disseminate funds for purposes on behalf of volunteer firefighters, their families, and others deemed in need

Washington state council of firefighters benevolent fund

Receive and disseminate funds for charitable purposes on behalf of members of the Washington state council of firefighters, their families, and others deemed in need

Washington's national park fund

Build awareness of Washington's national parks and support priority park programs and projects in Washington's national parks, such as enhancing visitor experience, promoting volunteerism, engaging communities, and providing educational opportunities related to Washington's national parks

We love our pets

Support and enable the Washington federation of animal welfare and control agencies to promote and perform spay/neuter surgery of Washington state pets in order to reduce pet population

(3) Only the director or the director's designee may authorize expenditures from the accounts described in subsection (2) of this section. The accounts are subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(4) Funds in the special license plate accounts described in subsection (2) of this section must be disbursed subject to the conditions described in subsection (2) of this section and under contract between the department and qualified nonprofit organizations that provide the services described in subsection (2) of this section.

(5) For the purposes of this section, a "qualified nonprofit organization" means a not-for-profit corporation oper-

ating in Washington that has received a determination of tax exempt status under 26 U.S.C. Sec. 501(c)(3). The qualified nonprofit organization must meet all the requirements under RCW 46.18.100(1). [2013 c 286 § 3; 2012 c 65 § 5. Prior: 2011 c 229 § 4; 2011 c 225 § 3; 2011 c 171 § 87; 2010 c 161 § 809.]

Effective date—2013 c 286: See note following RCW 46.18.200.

Effective date—2012 c 65: See note following RCW 46.18.200.

Effective date—2011 c 229: See note following RCW 46.18.200.

Effective date—2011 c 225: See note following RCW 46.18.200.

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Chapter 46.72A RCW

LIMOUSINES

Sections

46.72A.020 Engagement of and fares for carrier services—Service records—Carrier information—Penalties—Rules.

46.72A.020 Engagement of and fares for carrier services—Service records—Carrier information—Penalties—Rules. (1) Contact by a customer or customer's agent to engage the services of a carrier's limousine must be initiated by a customer or customer's agent at a time and place different from the customer's time and place of departure. The fare for service must be agreed upon prior to departure. Under no circumstances may customers or customers' agents make arrangements to immediately engage the services of a carrier's limousine with the chauffeur, even if the chauffeur is an owner or officer of the company, with the single exception of stand-hail limousines only at a facility owned and operated by a port district in a county with a population of one million or more that are licensed and restricted by the rules and policies set forth by the port district.

(2) At the time of the conduct of the commercial limousine business, the chauffeur of a limousine and the limousine carrier business must possess written or electronic records substantiating the prearrangement of the carrier's services for any customer carried for compensation, except for vehicles meeting the requirements of the exception for stand-hail limousines described in subsection (1) of this section. Limousine carriers and limousine chauffeurs operating as an independent business must list a physical address on their business license issued under chapter 19.02 RCW where records substantiating the prearrangement of the carrier's services may be reviewed by an enforcement officer. A limousine carrier must retain these records for a minimum of one calendar year, and failure to do so is a class 3 civil infraction against the carrier for each record that is missing or fails to include all of the information described in rules adopted under subsection (4) of this section.

(3) Limousine carriers and limousine chauffeurs operating as an independent business must list a telephone or pager number that is used to prearrange the carrier's services for any customer carried for compensation.

(4) The department must adopt rules specifying the content and retention schedule of the records required for compliance with subsection (2) of this section.

(5) The failure of a chauffeur who is operating a limousine to immediately provide, on demand by an enforcement officer, written or electronic records required by the department substantiating the prearrangement of the carrier's services for any customer carried for compensation, except for limousines meeting the requirements of the exception for stand-hail limousines described in subsection (1) of this section, is a class 2 civil infraction and is subject to monetary penalties under RCW 7.80.120. It is a class 1 civil infraction for a repeat offense under this subsection during the same calendar year.

(6) The department must define by rule conditions under which a chauffeur is considered to be operating a limousine, including when the limousine is parked in a designated passenger load zone. [2013 c 144 § 40; 2011 c 374 § 2; 1996 c 87 § 5.]

Effective date—2011 c 374 §§ 1-12: See note following RCW 46.72A.010.

Report by internal work group on issuance of chauffeur licenses—2011 c 374: See note following RCW 46.72A.090.

Chapter 46.81A RCW

MOTORCYCLE SKILLS EDUCATION PROGRAM

Sections

46.81A.010 Definitions.

46.81A.020 Powers and duties of director, department.

46.81A.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Department" means the department of licensing.

(2) "Director" means the director of licensing.

(3) "Motorcycle" has the same meaning as provided in RCW 46.04.330 and excludes off-road motorcycles.

(4) "Motorcycle skills education program" means a motorcycle rider skills training program to be administered by the department. [2013 c 174 § 3. Prior: 2003 c 353 § 11; 2003 c 41 § 4; 1988 c 227 § 2.]

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

Effective date—2003 c 353: See note following RCW 46.04.320.

Short title—Effective date—2003 c 41: See notes following RCW 46.20.500.

46.81A.020 Powers and duties of director, department. (1) The director shall administer and enforce the law pertaining to the motorcycle skills education program as set forth in this chapter.

(2) The director may adopt and enforce reasonable rules that are consistent with this chapter.

(3) The director shall revise the Washington motorcycle safety program to:

(a) Institute separate novice and advanced motorcycle skills education courses for both two-wheeled and three-wheeled motorcycles that are each a minimum of eight hours and no more than sixteen hours at a cost, except as provided in subsection (5) of this section, of (i) no more than fifty dol-

lars for Washington state residents under the age of eighteen, and (ii) no more than one hundred twenty-five dollars for Washington state residents who are eighteen years of age or older and military personnel of any age stationed in Washington state;

(b) Encourage the use of loaned or used motorcycles for use in the motorcycle skills education course if the instructor approves them;

(c) Require all instructors for two-wheeled motorcycles to conduct at least three classes in a one-year period, and all instructors for three-wheeled motorcycles to conduct at least one class in a one-year period, to maintain their teaching eligibility.

(4) The department may enter into agreements to review and certify that a private motorcycle skills education course meets educational standards equivalent to those required of courses conducted under the motorcycle skills education program. An agreement entered into under this subsection must provide that the department may conduct periodic audits to ensure that educational standards continue to meet those required for courses conducted under the motorcycle skills education program, and that the costs of the review, certification, and audit process will be borne by the party seeking certification.

(5) Subject to the requirements provided in this subsection, the department must allow private motorcycle skills education programs to offer motorcycle safety education where students pay the full cost for the training. After the department has reviewed and certified that a private motorcycle skills education course proposed under this subsection meets educational standards equivalent to those offered under subsection (3)(a) of this section, the department must enter into an agreement with the private motorcycle skills education program. An agreement entered into under this subsection must provide that (a) the department may conduct periodic audits to ensure that educational standards continue to meet those of other programs approved by the department, and (b) the costs of the review, certification, and audit process will be borne by the program seeking certification.

(6) The department shall obtain and compile information from applicants for a motorcycle endorsement regarding whether they have completed a state approved or certified motorcycle skills education course. [2013 c 33 § 1; 2007 c 97 § 2; 2003 c 41 § 5; 2002 c 197 § 2; 1998 c 245 § 91; 1993 c 115 § 2; 1988 c 227 § 3.]

Effective date—2013 c 33: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2013." [2013 c 33 § 2.]

Short title—Effective date—2003 c 41: See notes following RCW 46.20.500.

Chapter 46.83 RCW TRAFFIC SCHOOLS

Sections

46.83.070 Use of fees collected in excess of school costs—Limitations.

46.83.070 Use of fees collected in excess of school costs—Limitations. (1) A traffic school established by a city, town, or county under this chapter that collects fees for

the cost of attending the traffic school may use any fees collected that are in excess of the costs of the traffic school for the following activities:

- (a) Safe driver education materials and programs;
- (b) Safe driver education promotions and advertising; or
- (c) Costs associated with the training of law enforcement officers.

(2) This section does not authorize a city, town, or county to increase or impose new fees for traffic schools solely for the uses authorized in subsection (1) of this section.

(3) This section is not intended, and may not be construed, to reduce, increase, or otherwise impact funding for judicial programs, functions, or services.

(4) The fees collected by a traffic school in excess of the costs of the traffic school must be used only for the activities listed in subsection (1) of this section and are not subject to indirect costs or to be used to supplement any other costs of a city, town, or county not specifically described in this section. [2013 c 41 § 1; 2011 c 197 § 1.]

Chapter 46.87 RCW

PROPORTIONAL REGISTRATION

(Formerly: International Registration Plan)

Sections

46.87.080 Cab cards, validation tabs, special license plates—Design, procedures—Issuance, refusal, revocation. (*Effective July 1, 2015.*)

46.87.080 Cab cards, validation tabs, special license plates—Design, procedures—Issuance, refusal, revocation. (*Effective July 1, 2015.*) (1) Upon making satisfactory application and payment of applicable fees and taxes for proportional registration under this chapter, the department must issue a cab card and validation tab for each vehicle, and to vehicles of Washington-based fleets, two distinctive apportionable license plates for each motor vehicle. License plates must be displayed on vehicles as required by RCW 46.16A.200(5). The number and plate must be of a design, size, and color determined by the department. The plates must be treated with reflectorized material and clearly marked with the words "WASHINGTON" and "APPORTIONED," both words to appear in full and without abbreviation.

(2) The cab card serves as the certificate of registration for a proportionally registered vehicle. The face of the cab card must contain the name and address of the registrant as contained in the records of the department, the license plate number assigned to the vehicle by the base jurisdiction, the vehicle identification number, and such other description of the vehicle and data as the department may require. The cab card must be signed by the registrant, or a designated person if the registrant is a business firm, and must at all times be carried in or on the vehicle to which it was issued.

(3) The apportioned license plates are not transferrable from vehicle to vehicle unless otherwise determined by rule and may be used only on the vehicle to which they are assigned by the department for as long as they are legible or until such time as the department requires them to be removed and returned to the department.

(4) Distinctive validation tab(s) of a design, size, and color determined by the department must be affixed to the apportioned license plate(s) as prescribed by the department to indicate the month, if necessary, and year for which the vehicle is registered.

(5) Renewals are effected by the issuance and display of such tab(s) after making satisfactory application and payment of applicable fees and taxes.

(6) Fleet vehicles so registered and identified are deemed to be fully licensed and registered in this state for any type of movement or operation. However, in those instances in which a grant of authority is required for interstate or intrastate movement or operation, no such vehicle may be operated in interstate or intrastate commerce in this state unless the owner has been granted interstate operating authority in the case of interstate operations or intrastate operating authority by the Washington utility and transportation commission in the case of intrastate operations and unless the vehicle is being operated in conformity with that authority.

(7) The department may issue temporary authorization permits (TAPs) to qualifying operators for the operation of vehicles pending issuance of license identification. A fee of one dollar plus a one dollar filing fee must be collected for each permit issued. The permit fee must be deposited in the motor vehicle fund, and the filing fee must be deposited in the highway safety fund. The department may adopt rules for use and issuance of the permits.

(8) The department may refuse to issue any license or permit authorized by subsection (1) or (7) of this section to any person: (a) Who formerly held any type of license or permit issued by the department pursuant to chapter 46.16A, 46.85, 46.87, or 82.38 RCW that has been revoked for cause, which cause has not been removed; or (b) who is a subterfuge for the real party in interest whose license or permit issued by the department pursuant to chapter 46.16A, 46.85, 46.87, or 82.38 RCW and has been revoked for cause, which cause has not been removed; or (c) who, as an individual licensee, or officer, director, owner, or managing employee of a nonindividual licensee, has had a license or permit issued by the department pursuant to chapter 46.16A, 46.85, 46.87, or 82.38 RCW which has been revoked for cause, which cause has not been removed; or (d) who has an unsatisfied debt to the state assessed under either chapter 46.16A, 46.85, 46.87, 82.38, or 82.44 RCW.

(9) The department may revoke the license or permit authorized by subsection (1) or (7) of this section issued to any person for any of the grounds constituting cause for denial of licenses or permits set forth in subsection (8) of this section.

(10) Before such refusal or revocation under subsection (8) or (9) of this section, the department must grant the applicant a hearing and at least ten days written notice of the time and place of the hearing. [2013 c 225 § 609; 2011 c 171 § 97; 2005 c 194 § 6; 1998 c 115 § 1; 1993 c 307 § 14; 1987 c 244 § 23; 1985 c 380 § 8.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Additional notes found at www.leg.wa.gov

Title 47

PUBLIC HIGHWAYS AND TRANSPORTATION

Chapters

- 47.01** Department of transportation.
- 47.02** Department buildings.
- 47.04** General provisions.
- 47.06A** Freight mobility.
- 47.10** Highway construction bonds.
- 47.12** Acquisition and disposition of state highway property.
- 47.26** Development in urban areas—Urban arterials.
- 47.28** Construction and maintenance of highways.
- 47.29** Transportation innovative partnerships.
- 47.39** Scenic and recreational highway act of 1967.
- 47.42** Highway advertising control act—Scenic vistas act.
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- 47.60** Puget sound ferry and toll bridge system.
- 47.64** Marine employees—Public employment relations.
- 47.68** Aeronautics.

Chapter 47.01 RCW

DEPARTMENT OF TRANSPORTATION

Sections

- 47.01.470 Transfer of ownership of department-owned vessel—Review of vessel's physical condition.
- 47.01.475 Transfer of ownership of department-owned vessel—Further requirements.

Grant administration from multiuse roadway safety account funds: RCW 46.09.540.

47.01.470 Transfer of ownership of department-owned vessel—Review of vessel's physical condition. (1) Prior to transferring ownership of a department-owned vessel, the department shall conduct a thorough review of the physical condition of the vessel, the vessel's operating capability, and any containers and other materials that are not fixed to the vessel.

(2) If the department determines that the vessel is in a state of advanced deterioration or poses a reasonably imminent threat to human health or safety, including a threat of environmental contamination, the department may: (a) Not transfer the vessel until the conditions identified under this subsection have been corrected; or (b) permanently dispose of the vessel by landfill, deconstruction, or other related method. [2013 c 291 § 13.]

47.01.475 Transfer of ownership of department-owned vessel—Further requirements. (1) Following the inspection required under RCW 47.01.470 and prior to transferring ownership of a department-owned vessel, the department shall obtain the following from the transferee:

(a) The purposes for which the transferee intends to use the vessel; and

(b) Information demonstrating the prospective owner's intent to obtain legal moorage following the transfer, in the manner determined by the department.

(2)(a) The department shall remove any containers or other materials that are not fixed to the vessel and contain hazardous substances, as defined under RCW 70.105D.020.

(b) However, the department may transfer a vessel with:

(i) Those containers or materials described under (a) of this subsection where the transferee demonstrates to the department's satisfaction that the container's or material's presence is consistent with the anticipated use of the vessel; and

(ii) A reasonable amount of fuel as determined by the department, based on factors including the vessel's size, condition, and anticipated use of the vessel, including initial destination following transfer.

(c) The department may consult with the department of ecology in carrying out the requirements of this subsection.

(3) Prior to sale, and unless the vessel has a title or valid marine document, the department is required to apply for a certificate of title for the vessel under RCW 88.02.510 and register the vessel under RCW 88.02.550. [2013 c 291 § 14.]

Chapter 47.02 RCW DEPARTMENT BUILDINGS

Sections

47.02.070	Bonds—Statement describing nature of obligation—Pledge of excise taxes. (<i>Effective July 1, 2015.</i>)
47.02.160	District 1 headquarters bonds—Statement of general obligation—Pledge of excise taxes. (<i>Effective July 1, 2015.</i>)

47.02.070 Bonds—Statement describing nature of obligation—Pledge of excise taxes. (*Effective July 1, 2015.*) Bonds issued under the provisions of this chapter must distinctly state that they are not a general obligation of the state but are payable in the manner provided in this chapter from the proceeds of state excise taxes on motor vehicle fuels imposed by chapter 82.38 RCW. The proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the provisions of this chapter and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the provisions of this chapter. [2013 c 225 § 610; 1965 ex.s. c 167 § 7.]

Effective date—2013 c 225: See note following RCW 82.38.010.

47.02.160 District 1 headquarters bonds—Statement of general obligation—Pledge of excise taxes. (*Effective July 1, 2015.*) Bonds issued under the authority of RCW 47.02.120 through 47.02.190 must distinctly state that they are a general obligation of the state of Washington, must pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and must contain an unconditional promise to pay such principal and interest as the same becomes due. The principal and interest on the bonds must be first payable in the manner provided in RCW 47.02.120 through 47.02.190 from the proceeds of the state excise taxes on motor vehicle and special fuels imposed by chapter 82.38 RCW. Proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the authority of RCW 47.02.120 through 47.02.190, and the legislature agrees to continue to

impose these excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the authority of RCW 47.02.120 through 47.02.190. [2013 c 225 § 611; 1995 c 274 § 5; 1990 c 293 § 5.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Additional notes found at www.leg.wa.gov

Chapter 47.04 RCW GENERAL PROVISIONS

Sections

47.04.082	Urban public transportation systems—Defined.
47.04.280	Transportation system policy goals.

47.04.082 Urban public transportation systems—Defined. As used in chapter 108, Laws of 1967, "urban public transportation system" means a system for the public transportation of persons or property by buses, streetcars, trains, electric trolley coaches, other public transit vehicles, or any combination thereof operating in or through predominantly urban areas and owned and operated by the state, any public agency, any city or county or any municipal corporation of the state, including all structures, facilities, vehicles and other property rights and interest forming a part of such a system. [2013 c 113 § 6; 1967 c 108 § 1.]

47.04.280 Transportation system policy goals. (1) It is the intent of the legislature to establish policy goals for the planning, operation, performance of, and investment in, the state's transportation system. The policy goals established under this section are deemed consistent with the benchmark categories adopted by the state's blue ribbon commission on transportation on November 30, 2000. Public investments in transportation should support achievement of these policy goals:

(a) Economic vitality: To promote and develop transportation systems that stimulate, support, and enhance the movement of people and goods to ensure a prosperous economy;

(b) Preservation: To maintain, preserve, and extend the life and utility of prior investments in transportation systems and services;

(c) Safety: To provide for and improve the safety and security of transportation customers and the transportation system;

(d) Mobility: To improve the predictable movement of goods and people throughout Washington state;

(e) Environment: To enhance Washington's quality of life through transportation investments that promote energy conservation, enhance healthy communities, and protect the environment; and

(f) Stewardship: To continuously improve the quality, effectiveness, and efficiency of the transportation system.

(2) The powers, duties, and functions of state transportation agencies must be performed in a manner consistent with the policy goals set forth in subsection (1) of this section.

(3) These policy goals are intended to be the basis for establishing detailed and measurable objectives and related performance measures.

(4) It is the intent of the legislature that the office of financial management establish objectives and performance

measures for the department of transportation and other state agencies with transportation-related responsibilities to ensure transportation system performance at local, regional, and state government levels progresses toward the attainment of the policy goals set forth in subsection (1) of this section. The office of financial management shall submit initial objectives and performance measures to the legislature for its review and shall provide copies of the same to the commission during the 2008 legislative session. The office of financial management shall submit objectives and performance measures to the legislature for its review and shall provide copies of the same to the commission during each regular session of the legislature during an even-numbered year thereafter.

(5) A local or regional agency engaging in transportation planning may voluntarily establish objectives and performance measures to demonstrate progress toward the attainment of the policy goals set forth in subsection (1) of this section or any other transportation policy goals established by the local or regional agency. A local or regional agency engaging in transportation planning is encouraged to provide local and regional objectives and performance measures to be included with the objectives and performance measures submitted to the legislature pursuant to subsection (4) of this section.

(6) This section does not create a private right of action. [2013 c 199 § 1; 2010 c 74 § 1; 2007 c 516 § 3; 2002 c 5 § 101. Formerly RCW 47.01.012.]

Findings—Intent—2007 c 516: See note following RCW 47.01.011.

Additional notes found at www.leg.wa.gov

Chapter 47.06A RCW FREIGHT MOBILITY

Sections

47.06A.020 Board—Duties.
47.06A.045 Board—Standing committee—Travel reimbursement.
47.06A.050 Allocation of funds.

47.06A.020 Board—Duties. (1) The board shall:

(a) Adopt rules and procedures necessary to implement the freight mobility strategic investment program;

(b) Solicit from public entities proposed projects that meet eligibility criteria established in accordance with subsection (4) of this section; and

(c) Review and evaluate project applications based on criteria established under this section, and prioritize and select projects comprising a portfolio to be funded in part with grants from state funds appropriated for the freight mobility strategic investment program. In determining the appropriate level of state funding for a project, the board shall ensure that state funds are allocated to leverage the greatest amount of partnership funding possible. The board shall ensure that projects included in the portfolio are not more appropriately funded with other federal, state, or local government funding mechanisms or programs. The board shall reject those projects that appear to improve overall general mobility with limited enhancement for freight mobility.

The board shall provide periodic progress reports on its activities to the office of financial management and the senate and house transportation committees.

(2) The board may:

(a) Accept from any state or federal agency, loans or grants for the financing of any transportation project and enter into agreements with any such agency concerning the loans or grants;

(b) Provide technical assistance to project applicants;

(c) Accept any gifts, grants, or loans of funds, property, or financial, or other aid in any form from any other source on any terms and conditions which are not in conflict with this chapter;

(d) Adopt rules under chapter 34.05 RCW as necessary to carry out the purposes of this chapter; and

(e) Do all things necessary or convenient to carry out the powers expressly granted or implied under this chapter.

(3) The board shall designate strategic freight corridors within the state. The board shall update the list of designated strategic corridors not less than every two years, and shall establish a method of collecting and verifying data, including information on city and county-owned roadways.

(4) The board shall utilize threshold project eligibility criteria that, at a minimum, includes the following:

(a) The project must be on a strategic freight corridor;

(b) The project must meet one of the following conditions:

(i) It is primarily aimed at reducing identified barriers to freight movement with only incidental benefits to general or personal mobility; or

(ii) It is primarily aimed at increasing capacity for the movement of freight with only incidental benefits to general or personal mobility; or

(iii) It is primarily aimed at mitigating the impact on communities of increasing freight movement, including roadway/railway conflicts; and

(c) The project must have a total public benefit/total public cost ratio of equal to or greater than one.

(5) From June 11, 1998, through the biennium ending June 30, 2001, the board shall use the multicriteria analysis and scoring framework for evaluating and ranking eligible freight mobility and freight mitigation projects developed by the freight mobility project prioritization committee and contained in the January 16, 1998, report entitled "Project Eligibility, Priority and Selection Process for a Strategic Freight Investment Program." The prioritization process shall measure the degree to which projects address important program objectives and shall generate a project score that reflects a project's priority compared to other projects. The board shall assign scoring points to each criterion that indicate the relative importance of the criterion in the overall determination of project priority. After June 30, 2001, the board may supplement and refine the initial project priority criteria and scoring framework developed by the freight mobility project prioritization committee as expertise and experience is gained in administering the freight mobility program.

(6) It is the intent of the legislature that each freight mobility project contained in the project portfolio approved by the board utilize the greatest amount of nonstate funding possible. The board shall adopt rules that give preference to projects that contain the greatest levels of financial participation from nonprogram fund sources. The board shall consider twenty percent as the minimum partnership contribution, but shall also ensure that there are provisions allowing

exceptions for projects that are located in areas where minimal local funding capacity exists or where the magnitude of the project makes the adopted partnership contribution financially unfeasible.

(7) The board shall develop and recommend policies that address operational improvements that primarily benefit and enhance freight movement, including, but not limited to, policies that reduce congestion in truck lanes at border crossings and weigh stations and provide for access to ports during nonpeak hours. [2013 c 104 § 1; 2005 c 319 § 125; 1999 c 216 § 1; 1998 c 175 § 3.]

Findings—Intent—Part headings—Effective dates—2005 c 319: See notes following RCW 43.17.020.

47.06A.045 Board—Standing committee—Travel reimbursement. During the 2013-2015 fiscal biennium, members of the freight advisory committee group created as a standing committee of the board may be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060. [2013 c 306 § 707.]

Effective date—2013 c 306: See note following RCW 47.64.170.

47.06A.050 Allocation of funds. (1) For the purpose of allocating funds for the freight mobility strategic investment program, the board shall allocate the first fifty-five percent of funds to the highest priority projects, without regard to location.

(2) The remaining funds shall be allocated equally among three regions of the state, defined as follows:

(a) The Puget Sound region includes King, Pierce, and Snohomish counties;

(b) The western Washington region includes Clallam, Jefferson, Island, Kitsap, San Juan, Skagit, Whatcom, Clark, Cowlitz, Grays Harbor, Lewis, Mason, Pacific, Skamania, Thurston, and Wahkiakum counties; and

(c) The eastern Washington region includes Adams, Chelan, Douglas, Ferry, Grant, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Whitman, Asotin, Benton, Columbia, Franklin, Garfield, Kittitas, Klickitat, Walla Walla, and Yakima counties.

(3) If a region does not have enough qualifying projects to utilize its allocation of funds, the funds will be made available to the next highest priority project, without regard to location.

(4) In the event that a proposal contains projects in more than one region, for purposes of assuring that equitable geographic distributions are made under subsection (2) of this section, the board shall evaluate the proposal and proportionally assign the benefits that are attributable to each region.

(5) If the board identifies a project for funding, but later determines that the project is not ready to proceed, the board shall recommend removing the project from consideration and the next highest priority project shall be substituted in the project portfolio. Any project removed from funding consideration because it is not ready to proceed shall retain its position on the priority project list. [2013 c 104 § 2; 1998 c 175 § 6.]

Chapter 47.10 RCW

HIGHWAY CONSTRUCTION BONDS

Sections

47.10.040	Bonds not general obligations—Taxes pledged. (<i>Effective July 1, 2015.</i>)
47.10.180	Additional bonds—Bonds not general obligations—Taxes pledged. (<i>Effective July 1, 2015.</i>)
47.10.310	Construction in Grant, Franklin, Adams counties authorized—Bonds not general obligations—Taxes pledged. (<i>Effective July 1, 2015.</i>)
47.10.440	Echo Lake route—Bonds not general obligations—Taxes pledged. (<i>Effective July 1, 2015.</i>)
47.10.714	Tacoma-Seattle-Everett facility—Bonds not general obligations—Taxes pledged. (<i>Effective July 1, 2015.</i>)
47.10.729	Construction in Grant, Franklin, Adams counties authorized—Bonds not general obligations—Taxes pledged. (<i>Effective July 1, 2015.</i>)
47.10.756	Additional funds—Bonds not general obligations—Taxes pledged. (<i>Effective July 1, 2015.</i>)
47.10.766	Bonds—Statement describing nature of obligation—Pledge of excise taxes. (<i>Effective July 1, 2015.</i>)
47.10.793	Statement of general obligation—Pledge of excise taxes. (<i>Effective July 1, 2015.</i>)
47.10.804	Statement of general obligation—Pledge of excise taxes. (<i>Effective July 1, 2015.</i>)
47.10.815	Statement of general obligation—Pledge of excise taxes. (<i>Effective July 1, 2015.</i>)
47.10.822	Statement of general obligation—Pledge of excise taxes. (<i>Effective July 1, 2015.</i>)
47.10.838	Statement of general obligation—Pledge of excise taxes. (<i>Effective July 1, 2015.</i>)
47.10.846	Statement of general obligation—Pledge of excise taxes. (<i>Effective July 1, 2015.</i>)
47.10.864	Statement of general obligation—Pledge of excise taxes. (<i>Effective July 1, 2015.</i>)
47.10.876	Statement of general obligation—Pledge of excise taxes. (<i>Effective July 1, 2015.</i>)
47.10.883	Statement of general obligation—Pledge of toll revenue and excise taxes. (<i>Effective July 1, 2015.</i>)

47.10.040 Bonds not general obligations—Taxes pledged. (*Effective July 1, 2015.*) Bonds issued under the provisions of RCW 47.10.010 through 47.10.140 must distinctly state that they are not a general obligation of the state, but are payable in the manner provided in RCW 47.10.010 through 47.10.140 from the proceeds of all state excise taxes on motor vehicle fuels imposed by chapter 82.38 RCW. The proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the provisions of RCW 47.10.010 through 47.10.140, and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle fuels in amounts sufficient to pay the principal and interest on all bonds issued under the provisions of RCW 47.10.010 through 47.10.140 when due. [2013 c 225 § 612; 1961 c 13 § 47.10.040. Prior: 1951 c 121 § 4.]

Effective date—2013 c 225: See note following RCW 82.38.010.

47.10.180 Additional bonds—Bonds not general obligations—Taxes pledged. (*Effective July 1, 2015.*) Bonds issued under the provisions of RCW 47.10.150 through 47.10.270 must distinctly state that they are not a general obligation of the state, but are payable in the manner provided in RCW 47.10.150 through 47.10.270 from the proceeds of all state excise taxes on motor vehicle fuels imposed by chapter 82.38 RCW. The proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the provisions of RCW 47.10.150 through 47.10.270 and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle fuels

in amounts sufficient to pay the principal and interest on all bonds issued under the provisions of RCW 47.10.150 through 47.10.270 when due. [2013 c 225 § 613; 1961 c 13 § 47.10.180. Prior: 1953 c 154 § 4.]

Effective date—2013 c 225: See note following RCW 82.38.010.

47.10.310 Construction in Grant, Franklin, Adams counties authorized—Bonds not general obligations—Taxes pledged. (Effective July 1, 2015.) Bonds issued under the provisions of RCW 47.10.280 through 47.10.400 must distinctly state that they are not a general obligation of the state, but are payable in the manner provided in RCW 47.10.280 through 47.10.400 from the proceeds of all state excise taxes on motor vehicle fuels imposed by chapter 82.38 RCW. The proceeds of such excise taxes are pledged to the payment of any bonds and the interest thereon issued under the provisions of RCW 47.10.280 through 47.10.400. The legislature agrees to continue to impose the same excise taxes on motor fuels in amounts sufficient to pay the principal and interest on all bonds issued under the provisions of RCW 47.10.280 through 47.10.400 when due. [2013 c 225 § 614; 1961 c 13 § 47.10.310. Prior: 1955 c 311 § 4.]

Effective date—2013 c 225: See note following RCW 82.38.010.

47.10.440 Echo Lake route—Bonds not general obligations—Taxes pledged. (Effective July 1, 2015.) Bonds issued under the provisions of RCW 47.10.410 through 47.10.500 must distinctly state that they are not a general obligation of the state, but are payable in the manner provided in RCW 47.10.410 through 47.10.500 from the proceeds of all state excise taxes on motor vehicle fuels imposed by chapter 82.38 RCW. The proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the provisions of RCW 47.10.410 through 47.10.500 and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle fuels in amounts sufficient to pay the principal and interest on all bonds issued under the provisions of RCW 47.10.410 through 47.10.500. [2013 c 225 § 615; 1961 c 13 § 47.10.440. Prior: 1957 c 206 § 4.]

Effective date—2013 c 225: See note following RCW 82.38.010.

47.10.714 Tacoma-Seattle-Everett facility—Bonds not general obligations—Taxes pledged. (Effective July 1, 2015.) Bonds issued under the provisions of RCW 47.10.700 through 47.10.724 must distinctly state that they are not a general obligation of the state, but are payable in the manner provided in RCW 47.10.700 through 47.10.724 from the proceeds of state excise taxes on motor vehicle fuels imposed by chapter 82.38 RCW. The proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the provisions of RCW 47.10.700 through 47.10.724, and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the provisions of RCW 47.10.700 through 47.10.724. [2013 c 225 § 616; 1961 c 13 § 47.10.714. Prior: 1957 c 189 § 8.]

Effective date—2013 c 225: See note following RCW 82.38.010.

47.10.729 Construction in Grant, Franklin, Adams counties authorized—Bonds not general obligations—Taxes pledged. (Effective July 1, 2015.) Bonds issued under the provisions of RCW 47.10.726 through 47.10.738 must distinctly state that they are not a general obligation of the state, but are payable in the manner provided in RCW 47.10.726 through 47.10.738 from the proceeds of all state excise taxes on motor vehicle fuels imposed by chapter 82.38 RCW. The proceeds of such excise taxes are pledged to the payment of any bonds and the interest thereon issued under the provisions of RCW 47.10.726 through 47.10.738. The legislature agrees to continue to impose the same excise taxes on motor fuels in amounts sufficient to pay the principal and interest on all bonds issued under the provisions of RCW 47.10.726 through 47.10.738 when due. [2013 c 225 § 617; 1965 c 121 § 4.]

Effective date—2013 c 225: See note following RCW 82.38.010.

47.10.756 Additional funds—Bonds not general obligations—Taxes pledged. (Effective July 1, 2015.) Bonds issued under the provisions of RCW 47.10.751 through 47.10.760 must distinctly state that they are not a general obligation of the state, but are payable in the manner provided in RCW 47.10.751 through 47.10.760 from the proceeds of state excise taxes on motor vehicle fuels imposed by chapter 82.38 RCW. The proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the provisions of RCW 47.10.751 through 47.10.760, and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the provisions of RCW 47.10.751 through 47.10.760. [2013 c 225 § 618; 1967 ex.s. c 7 § 8.]

Effective date—2013 c 225: See note following RCW 82.38.010.

47.10.766 Bonds—Statement describing nature of obligation—Pledge of excise taxes. (Effective July 1, 2015.) Bonds issued under the provisions of RCW 47.10.761 through 47.10.771 must distinctly state that they are not a general obligation of the state, but are payable in the manner provided in RCW 47.10.761 through 47.10.771 from the proceeds of state excise taxes on motor vehicle fuels imposed by chapter 82.38 RCW. The proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the provisions of RCW 47.10.761 through 47.10.771, and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the provisions of RCW 47.10.761 through 47.10.771. [2013 c 225 § 619; 1967 ex.s. c 7 § 18.]

Effective date—2013 c 225: See note following RCW 82.38.010.

47.10.793 Statement of general obligation—Pledge of excise taxes. (Effective July 1, 2015.) Bonds issued under the provisions of RCW 47.10.790 must distinctly state that they are a general obligation of the state of Washington, must pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and must contain an unconditional promise to pay such principal and inter-

est as the same becomes due. The principal of and interest on such bonds must be first payable in the manner provided in RCW 47.10.790 through 47.10.798 from the proceeds of the state excise taxes on motor vehicle and special fuels imposed by chapter 82.38 RCW. Proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the provisions of RCW 47.10.790 through 47.10.798, and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the provisions of RCW 47.10.790 through 47.10.798. [2013 c 225 § 620; 1995 c 274 § 6; 1979 ex.s. c 180 § 4.]

Effective date—2013 c 225: See note following RCW 82.38.010.

47.10.804 Statement of general obligation—Pledge of excise taxes. (Effective July 1, 2015.) Bonds issued under RCW 47.10.801 must distinctly state that they are a general obligation of the state of Washington, must pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and must contain an unconditional promise to pay such principal and interest as the same becomes due. The principal of and interest on such bonds must be first payable in the manner provided in RCW 47.10.801 through 47.10.809 from the proceeds of the state excise taxes on motor vehicle and special fuels imposed by chapter 82.38 RCW. Proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under RCW 47.10.801 through 47.10.809, and the legislature hereby agrees to continue to impose these excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under RCW 47.10.801 through 47.10.809. [2013 c 225 § 621; 1995 c 274 § 7; 1981 c 316 § 4.]

Effective date—2013 c 225: See note following RCW 82.38.010.

47.10.815 Statement of general obligation—Pledge of excise taxes. (Effective July 1, 2015.) Bonds issued under the authority of RCW 47.10.812 through 47.10.817 must distinctly state that they are a general obligation of the state of Washington, must pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and must contain an unconditional promise to pay such principal and interest as the same becomes due. The principal and interest on the bonds must be first payable in the manner provided in RCW 47.10.812 through 47.10.817 from the proceeds of the state excise taxes on motor vehicle and special fuels imposed by chapter 82.38 RCW. Proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the authority of RCW 47.10.812 through 47.10.817, and the legislature agrees to continue to impose these excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the authority of RCW 47.10.812 through 47.10.817. [2013 c 225 § 622; 1995 c 274 § 8; 1993 c 431 § 4.]

Effective date—2013 c 225: See note following RCW 82.38.010.

47.10.822 Statement of general obligation—Pledge of excise taxes. (Effective July 1, 2015.) Bonds issued under the authority of RCW 47.10.819 through 47.10.824 must dis-

tingly state that they are a general obligation of the state of Washington, must pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and must contain an unconditional promise to pay such principal and interest as the same becomes due. The principal and interest on the bonds must be first payable in the manner provided in RCW 47.10.819 through 47.10.824 from the proceeds of the state excise taxes on motor vehicle and special fuels imposed by chapter 82.38 RCW. Proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the authority of RCW 47.10.819 through 47.10.824, and the legislature agrees to continue to impose these excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the authority of RCW 47.10.819 through 47.10.824. [2013 c 225 § 623; 1995 c 274 § 9; 1993 c 432 § 4.]

Effective date—2013 c 225: See note following RCW 82.38.010.

47.10.838 Statement of general obligation—Pledge of excise taxes. (Effective July 1, 2015.) (1) Bonds issued under the authority of RCW 47.10.834 through 47.10.841 must distinctly state that they are a general obligation of the state of Washington, must pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and must contain an unconditional promise to pay such principal and interest as the same becomes due.

(2) The principal and interest on the bonds issued for the purposes enumerated in RCW 47.10.836 must be first payable in the manner provided in RCW 47.10.834 through 47.10.841 from the proceeds of the state excise taxes on motor vehicle and special fuels imposed by chapter 82.38 RCW. Proceeds of those excise taxes are pledged to the payment of any bonds and the interest thereon issued under the authority of RCW 47.10.834 through 47.10.841, and the legislature agrees to continue to impose these excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the authority of RCW 47.10.834 through 47.10.841. [2013 c 225 § 624; 1995 2nd sp.s. c 15 § 5; 1994 c 183 § 6.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Additional notes found at www.leg.wa.gov

47.10.846 Statement of general obligation—Pledge of excise taxes. (Effective July 1, 2015.) Bonds issued under the authority of RCW 47.10.843 through 47.10.848 must distinctly state that they are a general obligation of the state of Washington, must pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and must contain an unconditional promise to pay such principal and interest as the same becomes due. The principal and interest on the bonds must be first payable in the manner provided in RCW 47.10.843 through 47.10.848 from the proceeds of the state excise taxes on motor vehicle and special fuels imposed by chapter 82.38 RCW. Proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the authority of RCW 47.10.843 through 47.10.848, and the legislature agrees to continue to impose these excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the

authority of RCW 47.10.843 through 47.10.848. [2013 c 225 § 625; 1998 c 321 § 19 (Referendum Bill No. 49, approved November 3, 1998).]

Effective date—2013 c 225: See note following RCW 82.38.010.

Purpose—Severability—1998 c 321: See notes following RCW 82.14.045.

Additional notes found at www.leg.wa.gov

47.10.864 Statement of general obligation—Pledge of excise taxes. (Effective July 1, 2015.) Bonds issued under the authority of RCW 47.10.861 through 47.10.866 must distinctly state that they are a general obligation of the state of Washington, must pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and must contain an unconditional promise to pay such principal and interest as the same becomes due. The principal and interest on the bonds must be first payable in the manner provided in RCW 47.10.861 through 47.10.866 from the proceeds of the state excise taxes on motor vehicle and special fuels imposed by chapter 82.38 RCW. Proceeds of these excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the authority of RCW 47.10.861 through 47.10.866, and the legislature agrees to continue to impose these excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the authority of RCW 47.10.861 through 47.10.866. [2013 c 225 § 626; 2003 c 147 § 4.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Effective date—2003 c 147: See note following RCW 47.10.861.

47.10.876 Statement of general obligation—Pledge of excise taxes. (Effective July 1, 2015.) Bonds issued under the authority of RCW 47.10.873 through 47.10.878 must distinctly state that they are a general obligation of the state of Washington, must pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and must contain an unconditional promise to pay such principal and interest as the same becomes due. The principal and interest on the bonds must be first payable in the manner provided in RCW 47.10.873 through 47.10.878 from the proceeds of the state excise taxes on motor vehicle and special fuels imposed by chapter 82.38 RCW. Proceeds of these excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the authority of RCW 47.10.873 through 47.10.878, and the legislature agrees to continue to impose these excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the authority of RCW 47.10.873 through 47.10.878. [2013 c 225 § 627; 2005 c 315 § 4.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Effective date—2005 c 315: See note following RCW 47.10.873.

47.10.883 Statement of general obligation—Pledge of toll revenue and excise taxes. (Effective July 1, 2015.) Bonds issued under the authority of this section and RCW 47.10.879, 47.10.884, and 47.10.885 must distinctly state that they are a general obligation of the state of Washington, must pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and must con-

tain an unconditional promise to pay such principal and interest as the same becomes due. The principal of and interest on the bonds must be first payable in the manner provided in this section and RCW 47.10.879, 47.10.884, and 47.10.885 from toll revenue and then from proceeds of excise taxes on motor vehicle and special fuels to the extent toll revenue is not available for that purpose. Toll revenue and the state excise taxes on motor vehicle and special fuels imposed by chapter 82.38 RCW are hereby pledged to the payment of any bonds and the interest thereon issued under the authority of this section and RCW 47.10.879, 47.10.884, and 47.10.885, and the legislature agrees to continue to impose these toll charges on the state route number 520 corridor, and on any other eligible toll facility designated by the legislature and on which the imposition of tolls is authorized by the legislature in respect of the bonds, and excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the authority of this section and RCW 47.10.879, 47.10.884, and 47.10.885. [2013 c 225 § 628; 2009 c 498 § 12.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Chapter 47.12 RCW ACQUISITION AND DISPOSITION OF STATE HIGHWAY PROPERTY

Sections

47.12.244 Advance right-of-way revolving fund.

47.12.340 Advanced environmental mitigation revolving account.

47.12.244 Advance right-of-way revolving fund.

There is created the "advance right-of-way revolving fund" in the custody of the treasurer, into which the department is authorized to deposit directly and expend without appropriation:

(1) An initial deposit of ten million dollars from the motor vehicle fund included in the department of transportation's 1991-93 budget;

(2) All moneys received by the department as rental income from real properties that are not subject to federal aid reimbursement, except moneys received from rental of capital facilities properties as defined in *chapter 47.13 RCW; and

(3) Any federal moneys available for acquisition of right-of-way for future construction under the provisions of section 108 of Title 23, United States Code.

During the 2011-2013 and 2013-2015 fiscal biennia, the legislature may transfer from the advance right-of-way revolving fund to the motor vehicle account amounts as reflect the excess fund balance of the advance right-of-way revolving fund. [2013 c 306 § 714; 2011 c 367 § 717; 2009 c 470 § 709; 2007 c 518 § 707; 1991 c 291 § 2; 1984 c 7 § 125; 1969 ex.s. c 197 § 7.]

***Reviser's note:** Chapter 47.13 RCW was repealed by 1999 c 94 § 33, effective July 1, 1999.

Effective date—2013 c 306: See note following RCW 47.64.170.

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

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

Severability—Effective date—2007 c 518: See notes following RCW 46.68.170.

Additional notes found at www.leg.wa.gov

47.12.340 Advanced environmental mitigation revolving account. The advanced environmental mitigation revolving account is created in the custody of the treasurer, into which the department shall deposit directly and may expend without appropriation:

(1) An initial appropriation included in the department of transportation's 1997-99 budget, and deposits from other identified sources;

(2) All moneys received by the department from internal and external sources for the purposes of conducting advanced environmental mitigation; and

(3) Interest gained from the management of the advanced environmental mitigation revolving account.

(4) During the 2011-2013 and 2013-2015 fiscal biennia, the legislature may transfer from the advanced environmental mitigation revolving account to the motor vehicle account such amounts as reflect the excess fund balance of the advanced environmental mitigation revolving account. [2013 c 306 § 715; 2010 c 247 § 703; 1997 c 140 § 3.]

Effective date—2013 c 306: See note following RCW 47.64.170.

Effective date—2010 c 247: See note following RCW 43.19.642.

Intent—1997 c 140: See note following RCW 47.12.330.

Chapter 47.26 RCW

DEVELOPMENT IN URBAN AREAS— URBAN ARTERIALS

Sections

47.26.404	Bonds—Statement describing nature of obligation—Pledge of excise taxes. (<i>Effective July 1, 2015.</i>)
47.26.424	Bonds—Statement describing nature of obligation—Pledge of excise taxes. (<i>Effective July 1, 2015.</i>)
47.26.4252	Bonds—Series II bonds, 1979 reenactment—Designation of funds to repay bonds and interest. (<i>Effective July 1, 2015.</i>)
47.26.4254	Bonds—Series III bonds—Designation of funds to repay bonds and interest. (<i>Effective July 1, 2015.</i>)
47.26.504	Statement of obligation—Pledge of excise taxes. (<i>Effective July 1, 2015.</i>)

47.26.404 Bonds—Statement describing nature of obligation—Pledge of excise taxes. (*Effective July 1, 2015.*) Bonds issued under the provisions of RCW 47.26.400 through 47.26.407 must distinctly state that they are a general obligation of the state of Washington, must pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon and must contain an unconditional promise to pay such principal and interest as the same becomes due. The principal of and interest on such bonds must be first payable in the manner provided in RCW 47.26.400 through 47.26.407 from the proceeds of state excise taxes on motor vehicle fuels imposed by chapter 82.38 RCW. The proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the provisions of RCW 47.26.400 through 47.26.407, and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the provisions of RCW 47.26.400 through 47.26.407. [2013 c 225 § 629; 1973 1st ex.s. c 169 § 3; 1967 ex.s. c 83 § 40.]

Effective date—2013 c 225: See note following RCW 82.38.010.

47.26.424 Bonds—Statement describing nature of obligation—Pledge of excise taxes. (*Effective July 1, 2015.*) The first authorization bonds, series II bonds, and series III bonds must distinctly state that they are a general obligation of the state of Washington, must pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and must contain an unconditional promise to pay such principal and interest as the same becomes due. The principal and interest on such bonds must be first payable in the manner provided in RCW 47.26.420 through 47.26.427, 47.26.425, and 47.26.4254 from the proceeds of state excise taxes on motor vehicle and special fuels imposed by chapter 82.38 RCW. The proceeds of such excise taxes are hereby pledged to the payment of any such bonds and the interest thereon, and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on all such bonds. [2013 c 225 § 630; 1995 c 274 § 11; 1981 c 315 § 9; 1979 c 5 § 7; 1977 ex.s. c 317 § 19; 1973 1st ex.s. c 169 § 6; 1967 ex.s. c 83 § 49.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Additional notes found at www.leg.wa.gov

47.26.4252 Bonds—Series II bonds, 1979 reenactment—Designation of funds to repay bonds and interest. (*Effective July 1, 2015.*) Any funds required to repay the authorization of series II bonds authorized by RCW 47.26.420, as reenacted by section 3, chapter 5, Laws of 1979, or the interest thereon when due, must first be taken from that portion of the motor vehicle fund which results from the imposition of excise taxes on motor vehicle and special fuels imposed by chapter 82.38 RCW and which is distributed to the transportation improvement account in the motor vehicle fund pursuant to RCW 46.68.090(2)(e), subject, however, to the prior lien of the first authorization of bonds authorized by RCW 47.26.420, as reenacted by section 3, chapter 5, Laws of 1979. If the moneys distributed to the transportation improvement account shall ever be insufficient to repay the first authorization bonds together with interest thereon, and the series II bonds or the interest thereon when due, the amount required to make such payments on such bonds or interest thereon must next be taken from that portion of the motor vehicle fund which results from the imposition of excise taxes on motor vehicle and special fuels and which is distributed to the state, counties, cities, and towns pursuant to RCW 46.68.090. Any payments on such bonds or interest thereon taken from motor vehicle or special fuel tax revenues which are distributable to the state, counties, cities, and towns, must be repaid from the first moneys distributed to the transportation improvement account not required for redemption of the first authorization bonds or series II and series III bonds or interest on those bond issues. [2013 c 225 § 631; 2011 c 120 § 12; 1999 sp.s. c 1 § 610. Prior: 1999 c 269 § 7; 1999 c 94 § 22; 1995 c 274 § 12; 1994 c 179 § 23; 1983 1st ex.s. c 49 § 23; 1979 c 5 § 8.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Legislative finding—Effective dates—1999 c 94: See notes following RCW 43.84.092.

Additional notes found at www.leg.wa.gov

47.26.4254 Bonds—Series III bonds—Designation of funds to repay bonds and interest. (*Effective July 1, 2015.*) (1) Any funds required to repay series III bonds authorized by RCW 47.26.420, or the interest thereon, when due must first be taken from that portion of the motor vehicle fund that results from the imposition of excise taxes on motor vehicle and special fuels imposed by chapter 82.38 RCW and that is distributed to the transportation improvement account in the motor vehicle fund pursuant to RCW 46.68.090(2)(e), subject, however, to the prior lien of the first authorization of bonds authorized by RCW 47.26.420. If the moneys so distributed to the transportation improvement account, after first being applied to administrative expenses of the transportation improvement board and to the requirements of bond retirement and payment of interest on first authorization bonds and series II bonds as provided in RCW 47.26.425 and 47.26.4252, are insufficient to meet the requirements for bond retirement or interest on any series III bonds, the amount required to make such payments on series III bonds or interest thereon must next be taken from that portion of the motor vehicle fund that results from the imposition of excise taxes on motor vehicle and special fuels and that is distributed to the state, counties, cities, and towns pursuant to RCW 46.68.090, subject, however, to subsection (2) of this section.

(2) To the extent that moneys so distributed to the transportation improvement account are insufficient to meet the requirements for bond retirement or interest on any series III bonds, sixty percent of the amount required to make such payments when due must first be taken from that portion of the motor vehicle fund that results from the imposition of excise taxes on motor vehicle and special fuels and that is distributed to the state. The remaining forty percent must first be taken from that portion of the motor vehicle fund that results from the imposition of excise taxes on motor vehicle and special fuels and that is distributed to the cities and towns pursuant to RCW 46.68.090(2)(g) and to the counties pursuant to RCW 46.68.090(2)(h). Of the counties', cities', and towns' share of any additional amounts required in each fiscal year, the percentage thereof to be taken from the counties' distributive share and from the cities' and towns' distributive share must correspond to the percentage of funds authorized for specific county projects and for specific city and town projects, respectively, from the proceeds of series III bonds, for the period through the first eleven months of the prior fiscal year as determined by the chair of the transportation improvement board and reported to the state finance committee and the state treasurer not later than the first working day of June.

(3) Any payments on such bonds or interest thereon taken from motor vehicle or special fuel tax revenues that are distributable to the state, counties, cities, and towns must be repaid from the first moneys distributed to the transportation improvement account not required for redemption of the first authorization bonds, series II bonds, or series III bonds or interest on these bonds. [2013 c 225 § 632; 2011 c 120 § 13; 2010 c 8 § 10008; 1999 sp.s. c 1 § 611. Prior: 1999 c 269 § 8; 1999 c 94 § 23; 1995 c 274 § 13; 1994 c 179 § 24; 1988 c 167 § 30; 1983 1st ex.s. c 49 § 24; 1981 c 315 § 10.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Legislative finding—Effective dates—1999 c 94: See notes following RCW 43.84.092.

[2013 RCW Supp—page 598]

Additional notes found at www.leg.wa.gov

47.26.504 Statement of obligation—Pledge of excise taxes. (*Effective July 1, 2015.*) Bonds issued under the provisions of RCW 47.26.500 through 47.26.507 must distinctly state that they are a general obligation of the state of Washington, must pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and must contain an unconditional promise to pay such principal and interest as the same becomes due. The principal and interest on such bonds must be first payable in the manner provided in RCW 47.26.500 through 47.26.507 from the proceeds of state excise taxes on motor vehicle and special fuels imposed by chapter 82.38 RCW. The proceeds of such excise taxes are hereby pledged to the payment of any such bonds and the interest thereon, and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on all such bonds. [2013 c 225 § 633; 1995 c 274 § 14; 1993 c 440 § 5.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Chapter 47.28 RCW CONSTRUCTION AND MAINTENANCE OF HIGHWAYS

Sections

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| 47.28.140 | Highway, public transportation improvements, flood damage prevention—Cooperative agreements. |
| 47.28.260 | Reciprocal agreement—Waiver of indirect costs. |

47.28.140 Highway, public transportation improvements, flood damage prevention—Cooperative agreements. When in the opinion of the governing authorities representing the department and any public agency, instrumentality, municipal corporation, or political subdivision of the state of Washington, any highway, road, street, or urban public transportation system will be benefited or improved by constructing, reconstructing, locating, relocating, laying out, repairing, surveying, altering, improving, or maintaining, or by the establishment adjacent to, under, upon, within, or above any portion of any such highway, road, street, or urban public transportation system, by either the department or any public agency, instrumentality, municipal corporation, or political subdivision of the state, and it is in the public interest to do so, the authorities may enter into cooperative agreements wherein either agrees to perform the work and furnish the materials necessary and pay the cost thereof, including necessary engineering assistance, which costs and expenses must be reimbursed by the party whose responsibility it was to do or perform the work or improvement in the first instance. The work may be done by either day labor or contract, and the cooperative agreement between the parties must provide for the method of reimbursement. In the case of some special benefit or improvement to a state highway derived from any project that assists in preventing or minimizing flood damages as defined in RCW 86.16.120 or from the construction of any public works project, including any urban public transportation system, the department may contribute to the cost thereof by making direct payment to the particular state department, agency, instrumentality, municipi-

pal corporation, or political subdivision on the basis of benefits received, but such payment may be made only after a cooperative agreement has been entered into for a specified amount or on an actual cost basis prior to the commencement of the particular public works project. [2013 c 113 § 7; 1991 c 322 § 29; 1984 c 7 § 174; 1967 c 108 § 6; 1961 c 13 § 47.28.140. Prior: 1955 c 384 § 8.]

Findings—Intent—1991 c 322: See note following RCW 86.12.200.

Urban public transportation system defined: RCW 47.04.082.

Additional notes found at www.leg.wa.gov

47.28.260 Reciprocal agreement—Waiver of indirect costs. When the department plans to administer a contract to engineer or construct a project; or oversee or perform work for another public agency, instrumentality, municipal corporation, or political subdivision; and the public agency, instrumentality, municipal corporation, or political subdivision plans to administer a contract to engineer or construct a project; or oversee or perform work, for the department, the department may waive application of its indirect costs by entering into a reciprocal agreement with the public agency, instrumentality, municipal corporation, or political subdivision in which each party agrees to waive indirect costs related to a project or work that will be performed by the party for the other party’s benefit. The reciprocal agreement must specify the project or work to be performed by each party and may be for a maximum term of ten years, unless amended by the parties. Each party’s obligation for reimbursement of indirect costs under RCW 47.28.140, 39.34.130, and 43.09.210 is deemed to be satisfied by the execution of a reciprocal agreement. [2013 c 113 § 8.]

Chapter 47.29 RCW

TRANSPORTATION INNOVATIVE PARTNERSHIPS

Sections

47.29.170 Unsolicited proposals.

47.29.170 Unsolicited proposals. Before accepting any unsolicited project proposals, the commission must adopt rules to facilitate the acceptance, review, evaluation, and selection of unsolicited project proposals. These rules must include the following:

- (1) Provisions that specify unsolicited proposals must meet predetermined criteria;
- (2) Provisions governing procedures for the cessation of negotiations and consideration;
- (3) Provisions outlining that unsolicited proposals are subject to a two-step process that begins with concept proposals and would only advance to the second step, which are fully detailed proposals, if the commission so directed;
- (4) Provisions that require concept proposals to include at least the following information: Proposers’ qualifications and experience; description of the proposed project and impact; proposed project financing; and known public benefits and opposition; and
- (5) Provisions that specify the process to be followed if the commission is interested in the concept proposal, which must include provisions:

(a) Requiring that information regarding the potential project would be published for a period of not less than thirty days, during which time entities could express interest in submitting a proposal;

(b) Specifying that if letters of interest were received during the thirty days, then an additional sixty days for submission of the fully detailed proposal would be allowed; and

(c) Procedures for what will happen if there are insufficient proposals submitted or if there are no letters of interest submitted in the appropriate time frame.

The commission may adopt other rules as necessary to avoid conflicts with existing laws, statutes, or contractual obligations of the state.

The commission may not accept or consider any unsolicited proposals before July 1, 2015. [2013 c 306 § 708; 2011 c 367 § 701; 2009 c 470 § 702; 2007 c 518 § 702; 2006 c 370 § 604; 2005 c 317 § 17.]

Effective date—2013 c 306: See note following RCW 47.64.170.

Effective date—2011 c 367: "Except for sections 703, 704, 705, 716, 719, and 722 of this act, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 16, 2011]." [2011 c 367 § 1102.]

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

Severability—Effective date—2007 c 518: See notes following RCW 46.68.170.

Severability—2006 c 370: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2006 c 370 § 701.]

Effective date—2006 c 370: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 31, 2006]." [2006 c 370 § 702.]

Chapter 47.39 RCW

SCENIC AND RECREATIONAL HIGHWAY ACT OF 1967

Sections

47.39.020 Designation of portions of existing highways and ferry routes as part of system.

47.39.020 Designation of portions of existing highways and ferry routes as part of system. The following portions of highways are designated as part of the scenic and recreational highway system:

- (1) State route number 2, beginning at the crossing of Woods creek at the east city limits of Monroe, thence in an easterly direction by way of Stevens pass to a junction with state route number 97 in the vicinity of Peshastin; also Beginning at the junction with state route number 17, in the vicinity of Coulee City, thence easterly to the junction with state route number 155;
- (2) State route number 3, beginning at a junction with state route number 101 in the vicinity of Shelton, thence northeasterly and northerly to a junction with state route number 104 in the vicinity of Port Gamble;
- (3) State route number 4, beginning at the junction with state route number 101, thence easterly through Cathlamet to Coal Creek road, approximately .5 miles west of the Longview city limits;

(4) State route number 5, beginning at the junction with Starbird Road in Snohomish county, thence northerly to the junction with Bow Hill Road in Skagit county, to be designated as an agricultural scenic corridor with appropriate signage;

(5) State route number 6, beginning at the junction with state route number 101 in Raymond, thence easterly to the junction with state route number 5, in the vicinity of Chehalis;

(6) State route number 7, beginning at the junction with state route number 12 in Morton, thence northerly to the junction with state route number 507;

(7) State route number 8, beginning at a junction with state route number 12 in the vicinity of Elma, thence easterly to a junction with state route number 101 near Tumwater;

(8) State route number 9, beginning at the junction with state route number 530 in Arlington, thence northerly to the end of the route at the Canadian border;

(9) State route number 10, beginning at Teanaway junction, thence easterly to a junction with state route number 97 west of Ellensburg;

(10) State route number 11, beginning at the junction with state route number 5 in the vicinity of Burlington, thence in a northerly direction to the junction with state route number 5;

(11) State route number 12, beginning at a junction with a county road approximately 2.8 miles west of the crossing of the Wynoochee river which is approximately 1.2 miles west of Montesano, thence in an easterly direction to a junction with state route number 8 in the vicinity of Elma; also

Beginning at a junction with state route number 5, thence easterly by way of Morton, Randle, and Packwood to the junction with state route number 410, approximately 3.5 miles west of Naches; also

Beginning at the junction with state route number 124 in the vicinity of the Tri-Cities, thence easterly through Wallula and Touchet to a junction with a county road approximately 2.4 miles west of a junction with state route number 129 at Clarkston;

(12) State route number 14, beginning at the crossing of Gibbons creek approximately 0.9 miles east of Washougal, thence easterly along the north bank of the Columbia river to a point in the vicinity of Plymouth;

(13) State route number 17, beginning at a junction with state route number 395 in the vicinity of Mesa, thence northerly to the junction with state route number 97 in the vicinity of Brewster;

(14) State route number 19, the Chimacum-Beaver Valley road, beginning at the junction with state route number 104, thence northerly to the junction with state route number 20;

(15) State route number 20, beginning at the junction with state route number 101 to the ferry zone in Port Townsend; also

Beginning at the Keystone ferry slip on Whidbey Island, thence northerly and easterly to a junction with state route number 153 southeast of Twisp; also

Beginning at the junction of state route number 97 in the vicinity of Okanogan, thence westerly across the Okanogan river to the junction with state route number 215; also

Beginning at a junction with state route number 97 near Tonasket, thence easterly and southerly to a junction with state route number 2 at Newport;

(16) State route number 25, beginning at the Spokane river bridge, thence northerly through Cedonia, Gifford, Kettle Falls, and Northport, to the Canadian border;

(17) State route number 26, beginning at the Whitman county boundary line, thence easterly by way of the vicinities of La Crosse and Dusty to a junction with state route number 195 in the vicinity of Colfax;

(18) State route number 27, beginning at a junction with state route number 195 in the vicinity of Pullman, thence northerly by way of the vicinities of Palouse and Garfield to a junction with state route number 271 in the vicinity of Oakesdale; also

From a junction with state route number 271 at Oakesdale, thence northerly to the vicinity of Rockford;

(19) State route number 31, beginning at the junction with state route number 20 in Tiger, thence northerly to the Canadian border;

(20) State route number 82, beginning at the junction with state route number 395 south of the Tri-Cities area, thence southerly to the end of the route at the Oregon border;

(21) State route number 90, beginning at the junction with East Sunset Way in the vicinity east of Issaquah, thence easterly to Thorp road 9.0 miles west of Ellensburg;

(22) State route number 97, beginning at the Oregon border, in a northerly direction through Toppenish and Wapato to the junction with state route number 82 at Union Gap; also

Beginning at the junction with state route number 10, 2.5 miles north of Ellensburg, in a northerly direction to the junction with state route number 2, 4.0 miles east of Leavenworth; also

Beginning at the junction of state route number 153 in the vicinity south of Pateros, thence northerly by way of the vicinities of Brewster, Okanogan, Omak, Riverside, Tonasket, and Oroville to the international boundary line;

(23) State route number 97 alternate, beginning at the junction with state route number 2 in the vicinity of Monitor, thence northerly to the junction with state route number 97, approximately 5.0 miles north of Chelan;

(24) State route number 101, beginning at the Astoria-Megler bridge, thence north to Fowler street in Raymond; also

Beginning at a junction with state route number 109 in the vicinity of Queets, thence in a northerly, northeasterly, and easterly direction by way of Forks to the junction with state route number 5 in the vicinity of Olympia;

(25) State route number 104, beginning at a junction with state route number 101 in the vicinity south of Discovery bay, thence in a southeasterly direction to the Kingston ferry crossing;

(26) State route number 105, beginning at a junction with state route number 101 at Raymond, thence westerly and northerly by way of Tokeland and North Cove to the shore of Grays Harbor north of Westport; also

Beginning at a junction with state route number 105 in the vicinity south of Westport, thence northeasterly to a junction with state route number 101 at Aberdeen;

(27) State route number 109, beginning at a junction with state route number 101 in Hoquiam to a junction with state route number 101 in the vicinity of Queets;

(28) State route number 112, beginning at the easterly boundary of the Makah Indian reservation, thence in an easterly direction to the vicinity of Laird's corner on state route number 101;

(29) State route number 116, beginning at the junction with the Chimacum-Beaver Valley road, thence in an easterly direction to Fort Flagler State Park;

(30) State route number 119, beginning at the junction with state route number 101 at Hoodspout, thence northwesterly to the Mount Rose development intersection;

(31) State route number 122, Harmony road, between the junction with state route number 12 near Mayfield dam and the junction with state route number 12 in Mossyrock;

(32) State route number 123, beginning at the junction with state route number 12 in the vicinity of Morton, thence northerly to the junction with state route number 410;

(33) State route number 129, beginning at the Oregon border, thence northerly to the junction with state route number 12 in Clarkston;

(34) State route number 141, beginning at the junction with state route number 14 in Bingen, thence northerly to the end of the route at the Skamania county line;

(35) State route number 142, beginning at the junction with state route number 14 in Lyle, thence northeasterly to the junction with state route number 97, .5 miles from Goldendale;

(36) State route number 153, beginning at a junction with state route number 97 in the vicinity of Pateros, thence in a northerly direction to a junction with state route number 20 in the vicinity south of Twisp;

(37) State route number 155, beginning at a junction with state route number 2 in the vicinity north of Coulee City, thence northerly and westerly to the junction with state route number 215;

(38) State route number 194, beginning at the Port of Almota to the junction with state route number 195 in the vicinity of Pullman;

(39) State route number 195, beginning at the Washington-Idaho boundary line southeast of Uniontown, thence northwesterly and northerly by way of the vicinity of Colton, Pullman, Colfax, Steptoe, and Rosalia to the Whitman county boundary line;

(40) State route number 202, beginning at the junction with state route number 522, thence in an easterly direction to the junction with state route number 90 in the vicinity of North Bend;

(41) State route number 211, beginning at the junction with state route number 2, thence northerly to the junction with state route number 20 in the vicinity of Usk;

(42) State route number 215, beginning at the junction of state route number 20 in the vicinity of Okanogan, thence northeasterly on the west side of the Okanogan river to a junction with state route number 97 north of Omak;

(43) State route number 231, beginning at the junction with state route number 23, in the vicinity of Sprague, thence in a northerly direction to the junction with state route number 2, approximately 2.5 miles west of Reardan;

(44) State route number 261, beginning at the junction with state route number 12 in the vicinity of Delaney, thence northwesterly to the junction with state route number 260;

(45) State route number 262, beginning at the junction with state route number 26, thence northeasterly to the junction with state route number 17 between Moses Lake and Othello;

(46) State route number 271, beginning at a junction with state route number 27 in the vicinity of Oakesdale, thence northwesterly to a junction with state route number 195 in the vicinity south of Rosalia;

(47) State route number 272, beginning at the junction with state route number 195 in Colfax, thence easterly to the Idaho state line, approximately 1.5 miles east of Palouse;

(48) State route number 278, beginning at a junction with state route number 27, thence easterly via Rockford to the Idaho state line;

(49) State route number 305, beginning at the Winslow ferry dock to the junction with state route number 3 approximately 1.0 mile north of Poulsbo;

(50) State route number 395, beginning at the north end of the crossing of Mill creek in the vicinity of Colville, thence in a northwesterly direction to a junction with state route number 20 at the west end of the crossing over the Columbia river at Kettle Falls;

(51) State route number 401, beginning at a junction with state route number 101 at Point Ellice, thence easterly and northerly to a junction with state route number 4 in the vicinity north of Naselle;

(52) State route number 410, beginning at the intersection with Farman street in Enumclaw, thence in an easterly direction to the junction with state route number 12, approximately 3.5 miles west of Naches;

(53) State route number 501, beginning at the junction with state route number 5 in the vicinity of Vancouver, thence northwesterly on the New Lower River road around Vancouver Lake;

(54) State route number 503, beginning at the junction with state route number 500, thence northerly by way of Battle Ground and Yale to the junction with state route number 5 in the vicinity of Woodland;

(55) State route number 504, beginning at a junction with state route number 5 at Castle Rock, to the end of the route on Johnston Ridge, approximately milepost 52;

(56) State route number 505, beginning at the junction with state route number 504, thence northwesterly by way of Toledo to the junction with state route number 5;

(57) State route number 508, beginning at the junction with state route number 5, thence in an easterly direction to the junction with state route number 7 in Morton;

(58) State route number 525, beginning at the ferry toll booth on Whidbey Island to a junction with state route number 20 east of the Keystone ferry slip;

(59) State route number 542, beginning at the junction with state route number 5, thence easterly to the vicinity of Austin pass in Whatcom county;

(60) State route number 547, beginning at the junction with state route number 542 in Kendall, thence northwesterly to the junction with state route number 9 in the vicinity of the Canadian border;

(61) State route number 706, beginning at the junction with state route number 7 in Elbe, in an easterly direction to the end of the route at Mt. Rainier National Park;

(62) State route number 821, beginning at a junction with state route number 82 at the Yakima firing center interchange, thence in a northerly direction to a junction with state route number 82 at the Thrall road interchange;

(63) State route number 971, Navarre Coulee road, between the junction with state route number 97 and the junction with South Lakeshore road;

(64) Beginning at the Anacortes ferry landing, the Washington state ferries Anacortes/San Juan Islands route, which includes stops at Lopez, Shaw, Orcas, and San Juan Islands; and the roads on San Juan and Orcas Islands as described in San Juan Island county council resolution number 7, adopted February 5, 2008;

(65) All Washington state ferry routes. [2013 c 154 § 2; 2011 c 123 § 1; 2010 c 14 § 2; 2009 c 277 § 1; 2003 c 55 § 1; 1993 c 430 § 7; 1992 c 26 § 2; 1991 c 342 § 54; 1990 c 240 § 3; 1975 c 63 § 8; 1973 1st ex.s. c 151 § 10; 1971 ex.s. c 73 § 29; 1970 ex.s. c 51 § 177; 1969 ex.s. c 281 § 6; 1967 ex.s. c 85 § 2.]

Intent—2013 c 154: "The legislature recognizes the city of Enumclaw as the gateway to the Chinook scenic byway in western Washington. As such, it is the legislature's intent to set the western terminus of the byway within Enumclaw's city limits. It is further the legislature's intent to make attractions within the city of Enumclaw eligible for future grant opportunities by establishing an all-encompassing entrance point for the Chinook scenic byway." [2013 c 154 § 1.]

Legislative finding—1990 c 240: "The legislature finds that scenic and recreational highways are designated because of a need to develop management plans that will protect and preserve the scenic and recreational resources from loss through inappropriate development. Protection of scenic and recreational resources includes managing land use outside normal highway rights-of-way. The legislature recognizes that scenic and recreational highways are typically located in areas that are natural in character, along watercourses or through mountainous areas, or in areas with a view of such scenery." [1990 c 240 § 1.]

Additional notes found at www.leg.wa.gov

Chapter 47.42 RCW

HIGHWAY ADVERTISING CONTROL ACT— SCENIC VISTAS ACT

Sections

47.42.048	Repealed.
47.42.080	Public nuisance—Abatement—Penalty.
47.42.120	Permits—Application—Fees—Renewal—Permissible acts—Revocation.
47.42.130	Permit identification number.

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

47.42.080 Public nuisance—Abatement—Penalty.

(1) Any sign erected or maintained contrary to the provisions of this chapter or rules adopted hereunder that is designed to be viewed from the interstate system, the primary system, or the scenic system is a public nuisance, and the department, the chief of the Washington state patrol, the county sheriff, or the chief of police of any city or town shall notify the permittee or, if there is no permittee, the owner of the property on which the sign is located, by certified mail at his or her last

known address, that it constitutes a public nuisance and must comply with the chapter or be removed.

(2) If the permittee or owner, as the case may be, fails to comply with the chapter or remove any such sign within fifteen days after being notified to remove the sign he or she is guilty of a misdemeanor. In addition to the penalties imposed by law upon conviction, an order may be entered compelling removal of the sign. Each day the sign is maintained constitutes a separate offense.

(3) If the permittee or owner, as the case may be, fails to comply with this chapter or rules adopted under this chapter or fails to remove any sign erected or maintained contrary to the provisions of this chapter or rules adopted under this chapter within fifteen days after being notified to remove the sign, the department shall assess a fine of one hundred dollars per calendar day until the sign is brought into compliance or is removed. The one hundred dollar per calendar day fine is not contingent on a misdemeanor conviction. Fines collected under this subsection must be deposited with the state treasurer to the credit of the motor vehicle fund.

(4) If the permittee or the owner of the property upon which it is located, as the case may be, is not found or refuses receipt of the notice, the department, the chief of the Washington state patrol, the county sheriff, or the chief of police of any city or town shall post the sign and property upon which it is located with a notice that the sign constitutes a public nuisance and must be removed. If the sign is not removed within fifteen days after such posting, the department, the chief of the Washington state patrol, the county sheriff, or the chief of police of any city or town shall abate the nuisance and destroy the sign, and for that purpose may enter upon private property without incurring liability for doing so.

(5) Nothing in this section may be construed to affect the provisions contained in RCW 47.42.102 requiring the payment of compensation upon the removal of any signs compensable under state law.

(6) Any sign erected or maintained on state highway right-of-way contrary to this chapter or rules adopted under it is a public nuisance, and the department is authorized to remove any such sign without notice. [2013 c 312 § 2; 2010 c 8 § 10016; 1985 c 376 § 6; 1984 c 7 § 227; 1975-76 2nd ex.s. c 55 § 1; 1971 ex.s. c 62 § 10; 1961 c 96 § 8.]

Legislative intent—1985 c 376: See note following RCW 47.42.020.

Additional notes found at www.leg.wa.gov

47.42.120 Permits—Application—Fees—Renewal—Permissible acts—Revocation. Notwithstanding any other provisions of this chapter, no sign except a sign of type 1 or 2 or those type 3 signs that advertise activities conducted upon the properties where the signs are located, may be erected or maintained without a permit issued by the department. Application for a permit shall be made to the department on forms furnished by it. The forms shall contain a statement that the owner or lessee of the land in question has consented thereto. For type 8 signs (temporary agricultural directional signs), when the land in question is owned by the department, the consent statement must be reviewed and, if the sign does not create a safety concern, be approved within ten days of application by the department. The application shall be accompanied by a fee established by department rule to be deposited with the state treasurer to the credit of the motor

vehicle fund. Permits shall be for the remainder of the calendar year in which they are issued, and accompanying fees shall not be prorated for fractions of the year. Permits must be renewed annually through a certification process established by department rule. Advertising copy may be changed at any time without the payment of an additional fee. Assignment of permits in good standing is effective only upon receipt of written notice of assignment by the department. A permit may be revoked after hearing if the department finds that any statement made in the application or annual certification process was false or misleading, or that the sign covered is not in good general condition and in a reasonable state of repair, or is otherwise in violation of this chapter, if the false or misleading information has not been corrected and the sign has not been brought into compliance with this chapter or rules adopted under it within thirty days after written notification. Beginning July 1, 2014, the department shall establish and charge by rule an annual fee for type 4 and 5 sign permits. The fee must reasonably recover costs for outdoor advertising control program administration and enforcement and may not exceed one hundred fifty dollars. The department shall establish by rule exemptions from payment of the annual fee for type 4 and 5 signs that do not generate rental income. [2013 c 312 § 1; 2010 c 138 § 2; 1999 c 276 § 1; 1984 c 7 § 232; 1971 ex.s. c 62 § 17; 1961 c 96 § 12.]

Additional notes found at www.leg.wa.gov

47.42.130 Permit identification number. Every permit issued by the department shall be assigned a separate identification number, and each permittee shall fasten to each sign a weatherproof label, not larger than twenty-eight square inches, that shall be furnished by the department and on which shall be plainly visible the permit number. The permittee shall also place his or her name in a conspicuous position on the front or back of each sign. The failure of a sign to have such a label affixed to it is prima facie evidence that it is not in compliance with the provisions of this chapter. [2013 c 312 § 3; 1999 c 276 § 2; 1984 c 7 § 233; 1961 c 96 § 13.]

Additional notes found at www.leg.wa.gov

**Chapter 47.52 RCW
LIMITED ACCESS FACILITIES**

Sections

47.52.025 Additional powers—Controlling use of limited access facilities—High occupancy vehicle lanes—Definition.

47.52.025 Additional powers—Controlling use of limited access facilities—High occupancy vehicle lanes—Definition. (1) Highway authorities of the state, counties, and incorporated cities and towns, in addition to the specific powers granted in this chapter, shall also have, and may exercise, relative to limited access facilities, any and all additional authority, now or hereafter vested in them relative to highways or streets within their respective jurisdictions, and may regulate, restrict, or prohibit the use of such limited access facilities by various classes of vehicles or traffic. Such highway authorities may reserve any limited access facility or portions thereof, including designated lanes or ramps for the exclusive or preferential use of (a) public transportation vehicles, (b) privately owned buses, (c) motorcy-

cles, (d) private motor vehicles carrying not less than a specified number of passengers, or (e) the following private transportation provider vehicles if the vehicle has the capacity to carry eight or more passengers, regardless of the number of passengers in the vehicle, and if such use does not interfere with the efficiency, reliability, and safety of public transportation operations: (i) Auto transportation company vehicles regulated under chapter 81.68 RCW; (ii) passenger charter carrier vehicles regulated under chapter 81.70 RCW, except marked or unmarked stretch limousines and stretch sport utility vehicles as defined under department of licensing rules; (iii) private nonprofit transportation provider vehicles regulated under chapter 81.66 RCW; and (iv) private employer transportation service vehicles, when such limitation will increase the efficient utilization of the highway facility or will aid in the conservation of energy resources. Regulations authorizing such exclusive or preferential use of a highway facility may be declared to be effective at all time or at specified times of day or on specified days.

(2) Any transit-only lanes that allow other vehicles to access abutting businesses that are reserved pursuant to subsection (1) of this section may not be authorized for the use of private transportation provider vehicles as described under subsection (1) of this section.

(3) Highway authorities of the state, counties, or incorporated cities and towns may prohibit the use of limited access facilities by the following private transportation provider vehicles: (a) Auto transportation company vehicles regulated under chapter 81.68 RCW; (b) passenger charter carrier vehicles regulated under chapter 81.70 RCW, and marked or unmarked limousines and stretch sport utility vehicles as defined under department of licensing rules; (c) private nonprofit transportation provider vehicles regulated under chapter 81.66 RCW; and (d) private employer transportation service vehicles, when the average transit speed in the high occupancy vehicle travel lane fails to meet department standards and falls below forty-five miles per hour at least ninety percent of the time during the peak hours for two consecutive months.

(4)(a) Local authorities are encouraged to establish a process for private transportation providers, described under subsections (1) and (3) of this section, to apply for the use of limited access facilities that are reserved for the exclusive or preferential use of public transportation vehicles.

(b) The process must provide a list of facilities that the local authority determines to be unavailable for use by the private transportation provider and must provide the criteria used to reach that determination.

(c) The application and review processes must be uniform and should provide for an expeditious response by the authority.

(5) For the purposes of this section, "private employer transportation service" means regularly scheduled, fixed-route transportation service that is similarly marked or identified to display the business name or logo on the driver and passenger sides of the vehicle, meets the annual certification requirements of the department, and is offered by an employer for the benefit of its employees. [2013 c 26 § 3; 2011 c 379 § 3; 1974 ex.s. c 133 § 1; 1961 c 13 § 47.52.025. Prior: 1957 c 235 § 3; prior: 1951 c 167 § 5; 1947 c 202 § 2, part; Rem. Supp. 1947 § 6402-61, part.]

Conflict with state and federal environmental mitigation requirements—2011 c 379: See note following RCW 46.61.165.

High occupancy vehicle lanes: RCW 46.61.165.

Chapter 47.56 RCW

STATE TOLL BRIDGES, TUNNELS, AND FERRIES

Sections

47.56.403	High occupancy toll lane pilot project.
47.56.771	Refunding bonds—General obligation—Signatures, negotiability—Payment of principal and interest—Pledge of excise taxes. (<i>Effective July 1, 2015.</i>)
47.56.876	State route number 520 civil penalties account.

47.56.403 High occupancy toll lane pilot project. (1)

The department may provide for the establishment, construction, and operation of a pilot project of high occupancy toll lanes on state route 167 high occupancy vehicle lanes within King county. The department may issue, buy, and redeem bonds, and deposit and expend them; secure and remit financial and other assistance in the construction of high occupancy toll lanes, carry insurance, and handle any other matters pertaining to the high occupancy toll lane pilot project.

(2) Tolls for high occupancy toll lanes will be established as follows:

(a) The schedule of toll charges for high occupancy toll lanes must be established by the transportation commission and collected in a manner determined by the commission.

(b) Toll charges shall not be assessed on transit buses and vanpool vehicles owned or operated by any public agency.

(c) The department shall establish performance standards for the state route 167 high occupancy toll lane pilot project. The department must automatically adjust the toll charge, using dynamic tolling, to ensure that toll-paying single-occupant vehicle users are only permitted to enter the lane to the extent that average vehicle speeds in the lane remain above forty-five miles per hour at least ninety percent of the time during peak hours. The toll charge may vary in amount by time of day, level of traffic congestion within the highway facility, vehicle occupancy, or other criteria, as the commission may deem appropriate. The commission may also vary toll charges for single-occupant inherently low-emission vehicles such as those powered by electric batteries, natural gas, propane, or other clean burning fuels.

(d) The commission shall periodically review the toll charges to determine if the toll charges are effectively maintaining travel time, speed, and reliability on the highway facilities.

(3) The department shall monitor the state route 167 high occupancy toll lane pilot project and shall annually report to the transportation commission and the legislature on operations and findings. At a minimum, the department shall provide facility use data and review the impacts on:

- (a) Freeway efficiency and safety;
- (b) Effectiveness for transit;
- (c) Person and vehicle movements by mode;
- (d) Ability to finance improvements and transportation services through tolls; and

(e) The impacts on all highway users. The department shall analyze aggregate use data and conduct, as needed, separate surveys to assess usage of the facility in relation to geo-

graphic, socioeconomic, and demographic information within the corridor in order to ascertain actual and perceived questions of equitable use of the facility.

(4) The department shall modify the pilot project to address identified safety issues and mitigate negative impacts to high occupancy vehicle lane users.

(5) Authorization to impose high occupancy vehicle tolls for the state route 167 high occupancy toll pilot project expires if either of the following two conditions apply:

(a) If no contracts have been let by the department to begin construction of the toll facilities associated with this pilot project within four years of July 24, 2005; or

(b) If high occupancy vehicle tolls are being collected on June 30, 2015.

(6) The department of transportation shall adopt rules that allow automatic vehicle identification transponders used for electronic toll collection to be compatible with other electronic payment devices or transponders from the Washington state ferry system, other public transportation systems, or other toll collection systems to the extent that technology permits.

(7) The conversion of a single existing high occupancy vehicle lane to a high occupancy toll lane as proposed for SR-167 must be taken as the exception for this pilot project.

(8) A violation of the lane restrictions applicable to the high occupancy toll lanes established under this section is a traffic infraction.

(9) Procurement activity associated with this pilot project shall be open and competitive in accordance with *chapter 39.29 RCW. [2013 c 306 § 709; 2011 c 367 § 709; 2005 c 312 § 3.]

***Reviser's note:** Chapter 39.29 RCW was repealed by 2012 c 224 § 29, effective January 1, 2013. See chapter 39.26 RCW.

Contingent effective date—2013 c 306 § 709: "Section 709 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect June 30, 2013, unless *chapter . . . (Substitute House Bill No. 1745), Laws of 2013 is enacted on or before June 30, 2013, in which case section 709 of this act does not take effect." [2013 c 306 § 1404.]

***Reviser's note:** Substitute House Bill No. 1745 was not enacted on or before June 30, 2013.

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

Intent—Captions—2005 c 312: See notes following RCW 47.56.401.

47.56.771 Refunding bonds—General obligation—Signatures, negotiability—Payment of principal and interest—Pledge of excise taxes. (*Effective July 1, 2015.*)

(1) The refunding bonds authorized under RCW 47.56.770 must be general obligation bonds of the state of Washington and must be issued in a total principal amount not to exceed fifteen million dollars. The exact amount of refunding bonds to be issued must be determined by the state finance committee after calculating the amount of money deposited with the trustee for the bonds to be refunded which can be used to redeem or defease outstanding toll bridge authority, ferry, and Hood Canal bridge revenue bonds after the setting aside of sufficient money from that fund to pay the first interest installment on the refunding bonds. The refunding bonds must be serial in form maturing at such time, in such amounts, having such denomination or denominations, redemption privileges, and having such terms and conditions as determined by the state finance committee. The last matu-

rity date of the refunding bonds may not be later than January 1, 2002.

(2) The refunding bonds must be signed by the governor and the state treasurer under the seal of the state, which signatures must be made manually or in printed facsimile. The bonds must be registered in the name of the owner in accordance with chapter 39.46 RCW. The refunding bonds must distinctly state that they are a general obligation of the state of Washington, must pledge the full faith and credit of the state, and must contain an unconditional promise to pay the principal thereof and the interest thereon when due. The refunding bonds must be fully negotiable instruments.

(3) The principal and interest on the refunding bonds must be first payable in the manner provided in this section from the proceeds of state excise taxes on fuels imposed by chapter 82.38 RCW.

(4) The principal of and interest on the refunding bonds must be paid first from the state excise taxes on motor vehicle and special fuels deposited in the ferry bond retirement fund. There is hereby pledged the proceeds of state excise taxes on motor vehicle and special fuels imposed under chapter 82.38 RCW to pay the refunding bonds and interest thereon, and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on the refunding bonds. Not less than fifteen days prior to the date any interest or principal and interest payments are due, the state finance committee must certify to the state treasurer such amount of additional money as may be required for debt service, and the treasurer must thereupon transfer from the motor vehicle fund such amount from the proceeds of such excise taxes into the ferry bond retirement fund. Any proceeds of such excise taxes required for these purposes must first be taken from that portion of the motor vehicle fund which results from the imposition of the excise taxes on motor vehicle and special fuels and which is distributed to the Puget Sound capital construction account. If the proceeds from excise taxes distributed to the state are ever insufficient to meet the required payments on principal or interest on the refunding bonds when due, the amount required to make the payments on the principal or interest must next be taken from that portion of the motor vehicle fund which results from the imposition of excise taxes on motor vehicle and special fuels and which is distributed to the state, counties, cities, and towns pursuant to RCW 46.68.090. Any payments of the principal or interest taken from the motor vehicle or special fuel tax revenues which are distributable to the counties, cities, and towns must be repaid from the first money distributed to the state not required for redemption of the refunding bonds or interest thereon. The legislature covenants that it will at all times provide sufficient revenues from the imposition of such excise taxes to pay the principal and interest due on the refunding bonds. [2013 c 225 § 634; 1999 c 269 § 14; 1995 c 274 § 17; 1993 c 4 § 3.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Additional notes found at www.leg.wa.gov

47.56.876 State route number 520 civil penalties account. A special account to be known as the state route number 520 civil penalties account is created in the state treasury. All state route number 520 bridge replacement and

HOV program civil penalties generated from the nonpayment of tolls on the state route number 520 corridor must be deposited into the account, as provided under RCW 47.56.870(4)(b)(vii). Moneys in the account may be spent only after appropriation. Expenditures from the account may be used to fund any project within the state route number 520 bridge replacement and HOV program, including mitigation. During the 2011-2013 and 2013-2015 fiscal biennia, the legislature may transfer from the state route number 520 civil penalties account to the state route number 520 corridor account such amounts as reflect the excess fund balance of the state route number 520 civil penalties account. Funds transferred must be used solely for capital expenditures for the state route number 520 bridge replacement and HOV project (8BI1003). [2013 c 306 § 710; 2011 c 367 § 720; 2010 c 248 § 5.]

Effective date—2013 c 306: See note following RCW 47.64.170.

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

Chapter 47.60 RCW

PUGET SOUND FERRY AND TOLL BRIDGE SYSTEM

Sections

47.60.580 Bonds—Terms—Principal and interest payable from proceeds of state excise taxes on motor vehicle and special fuels. (*Effective July 1, 2015.*)

47.60.580 Bonds—Terms—Principal and interest payable from proceeds of state excise taxes on motor vehicle and special fuels. (*Effective July 1, 2015.*) Bonds issued under the provisions of RCW 47.60.560 must distinctly state that they are a general obligation of the state of Washington, must pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and must contain an unconditional promise to pay such principal and interest as the same becomes due. The principal of and interest on such bonds must be first payable in the manner provided in RCW 47.60.560 through 47.60.640 from the proceeds of the state excise taxes on motor vehicle and special fuels imposed by chapter 82.38 RCW. Proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the provisions of RCW 47.60.560 through 47.60.640 and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the provisions of RCW 47.60.560 through 47.60.640. [2013 c 225 § 635; 1995 c 274 § 18; 1977 ex.s. c 360 § 3.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Additional notes found at www.leg.wa.gov

Chapter 47.64 RCW

MARINE EMPLOYEES— PUBLIC EMPLOYMENT RELATIONS

Sections

47.64.170 Collective bargaining procedures.
47.64.270 Insurance and health care.

47.64.170 Collective bargaining procedures. (1) Any ferry employee organization certified as the bargaining representative shall be the exclusive representative of all ferry employees in the bargaining unit and shall represent all such employees fairly.

(2) A ferry employee organization or organizations and the governor may each designate any individual as its representative to engage in collective bargaining negotiations.

(3) Negotiating sessions, including strategy meetings of the employer or employee organizations, mediation, and the deliberative process of arbitrators are exempt from the provisions of chapter 42.30 RCW. Hearings conducted by arbitrators may be open to the public by mutual consent of the parties.

(4) Terms of any collective bargaining agreement may be enforced by civil action in Thurston county superior court upon the initiative of either party.

(5) Ferry system employees or any employee organization shall not negotiate or attempt to negotiate directly with anyone other than the person who has been appointed or authorized a bargaining representative for the purpose of bargaining with the ferry employees or their representative.

(6)(a) Within ten working days after the first Monday in September of every odd-numbered year, the parties shall attempt to agree on an interest arbitrator to be used if the parties are not successful in negotiating a comprehensive collective bargaining agreement. If the parties cannot agree on an arbitrator within the ten-day period, either party may request a list of seven arbitrators from the federal mediation and conciliation service. The parties shall select an interest arbitrator using the coin toss/alternate strike method within thirty calendar days of receipt of the list. Immediately upon selecting an interest arbitrator, the parties shall cooperate to reserve dates with the arbitrator for potential arbitration between August 1st and September 15th of the following even-numbered year. The parties shall also prepare a schedule of at least five negotiation dates for the following year, absent an agreement to the contrary. The parties shall execute a written agreement before November 1st of each odd-numbered year setting forth the name of the arbitrator and the dates reserved for bargaining and arbitration. This subsection (6)(a) imposes minimum obligations only and is not intended to define or limit a party's full, good faith bargaining obligation under other sections of this chapter.

(b) The negotiation of a proposed collective bargaining agreement by representatives of the employer and a ferry employee organization shall commence on or about February 1st of every even-numbered year.

(c) For negotiations covering the 2009-2011 biennium and subsequent biennia, the time periods specified in this section, and in RCW 47.64.210 and 47.64.300 through 47.64.320, must ensure conclusion of all agreements on or before October 1st of the even-numbered year next preceding the biennial budget period during which the agreement should take effect. These time periods may only be altered by mutual agreement of the parties in writing. Any such agreement and any impasse procedures agreed to by the parties under RCW 47.64.200 must include an agreement regarding the new time periods that will allow final resolution by negotiations or arbitration by October 1st of each even-numbered year.

(7) It is the intent of this section that the collective bargaining agreement or arbitrator's award shall commence on July 1st of each odd-numbered year and shall terminate on June 30th of the next odd-numbered year to coincide with the ensuing biennial budget year, as defined by RCW 43.88.020(7), to the extent practical. It is further the intent of this section that all collective bargaining agreements be concluded by October 1st of the even-numbered year before the commencement of the biennial budget year during which the agreements are to be in effect. After the expiration date of a collective bargaining agreement negotiated under this chapter, except to the extent provided in subsection (11) of this section and RCW 47.64.270(4), all of the terms and conditions specified in the collective bargaining agreement remain in effect until the effective date of a subsequently negotiated agreement, not to exceed one year from the expiration date stated in the agreement. Thereafter, the employer may unilaterally implement according to law.

(8) The office of financial management shall conduct a salary survey, for use in collective bargaining and arbitration, which must be conducted through a contract with a firm nationally recognized in the field of human resources management consulting.

(9) Except as provided in subsection (11) of this section:

(a) The governor shall submit a request either for funds necessary to implement the collective bargaining agreements including, but not limited to, the compensation and fringe benefit provisions or for legislation necessary to implement the agreement, or both. Requests for funds necessary to implement the collective bargaining agreements shall not be submitted to the legislature by the governor unless such requests:

(i) Have been submitted to the director of the office of financial management by October 1st before the legislative session at which the requests are to be considered; and

(ii) Have been certified by the director of the office of financial management as being feasible financially for the state.

(b) The governor shall submit a request either for funds necessary to implement the arbitration awards or for legislation necessary to implement the arbitration awards, or both. Requests for funds necessary to implement the arbitration awards shall not be submitted to the legislature by the governor unless such requests:

(i) Have been submitted to the director of the office of financial management by October 1st before the legislative session at which the requests are to be considered; and

(ii) Have been certified by the director of the office of financial management as being feasible financially for the state.

(c) The legislature shall approve or reject the submission of the request for funds necessary to implement the collective bargaining agreements or arbitration awards as a whole for each agreement or award. The legislature shall not consider a request for funds to implement a collective bargaining agreement or arbitration award unless the request is transmitted to the legislature as part of the governor's budget document submitted under RCW 43.88.030 and 43.88.060. If the legislature rejects or fails to act on the submission, either party may reopen all or part of the agreement and award or the exclusive bargaining representative may seek to imple-

ment the procedures provided for in RCW 47.64.210 and 47.64.300.

(10) If, after the compensation and fringe benefit provisions of an agreement are approved by the legislature, a significant revenue shortfall occurs resulting in reduced appropriations, as declared by proclamation of the governor or by resolution of the legislature, both parties shall immediately enter into collective bargaining for a mutually agreed upon modification of the agreement.

(11)(a) For the collective bargaining agreements negotiated for the 2011-2013 fiscal biennium, the legislature may consider a request for funds to implement a collective bargaining agreement even if the request for funds was not received by the office of financial management by October 1st and was not transmitted to the legislature as part of the governor's budget document submitted under RCW 43.88.030 and 43.88.060.

(b) For the 2013-2015 fiscal biennium, a collective bargaining agreement related to employee health care benefits negotiated between the employer and coalition pursuant to RCW 41.80.020(3) regarding the dollar amount expended on behalf of each employee must be a separate agreement for which the governor may request funds necessary to implement the agreement. The legislature may act upon a 2013-2015 collective bargaining agreement related to employee health care benefits if an agreement is reached and submitted to the office of financial management and legislative budget committees before final legislative action on the biennial or supplemental operating budget by the sitting legislature.

(c) For the collective bargaining agreements negotiated for the 2013-2015 fiscal biennium, the legislature may consider a request for funds to implement a collective bargaining agreement reached after October 1st after a determination of financial infeasibility by the director of the office of financial management if the request for funds is transmitted to the legislature as part of the governor's budget document submitted under RCW 43.88.030 and 43.88.060. [2013 c 306 § 521; 2011 c 367 § 712; 2010 c 283 § 11; 2007 c 160 § 1; 2006 c 164 § 6; 1983 c 15 § 8.]

Effective date—2013 c 306: "Except for sections 702 and 709 of this act, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 20, 2013]." [2013 c 306 § 1402.]

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

Findings—Intent—Effective date—2010 c 283: See notes following RCW 47.60.355.

Prospective application—Savings—Effective dates—2006 c 164: See notes following RCW 47.64.011.

47.64.270 Insurance and health care. (1) The employer and one coalition of all the exclusive bargaining representatives subject to this chapter and chapter 41.80 RCW shall conduct negotiations regarding the dollar amount expended on behalf of each employee for health care benefits.

(2) Absent a collective bargaining agreement to the contrary, the department of transportation shall provide contributions to insurance and health care plans for ferry system employees and dependents, as determined by the state health care authority, under chapter 41.05 RCW.

(3) The employer and employee organizations may collectively bargain for insurance plans other than health care benefits, and employer contributions may exceed that of other state agencies as provided in RCW 41.05.050.

(4) For the 2013-2015 fiscal biennium, a collective bargaining agreement related to employee health care benefits negotiated between the employer and coalition pursuant to RCW 41.80.020(3) regarding the dollar amount expended on behalf of each employee must be a separate agreement for which the governor may request funds necessary to implement the agreement. [2013 c 306 § 522; 2011 c 367 § 713; 2010 c 283 § 13; 2006 c 164 § 17; 1995 1st sp.s. c 6 § 6; 1993 c 492 § 224; 1988 c 107 § 21; 1987 c 78 § 2; 1983 c 15 § 18.]

Effective date—2013 c 306: See note following RCW 47.64.170.

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

Findings—Intent—Effective date—2010 c 283: See notes following RCW 47.60.355.

Prospective application—Savings—Effective dates—2006 c 164: See notes following RCW 47.64.011.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Intent—1987 c 78: "The legislature finds that the provisions of RCW 47.64.270 have been subject to misinterpretation. The objective of this act is to clarify the intent of RCW 47.64.270 as originally enacted." [1987 c 78 § 1.]

Additional notes found at www.leg.wa.gov

Chapter 47.68 RCW AERONAUTICS

(Formerly: Chapter 14.04 RCW, Aeronautics commission)

Sections

47.68.250 Registration of aircraft. (*Effective January 1, 2014, until July 1, 2021.*)

47.68.250 Registration of aircraft. (*Effective January 1, 2014, until July 1, 2021.*) (1) Every aircraft must be registered with the department for each calendar year in which the aircraft is operated or is based within this state. A fee of fifteen dollars is charged for each such registration and each annual renewal thereof.

(2) Possession of the appropriate effective federal certificate, permit, rating, or license relating to ownership and airworthiness of the aircraft, and payment of the excise tax imposed by Title 82 RCW for the privilege of using the aircraft within this state during the year for which the registration is sought, and payment of the registration fee required by this section are the only requisites for registration of an aircraft under this section.

(3) The registration fee imposed by this section is payable to and collected by the secretary. The fee for any calendar year must be paid during the month of January, and must be collected by the secretary at the time of the collection by him or her of the excise tax. If the secretary is satisfied that the requirements for registration of the aircraft have been met, he or she must issue to the owner of the aircraft a certificate of registration therefor. The secretary must pay to the state treasurer the registration fees collected under this section, which registration fees must be credited to the aeronautics account in the transportation fund.

(4) It is not necessary for the registrant to provide the secretary with originals or copies of federal certificates, permits, ratings, or licenses. The secretary must issue certifi-

cates of registration, or such other evidences of registration or payment of fees as he or she may deem proper; and in connection therewith may prescribe requirements for the possession and exhibition of such certificates or other evidences.

(5) The provisions of this section do not apply to:

(a) An aircraft owned by and used exclusively in the service of any government or any political subdivision thereof, including the government of the United States, any state, territory, or possession of the United States, or the District of Columbia, which is not engaged in carrying persons or property for commercial purposes;

(b) An aircraft registered under the laws of a foreign country;

(c) An aircraft that is owned by a nonresident if:

(i) The aircraft remains in this state or is based in this state, or both, for a period less than ninety days; or

(ii) The aircraft is a large private airplane as defined in RCW 82.08.215 and remains in this state for a period of ninety days or longer, but only when:

(A) The airplane is in this state exclusively for the purpose of repairs, alterations, or reconstruction, including any flight testing related to the repairs, alterations, or reconstruction, or for the purpose of continual storage of not less than one full calendar year;

(B) An employee of the facility providing these services is on board the airplane during any flight testing; and

(C) Within ninety days of the date the airplane first arrived in this state during the calendar year, the nonresident files a written statement with the department indicating that the airplane is exempt from registration under this subsection (5)(c)(ii). The written statement must be filed in a form and manner prescribed by the department and must include such information as the department requires. The department may require additional periodic verification that the airplane remains exempt from registration under this subsection (5)(c)(ii) and that written statements conform with the provisions of RCW 9A.72.085;

(d) An aircraft engaged principally in commercial flying constituting an act of interstate or foreign commerce;

(e) An aircraft owned by the commercial manufacturer thereof while being operated for test or experimental purposes, or for the purpose of training crews for purchasers of the aircraft;

(f) An aircraft being held for sale, exchange, delivery, test, or demonstration purposes solely as stock in trade of an aircraft dealer licensed under Title 14 RCW; and

(g) An aircraft based within the state that is in an unairworthy condition, is not operated within the registration period, and has obtained a written exemption issued by the secretary.

(6) The secretary must be notified within thirty days of any change in ownership of a registered aircraft. The notification must contain the N, NC, NR, NL, or NX number of the aircraft, the full name and address of the former owner, and the full name and address of the new owner. For failure to so notify the secretary, the registration of that aircraft may be canceled by the secretary, subject to reinstatement upon application and payment of a reinstatement fee of ten dollars by the new owner.

(7) A municipality or port district that owns, operates, or leases an airport, as defined in RCW 47.68.020, with the

intent to operate, must require from an aircraft owner proof of aircraft registration as a condition of leasing or selling tiedown or hanger space for an aircraft. It is the responsibility of the lessee or purchaser to register the aircraft. The airport must work with the aviation division to assist in its efforts to register aircraft by providing information about based aircraft on an annual basis as requested by the division. [2013 2nd sp.s. c 13 § 1102; 2003 c 375 § 4; 1999 c 302 § 2; 1998 c 188 § 1; 1995 c 170 § 3; 1993 c 208 § 7; 1987 c 220 § 3; 1979 c 158 § 206; 1967 ex.s. c 9 § 8; 1955 c 150 § 11; 1949 c 49 § 12; 1947 c 165 § 25; Rem. Supp. 1949 § 10964-105. Formerly RCW 14.04.250.]

Intent—Findings—2013 2nd sp.s. c 13: "(1) The legislature intends to promote the economic development of our state's aerospace cluster and increase the tax revenues collected by the state through promoting a competitive marketplace for storing and modifying unfurnished, noncommercial aircraft. The legislature finds that Washington is currently losing these types of jobs to other states, resulting in the loss of high-wage jobs and new tax revenue. Further, the legislature finds that the current tax statutes are an impediment to encouraging the development of aerospace clusters in our state. Therefore, the legislature intends to modify our state's tax policy to encourage aerospace cluster development within the state and increase tax revenues.

(2) The joint legislative audit and review committee, as part of its tax preference review process, must estimate the net impact on state tax revenues by comparing the decrease in state revenues resulting from the changes made in part XI of this act to the additional tax revenues generated from the direct, indirect, and induced economic impacts from those changes. The committee must also, to the extent practicable, estimate job growth in the aerospace cluster resulting from the changes made in part XI of this act. The committee must conduct its tax preference review of part XI of this act during calendar year 2016 and report its findings and recommendations to the legislature by January 1, 2017." [2013 2nd sp.s. c 13 § 1101.]

Effective date—Expiration date—2013 2nd sp.s. c 13: See notes following RCW 82.08.215.

Effective date—2003 c 375: See note following RCW 47.68.240.

Aircraft dealers: Chapter 14.20 RCW.

Definition of terms: RCW 14.20.010, 47.68.020.

Additional notes found at www.leg.wa.gov

Title 48 INSURANCE

Chapters

- 48.02 Insurance commissioner.**
- 48.03 Examinations.**
- 48.14 Fees and taxes.**
- 48.18 The insurance contract.**
- 48.18A Variable contract act.**
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Chapter 48.02 RCW
INSURANCE COMMISSIONER

Sections

48.02.093 Health care authority ombuds—Retirees—Volunteer position.

48.02.093 Health care authority ombuds—Retirees—Volunteer position. There is established, within the office of the insurance commissioner, the volunteer position of health care authority ombuds to assist retirees enrolled in the public employees' benefits board program. The volunteer position shall be trained as part of the existing volunteer training provided to the statewide health insurance benefit advisors. The position shall help retirees with questions and concerns, assist the public employees' benefits board program with identification of retiree concerns, and maintain access to updated program information. [2013 c 23 § 101; 2012 c 150 § 1.]

Chapter 48.03 RCW
EXAMINATIONS

Sections

48.03.010 Examination of insurers, bureaus.
48.03.060 Examination expense.

48.03.010 Examination of insurers, bureaus. (1) The commissioner shall examine the affairs, transactions, accounts, records, documents, and assets of each authorized insurer as often as he or she deems advisable. The commissioner shall so examine each insurer holding a certificate of authority or certificate of registration not less frequently than every five years. Examination of an alien insurer may be limited to its insurance transactions in the United States. In scheduling and determining the nature, scope, and frequency of an examination, the commissioner shall consider such matters as the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants, and other criteria as set forth in the examiner's handbook adopted by the National Association of Insurance Commissioners and in effect when the commissioner exercises discretion under this section.

(2) As often as the commissioner deems advisable and at least once in five years, the commissioner shall fully examine each rating organization and examining bureau licensed in this state. As often as he or she deems it advisable the commissioner may examine each advisory organization, any statistical reporting agent designated by the commissioner under RCW 48.29.017, and each joint underwriting or joint reinsurance group, association, or organization.

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

(4) In lieu of making an examination under this chapter, the commissioner may accept a full report of the last recent examination of a nondomestic rating or advisory organization, or joint underwriting or joint reinsurance group, association or organization, as prepared by the insurance supervisory official of the state of domicile or of entry. In lieu of an examination under this chapter of a foreign or alien insurer licensed in this state, the commissioner may accept an exam-

ination report on the company as prepared by the insurance department for the company's state of domicile or port-of-entry state until January 1, 1994. Thereafter, an examination report may be accepted only if: (a) That insurance department was at the time of the examination accredited under the National Association of Insurance Commissioners' financial regulation standards and accreditation program; or (b) the examination was performed either under the supervision of an accredited insurance department or with the participation of one or more examiners employed by an accredited state insurance department who, after a review of the examination work papers and report, state under oath that the examination was performed in a manner consistent with the standards and procedures required by their insurance department.

(5) The commissioner may elect to accept and rely on an audit report made by an independent certified public accountant for the insurer in the course of that part of the commissioner's examination covering the same general subject matter as the audit. The commissioner may incorporate the audit report in his or her report of the examination.

(6) For the purposes of completing an examination of any company under this chapter, the commissioner may examine or investigate any managing general agent or any other person, or the business of any managing general agent or other person, insofar as that examination or investigation is, in the sole discretion of the commissioner, necessary or material to the examination of the company. [2013 c 65 § 3; 1993 c 462 § 43; 1982 c 181 § 1; 1979 c 139 § 1; 1947 c 79 § .03.01; Rem. Supp. 1947 § 45.03.01.]

Additional notes found at www.leg.wa.gov

48.03.060 Examination expense. (1) Examinations within this state of any insurer or self-funded multiple employer welfare arrangement as defined in RCW 48.125.010 domiciled or having its home offices in this state, other than a title insurer, made by the commissioner or the commissioner's examiners and employees must, except as to fees, mileage, and expense incurred as to witnesses, be at the expense of the state.

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

(3) When making an examination under this chapter, the commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants, or other professionals and specialists as examiners, the cost of which must be borne by the person who is the subject of the examination, except as provided in subsection (1) of this section.

(4) The person examined and liable must reimburse the state upon presentation of an itemized statement for the actual travel expenses of the commissioner's examiners, their reasonable living expense allowance, and their per diem compensation, including salary and the employer's cost of employee benefits, at a reasonable rate approved by the commissioner, incurred on account of the examination. Per diem salary and expenses for employees examining insurers domi-

ciled outside the state of Washington must be established by the commissioner on the basis of the national association of insurance commissioner's recommended salary and expense schedule for zone examiners, or the salary schedule established by the state director of personnel, and the expense schedule established by the office of financial management, whichever is higher. A domestic title insurer must pay the examination expense and costs to the commissioner as itemized and billed by the commissioner.

The commissioner or the commissioner's examiners must not receive or accept any additional emolument on account of any examination.

(5) Nothing contained in this chapter limits the commissioner's authority to terminate or suspend any examination in order to pursue other legal or regulatory action under the insurance laws of this state. Findings of fact and conclusions made pursuant to any examination are prima facie evidence in any legal or regulatory action.

(6) The expense of the examination of any statistical reporting agent designated by the commissioner under RCW 48.29.017 must be borne by and apportioned among all authorized title insurance companies and licensed title insurance agents in this state. [2013 c 65 § 4; 2011 c 47 § 4; 2004 c 260 § 23; 1995 c 152 § 2. Prior: 1993 c 462 § 47; 1993 c 281 § 55; 1981 c 339 § 2; 1979 ex.s. c 35 § 1; 1947 c 79 § .03.06; Rem. Supp. 1947 § 45.03.06.]

Severability—Effective date—2004 c 260: See RCW 48.125.900 and 48.125.901.

Intent—1995 c 152: "The only intent of the legislature in chapter 152, Laws of 1995 is to correct double amendments. It is not the intent of the legislature to change the substance or effect of any statute previously enacted." [1995 c 152 § 1.]

Additional notes found at www.leg.wa.gov

Chapter 48.14 RCW FEES AND TAXES

Sections

- 48.14.020 Premium taxes.
48.14.0201 Premiums and prepayments tax—Health care services—
Exemptions—State preemption.

48.14.020 Premium taxes. (1) Subject to other provisions of this chapter, each authorized insurer except title insurers shall on or before the first day of March of each year pay to the state treasurer through the commissioner's office a tax on premiums. Except as provided in subsection (3) of this section, such tax shall be in the amount of two percent of all premiums, excluding amounts returned to or the amount of reductions in premiums allowed to holders of industrial life policies for payment of premiums directly to an office of the insurer, collected or received by the insurer under RCW 48.14.090 during the preceding calendar year other than ocean marine and foreign trade insurances, after deducting premiums paid to policyholders as returned premiums, upon risks or property resident, situated, or to be performed in this state. For tax purposes, the reporting of premiums shall be on a written basis or on a paid-for basis consistent with the basis required by the annual statement. For the purposes of this section the consideration received by an insurer for the granting of an annuity shall not be deemed to be a premium.

[2013 RCW Supp—page 610]

(2)(a) The taxes imposed in this section do not apply to amounts received by any life and disability insurer for health care services included within the definition of practice of dentistry under RCW 18.32.020 except amounts received for pediatric oral services that qualify as coverage for the minimum essential coverage requirement under P.L. 111-148 (2010), as amended.

(b) Beginning January 1, 2014, moneys collected for premiums written on qualified health benefit plans and stand-alone dental plans offered through the health benefit exchange under chapter 43.71 RCW must be deposited in the health benefit exchange account under RCW 43.71.060.

(3) In the case of insurers which require the payment by their policyholders at the inception of their policies of the entire premium thereon in the form of premiums or premium deposits which are the same in amount, based on the character of the risks, regardless of the length of term for which such policies are written, such tax shall be in the amount of two percent of the gross amount of such premiums and premium deposits upon policies on risks resident, located, or to be performed in this state, in force as of the thirty-first day of December next preceding, less the unused or unabsorbed portion of such premiums and premium deposits computed at the average rate thereof actually paid or credited to policyholders or applied in part payment of any renewal premiums or premium deposits on one-year policies expiring during such year.

(4) Each authorized insurer shall with respect to all ocean marine and foreign trade insurance contracts written within this state during the preceding calendar year, on or before the first day of March of each year pay to the state treasurer through the commissioner's office a tax of ninety-five one-hundredths of one percent on its gross underwriting profit. Such gross underwriting profit shall be ascertained by deducting from the net premiums (i.e., gross premiums less all return premiums and premiums for reinsurance) on such ocean marine and foreign trade insurance contracts the net losses paid (i.e., gross losses paid less salvage and recoveries on reinsurance ceded) during such calendar year under such contracts. In the case of insurers issuing participating contracts, such gross underwriting profit shall not include, for computation of the tax prescribed by this subsection, the amounts refunded, or paid as participation dividends, by such insurers to the holders of such contracts.

(5) The state does hereby preempt the field of imposing excise or privilege taxes upon insurers or their appointed insurance producers, other than title insurers, and no county, city, town or other municipal subdivision shall have the right to impose any such taxes upon such insurers or these insurance producers.

(6) If an authorized insurer collects or receives any such premiums on account of policies in force in this state which were originally issued by another insurer and which other insurer is not authorized to transact insurance in this state on its own account, such collecting insurer shall be liable for and shall pay the tax on such premiums. [2013 2nd sp.s. c 6 § 6; 2013 c 325 § 4; 2009 c 161 § 3; 2008 c 217 § 6; 1986 c 296 § 1; 1983 2nd ex.s. c 3 § 7; 1982 2nd ex.s. c 10 § 1; 1982 1st ex.s. c 35 § 15; 1979 ex.s. c 233 § 2; 1969 ex.s. c 241 § 9; 1947 c 79 § .14.02; Rem. Supp. 1947 § 45.14.02.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

Intent—1979 ex.s. c 233: "It is the intent of the legislature to eliminate existing tax discrimination between qualified and nonqualified pension plans which are effectuated by annuity contracts, by excluding the consideration paid for such contracts from premiums subject to the premium tax." [1979 ex.s. c 233 § 1.]

Credit against premium tax for assessments paid pursuant to RCW 48.32.060(1)(c): RCW 48.32.145.

*Portion of state taxes on fire insurance premiums to be deposited in firefighters' pension fund: RCW 41.16.050.
volunteer firefighters' and reserve officers' relief and pension principal fund: RCW 41.24.030.*

Additional notes found at www.leg.wa.gov

48.14.0201 Premiums and prepayments tax—Health care services—Exemptions—State preemption. (1) As used in this section, "taxpayer" means a health maintenance organization as defined in RCW 48.46.020, a health care service contractor as defined in chapter 48.44 RCW, or a self-funded multiple employer welfare arrangement as defined in RCW 48.125.010.

(2) Each taxpayer must pay a tax on or before the first day of March of each year to the state treasurer through the insurance commissioner's office. The tax must be equal to the total amount of all premiums and prepayments for health care services collected or received by the taxpayer under RCW 48.14.090 during the preceding calendar year multiplied by the rate of two percent. For tax purposes, the reporting of premiums and prepayments must be on a written basis or on a paid-for basis consistent with the basis required by the annual statement.

(3) Taxpayers must prepay their tax obligations under this section. The minimum amount of the prepayments is the percentages of the taxpayer's tax obligation for the preceding calendar year recomputed using the rate in effect for the current year. For the prepayment of taxes due during the first calendar year, the minimum amount of the prepayments is the percentages of the taxpayer's tax obligation that would have been due had the tax been in effect during the previous calendar year. The tax prepayments must be paid to the state treasurer through the commissioner's office by the due dates and in the following amounts:

- (a) On or before June 15, forty-five percent;
- (b) On or before September 15, twenty-five percent;
- (c) On or before December 15, twenty-five percent.

(4) For good cause demonstrated in writing, the commissioner may approve an amount smaller than the preceding calendar year's tax obligation as recomputed for calculating the health maintenance organization's, health care service contractor's, self-funded multiple employer welfare arrangement's, or certified health plan's prepayment obligations for the current tax year.

(5)(a) Except as provided in (b) of this subsection, moneys collected under this section are deposited in the general fund.

(b) Beginning January 1, 2014, moneys collected from taxpayers for premiums written on qualified health benefit plans and stand-alone dental plans offered through the health benefit exchange under chapter 43.71 RCW must be deposited in the health benefit exchange account under RCW 43.71.060.

(6) The taxes imposed in this section do not apply to:

(a) Amounts received by any taxpayer from the United States or any instrumentality thereof as prepayments for health care services provided under Title XVIII (medicare) of the federal social security act.

(b) Amounts received by any taxpayer from the state of Washington as prepayments for health care services provided under:

(i) The medical care services program as provided in RCW 74.09.035; or

(ii) The Washington basic health plan on behalf of subsidized enrollees as provided in chapter 70.47 RCW.

(c) Amounts received by any health care service contractor as defined in chapter 48.44 RCW, or any health maintenance organization as defined in chapter 48.46 RCW, as prepayments for health care services included within the definition of practice of dentistry under RCW 18.32.020, except amounts received for pediatric oral services that qualify as coverage for the minimum essential coverage requirement under P.L. 111-148 (2010), as amended.

(d) Participant contributions to self-funded multiple employer welfare arrangements that are not taxable in this state.

(7) Beginning January 1, 2000, the state preempts the field of imposing excise or privilege taxes upon taxpayers and no county, city, town, or other municipal subdivision has the right to impose any such taxes upon such taxpayers. This subsection is limited to premiums and payments for health benefit plans offered by health care service contractors under chapter 48.44 RCW, health maintenance organizations under chapter 48.46 RCW, and self-funded multiple employer welfare arrangements as defined in RCW 48.125.010. The preemption authorized by this subsection must not impair the ability of a county, city, town, or other municipal subdivision to impose excise or privilege taxes upon the health care services directly delivered by the employees of a health maintenance organization under chapter 48.46 RCW.

(8)(a) The taxes imposed by this section apply to a self-funded multiple employer welfare arrangement only in the event that they are not preempted by the employee retirement income security act of 1974, as amended, 29 U.S.C. Sec. 1001 et seq. The arrangements and the commissioner must initially request an advisory opinion from the United States department of labor or obtain a declaratory ruling from a federal court on the legality of imposing state premium taxes on these arrangements. Once the legality of the taxes has been determined, the multiple employer welfare arrangement certified by the insurance commissioner must begin payment of these taxes.

(b) If there has not been a final determination of the legality of these taxes, then beginning on the earlier of (i) the date the fourth multiple employer welfare arrangement has been certified by the insurance commissioner, or (ii) April 1, 2006, the arrangement must deposit the taxes imposed by this section into an interest bearing escrow account maintained by the arrangement. Upon a final determination that the taxes are not preempted by the employee retirement income security act of 1974, as amended, 29 U.S.C. Sec. 1001 et seq., all funds in the interest bearing escrow account must be transferred to the state treasurer.

(9) The effect of transferring contracts for health care services from one taxpayer to another taxpayer is to transfer the tax prepayment obligation with respect to the contracts.

(10) On or before June 1st of each year, the commissioner must notify each taxpayer required to make prepayments in that year of the amount of each prepayment and must provide remittance forms to be used by the taxpayer. However, a taxpayer's responsibility to make prepayments is not affected by failure of the commissioner to send, or the taxpayer to receive, the notice or forms. [2013 2nd sp.s. c 6 § 5; 2013 c 325 § 3; 2011 c 47 § 8; 2009 c 479 § 41. Prior: 2005 c 405 § 1; 2005 c 223 § 6; 2005 c 7 § 1; 2004 c 260 § 24; 1998 c 323 § 1; 1997 c 154 § 1; 1993 sp.s. c 25 § 601; 1993 c 492 § 301.]

Effective date—2009 c 479: See note following RCW 2.56.030.

Effective date—2005 c 7: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 15, 2005]." [2005 c 7 § 3.]

Severability—Effective date—2004 c 260: See RCW 48.125.900 and 48.125.901.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050. Additional notes found at www.leg.wa.gov

Chapter 48.18 RCW THE INSURANCE CONTRACT

Sections

- 48.18.103 Forms of commercial property casualty policies—Legislative intent—Issuance prior to filing—Disapproval by commissioner—Definition.
- 48.18.278 Terms for cancellation, nonrenewal, or modification of portable electronics policy—Application of RCW 48.18.290 and 48.18.2901 to portable electronics insurance.

48.18.103 Forms of commercial property casualty policies—Legislative intent—Issuance prior to filing—Disapproval by commissioner—Definition. (1) It is the intent of the legislature to assist the purchasers of commercial property casualty insurance by allowing policies to be issued more expeditiously and provide a more competitive market for forms.

(2) Commercial property casualty policies may be issued prior to filing the forms.

(3) All commercial property casualty forms must be filed with the commissioner within thirty days after an insurer issues any policy using them. This subsection does not apply to:

(a) Types or classes of forms that the commissioner exempts from filing by rule; and

(b) Manuscript policies, riders, or endorsements of unique character designed for and used with relation to insurance upon a particular subject.

(4) If, within thirty days after a commercial property casualty form has been filed, the commissioner finds that the form does not meet the requirements of this chapter, the commissioner shall disapprove the form and give notice to the insurer or rating organization that made the filing, specifying how the form fails to meet the requirements and stating when, within a reasonable period thereafter, the form shall be deemed no longer effective. The commissioner may extend the time for review an additional fifteen days by giving notice

to the insurer prior to the expiration of the original thirty-day period.

(5) Upon a final determination of a disapproval of a policy form under subsection (4) of this section, the insurer must amend any previously issued disapproved form by endorsement to comply with the commissioner's disapproval.

(6) For purposes of this section, "commercial property casualty" means insurance pertaining to a business, profession, occupation, nonprofit organization, or public entity for the lines of property and casualty insurance defined in RCW 48.11.040, 48.11.050, 48.11.060, or 48.11.070, but does not mean medical malpractice insurance or portable electronics insurance as defined in RCW 48.120.005.

(7) Except as provided in subsection (5) of this section, the disapproval shall not affect any contract made or issued prior to the expiration of the period set forth in the notice of disapproval.

(8) Every member or subscriber to a rating organization must adhere to the form filings made on its behalf by the organization. An insurer may deviate from forms filed on its behalf by an organization only if the insurer files the forms with the commissioner in accordance with this chapter.

(9) In the event a hearing is held on the actions of the commissioner under subsection (4) of this section, the burden of proof shall be on the commissioner. [2013 c 152 § 1; 2006 c 8 § 215; 2005 c 223 § 9; 2003 c 248 § 4; 1997 c 428 § 1.]

Findings—Intent—Part headings and subheadings not law—Severability—2006 c 8: See notes following RCW 5.64.010.

48.18.278 Terms for cancellation, nonrenewal, or modification of portable electronics policy—Application of RCW 48.18.290 and 48.18.2901 to portable electronics insurance. (1) The cancellation provisions in RCW 48.18.290 and the nonrenewal provisions in RCW 48.18.2901 apply to portable electronics insurance policies issued under chapter 48.120 RCW, unless inconsistent with this section in which case this section controls.

(2) An insurer may cancel, nonrenew, modify, or otherwise change the terms and conditions of a policy of portable electronics only:

(a) Upon providing the policyholder and enrolled customers with at least thirty days' notice; or

(b) As provided in subsections (5) through (7) of this section.

(3) An insurer may not increase premiums or deductibles or otherwise restrict benefits more than once in any six-month period.

(4) If an insurer changes the terms and conditions, then the insurer must provide:

(a) The vendor policyholder with a revised policy endorsement; and

(b) Each enrolled customer with:

(i) A revised certificate or endorsement and a summary of material changes; or

(ii) If the change is limited to a change in premium, a revised certificate, endorsement, updated brochure, or other evidence indicating a change in premium.

(5) An insurer may terminate an enrolled customer's enrollment under a portable electronics insurance policy upon fifteen days' notice for discovery of fraud or material

misrepresentation in obtaining coverage or in the presentation of a claim.

(6) An insurer may terminate an enrolled customer's enrollment under a portable electronics insurance policy upon ten days' notice for nonpayment of premium.

(7) An insurer may immediately terminate an enrolled customer's enrollment under a portable electronics insurance policy:

(a) Without notice, if the enrolled customer ceases to have an active service with the vendor of portable electronics; or

(b) Without prior notice if an enrolled customer exhausts the aggregate limit of liability, if any, under the terms of the portable electronics insurance policy and the insurer sends notice of termination to the enrolled customer within thirty calendar days after exhaustion of the limit. However, if notice is not timely sent, coverage continues notwithstanding the aggregate limit of liability until the insurer sends notice of termination to the enrolled customer.

(8) If a policy of portable electronics insurance is being canceled or terminated by the insurer, the notice must include the insurer's actual reason for cancellation or termination.

(9) When a portable electronics insurance policy is terminated by a policyholder, the insurer must mail or deliver written notice to each enrolled customer advising the enrolled customer of the termination of the policy and the effective date of termination. The written notice must be mailed or delivered to the enrolled customer at least thirty days prior to the termination. The written notice must include the actual reason for the termination. However, if the policyholder is a vendor licensed as a specialty producer pursuant to RCW 48.120.010, the notice required by this subsection must be mailed or delivered by the vendor.

(10) Any notice or correspondence with respect to a policy of portable electronics insurance required under this section or otherwise required by law must be in writing. Notice or correspondence may be sent either by mail or by electronic means. If the notice or correspondence is mailed, it must be sent to the vendor of portable electronics at the vendor's mailing address specified for that purpose and to its affected enrolled customers' last known mailing addresses on file with the insurer.

The insurer or vendor of portable electronics must maintain proof of mailing in a form authorized or accepted by the United States postal service or other commercial mail delivery service. If a notice or correspondence is sent by electronic means, it must be sent to the vendor of portable electronics at the vendor's electronic mail address specified for that purpose and to its affected enrolled customers' last known electronic mail address as provided by each enrolled customer to the insurer or vendor of portable electronics, as the case may be.

For purposes of this subsection, an enrolled customer's provision of an electronic mail address to the insurer, supervising person, or vendor of portable electronics means that the enrolled customer consents to receive notices and correspondence by electronic mail as long as a disclosure to that effect is provided to the consumer at the time the consumer provides an electronic mail address. The insurer or vendor of portable electronics, as the case may be, must maintain proof that the notice or correspondence was sent.

(11) Notice or correspondence required by this section or otherwise required by law may be sent by the supervising person appointed by the insurer on behalf of an insurer or a vendor. [2013 c 152 § 8.]

Chapter 48.18A RCW VARIABLE CONTRACT ACT

Sections

48.18A.070 Authority of commissioner.

48.18A.070 Authority of commissioner. Notwithstanding any other provision of law, the commissioner shall have sole and exclusive authority to regulate the issuance and sale of variable contracts; except for the examination, issuance or renewal, suspension or revocation, of a security salesperson's license issued to persons selling variable contracts. To carry out the purposes and provisions of this chapter, he or she may independently, and in concert with the director of financial institutions, issue such reasonable rules and regulations as may be appropriate. [2013 c 23 § 102; 1994 c 92 § 503; 1969 c 104 § 7.]

Chapter 48.19 RCW RATES

Sections

48.19.040 Filing required—Contents—Definition.
48.19.043 Forms of commercial property casualty policies—Legislative intent—Issuance prior to filing—Disapproval by commissioner—Definition.

48.19.040 Filing required—Contents—Definition.

(1) Every insurer or rating organization shall, before using, file with the commissioner every classifications manual, manual of rules and rates, rating plan, rating schedule, minimum rate, class rate, and rating rule, and every modification of any of the foregoing which it proposes. The insurer need not so file any rate on individually rated risks as described in subdivision (1) of RCW 48.19.030; except that any such specific rate made by a rating organization shall be filed.

(2) Every such filing shall indicate the type and extent of the coverage contemplated and must be accompanied by sufficient information to permit the commissioner to determine whether it meets the requirements of this chapter. An insurer or rating organization shall offer in support of any filing:

(a) The experience or judgment of the insurer or rating organization making the filing;

(b) An exhibit detailing the major elements of operating expense for the types of insurance affected by the filing;

(c) An explanation of how investment income has been taken into account in the proposed rates; and

(d) Any other information which the insurer or rating organization deems relevant.

(3) If an insurer has insufficient loss experience to support its proposed rates, it may submit:

(a) Loss experience for similar exposures of other insurers or of a rating organization; or

(b) A complete and logical explanation of how it has developed its proposed rates, including the insurer's analysis of any relevant information and showing why the proposed

rates should be considered to meet the requirements of RCW 48.19.020.

(4) Every such filing shall state its proposed effective date.

(5)(a) A filing made pursuant to this chapter shall be exempt from the provisions of RCW 48.02.120(3). However, the filing and all supporting information accompanying it shall be open to public inspection only after the filing becomes effective, except as provided in (b) of this subsection.

(b) For the purpose of this section, "usage-based insurance" means private passenger automobile coverage that uses data gathered from any recording device as defined in RCW 46.35.010, or a system, or business method that records and preserves data arising from the actual usage of a motor vehicle to determine rates or premiums. Information in a filing of usage-based insurance about the usage-based component of the rate is confidential and must be withheld from public inspection.

(6) Where a filing is required no insurer shall make or issue an insurance contract or policy except in accordance with its filing then in effect, except as is provided by RCW 48.19.090. [2013 c 152 § 2; 2012 c 222 § 1; 1994 c 131 § 8; 1989 c 25 § 4; 1983 1st ex.s. c 32 § 14; 1947 c 79 § .19.04; Rem. Supp. 1947 § 45.19.04.]

Additional notes found at www.leg.wa.gov

48.19.043 Forms of commercial property casualty policies—Legislative intent—Issuance prior to filing—Disapproval by commissioner—Definition. (1) It is the intent of the legislature to assist the purchasers of commercial property casualty insurance by allowing policies to be issued more expeditiously and provide a more competitive market for rates.

(2) Notwithstanding the provisions of RCW 48.19.040(1), commercial property casualty policies may be issued prior to filing the rates. All commercial property casualty rates shall be filed with the commissioner within thirty days after an insurer issues any policy using them.

(3) If, within thirty days after a commercial property casualty rate has been filed, the commissioner finds that the rate does not meet the requirements of this chapter, the commissioner shall disapprove the filing and give notice to the insurer or rating organization that made the filing, specifying how the filing fails to meet the requirements and stating when, within a reasonable period thereafter, the filing shall be deemed no longer effective. The commissioner may extend the time for review another fifteen days by giving notice to the insurer prior to the expiration of the original thirty-day period.

(4) Upon a final determination of a disapproval of a rate filing under subsection (3) of this section, the insurer shall issue an endorsement changing the rate to comply with the commissioner's disapproval from the date the rate is no longer effective.

(5) For purposes of this section, "commercial property casualty" means insurance pertaining to a business, profession, occupation, nonprofit organization, or public entity for the lines of property and casualty insurance defined in RCW 48.11.040, 48.11.050, 48.11.060, or 48.11.070, but does not

mean medical malpractice insurance or portable electronics insurance as defined in RCW 48.120.005.

(6) Except as provided in subsection (4) of this section, the disapproval shall not affect any contract made or issued prior to the expiration of the period set forth in the notice of disapproval.

(7) In the event a hearing is held on the actions of the commissioner under subsection (3) of this section, the burden of proof is on the commissioner. [2013 c 152 § 3; 2006 c 8 § 216; 2003 c 248 § 7; 1997 c 428 § 2.]

Findings—Intent—Part headings and subheadings not law—Severability—2006 c 8: See notes following RCW 5.64.010.

Chapter 48.29 RCW

TITLE INSURERS

Sections

48.29.017 Statistical reporting agent—Duties—Required reports—Costs—Rules.

48.29.018 Information filed under RCW 48.29.017—Confidentiality.

48.29.017 Statistical reporting agent—Duties—Required reports—Costs—Rules. (1) The commissioner must designate one statistical reporting agent to assist him or her in gathering information on title insurance policy issuance, business income, and expenses and making compilations thereof. The costs and expenses of the statistical reporting agent must be borne by all the authorized title insurance companies and title insurance agents licensed to conduct the business of title insurance in this state. The commissioner may adopt rules setting forth how the costs and expenses of the statistical reporting agent are to be paid and apportioned among the authorized title insurers and licensed title insurance agents.

(2) Upon designation of a statistical reporting agent by the commissioner under subsection (1) of this section all authorized title insurance companies and licensed title insurance agents must annually, by May 31st, file a report with the statistical reporting agent of their policy issuance, business income, expenses, and loss experience in this state. The report must be filed with the statistical reporting agent in a manner and form prescribed by the commissioner by rule, which must be consistent with the manner and form adopted by the national association of insurance commissioners.

(3) The statistical reporting agent must review the information filed with it for completeness, accuracy, and quality within one hundred twenty days of its receipt. All title insurance companies and title insurance agents must cooperate with the statistical reporting agent to verify the completeness, accuracy, and quality of the data that they submitted.

(4) Within thirty days after completing its review of the information for quality and accuracy, the statistical reporting agent must file the information for each title insurance company and title insurance agent, individually and in the aggregate, with the commissioner with a copy of the aggregate data from such statistical reporting agent provided to each title insurer and title insurance agent.

(5) The commissioner may adopt rules to implement and administer this section. [2013 c 65 § 1.]

48.29.018 Information filed under RCW 48.29.017—Confidentiality. (1) Information filed with the commissioner under RCW 48.29.017 must be kept confidential and is not subject to public disclosure under chapter 42.56 RCW, unless the commissioner finds, after notice and hearing with the affected parties, it is in the public interest to disclose the information.

(2) The commissioner may share the information in subsection (1) of this section with the national association of insurance commissioners and its affiliates and subsidiaries, regulatory and law enforcement officials of other states and nations, the federal government, and international authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the information.

(3) This section does not prohibit the commissioner from sharing or publishing the information in an aggregate form. [2013 c 65 § 2.]

(a) A decrease in payment or compensation resulting from a change in a fee schedule published by the payor upon which the payment or compensation is based and the date of applicability is clearly identified in the contract, compensation addendum, or fee schedule notice;

(b) A decrease in payment or compensation that was anticipated under the terms of the contract, if the amount and date of applicability of the decrease is clearly identified in the contract; or

(c) Changes unrelated to compensation so long as reasonable notice of not less than sixty days is provided.

(3) "Payor" or "third-party payor" means carriers licensed under chapters 48.20, 48.21, 48.44, and 48.46 RCW, and managed health care systems as defined in RCW 74.09.522. [2013 c 293 § 2.]

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

Chapter 48.39 RCW

CONTRACTS BETWEEN INSURANCE CARRIERS, HEALTH CARE PROVIDERS, AND THIRD-PARTY PAYORS

Sections

48.39.003	Findings.
48.39.005	Definitions.
48.39.010	Notice of material amendments to contract—Failure to comply.
48.39.020	Payor may require provider to extend payor's medicaid rates—Limitations.

48.39.003 Findings. The legislature finds that Washington state is a provider friendly state within which to practice medicine. As part of health care reform, Washington state endeavors to establish and operate a state-based health benefits exchange wherein insurance products will be offered for sale and add potentially three hundred thousand patients to commercial insurance, and to expand access to medicaid for potentially three hundred thousand new enrollees. Such a successful and new insurance market in Washington state will require the willing participation of all categories of health care providers. The legislature further finds that principles of fair contracting apply to all contracts between health care providers and health insurance carriers offering insurance within Washington state and that fair dealings and transparency in expectations should be present in interactions between all third-party payors and health care providers. [2013 c 293 § 1.]

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

(1) "Health care provider" or "provider" has the same meaning as in RCW 48.43.005 and, for the purposes of this chapter, includes facilities licensed under chapter 70.41 RCW.

(2) "Material amendment" means an amendment to a contract between a payor and health care provider that would result in requiring a health care provider to participate in a health plan, product, or line of business with a lower fee schedule in order to continue to participate in a health plan, product, or line of business with a higher fee schedule. A material amendment does not include any of the following:

48.39.010 Notice of material amendments to contract—Failure to comply. (1) A third-party payor shall provide no less than sixty days' notice to the health care provider of any proposed material amendments to a health care provider's contract with the third-party payor.

(2) Any material amendment to a contract must be clearly defined in a notice to the provider from the third-party payor as being a material change to the contract before the provider's notice period begins. The notice must also inform the providers that they may choose to reject the terms of the proposed material amendment through written or electronic means at any time during the notice period and that such rejection may not affect the terms of the health care provider's existing contract with the third-party payor.

(3) A health care provider's rejection of the material amendment does not affect the terms of the health care provider's existing contract with the third-party payor.

(4) A failure to comply with the terms of subsections (1), (2), and (3) of this section shall void the effectiveness of the material amendment. [2013 c 293 § 3.]

48.39.020 Payor may require provider to extend payor's medicaid rates—Limitations. A payor may require a health care provider to extend the payor's medicaid rates, or some percentage above the payor's medicaid rates, that govern a health benefit program administered by a public purchaser to a commercial plan or line of business offered by a payor that is not administered by a public purchaser only if the health care provider has expressly agreed in writing to the extension. For the purposes of this section, "administered by a public purchaser" does not include commercial coverage offered through the Washington health benefit exchange. Nothing in this section prohibits a payor from utilizing medicaid rates, or some percentage above medicaid rates, as a base when negotiating payment rates with a health care provider. [2013 c 293 § 4.]

Chapter 48.41 RCW

HEALTH INSURANCE COVERAGE ACCESS ACT

Sections

48.41.060 Board powers and duties. (*Effective January 1, 2014.*)

- 48.41.090 Financial participation in pool—Computation, deficit assessments.
- 48.41.100 Eligibility for coverage. (*Effective January 1, 2014.*)
- 48.41.160 Pool policy requirements—Continued coverage—Rate changes—Continuation—Statement of intent to discontinue pool coverage.
- 48.41.240 Review of populations needing coverage through pool—Analysis and recommendations—Report.

48.41.060 Board powers and duties. (*Effective January 1, 2014.*) (1) The board shall have the general powers and authority granted under the laws of this state to insurance companies, health care service contractors, and health maintenance organizations, licensed or registered to offer or provide the kinds of health coverage defined under this title. In addition thereto, the board shall:

(a) Establish appropriate rates, rate schedules, rate adjustments, expense allowances, claim reserve formulas and any other actuarial functions appropriate to the operation of the pool. Rates shall not be unreasonable in relation to the coverage provided, the risk experience, and expenses of providing the coverage. Rates and rate schedules may be adjusted for appropriate risk factors such as age and area variation in claim costs and shall take into consideration appropriate risk factors in accordance with established actuarial underwriting practices consistent with Washington state individual plan rating requirements under RCW 48.44.022 and 48.46.064;

(b)(i) Assess members of the pool in accordance with the provisions of this chapter, and make advance interim assessments as may be reasonable and necessary for the organizational or interim operating expenses. Any interim assessments will be credited as offsets against any regular assessments due following the close of the year.

(ii) Self-funded multiple employer welfare arrangements are subject to assessment under this subsection only in the event that assessments are not preempted by the employee retirement income security act of 1974, as amended, 29 U.S.C. Sec. 1001 et seq. The arrangements and the commissioner shall initially request an advisory opinion from the United States department of labor or obtain a declaratory ruling from a federal court on the legality of imposing assessments on these arrangements before imposing the assessment. Once the legality of the assessments has been determined, the multiple employer welfare arrangement certified by the insurance commissioner must begin payment of these assessments.

(iii) If there has not been a final determination of the legality of these assessments, then beginning on the earlier of (A) the date the fourth multiple employer welfare arrangement has been certified by the insurance commissioner, or (B) April 1, 2006, the arrangement shall deposit the assessments imposed by this subsection into an interest bearing escrow account maintained by the arrangement. Upon a final determination that the assessments are not preempted by the employee retirement income security act of 1974, as amended, 29 U.S.C. Sec. 1001 et seq., all funds in the interest bearing escrow account shall be transferred to the board;

(c) Issue policies of health coverage in accordance with the requirements of this chapter;

(d) Establish procedures for the administration of the premium discount provided under RCW 48.41.200(3)(a)(iii);

(e) Contract with the Washington state health care authority for the administration of the premium discounts provided under RCW 48.41.200(3)(a) (i) and (ii);

(f) Set a reasonable fee to be paid to an insurance producer licensed in Washington state for submitting an acceptable application for enrollment in the pool; and

(g) Provide certification to the commissioner when assessments will exceed the threshold level established in RCW 48.41.037.

(2) In addition thereto, the board may:

(a) Enter into contracts as are necessary or proper to carry out the provisions and purposes of this chapter including the authority, with the approval of the commissioner, to enter into contracts with similar pools of other states for the joint performance of common administrative functions, or with persons or other organizations for the performance of administrative functions;

(b) Sue or be sued, including taking any legal action as necessary to avoid the payment of improper claims against the pool or the coverage provided by or through the pool;

(c) Appoint appropriate legal, actuarial, and other committees as necessary to provide technical assistance in the operation of the pool, policy, and other contract design, and any other function within the authority of the pool; and

(d) Conduct periodic audits to assure the general accuracy of the financial data submitted to the pool, and the board shall cause the pool to have an annual audit of its operations by an independent certified public accountant.

(3) Nothing in this section shall be construed to require or authorize the adoption of rules under chapter 34.05 RCW. [2013 c 279 § 2; 2011 c 314 § 13; 2009 c 555 § 2; 2008 c 217 § 47; 2005 c 7 § 2; 2004 c 260 § 26; 2000 c 79 § 9; 1997 c 337 § 5; 1997 c 231 § 211; 1989 c 121 § 3; 1987 c 431 § 6.]

Effective date—2013 c 279 §§ 2 and 3: "Sections 2 and 3 of this act take effect January 1, 2014." [2013 c 279 § 6.]

Finding—Intent—2013 c 279: "The federal patient protection and affordable care act of 2010, P.L. 111-148, as amended, prohibits the imposition of any preexisting condition coverage exceptions in the individual market for insurance coverage beginning January 1, 2014. The affordable care act also extends opportunities for individuals to enroll in comprehensive coverage in a health benefit exchange beginning January 1, 2014. The legislature finds that some individuals may still be barred from enrolling in the new comprehensive coverage options and it is the intent of the legislature to continue some limited access to the Washington state health insurance pool for a transitional period, and to provide for modification to the pool to reflect changes in federal law and insurance availability." [2013 c 279 § 1.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

Effective date—2005 c 7: See note following RCW 48.14.0201.

Severability—Effective date—2004 c 260: See RCW 48.125.900 and 48.125.901.

Report on implementation of 1987 c 431: "The board shall report to the commissioner and the appropriate committees of the legislature by April 1, 1990, on the implementation of this act. The report shall include information regarding enrollment, coverage utilization, cost, and any problems with the program and suggest remedies." [1987 c 431 § 26.]

Additional notes found at www.leg.wa.gov

48.41.090 Financial participation in pool—Computation, deficit assessments. (1) Following the close of each accounting year, the pool administrator shall determine the total net cost of pool operation which shall include:

(a) Net premium (premiums less administrative expense allowances), the pool expenses of administration, and

incurred losses for the year, taking into account investment income and other appropriate gains and losses; and

(b) The amount of pool contributions specified in the state omnibus appropriations act for deposit into the health benefit exchange account under RCW 43.71.060, to assist with the transition of enrollees from the pool into the health benefit exchange created by chapter 43.71 RCW.

(2)(a) Each member's proportion of participation in the pool shall be determined annually by the board based on annual statements and other reports deemed necessary by the board and filed by the member with the commissioner; and shall be determined by multiplying the total cost of pool operation by a fraction. The numerator of the fraction equals that member's total number of resident insured persons, including spouse and dependents, covered under all health plans in the state by that member during the preceding calendar year. The denominator of the fraction equals the total number of resident insured persons, including spouses and dependents, covered under all health plans in the state by all pool members during the preceding calendar year.

(b) For purposes of calculating the numerator and the denominator under (a) of this subsection:

(i) All health plans in the state by the state health care authority include only the uniform medical plan;

(ii) Each ten resident insured persons, including spouse and dependents, under a stop loss plan or the uniform medical plan shall count as one resident insured person;

(iii) Health plans serving medical care services program clients under RCW 74.09.035 are exempted from the calculation; and

(iv) Health plans established to serve elderly clients or medicaid clients with disabilities under chapter 74.09 RCW when the plan has been implemented on a demonstration or pilot project basis are exempted from the calculation until July 1, 2009.

(c) Except as provided in RCW 48.41.037, any deficit incurred by the pool, including pool contributions for deposit into the health benefit exchange account, shall be recouped by assessments among members apportioned under this subsection pursuant to the formula set forth by the board among members. The monthly per member assessment may not exceed the 2013 assessment level. If the maximum assessment is insufficient to cover a pool deficit the assessment shall be used first to pay all incurred losses and pool administrative expenses, with the remainder being available for deposit in the health benefit exchange account.

(3) The board may abate or defer, in whole or in part, the assessment of a member if, in the opinion of the board, payment of the assessment would endanger the ability of the member to fulfill its contractual obligations. If an assessment against a member is abated or deferred in whole or in part, the amount by which such assessment is abated or deferred may be assessed against the other members in a manner consistent with the basis for assessments set forth in subsection (2) of this section. The member receiving such abatement or deferment shall remain liable to the pool for the deficiency.

(4) Subject to the limitation imposed in subsection (2)(c) of this section, the pool administrator shall transfer the assessments for pool contributions for the operation of the health benefit exchange to the treasurer for deposit into the health benefit exchange account with the quarterly assess-

ments for 2014 as specified in the state omnibus appropriations act. If assessments exceed actual losses and administrative expenses of the pool and pool contributions for deposit into the health benefit exchange account, the excess shall be held at interest and used by the board to offset future losses or to reduce pool premiums. As used in this subsection, "future losses" includes reserves for incurred but not reported claims. [2013 2nd sp.s. c 6 § 7; 2005 c 405 § 2; 2000 c 79 § 11; 1989 c 121 § 6; 1987 c 431 § 9.]

Additional notes found at www.leg.wa.gov

48.41.100 Eligibility for coverage. (Effective January 1, 2014.) (1)(a) The following persons who are residents of this state are eligible for pool coverage:

(i) Any resident of the state not eligible for medicare coverage or medicaid coverage, and residing in a county where an individual health plan other than a catastrophic health plan as defined in RCW 48.43.005 is not offered to the resident during defined open enrollment or special enrollment periods at the time of application to the pool, whether through the health benefit exchange operated pursuant to chapter 43.71 RCW or in the private insurance market, and who makes application to the pool for coverage prior to December 31, 2017;

(ii) Any resident of the state not eligible for medicare coverage, enrolled in the pool prior to December 31, 2013, shall remain eligible for pool coverage except as provided in subsections (2) and (3) of this section through December 31, 2017;

(iii) Any person becoming eligible for medicare before August 1, 2009, who provides evidence of (A) a rejection for medical reasons, (B) a requirement of restrictive riders, (C) an up-rated premium, (D) a preexisting conditions limitation, or (E) lack of access to or for a comprehensive medicare supplemental insurance policy under chapter 48.66 RCW, the effect of any of which is to substantially reduce coverage from that received by a person considered a standard risk by at least one member within six months of the date of application; and

(iv) Any person becoming eligible for medicare on or after August 1, 2009, who does not have access to a reasonable choice of comprehensive medicare part C plans, as defined in (b) of this subsection, and who provides evidence of (A) a rejection for medical reasons, (B) a requirement of restrictive riders, (C) an up-rated premium, (D) a preexisting conditions limitation, or (E) lack of access to or for a comprehensive medicare supplemental insurance policy under chapter 48.66 RCW, the effect of any of which is to substantially reduce coverage from that received by a person considered a standard risk by at least one member within six months of the date of application.

(b) For purposes of (a)(i) of this subsection, by December 1, 2013, the board shall develop and implement a process to determine an applicant's eligibility based on the criteria specified in (a)(i) of this subsection.

(c) For purposes of (a)(iv) of this subsection (1), a person does not have access to a reasonable choice of plans unless the person has a choice of health maintenance organization or preferred provider organization medicare part C plans offered by at least three different carriers that have had provider networks in the person's county of residence for at least five

years. The plan options must include coverage at least as comprehensive as a plan F medicare supplement plan combined with medicare parts A and B. The plan options must also provide access to adequate and stable provider networks that make up-to-date provider directories easily accessible on the carrier web site, and will provide them in hard copy, if requested. In addition, if no health maintenance organization or preferred provider organization plan includes the health care provider with whom the person has an established care relationship and from whom he or she has received treatment within the past twelve months, the person does not have reasonable access.

(2) The following persons are not eligible for coverage by the pool:

(a) Any person having terminated coverage in the pool unless (i) twelve months have lapsed since termination, or (ii) that person can show continuous other coverage which has been involuntarily terminated for any reason other than non-payment of premiums. However, these exclusions do not apply to eligible individuals as defined in section 2741(b) of the federal health insurance portability and accountability act of 1996 (42 U.S.C. Sec. 300gg-41(b));

(b) Inmates of public institutions and those persons who become eligible for medical assistance after June 30, 2008, as defined in RCW 74.09.010. However, these exclusions do not apply to eligible individuals as defined in section 2741(b) of the federal health insurance portability and accountability act of 1996 (42 U.S.C. Sec. 300gg-41(b)).

(3) When a carrier or insurer regulated under chapter 48.15 RCW begins to offer an individual health benefit plan in a county where no carrier had been offering an individual health benefit plan:

(a) If the health benefit plan offered is other than a catastrophic health plan as defined in RCW 48.43.005, any person enrolled in a pool plan pursuant to subsection (1)(a)(i) of this section in that county shall no longer be eligible for coverage under that plan pursuant to subsection (1)(a)(i) of this section; and

(b) The pool administrator shall provide written notice to any person who is no longer eligible for coverage under a pool plan under this subsection (3) within thirty days of the administrator's determination that the person is no longer eligible. The notice shall: (i) Indicate that coverage under the plan will cease ninety days from the date that the notice is dated; (ii) describe any other coverage options, either in or outside of the pool, available to the person; and (iii) describe the enrollment process for the available options outside of the pool. [2013 c 279 § 3. Prior: 2011 c 315 § 5; 2011 c 314 § 15; 2009 c 555 § 3; 2007 c 259 § 30; 2001 c 196 § 3; 2000 c 79 § 12; 1995 c 34 § 5; 1989 c 121 § 7; 1987 c 431 § 10.]

Effective date—2013 c 279 §§ 2 and 3: See note following RCW 48.41.060.

Finding—Intent—2013 c 279: See note following RCW 48.41.060.

Effective date—2011 c 315 §§ 5 and 6: "Sections 5 and 6 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [May 11, 2011]." [2011 c 315 § 7.]

Intent—2011 c 315: See note following RCW 48.43.005.

Contingent effective date—2009 c 555 § 3: "Section 3 of this act takes effect if section 4, chapter 317, Laws of 2008 is null and void on July 26, 2009; otherwise section 3 of this act is null and void." [2009 c 555 § 6.]

Effective date—2007 c 259 § 30: "Section 30 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 2, 2007]." [2007 c 259 § 75.]

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

Additional notes found at www.leg.wa.gov

48.41.160 Pool policy requirements—Continued coverage—Rate changes—Continuation—Statement of intent to discontinue pool coverage. (1) On or before December 31, 2007, the pool shall cancel all existing pool policies and replace them with policies that are identical to the existing policies except for the inclusion of a provision providing for a guarantee of the continuity of coverage consistent with this section. As a means to minimize the number of policy changes for enrollees, replacement policies provided under this subsection also may include the plan modifications authorized in RCW 48.41.100, 48.41.110, and 48.41.120.

(2) A pool policy shall contain a guarantee of the individual's right to continued coverage, subject to the provisions of subsections (4), (5), (7), and (8) of this section.

(3) The guarantee of continuity of coverage required by this section shall not prevent the pool from canceling or non-renewing a policy for:

(a) Nonpayment of premium;

(b) Violation of published policies of the pool;

(c) Failure of a covered person who becomes eligible for medicare benefits by reason of age to apply for a pool medical supplement plan, or a medicare supplement plan or other similar plan offered by a carrier pursuant to federal laws and regulations;

(d) Failure of a covered person to pay any deductible or copayment amount owed to the pool and not the provider of health care services;

(e) Covered persons committing fraudulent acts as to the pool;

(f) Covered persons materially breaching the pool policy; or

(g) Changes adopted to federal or state laws when such changes no longer permit the continued offering of such coverage.

(4)(a) The guarantee of continuity of coverage provided by this section requires that if the pool replaces a plan, it must make the replacement plan available to all individuals in the plan being replaced. The replacement plan must include all of the services covered under the replaced plan, and must not significantly limit access to the kind of services covered under the replacement plan through unreasonable cost-sharing requirements or otherwise. The pool may also allow individuals who are covered by a plan that is being replaced an unrestricted right to transfer to a fully comparable plan.

(b) The guarantee of continuity of coverage provided by this section requires that if the pool discontinues offering a plan: (i) The pool must provide notice to each individual of the discontinuation at least ninety days prior to the date of the discontinuation; (ii) the pool must offer to each individual provided coverage under the discontinued plan the option to enroll in any other plan currently offered by the pool for which the individual is otherwise eligible; and (iii) in exercising the option to discontinue a plan and in offering the option

of coverage under (b)(ii) of this subsection, the pool must act uniformly without regard to any health status-related factor of enrolled individuals or individuals who may become eligible for this coverage.

(c) The pool cannot replace or discontinue a plan under this subsection (4) until it has completed an evaluation of the impact of replacing the plan upon:

- (i) The cost and quality of care to pool enrollees;
- (ii) Pool financing and enrollment;
- (iii) The board's ability to offer comprehensive and other plans to its enrollees;
- (iv) Other items identified by the board.

In its evaluation, the board must request input from the constituents represented by the board members.

(d) The guarantee of continuity of coverage provided by this section does not apply if the pool has zero enrollment in a plan.

(5) The pool may not change the rates for pool policies except on a class basis, with a clear disclosure in the policy of the pool's right to do so.

(6) A pool policy offered under this chapter shall provide that, upon the death of the individual in whose name the policy is issued, every other individual then covered under the policy may elect, within a period specified in the policy, to continue coverage under the same or a different policy.

(7) All pool policies issued on or after January 1, 2014, must reflect the new eligibility requirements of RCW 48.41.100 and contain a statement of the intent to discontinue the pool coverage on December 31, 2017, under pool non-medicare plans.

(8) Pool policies issued prior to January 1, 2014, shall be modified effective January 1, 2013, consistent with subsection (3)(g) of this section, and contain a statement of the intent to discontinue pool coverage on December 31, 2017, under pool non-medicare plans.

(9) The pool shall discontinue all non-medicare pool plans effective December 31, 2017. [2013 c 279 § 4; 2007 c 259 § 27; 1987 c 431 § 16.]

Finding—Intent—2013 c 279: See note following RCW 48.41.060.

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

48.41.240 Review of populations needing coverage through pool—Analysis and recommendations—Report.

(1) The board shall review populations that may need ongoing access to coverage through the pool, with specific attention to those persons who may be excluded from or may receive inadequate coverage beginning January 1, 2014, such as persons with end-stage renal disease or HIV/AIDS, or persons not eligible for coverage in the exchange.

(2) If the review under subsection (1) of this section indicates a continued need for coverage through the pool after December 31, 2013, the board shall submit recommendations regarding any modifications to pool eligibility requirements for new and ongoing enrollment after December 31, 2013. The recommendations must address any needed modifications to the standard health questionnaire or other eligibility screening tool that could be used in a manner consistent with federal law to determine eligibility for enrollment in the pool.

(3) The board shall complete an analysis of current pool assessment requirements in relation to assessments that will

fund the reinsurance program and recommend changes to pool assessments or any credits against assessments that may be considered for the reinsurance program. The analysis shall recommend whether the categories of members paying assessments should be adjusted to make the assessment fair and equitable among all payers.

(4) The board shall report its recommendations to the governor and the legislature by December 1, 2012.

(5) The board shall revisit the study of eligibility completed in 2012 with another review of the populations that may need ongoing access to coverage through the pool, to be submitted to the governor and legislature by November 1, 2015. The eligibility study shall include the non-medicare populations scheduled to lose coverage and medicare populations, and consider whether the enrollees have access to comprehensive coverage alternatives that include appropriate pharmacy coverage. The study shall include recommendations to address any barriers in eligibility that remain in accessing other coverage such as medicare supplemental coverage or comprehensive pharmacy coverage, as well as suggestions for financing changes and recommendations on a future expiration of the pool. [2013 c 279 § 5; 2012 c 87 § 17.]

Finding—Intent—2013 c 279: See note following RCW 48.41.060.

Spiritual care services—2012 c 87: See RCW 43.71.901.

Chapter 48.43 RCW

INSURANCE REFORM

(Formerly: Certified health plans)

Sections

- 48.43.715 Individual and small group market—Selection of benchmark plan—Minimum requirements—Criteria—List of state-mandated health benefits.
- 48.43.730 Carrier must file provider contracts and compensation agreements with commissioner—Approval or disapproval—Confidentiality—Hearings—Rules—Definitions. *(Expires July 1, 2017.)*

48.43.715 Individual and small group market—Selection of benchmark plan—Minimum requirements—Criteria—List of state-mandated health benefits.

(1) Consistent with federal law, the commissioner, in consultation with the board and the health care authority, shall, by rule, select the largest small group plan in the state by enrollment as the benchmark plan for the individual and small group market for purposes of establishing the essential health benefits in Washington state under P.L. 111-148 of 2010, as amended.

(2) If the essential health benefits benchmark plan for the individual and small group market does not include all of the ten benefit categories specified by section 1302 of P.L. 111-148, as amended, the commissioner, in consultation with the board and the health care authority, shall, by rule, supplement the benchmark plan benefits as needed to meet the minimum requirements of section 1302.

(3) A health plan required to offer the essential health benefits, other than a health plan offered through the federal basic health program or medicaid, under P.L. 111-148 of 2010, as amended, may not be offered in the state unless the commissioner finds that it is substantially equal to the bench-

mark plan. When making this determination, the commissioner:

(a) Must ensure that the plan covers the ten essential health benefits categories specified in section 1302 of P.L. 111-148 of 2010, as amended;

(b) May consider whether the health plan has a benefit design that would create a risk of biased selection based on health status and whether the health plan contains meaningful scope and level of benefits in each of the ten essential health benefit categories specified by section 1302 of P.L. 111-148 of 2010, as amended;

(c) Notwithstanding the foregoing, for benefit years beginning January 1, 2015, and only to the extent permitted by federal law and guidance, must establish by rule the review and approval requirements and procedures for pediatric oral services when offered in stand-alone dental plans in the nongrandfathered individual and small group markets outside of the exchange; and

(d) Unless prohibited by federal law and guidance, must allow health carriers to also offer pediatric oral services within the health benefit plan in the nongrandfathered individual and small group markets outside of the exchange.

(4) Beginning December 15, 2012, and every year thereafter, the commissioner shall submit to the legislature a list of state-mandated health benefits, the enforcement of which will result in federally imposed costs to the state related to the plans sold through the exchange because the benefits are not included in the essential health benefits designated under federal law. The list must include the anticipated costs to the state of each state-mandated health benefit on the list and any statutory changes needed if funds are not appropriated to defray the state costs for the listed mandate. The commissioner may enforce a mandate on the list for the entire market only if funds are appropriated in an omnibus appropriations act specifically to pay the state portion of the identified costs. [2013 c 325 § 1; 2012 c 87 § 13.]

Spiritual care services—2012 c 87: See RCW 43.71.901.

48.43.730 Carrier must file provider contracts and compensation agreements with commissioner—Approval or disapproval—Confidentiality—Hearings—Rules—Definitions. (Expires July 1, 2017.) (1) For the purposes of this section:

(a) "Carrier" means a:

(i) Health carrier as defined in RCW 48.43.005; and

(ii) Limited health care service contractor that offers limited health care service as defined in RCW 48.44.035.

(b) "Provider" means:

(i) A health care provider as defined in RCW 48.43.005;

(ii) A participating provider as defined in RCW 48.44.010;

(iii) A health care facility, as defined in RCW 48.43.005; and

(iv) Intermediaries that have agreed in writing with a carrier to provide access to providers under this subsection (1)(b) who render covered services to enrollees of a carrier.

(c) "Provider compensation agreement" means any written agreement that includes specific information about payment methodology, payment rates, and other terms that determine the remuneration a carrier will pay to a provider.

(d) "Provider contract" means a written contract between a carrier and a provider for any health care services rendered to an enrollee.

(2) A carrier must file all provider contracts and provider compensation agreements with the commissioner thirty calendar days before use. When a carrier and provider negotiate a provider contract or provider compensation agreement that deviates from a filed agreement, the carrier must also file that specific contract or agreement with the commissioner thirty calendar days before use.

(a) Any provider contract and related provider compensation agreements not affirmatively disapproved by the commissioner are deemed approved, except the commissioner may extend the approval date an additional fifteen calendar days upon giving notice before the expiration of the initial thirty-day period.

(b) Changes to previously filed and approved provider compensation agreements modifying the compensation amount or related terms that help determine the compensation amount must be filed and are deemed approved upon filing if no other changes are made to the previously approved provider contract or compensation agreement.

(3) The commissioner may not base a disapproval of a provider compensation agreement on the amount of compensation or other financial arrangements between the carrier and the provider, unless that compensation amount causes the underlying health benefit plan to otherwise be in violation of state or federal law. This subsection does not grant the commissioner the authority to regulate provider reimbursement amounts.

(4) The commissioner may withdraw approval of a provider contract or provider compensation agreement at any time for cause.

(5) Provider compensation agreements are confidential and not subject to public inspection under RCW 48.02.120(2), or public disclosure under chapter 42.56 RCW, if filed in accordance with the procedures for submitting confidential filings through the system for electronic rate and form filings and the general filing instructions as set forth by the commissioner. In the event the referenced filing fails to comply with the filing instructions setting forth the process to withhold the compensation agreement from public inspection, and the carrier indicates that the compensation agreement is to be withheld from public inspection, the commissioner shall reject the filing and notify the carrier through the system for electronic rate and form filings to amend its filing to comply with the confidentiality filing instructions.

(6) In the event a provider contract or provider compensation agreement is disapproved or withdrawn from use by the commissioner, the carrier has the right to demand and receive a hearing under chapters 48.04 and 34.05 RCW.

(7) The commissioner may adopt rules to implement this section. [2013 c 277 § 1.]

Expiration date—2013 c 277: "This act expires July 1, 2017." [2013 c 277 § 6.]

Chapter 48.44 RCW
HEALTH CARE SERVICES

Sections

48.44.070 Contracts to be filed with commissioner—Temporary suspension. (*Effective until July 1, 2017.*)

48.44.070 Contracts to be filed with commissioner—Temporary suspension. (*Effective until July 1, 2017.*) (1) Forms of contracts between health care service contractors and participating providers shall be filed with the insurance commissioner prior to use.

(2) Any contract form not affirmatively disapproved within fifteen days of filing shall be deemed approved, except that the commissioner may extend the approval period an additional fifteen days upon giving notice before the expiration of the initial fifteen-day period. The commissioner may approve such a contract form for immediate use at any time. Approval may be subsequently withdrawn for cause.

(3) Subject to the right of the health care service contractor to demand and receive a hearing under chapters 48.04 and 34.05 RCW, the commissioner may disapprove such a contract form if it is in any respect in violation of this chapter or if it fails to conform to minimum provisions or standards required by the commissioner by rule under chapter 34.05 RCW.

(4) This section is suspended, and shall have no effect, until July 1, 2017. [2013 c 277 § 2; 1990 c 120 § 9; 1965 c 87 § 2; 1961 c 197 § 4.]

Expiration date—2013 c 277: See note following RCW 48.43.730.

Chapter 48.46 RCW
HEALTH MAINTENANCE ORGANIZATIONS

Sections

48.46.030 Eligibility requirements for certificate of registration—Application requirements, information—Provider compensation. (*Effective until July 1, 2017.*)

48.46.243 Contract—Participant liability. (*Effective until July 1, 2017.*)

48.46.243 Contract—Participant liability—Commissioner's review. (*Effective July 1, 2017.*)

48.46.030 Eligibility requirements for certificate of registration—Application requirements, information—Provider compensation. (*Effective until July 1, 2017.*) Any corporation, cooperative group, partnership, individual, association, or groups of health professionals licensed by the state of Washington, public hospital district, or public institutions of higher education shall be entitled to a certificate of registration from the insurance commissioner as a health maintenance organization if it:

(1) Provides comprehensive health care services to enrolled participants on a group practice per capita prepayment basis or on a prepaid individual practice plan and provides such health services either directly or through arrangements with institutions, entities, and persons which its enrolled population might reasonably require as determined by the health maintenance organization in order to be maintained in good health; and

(2) Is governed by a board elected by enrolled participants, or otherwise provides its enrolled participants with a meaningful role in policy making procedures of such organization, as defined in RCW 48.46.020(18) and 48.46.070; and

(3) Affords enrolled participants with a meaningful appeal procedure aimed at settlement of disputes between such persons and such health maintenance organization, as defined in RCW 48.46.020(17) and 48.46.100; and

(4) Provides enrolled participants, or makes available for inspection at least annually, financial statements pertaining to health maintenance agreements, disclosing income and expenses, assets and liabilities, and the bases for proposed rate adjustments for health maintenance agreements relating to its activity as a health maintenance organization; and

(5) Demonstrates to the satisfaction of the commissioner that its facilities and personnel are reasonably adequate to provide comprehensive health care services to enrolled participants and that it is financially capable of providing such members with, or has made adequate contractual arrangements through insurance or otherwise to provide such members with, such health services; and

(6) Substantially complies with administrative rules and regulations of the commissioner for purposes of this chapter; and

(7) Submits an application for a certificate of registration which shall be verified by an officer or authorized representative of the applicant, being in form as the commissioner prescribes, and setting forth:

(a) A copy of the basic organizational document, if any, of the applicant, such as the articles of incorporation, articles of association, partnership agreement, trust agreement, or other applicable documents, and all amendments thereto;

(b) A copy of the bylaws, rules and regulations, or similar documents, if any, which regulate the conduct of the internal affairs of the applicant, and all amendments thereto;

(c) A list of the names, addresses, members of the board of directors, board of trustees, executive committee, or other governing board or committee and the principal officers, partners, or members;

(d) A full and complete disclosure of any financial interests held by any officer, or director in any provider associated with the applicant or any provider of the applicant;

(e) A description of the health maintenance organization, its facilities and its personnel, and the applicant's most recent financial statement showing such organization's assets, liabilities, income, and other sources of financial support;

(f) A description of the geographic areas and the population groups to be served and the size and composition of the anticipated enrollee population;

(g) A copy of each type of health maintenance agreement to be issued to enrolled participants;

(h) A schedule of all proposed rates of reimbursement to contracting health care facilities or providers, if any, and a schedule of the proposed charges for enrollee coverage for health care services, accompanied by data relevant to the formulation of such schedules;

(i) A description of the proposed method and schedule for soliciting enrollment in the applicant health maintenance organization and the basis of compensation for such solicitation services;

(j) A copy of the solicitation document to be distributed to all prospective enrolled participants in connection with any solicitation;

(k) A financial projection which sets forth the anticipated results during the initial two years of operation of such orga-

nization, accompanied by a summary of the assumptions and relevant data upon which the projection is based. The projection should include the projected expenses, enrollment trends, income, enrollee utilization patterns, and sources of working capital;

(l) A detailed description of the procedures and programs to be implemented to assure that the health care services delivered to enrolled participants will be of professional quality;

(m) A detailed description of procedures to be implemented to meet the requirements to protect against insolvency in RCW 48.46.245;

(n) Documentation that the health maintenance organization has an initial net worth of one million dollars and shall thereafter maintain the minimum net worth required under RCW 48.46.235; and

(o) Such other information as the commissioner shall require by rule or regulation which is reasonably necessary to carry out the provisions of this section.

A health maintenance organization shall, unless otherwise provided for in this chapter, file a notice describing any modification of any of the information required by subsection (7) of this section. Such notice shall be filed with the commissioner. With respect to provider compensation; however, such notice shall be filed in compliance with the requirements regarding provider compensation filing in chapter 48.43 RCW. [2013 c 277 § 4; 2012 c 211 § 23; 1990 c 119 § 2; 1985 c 320 § 1; 1983 c 106 § 2; 1975 1st ex.s. c 290 § 4.]

Expiration date—2013 c 277: See note following RCW 48.43.730.

48.46.243 Contract—Participant liability. (Effective until July 1, 2017.) (1) Subject to subsection (2) of this section, every contract between a health maintenance organization and its participating providers of health care services shall be in writing and shall set forth that in the event the health maintenance organization fails to pay for health care services as set forth in the agreement, the enrolled participant shall not be liable to the provider for any sums owed by the health maintenance organization. Every such contract shall provide that this requirement shall survive termination of the contract.

(2) The provisions of subsection (1) of this section shall not apply:

(a) To emergency care from a provider who is not a participating provider;

(b) To out-of-area services;

(c) To the delivery of covered pediatric oral services that are substantially equal to the essential health benefits benchmark plan; or

(d) In exceptional situations approved in advance by the commissioner, if the health maintenance organization is unable to negotiate reasonable and cost-effective participating provider contracts.

(3) No participating provider, or insurance producer, trustee, or assignee thereof, may maintain an action against an enrolled participant to collect sums owed by the health maintenance organization. [2013 c 325 § 2; 2013 c 277 § 3; 2008 c 217 § 56; 1990 c 119 § 7.]

Reviser's note: This section was amended by 2013 c 277 § 3 and by 2013 c 325 § 2, each without reference to the other. Both amendments are

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

Expiration date—2013 c 277: See note following RCW 48.43.730.

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.46.243 Contract—Participant liability—Commissioner's review. (Effective July 1, 2017.) (1) Subject to subsection (2) of this section, every contract between a health maintenance organization and its participating providers of health care services shall be in writing and shall set forth that in the event the health maintenance organization fails to pay for health care services as set forth in the agreement, the enrolled participant shall not be liable to the provider for any sums owed by the health maintenance organization. Every such contract shall provide that this requirement shall survive termination of the contract.

(2) The provisions of subsection (1) of this section shall not apply:

(a) To emergency care from a provider who is not a participating provider;

(b) To out-of-area services;

(c) To the delivery of covered pediatric oral services that are substantially equal to the essential health benefits benchmark plan; or

(d) In exceptional situations approved in advance by the commissioner, if the health maintenance organization is unable to negotiate reasonable and cost-effective participating provider contracts.

(3)(a) Each participating provider contract form shall be filed with the commissioner fifteen days before it is used.

(b) Any contract form not affirmatively disapproved within fifteen days of filing shall be deemed approved, except that the commissioner may extend the approval period an additional fifteen days upon giving notice before the expiration of the initial fifteen-day period. The commissioner may approve such a contract form for immediate use at any time. Approval may be subsequently withdrawn for cause.

(c) Subject to the right of the health maintenance organization to demand and receive a hearing under chapters 48.04 and 34.05 RCW, the commissioner may disapprove such a contract form if it is in any respect in violation of this chapter or if it fails to conform to minimum provisions or standards required by the commissioner by rule under chapter 34.05 RCW.

(4) No participating provider, or insurance producer, trustee, or assignee thereof, may maintain an action against an enrolled participant to collect sums owed by the health maintenance organization. [2013 c 325 § 2; 2008 c 217 § 56; 1990 c 119 § 7.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

Chapter 48.83 RCW

LONG-TERM CARE INSURANCE COVERAGE—STANDARDS

Sections

48.83.090 Denial of claims—Written explanation.
48.83.170 Rules, generally.

48.83.090 Denial of claims—Written explanation.

All long-term care denials must be made within thirty days after receipt of a written request made by a policyholder or certificate holder, or his or her representative. All denials of long-term care claims by the issuer must provide a written explanation of the reasons for the denial and make available to the policyholder or certificate holder all information directly related to the denial. [2013 c 8 § 1; 2008 c 145 § 10.]

48.83.170 Rules, generally.

(1) The commissioner must adopt rules that include standards for full and fair disclosure setting forth the manner, content, and required disclosures for the sale of long-term care insurance policies, terms of renewability, initial and subsequent conditions of eligibility, nonduplication of coverage provisions, coverage of dependents, preexisting conditions, termination of insurance, continuation or conversion, probationary periods, limitations, exceptions, reductions, elimination periods, requirements for replacement, recurrent conditions, and definitions of terms. The commissioner must adopt rules establishing loss ratio standards for long-term care insurance policies. The commissioner must adopt rules to promote premium adequacy and to protect policyholders in the event of proposed substantial rate increases, and to establish minimum standards for producer education, marketing practices, producer compensation, producer testing, penalties, and reporting practices for long-term care insurance.

(2) The commissioner must adopt rules establishing standards protecting patient privacy rights, rights to receive confidential health care services, and standards for an issuer's timely review of a claim denial upon request of a covered person.

(3) The commissioner must adopt by rule prompt payment requirements for long-term care insurance. The rules must include a definition of a "claim" and a definition of "clean claim." In adopting the rules the commissioner must consider the prompt payment requirements in long-term care insurance model acts developed by the national association of insurance commissioners.

(4) The commissioner may adopt reasonable rules to effectuate any provision of this chapter in accordance with the requirements of chapter 34.05 RCW. [2013 c 8 § 2; 2008 c 145 § 18.]

Chapter 48.110 RCW**SERVICE CONTRACTS AND PROTECTION PRODUCT GUARANTEES**

Sections

48.110.017 Application of chapter.

48.110.020 Definitions.

48.110.017 Application of chapter. This chapter does not prohibit a service contract provider from covering, in whole or in part, residential water, sewer, utilities, or similar systems with or without coverage of appliances or from sharing contract revenue with local governments or other third parties for endorsements and marketing services. [2013 c 117 § 2.]

48.110.020 Definitions. The definitions in this section apply throughout this chapter.

(1) "Administrator" means the person who is responsible for the administration of the service contracts, the service contracts plan, or the protection product guarantees.

(2) "Commissioner" means the insurance commissioner of this state.

(3) "Consumer" means an individual who buys any tangible personal property that is primarily for personal, family, or household use.

(4) "Home heating fuel service contract" means a contract or agreement for a separately stated consideration for a specific duration to perform the repair, replacement, or maintenance of a home heating fuel supply system including the fuel tank and all visible pipes, caps, lines, and associated parts or the indemnification for repair, replacement, or maintenance for operational or structural failure due to a defect in materials or workmanship, or normal wear and tear.

(5) "Incidental costs" means expenses specified in the guarantee incurred by the protection product guarantee holder related to damages to other property caused by the failure of the protection product to perform as provided in the guarantee. "Incidental costs" may include, without limitation, insurance policy deductibles, rental vehicle charges, the difference between the actual value of the stolen vehicle at the time of theft and the cost of a replacement vehicle, sales taxes, registration fees, transaction fees, and mechanical inspection fees. Incidental costs may be paid under the provisions of the protection product guarantee in either a fixed amount specified in the protection product guarantee or sales agreement, or by the use of a formula itemizing specific incidental costs incurred by the protection product guarantee holder to be paid.

(6) "Maintenance agreement" means a contract of limited duration that provides for scheduled maintenance only.

(7) "Motor vehicle" means any vehicle subject to registration under chapter 46.16A RCW.

(8) "Person" means an individual, partnership, corporation, incorporated or unincorporated association, joint stock company, reciprocal insurer, syndicate, or any similar entity or combination of entities acting in concert.

(9) "Premium" means the consideration paid to an insurer for a reimbursement insurance policy.

(10) "Protection product" means any product offered or sold with a guarantee to repair or replace another product or pay incidental costs upon the failure of the product to perform pursuant to the terms of the protection product guarantee.

(11) "Protection product guarantee" means a written agreement by a protection product guarantee provider to repair or replace another product or pay incidental costs upon the failure of the protection product to perform pursuant to the terms of the protection product guarantee.

(12) "Protection product guarantee holder" means a person who is the purchaser or permitted transferee of a protection product guarantee.

(13) "Protection product guarantee provider" means a person who is contractually obligated to the protection product guarantee holder under the terms of the protection product guarantee. Protection product guarantee provider does not include an authorized insurer providing a reimbursement insurance policy.

(14) "Protection product seller" means the person who sells the protection product to the consumer.

(15) "Provider fee" means the consideration paid by a consumer for a service contract.

(16) "Reimbursement insurance policy" means a policy of insurance that is issued to a service contract provider or a protection product guarantee provider to provide reimbursement to the service contract provider or the protection product guarantee provider or to pay on behalf of the service contract provider or the protection product guarantee provider all contractual obligations incurred by the service contract provider or the protection product guarantee provider under the terms of the insured service contracts or protection product guarantees issued or sold by the service contract provider or the protection product guarantee provider.

(17)(a) "Service contract" means a contract or agreement entered into at any time for consideration over and above the lease or purchase price of the property for any specific duration to perform the repair, replacement, or maintenance of property or the indemnification for repair, replacement, or maintenance for operational or structural failure due to a defect in materials or workmanship, or normal wear and tear. Service contracts may provide for the repair, replacement, or maintenance of property for damage resulting from power surges and accidental damage from handling, with or without additional provision for incidental payment of indemnity under limited circumstances, including towing, rental, emergency road services, or other expenses relating to the failure of the product or of a component part thereof.

(b) "Service contract" also includes a contract or agreement sold for separately stated consideration for a specific duration to perform the repair or replacement of tires and/or wheels damaged as a result of coming into contact with road hazards including but not limited to potholes, rocks, wood debris, metal parts, glass, plastic, curbs, or composite scraps. However, a contract or agreement meeting the definition under this subsection (17)(b) in which the party obligated to perform is either a tire or wheel manufacturer or a motor vehicle manufacturer is exempt from the requirements of this chapter.

(18) "Service contract holder" or "contract holder" means a person who is the purchaser or holder of a service contract.

(19) "Service contract provider" means a person who is contractually obligated to the service contract holder under the terms of the service contract.

(20) "Service contract seller" means the person who sells the service contract to the consumer.

(21) "Warranty" means a warranty made solely by the manufacturer, importer, or seller of property or services without consideration; that is not negotiated or separated from the sale of the product and is incidental to the sale of the product; and that guarantees indemnity for defective parts, mechanical or electrical breakdown, labor, or other remedial measures, such as repair or replacement of the property or repetition of services. [2013 c 117 § 1; 2011 c 171 § 104. Prior: 2010 c 89 § 1; prior: 2006 c 274 § 3; 2006 c 36 § 17; 2000 c 208 § 2; 1999 c 112 § 3.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Severability—2006 c 36: See RCW 48.111.901.

Chapter 48.120 RCW SPECIALTY PRODUCER LICENSES— PORTABLE ELECTRONICS OR SERVICES

Sections

48.120.015	Scope of license—Authorization—Portable electronics.
48.120.020	Issuance of insurance—Restrictions—Portable electronics—Conduct of employees and authorized representatives. <i>(Effective until July 1, 2015.)</i>
48.120.020	Issuance of insurance—Restrictions—Portable electronics—Conduct of employees and authorized representatives. <i>(Effective July 1, 2015.)</i>
48.120.025	Statutes governing vendor misconduct—Rules necessary to implement chapter.

48.120.015 Scope of license—Authorization—Portable electronics. (1) A specialty producer license authorizes a vendor and its employees and authorized representatives to offer and sell to, enroll in, and bill and collect premiums from customers for insurance covering portable electronics on a master, corporate, group commercial inland marine policy, or on an individual policy basis on a month-to-month or other periodic basis at each location at which the vendor engages in portable electronics transactions. However:

(a) The supervising person must maintain a list of a vendor's locations that are authorized to sell or solicit portable electronics insurance coverage; and

(b) The list under (a) of this subsection must be provided to the commissioner within ten days of a request by the commissioner.

(2) An employee or authorized representative of a vendor may sell or offer portable electronics insurance to the vendor's customers without being individually licensed as an insurance producer if the vendor is licensed under this chapter and is acting in compliance with this chapter and any rules adopted by the commissioner.

(3) A vendor billing and collecting premiums from customers for portable electronics insurance coverage is not required to maintain these funds in a segregated account if the vendor:

(a) Is authorized by the insurer to hold the funds in an alternative manner; and

(b) Remits the funds to the supervising person within sixty days of receipt.

(4) All funds received by a vendor from an enrolled customer for the sale of portable electronics insurance are considered funds held in trust by the vendor in a fiduciary capacity for the benefit of the insurer.

(5) Any charge to the enrolled customer for coverage that is not included in the cost associated with the purchase or lease of portable electronics or related services must be separately itemized on the enrolled customer's bill.

(6) If portable electronics insurance coverage is included with the purchase or lease of portable electronics or related services, the vendor must clearly and conspicuously disclose to the enrolled customer that the portable electronics insurance coverage is included with the portable electronics or related services.

(7) Vendors may receive compensation for billing and collection services. [2013 c 152 § 4; 2012 c 154 § 3; 2002 c 357 § 3.]

48.120.020 Issuance of insurance—Restrictions—Portable electronics—Conduct of employees and autho-

alized representatives. (Effective until July 1, 2015.) (1) A vendor issued a specialty producer license may not issue insurance under RCW 48.120.015 unless:

(a) At every location where customers are enrolled in portable electronics insurance programs, written material regarding the program is made available to prospective customers that:

(i) Discloses that portable electronics insurance may provide a duplication of coverage already provided by a customer's homeowner's insurance policy, renter's insurance policy, or other source of coverage;

(ii) States that the enrollment by the customer in a portable electronics insurance program is not required in order to purchase or lease portable electronics or services;

(iii) Summarizes the material terms of the insurance coverage, including the identity of the insurer, the identity of the supervising person, the amount of any applicable deductible and how it is to be paid, benefits of the coverage, and key terms and conditions of coverage, such as whether portable electronics may be replaced with a similar make and model or reconditioned make and model or repaired with nonoriginal manufacturer parts or equipment;

(iv) Summarizes the process for filing a claim, including a description of how to return portable electronics and the maximum fee applicable in the event the customer fails to comply with any equipment return requirements; and

(v) States that an enrolled customer may cancel enrollment for coverage under a portable electronics insurance policy at any time and the person paying the premium will receive a refund or credit of any applicable unearned premium;

(b)(i) The written materials required by (a) of this subsection disclose with specificity under what circumstances and subject to what limitations an insurer may cancel, terminate, modify, or otherwise change the terms and conditions of a policy of portable electronics insurance; or

(ii) Within a reasonable time from the date of purchase, materials are delivered to an enrolled customer that state with specificity under what circumstances and subject to what limitations an insurer may cancel, terminate, modify, or otherwise change the terms and conditions of a policy of portable electronics insurance; and

(c) The portable electronics insurance program is operated with the participation of a supervising person who, with authorization and approval from the appointing insurer, supervises a training program for employees of the licensed vendor. The training must comply with the following:

(i) The training must be delivered to employees and authorized representatives of vendors who are directly engaged in the activity of selling or offering portable electronics insurance;

(ii) The training may be provided in electronic form. However, if conducted in an electronic form, the supervising person must implement a supplemental education program regarding the portable electronics insurance product that is conducted and overseen by licensed employees of the supervising person; and

(iii) Each employee and authorized representative must receive basic instruction about the portable electronics insurance offered to customers and the disclosures required under this section.

(2) No employee or authorized representative of a vendor of portable electronics may advertise, represent, or otherwise hold himself or herself out as a nonlimited lines licensed insurance producer.

(3) Employees and authorized representatives of a vendor issued a specialty producer license may only act on behalf of the vendor in the offer, sale, solicitation, or enrollment of customers in a portable electronics insurance program. The conduct of these employees and authorized representatives within the scope of their employment or agency is the same as conduct of the vendor for purposes of this title. [2013 c 152 § 5; 2012 c 154 § 4; 2002 c 357 § 4.]

Expiration date—2013 c 152 § 5: "Section 5 of this act expires July 1, 2015." [2013 c 152 § 9.]

48.120.020 Issuance of insurance—Restrictions—Portable electronics—Conduct of employees and authorized representatives. (Effective July 1, 2015.) (1) A vendor issued a specialty producer license may not issue insurance under RCW 48.120.015 unless:

(a) At every location where customers are enrolled in portable electronics insurance programs, written material regarding the program is made available to prospective customers that:

(i) Discloses that portable electronics insurance may provide a duplication of coverage already provided by a customer's homeowner's insurance policy, renter's insurance policy, or other source of coverage;

(ii) States that the enrollment by the customer in a portable electronics insurance program is not required in order to purchase or lease portable electronics or services;

(iii) Summarizes the material terms of the insurance coverage, including the identity of the insurer, the identity of the supervising person, the amount of any applicable deductible and how it is to be paid, benefits of the coverage, and key terms and conditions of coverage, such as whether portable electronics may be replaced with a similar make and model or reconditioned make and model or repaired with nonoriginal manufacturer parts or equipment;

(iv) Summarizes the process for filing a claim, including a description of how to return portable electronics and the maximum fee applicable in the event the customer fails to comply with any equipment return requirements;

(v) States that an enrolled customer may cancel enrollment for coverage under a portable electronics insurance policy at any time and the person paying the premium will receive a refund or credit of any applicable unearned premium; and

(vi) Discloses with specificity under what circumstances and subject to what limitations an insurer may cancel, terminate, modify, or otherwise change the terms and conditions of a policy of portable electronics insurance; and

(b) The portable electronics insurance program is operated with the participation of a supervising person who, with authorization and approval from the appointing insurer, supervises a training program for employees of the licensed vendor. The training must comply with the following:

(i) The training must be delivered to employees and authorized representatives of vendors who are directly engaged in the activity of selling or offering portable electronics insurance;

(ii) The training may be provided in electronic form. However, if conducted in an electronic form, the supervising person must implement a supplemental education program regarding the portable electronics insurance product that is conducted and overseen by licensed employees of the supervising person; and

(iii) Each employee and authorized representative must receive basic instruction about the portable electronics insurance offered to customers and the disclosures required under this section.

(2) No employee or authorized representative of a vendor of portable electronics may advertise, represent, or otherwise hold himself or herself out as a nonlimited lines licensed insurance producer.

(3) Employees and authorized representatives of a vendor issued a specialty producer license may only act on behalf of the vendor in the offer, sale, solicitation, or enrollment of customers in a portable electronics insurance program. The conduct of these employees and authorized representatives within the scope of their employment or agency is the same as conduct of the vendor for purposes of this title. [2013 c 152 § 6; 2012 c 154 § 4; 2002 c 357 § 4.]

Effective date—2013 c 152 § 6: "Section 6 of this act takes effect July 1, 2015." [2013 c 152 § 10.]

48.120.025 Statutes governing vendor misconduct—Rules necessary to implement chapter. (1) A vendor issued a specialty producer license under this chapter is subject to RCW 48.17.530 through 48.17.560.

(2) The commissioner may adopt rules necessary for the implementation of this chapter, including, but not limited to, rules governing:

(a) The specialty producer license application process, including any forms required to be used;

(b) The standards for approval and the required content of written materials required under RCW 48.120.020(1)(a);

(c) The approval and required content of training materials required under RCW 48.120.020(1)(c);

(d) Establishing license fees to defray the cost of administering the specialty producer licensure program;

(e) Establishing requirements for the remittance of premium funds to the supervising agent under authority from the program insurer; and

(f) Determining the applicability or nonapplicability of other provisions of this title to this chapter. [2013 c 152 § 7; 2002 c 357 § 5.]

Chapter 48.150 RCW DIRECT PATIENT-PROVIDER PRIMARY HEALTH CARE

Sections

48.150.010 Definitions.

48.150.040 Prohibited and authorized practices.

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

(1) "Direct agreement" means a written agreement entered into between a direct practice and an individual direct patient, or the parent or legal guardian of the direct patient or

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a family of direct patients, whereby the direct practice charges a direct fee as consideration for being available to provide and providing primary care services to the individual direct patient. A direct agreement must (a) describe the specific health care services the direct practice will provide; and (b) be terminable at will upon written notice by the direct patient.

(2) "Direct fee" means a fee charged by a direct practice as consideration for being available to provide and providing primary care services as specified in a direct agreement.

(3) "Direct patient" means a person who is party to a direct agreement and is entitled to receive primary care services under the direct agreement from the direct practice.

(4) "Direct patient-provider primary care practice" and "direct practice" means a provider, group, or entity that meets the following criteria in (a), (b), (c), and (d) of this subsection:

(a)(i) A health care provider who furnishes primary care services through a direct agreement;

(ii) A group of health care providers who furnish primary care services through a direct agreement; or

(iii) An entity that sponsors, employs, or is otherwise affiliated with a group of health care providers who furnish only primary care services through a direct agreement, which entity is wholly owned by the group of health care providers or is a nonprofit corporation exempt from taxation under section 501(c)(3) of the internal revenue code, and is not otherwise regulated as a health care service contractor, health maintenance organization, or disability insurer under Title 48 RCW. Such entity is not prohibited from sponsoring, employing, or being otherwise affiliated with other types of health care providers not engaged in a direct practice;

(b) Enters into direct agreements with direct patients or parents or legal guardians of direct patients;

(c) Does not accept payment for health care services provided to direct patients from any entity subject to regulation under Title 48 RCW or plans administered under chapter 41.05, 70.47, or 70.47A RCW; and

(d) Does not provide, in consideration for the direct fee, services, procedures, or supplies such as prescription drugs except as provided in RCW 48.150.040(2)(b)(i)(B), hospitalization costs, major surgery, dialysis, high level radiology (CT, MRI, PET scans or invasive radiology), rehabilitation services, procedures requiring general anesthesia, or similar advanced procedures, services, or supplies.

(5) "Health care provider" or "provider" means a person regulated under Title 18 RCW or chapter 70.127 RCW to practice health or health-related services or otherwise practicing health care services in this state consistent with state law.

(6) "Health carrier" or "carrier" has the same meaning as in RCW 48.43.005.

(7) "Network" means the group of participating providers and facilities providing health care services to a particular health carrier's health plan or to plans administered under chapter 41.05, 70.47, or 70.47A RCW.

(8) "Primary care" means routine health care services, including screening, assessment, diagnosis, and treatment for the purpose of promotion of health, and detection and management of disease or injury. [2013 c 126 § 1. Prior: 2009 c 552 § 1; 2007 c 267 § 3.]

48.150.040 Prohibited and authorized practices. (1)

Direct practices may not:

(a) Enter into a participating provider contract as defined in RCW 48.44.010 or 48.46.020 with any carrier or with any carrier's contractor or subcontractor, or plans administered under chapter 41.05, 70.47, or 70.47A RCW, to provide health care services through a direct agreement except as set forth in subsection (2) of this section;

(b) Submit a claim for payment to any carrier or any carrier's contractor or subcontractor, or plans administered under chapter 41.05, 70.47, or 70.47A RCW, for health care services provided to direct patients as covered by their agreement;

(c) With respect to services provided through a direct agreement, be identified by a carrier or any carrier's contractor or subcontractor, or plans administered under chapter 41.05, 70.47, or 70.47A RCW, as a participant in the carrier's or any carrier's contractor or subcontractor network for purposes of determining network adequacy or being available for selection by an enrollee under a carrier's benefit plan; or

(d) Pay for health care services covered by a direct agreement rendered to direct patients by providers other than the providers in the direct practice or their employees, except as described in subsection (2)(b) of this section.

(2) Direct practices and providers may:

(a) Enter into a participating provider contract as defined by RCW 48.44.010 and 48.46.020 or plans administered under chapter 41.05, 70.47, or 70.47A RCW for purposes other than payment of claims for services provided to direct patients through a direct agreement. Such providers shall be subject to all other provisions of the participating provider contract applicable to participating providers including but not limited to the right to:

- (i) Make referrals to other participating providers;
- (ii) Admit the carrier's members to participating hospitals and other health care facilities;
- (iii) Prescribe prescription drugs; and
- (iv) Implement other customary provisions of the contract not dealing with reimbursement of services;

(b)(i) Pay for charges associated with:

(A) The provision of routine lab and imaging services; and

(B) The dispensing, at no additional cost to the direct patient, of an initial supply, not to exceed thirty days, of generic prescription drugs prescribed by the direct provider.

(ii) In aggregate payments made under (b)(i)(A) and (B) of this subsection per year per direct patient are not to exceed fifteen percent of the total annual direct fee charged that direct patient. Exceptions to this limitation may occur with respect to routine lab and imaging services in the event of short-term equipment failure if such failure prevents the provision of care that should not be delayed; and

(c) Charge an additional fee to direct patients for supplies, medications, and specific vaccines provided to direct patients that are specifically excluded under the agreement, provided the direct practice notifies the direct patient of the additional charge, prior to their administration or delivery. [2013 c 126 § 2; 2009 c 552 § 2; 2007 c 267 § 6.]

Title 49**LABOR REGULATIONS****Chapters**

49.28 Hours of labor.

49.44 Violations—Prohibited practices.

49.46 Minimum wage act.

49.60 Discrimination—Human rights commission.

49.86 Family leave insurance.

Chapter 49.28 RCW**HOURS OF LABOR**

Sections

49.28.120 Repealed.

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

Chapter 49.44 RCW**VIOLATIONS—PROHIBITED PRACTICES**

Sections

49.44.200 Personal social networking accounts—Restrictions on employer access—Definitions.

49.44.205 Violations of RCW 49.44.200—Civil action—Remedies.

49.44.200 Personal social networking accounts—Restrictions on employer access—Definitions. (1) An employer may not:

(a) Request, require, or otherwise coerce an employee or applicant to disclose login information for the employee's or applicant's personal social networking account;

(b) Request, require, or otherwise coerce an employee or applicant to access his or her personal social networking account in the employer's presence in a manner that enables the employer to observe the contents of the account;

(c) Compel or coerce an employee or applicant to add a person, including the employer, to the list of contacts associated with the employee's or applicant's personal social networking account;

(d) Request, require, or cause an employee or applicant to alter the settings on his or her personal social networking account that affect a third party's ability to view the contents of the account; or

(e) Take adverse action against an employee or applicant because the employee or applicant refuses to disclose his or her login information, access his or her personal social networking account in the employer's presence, add a person to the list of contacts associated with his or her personal social networking account, or alter the settings on his or her personal social networking account that affect a third party's ability to view the contents of the account.

(2) This section does not apply to an employer's request or requirement that an employee share content from his or her personal social networking account if the following conditions are met:

(a) The employer requests or requires the content to make a factual determination in the course of conducting an investigation;

(b) The employer undertakes the investigation in response to receipt of information about the employee's activity on his or her personal social networking account;

(c) The purpose of the investigation is to: (i) Ensure compliance with applicable laws, regulatory requirements, or prohibitions against work-related employee misconduct; or (ii) investigate an allegation of unauthorized transfer of an employer's proprietary information, confidential information, or financial data to the employee's personal social networking account; and

(d) The employer does not request or require the employee to provide his or her login information.

(3) This section does not:

(a) Apply to a social network, intranet, or other technology platform that is intended primarily to facilitate work-related information exchange, collaboration, or communication by employees or other workers;

(b) Prohibit an employer from requesting or requiring an employee to disclose login information for access to: (i) An account or service provided by virtue of the employee's employment relationship with the employer; or (ii) an electronic communications device or online account paid for or supplied by the employer;

(c) Prohibit an employer from enforcing existing personnel policies that do not conflict with this section; or

(d) Prevent an employer from complying with the requirements of state or federal statutes, rules or regulations, case law, or rules of self-regulatory organizations.

(4) If, through the use of an employer-provided electronic communications device or an electronic device or program that monitors an employer's network, an employer inadvertently receives an employee's login information, the employer is not liable for possessing the information but may not use the login information to access the employee's personal social networking account.

(5) For the purposes of this section and RCW 49.44.205:

(a) "Adverse action" means: Discharging, disciplining, or otherwise penalizing an employee; threatening to discharge, discipline, or otherwise penalize an employee; and failing or refusing to hire an applicant.

(b) "Applicant" means an applicant for employment.

(c) "Electronic communications device" means a device that uses electronic signals to create, transmit, and receive information, including computers, telephones, personal digital assistants, and other similar devices.

(d) "Employer" means any person, firm, corporation, partnership, business trust, legal representative, or other business entity which engages in any business, industry, profession, or other activity in this state and employs one or more employees, and includes the state, any state institution, state agency, political subdivisions of the state, and any municipal corporation or quasi-municipal corporation. "Employer" includes an agent, a representative, or a designee of the employer.

(e) "Login information" means a user name and password, a password, or other means of authentication that protects access to a personal social networking account. [2013 c 330 § 1.]

49.44.205 Violations of RCW 49.44.200—Civil action—Remedies. An employee or applicant aggrieved by

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a violation of RCW 49.44.200 may bring a civil action in a court of competent jurisdiction. The court may:

(1) Award a prevailing employee or applicant injunctive or other equitable relief, actual damages, a penalty in the amount of five hundred dollars, and reasonable attorneys' fees and costs; and

(2) Pursuant to RCW 4.84.185, award any prevailing party against whom an action has been brought for a violation of RCW 49.44.200 reasonable expenses and attorneys' fees upon final judgment and written findings by the trial judge that the action was frivolous and advanced without reasonable cause. [2013 c 330 § 2.]

Chapter 49.46 RCW MINIMUM WAGE ACT

Sections

49.46.010 Definitions.

49.46.130 Minimum rate of compensation for employment in excess of forty hour work week—Exceptions.

49.46.010 Definitions. As used in this chapter:

(1) "Director" means the director of labor and industries;

(2) "Employ" includes to permit to work;

(3) "Employee" includes any individual employed by an employer but shall not include:

(a) Any individual (i) employed as a hand harvest laborer and paid on a piece rate basis in an operation which has been, and is generally and customarily recognized as having been, paid on a piece rate basis in the region of employment; (ii) who commutes daily from his or her permanent residence to the farm on which he or she is employed; and (iii) who has been employed in agriculture less than thirteen weeks during the preceding calendar year;

(b) Any individual employed in casual labor in or about a private home, unless performed in the course of the employer's trade, business, or profession;

(c) Any individual employed in a bona fide executive, administrative, or professional capacity or in the capacity of outside salesperson as those terms are defined and delimited by rules of the director. However, those terms shall be defined and delimited by the human resources director pursuant to chapter 41.06 RCW for employees employed under the director of personnel's jurisdiction;

(d) Any individual engaged in the activities of an educational, charitable, religious, state or local governmental body or agency, or nonprofit organization where the employer-employee relationship does not in fact exist or where the services are rendered to such organizations gratuitously. If the individual receives reimbursement in lieu of compensation for normally incurred out-of-pocket expenses or receives a nominal amount of compensation per unit of voluntary service rendered, an employer-employee relationship is deemed not to exist for the purpose of this section or for purposes of membership or qualification in any state, local government, or publicly supported retirement system other than that provided under chapter 41.24 RCW;

(e) Any individual employed full time by any state or local governmental body or agency who provides voluntary services but only with regard to the provision of the voluntary services. The voluntary services and any compensation

therefor shall not affect or add to qualification, entitlement, or benefit rights under any state, local government, or publicly supported retirement system other than that provided under chapter 41.24 RCW;

(f) Any newspaper vendor, carrier, or delivery person selling or distributing newspapers on the street, to offices, to businesses, or from house to house and any freelance news correspondent or "stringer" who, using his or her own equipment, chooses to submit material for publication for free or a fee when such material is published;

(g) Any carrier subject to regulation by Part 1 of the Interstate Commerce Act;

(h) Any individual engaged in forest protection and fire prevention activities;

(i) Any individual employed by any charitable institution charged with child care responsibilities engaged primarily in the development of character or citizenship or promoting health or physical fitness or providing or sponsoring recreational opportunities or facilities for young people or members of the armed forces of the United States;

(j) Any individual whose duties require that he or she reside or sleep at the place of his or her employment or who otherwise spends a substantial portion of his or her work time subject to call, and not engaged in the performance of active duties;

(k) Any resident, inmate, or patient of a state, county, or municipal correctional, detention, treatment or rehabilitative institution;

(l) Any individual who holds a public elective or appointive office of the state, any county, city, town, municipal corporation or quasi municipal corporation, political subdivision, or any instrumentality thereof, or any employee of the state legislature;

(m) All vessel operating crews of the Washington state ferries operated by the department of transportation;

(n) Any individual employed as a seaman on a vessel other than an American vessel;

(4) "Employer" includes any individual, partnership, association, corporation, business trust, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee;

(5) "Occupation" means any occupation, service, trade, business, industry, or branch or group of industries or employment or class of employment in which employees are gainfully employed;

(6) "Retail or service establishment" means an establishment seventy-five percent of whose annual dollar volume of sales of goods or services, or both, is not for resale and is recognized as retail sales or services in the particular industry;

(7) "Wage" means compensation due to an employee by reason of employment, payable in legal tender of the United States or checks on banks convertible into cash on demand at full face value, subject to such deductions, charges, or allowances as may be permitted by rules of the director. [2013 c 141 § 1. Prior: 2011 1st sp.s. c 43 § 462; (2011 1st sp.s. c 43 § 461 expired December 31, 2011); prior: (2010 c 160 § 2 expired December 31, 2011); 2010 c 8 § 12040; 2002 c 354 § 231; 1997 c 203 § 3; 1993 c 281 § 56; 1989 c 1 § 1 (Initiative Measure No. 518, approved November 8, 1988); 1984 c 7 § 364; 1977 ex.s. c 69 § 1; 1975 1st ex.s. c 289 § 1; 1974 ex.s. c 107 § 1; 1961 ex.s. c 18 § 2; 1959 c 294 § 1.]

Effective date—2011 1st sp.s. c 43 § 462: "Section 462 of this act takes effect December 31, 2011." [2011 1st sp.s. c 43 § 484.]

Expiration date—2011 1st sp.s. c 43 § 461: "Section 461 of this act expires December 31, 2011." [2011 1st sp.s. c 43 § 483.]

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

Expiration date—2010 c 160: "This act expires December 31, 2011." [2010 c 160 § 6.]

Effect of offset of military pay on status of bona fide executive, administrative, and professional employees: RCW 73.16.080.

Additional notes found at www.leg.wa.gov

49.46.130 Minimum rate of compensation for employment in excess of forty hour work week—Exceptions.

(1) Except as otherwise provided in this section, no employer shall employ any of his or her employees for a work week longer than forty hours unless such employee receives compensation for his or her employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he or she is employed.

(2) This section does not apply to:

(a) Any person exempted pursuant to RCW 49.46.010(3). The payment of compensation or provision of compensatory time off in addition to a salary shall not be a factor in determining whether a person is exempted under RCW 49.46.010(3)(c);

(b) Employees who request compensating time off in lieu of overtime pay;

(c) Any individual employed as a seaman whether or not the seaman is employed on a vessel other than an American vessel;

(d) Seasonal employees who are employed at concessions and recreational establishments at agricultural fairs, including those seasonal employees employed by agricultural fairs, within the state provided that the period of employment for any seasonal employee at any or all agricultural fairs does not exceed fourteen working days a year;

(e) Any individual employed as a motion picture projectionist if that employee is covered by a contract or collective bargaining agreement which regulates hours of work and overtime pay;

(f) An individual employed as a truck or bus driver who is subject to the provisions of the Federal Motor Carrier Act (49 U.S.C. Sec. 3101 et seq. and 49 U.S.C. Sec. 10101 et seq.), if the compensation system under which the truck or bus driver is paid includes overtime pay, reasonably equivalent to that required by this subsection, for working longer than forty hours per week;

(g) Any individual employed (i) on a farm, in the employ of any person, in connection with the cultivation of the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and furbearing animals and wildlife, or in the employ of the owner or tenant or other operator of a farm in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment; or (ii) in packing, packaging, grading, storing or delivering to storage, or to market or to a carrier for transportation to market, any agricultural or horticultural commodity; or (iii) commercial canning, commercial freezing, or any other commercial processing, or with respect to services performed

in connection with the cultivation, raising, harvesting, and processing of oysters or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption;

(h) Any industry in which federal law provides for an overtime payment based on a work week other than forty hours. However, the provisions of the federal law regarding overtime payment based on a work week other than forty hours shall nevertheless apply to employees covered by this section without regard to the existence of actual federal jurisdiction over the industrial activity of the particular employer within this state. For the purposes of this subsection, "industry" means a trade, business, industry, or other activity, or branch, or group thereof, in which individuals are gainfully employed (section 3(h) of the Fair Labor Standards Act of 1938, as amended (Public Law 93-259));

(i) Any hours worked by an employee of a carrier by air subject to the provisions of subchapter II of the Railway Labor Act (45 U.S.C. Sec. 181 et seq.), when such hours are voluntarily worked by the employee pursuant to a shift-trading practice under which the employee has the opportunity in the same or in other work weeks to reduce hours worked by voluntarily offering a shift for trade or reassignment; and

(j) Any individual licensed under chapter 18.85 RCW unless the individual is providing real estate brokerage services under a written contract with a real estate firm which provides that the individual is an employee. For purposes of this subsection (2)(j), "real estate brokerage services" and "real estate firm" mean the same as defined in RCW 18.85.011.

(3) No employer shall be deemed to have violated subsection (1) of this section by employing any employee of a retail or service establishment for a work week in excess of the applicable work week specified in subsection (1) of this section if:

(a) The regular rate of pay of the employee is in excess of one and one-half times the minimum hourly rate required under RCW 49.46.020; and

(b) More than half of the employee's compensation for a representative period, of not less than one month, represents commissions on goods or services.

In determining the proportion of compensation representing commissions, all earnings resulting from the application of a bona fide commission rate is to be deemed commissions on goods or services without regard to whether the computed commissions exceed the draw or guarantee.

(4) No employer of commissioned salespeople primarily engaged in the business of selling automobiles, trucks, recreational vessels, recreational vessel trailers, recreational vehicle trailers, recreational campers, manufactured housing, or farm implements to ultimate purchasers shall violate subsection (1) of this section with respect to such commissioned salespeople if the commissioned salespeople are paid the greater of:

(a) Compensation at the hourly rate, which may not be less than the rate required under RCW 49.46.020, for each hour worked up to forty hours per week, and compensation of one and one-half times that hourly rate for all hours worked over forty hours in one week; or

(b) A straight commission, a salary plus commission, or a salary plus bonus applied to gross salary.

(5) No public agency shall be deemed to have violated subsection (1) of this section with respect to the employment of any employee in fire protection activities or any employee in law enforcement activities (including security personnel in correctional institutions) if: (a) In a work period of twenty-eight consecutive days the employee receives for tours of duty which in the aggregate exceed two hundred forty hours; or (b) in the case of such an employee to whom a work period of at least seven but less than twenty-eight days applies, in his or her work period the employee receives for tours of duty which in the aggregate exceed a number of hours which bears the same ratio to the number of consecutive days in his or her work period as two hundred forty hours bears to twenty-eight days; compensation at a rate not less than one and one-half times the regular rate at which he or she is employed. [2013 c 207 § 1; 2010 c 8 § 12045; 1998 c 239 § 2. Prior: 1997 c 311 § 1; 1997 c 203 § 2; 1995 c 5 § 1; 1993 c 191 § 1; 1992 c 94 § 1; 1989 c 104 § 1; prior: 1977 ex.s. c 4 § 1; 1977 ex.s. c 74 § 1; 1975 1st ex.s. c 289 § 3.]

Findings—Intent—1998 c 239: "The legislature finds that employees in the airline industry have a long-standing practice and tradition of trading shifts voluntarily among themselves. The legislature also finds that federal law exempts airline employees from the provisions of federal overtime regulations. This act is intended to specify that airline industry employers are not required to pay overtime compensation to an employee agreeing to work additional hours for a coemployee." [1998 c 239 § 1.]

Intent—Collective bargaining agreements—1998 c 239: "This act does not alter the terms, conditions, or practices contained in any collective bargaining agreement." [1998 c 239 § 3.]

Intent—Application—1995 c 5: "This act is intended to clarify the original intent of RCW 49.46.010(5)(c). This act applies to all administrative and judicial actions commenced on or after February 1, 1995, and pending on March 30, 1995, and such actions commenced on or after March 30, 1995." [1995 c 5 § 2.]

Additional notes found at www.leg.wa.gov

Chapter 49.60 RCW DISCRIMINATION— HUMAN RIGHTS COMMISSION

Sections

49.60.400 Discrimination, preferential treatment prohibited.

49.60.400 Discrimination, preferential treatment prohibited. (1) The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.

(2) This section applies only to action taken after December 3, 1998.

(3) This section does not affect any law or governmental action that does not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin.

(4) This section does not affect any otherwise lawful classification that:

(a) Is based on sex and is necessary for sexual privacy or medical or psychological treatment; or

(b) Is necessary for undercover law enforcement or for film, video, audio, or theatrical casting; or

(c) Provides for separate athletic teams for each sex.

(5) This section does not invalidate any court order or consent decree that is in force as of December 3, 1998.

(6) This section does not prohibit action that must be taken to establish or maintain eligibility for any federal program, if ineligibility would result in a loss of federal funds to the state.

(7) Nothing in this section prohibits schools established under chapter 28A.715 RCW from:

(a) Implementing a policy of Indian preference in employment; or

(b) Prioritizing the admission of tribal members where capacity of the school's programs or facilities is not as large as demand.

(8) For the purposes of this section, "state" includes, but is not necessarily limited to, the state itself, any city, county, public college or university, community college, school district, special district, or other political subdivision or governmental instrumentality of or within the state.

(9) The remedies available for violations of this section shall be the same, regardless of the injured party's race, sex, color, ethnicity, or national origin, as are otherwise available for violations of Washington antidiscrimination law.

(10) This section shall be self-executing. If any part or parts of this section are found to be in conflict with federal law, the United States Constitution, or the Washington state Constitution, the section shall be implemented to the maximum extent that federal law, the United States Constitution, and the Washington state Constitution permit. Any provision held invalid shall be severable from the remaining portions of this section. [2013 c 242 § 7; 1999 c 3 § 1 (Initiative Measure No. 200, approved November 3, 1998).]

Chapter 49.86 RCW

FAMILY LEAVE INSURANCE

Sections

49.86.030 Eligibility for benefits.
49.86.210 Reports.

49.86.030 Eligibility for benefits. When the legislature has specifically appropriated funding and enacted an implementation date for benefits, then beginning on that specified date, family leave insurance benefits are payable to an individual during a period in which the individual is unable to perform his or her regular or customary work because he or she is on family leave if the individual:

(1) Files a claim for benefits in each week in which the individual is on family leave, and as required by rules adopted by the director;

(2) Has been employed for at least six hundred eighty hours in employment during the individual's qualifying year;

(3) Establishes an application year. An application year may not be established if the qualifying year includes hours worked before establishment of a previous application year;

(4) Consents to the disclosure of information or records deemed private and confidential under chapter 50.13 RCW. Initial disclosure of this information and these records by the employment security department to the department is solely for purposes related to the administration of this chapter. Further disclosure of this information or these records is subject to RCW 49.86.020(3);

(5) Discloses whether or not he or she owes child support obligations as defined in RCW 50.40.050; and

(6) Documents that he or she has provided the employer from whom family leave is to be taken with written notice of the individual's intention to take family leave in the same manner as an employee is required to provide notice in RCW 49.78.250. [2013 2nd sp.s. c 26 § 1; 2011 1st sp.s. c 25 § 1; 2009 c 544 § 1; 2007 c 357 § 5.]

49.86.210 Reports. Beginning one year after the implementation date specified by the legislature pursuant to RCW 49.86.030, and annually thereafter, the department shall report to the legislature on projected and actual program participation, premium rates, fund balances, and outreach efforts. [2013 2nd sp.s. c 26 § 2; 2011 1st sp.s. c 25 § 2; 2009 c 544 § 2; 2007 c 357 § 26.]

Title 50

UNEMPLOYMENT COMPENSATION

Chapters

50.04 Definitions.
50.12 Administration.
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Chapter 50.04 RCW

DEFINITIONS

Sections

50.04.080 Employer. (*Effective December 29, 2013.*)
50.04.090 Employing unit. (*Effective December 29, 2013.*)
50.04.165 Employment—Corporate officers—Election of coverage—Notification. (*Effective December 29, 2013.*)
50.04.170 Employment—Maritime service—Exceptions.
50.04.240 Employment—Newspaper vendor, carrier, or delivery person.
50.04.310 Unemployed individual—Individual not unemployed—Unemployed corporate officer—Corporate officer not unemployed. (*Effective December 29, 2013.*)

50.04.080 Employer. (*Effective December 29, 2013.*) "Employer" means any individual or type of organization, including any partnership, association, trust, estate, joint stock company, insurance company, limited liability company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee, or the legal representative of a deceased person, having any person in employment or, having become an employer, has not ceased to be an employer as provided in this title. [2013 c 250 § 3; 2007 c 146 § 19; 1985 c 41 § 1; 1971 c 3 § 5; 1949 c 214 § 2; 1945 c 35 § 9; Rem. Supp. 1949 § 9998-148. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 19; 1937 c 162 § 19.]

Conflict with federal requirements—Effective date—2013 c 250: See notes following RCW 50.12.070.

Conflict with federal requirements—2007 c 146: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this

act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2007 c 146 § 21.]

Severability—2007 c 146: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2007 c 146 § 22.]

Additional notes found at www.leg.wa.gov

50.04.090 Employing unit. (Effective December 29, 2013.) "Employing unit" means any individual or any type of organization, including any partnership, association, trust, estate, joint stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has or subsequent to January 1, 1937, had in its employ or in its "employment" one or more individuals performing services within this state. The state and its political subdivisions shall be deemed employing units as to any transactions occurring on or after September 21, 1977, which would render an employing unit liable for contributions, interest, or penalties under RCW 50.24.130. "Employing unit" includes Indian tribes as defined in RCW 50.50.010. [2013 c 250 § 4; 2007 c 146 § 20; 2001 1st sp.s. c 11 § 1; 1983 1st ex.s. c 23 § 2; 1977 ex.s. c 73 § 1; 1947 c 215 § 2; 1945 c 35 § 10; Rem. Supp. 1947 § 9998-149. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 19; 1937 c 162 § 19.]

Conflict with federal requirements—Effective date—2013 c 250: See notes following RCW 50.12.070.

Conflict with federal requirements—Severability—2007 c 146: See notes following RCW 50.04.080.

Additional notes found at www.leg.wa.gov

50.04.165 Employment—Corporate officers—Election of coverage—Notification. (Effective December 29, 2013.) Services performed by a person appointed as an officer of a corporation under RCW 23B.08.400, other than those covered by chapters 50.44 and 50.50 RCW, shall not be considered services in employment. However, a corporation may elect to cover not less than all of its corporate officers under RCW 50.24.160. If an employer does not elect to cover its corporate officers under RCW 50.24.160, the employer must notify its corporate officers in writing that they are ineligible for unemployment benefits. However, if the employer fails to provide notice, the individual's status as a corporate officer is unchanged and the person remains ineligible for unemployment benefits. [2013 c 250 § 2; 2007 c 146 § 4; 1993 c 290 § 2; 1993 c 58 § 1; 1991 c 72 § 57; 1986 c 110 § 1; 1983 1st ex.s. c 23 § 4; 1981 c 35 § 13.]

Conflict with federal requirements—Effective date—2013 c 250: See notes following RCW 50.12.070.

Effective date—2007 c 146 § 4: "Section 4 of this act takes effect January 1, 2009." [2007 c 146 § 24.]

Conflict with federal requirements—Severability—2007 c 146: See notes following RCW 50.04.080.

Additional notes found at www.leg.wa.gov

50.04.170 Employment—Maritime service—Exceptions. (1)(a) Except for services subject to RCW 50.44.010, 50.44.020, 50.44.030, or 50.50.010, the term "employment" includes an individual's entire service as an officer or mem-

ber of a crew of an American vessel wherever performed and whether in intrastate or interstate or foreign commerce, if the employer maintains within this state at the beginning of the pay period an operating office from which the operations of the vessel are ordinarily and regularly supervised, managed, directed, and controlled.

(b) The term "employment" does not include:

(i) Services performed by an individual on a boat engaged in catching fish or other forms of aquatic animal life under an arrangement with the owner or operator of the boat under which:

(A) The individual does not receive any cash remuneration except as provided in (b)(i)(B) and (C) of this subsection;

(B) The individual receives a share of the boat's, or the boats' in the case of a fishing operation involving more than one boat, catch of fish or other forms of aquatic animal life or a share of the proceeds from the sale of the catch; and

(C) The amount of the individual's share depends on the amount of the boat's, or the boats' in the case of a fishing operation involving more than one boat, catch of fish or other forms of aquatic animal life, but only if the operating crew of the boat, or each boat from which the individual receives a share in the case of a fishing operation involving more than one boat, is normally made up of fewer than ten individuals.

(ii) Services performed as an officer or member of the crew of a vessel not an American vessel and services on or in connection with an American vessel under a contract of service which is not entered into within the United States and during the performance of which the vessel does not touch at a port of the United States.

(2) For the purposes of this section, "American vessel" means any vessel documented or numbered under the laws of the United States, and includes any vessel which is neither documented or numbered under the laws of the United States nor documented under the laws of any foreign country if its crew is employed solely by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any state. [2013 c 75 § 2; 1949 c 214 § 3; 1947 c 215 § 5; 1945 c 35 § 18; Rem. Supp. 1949 § 9998-157. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

Conflict with federal requirements—2013 c 75: See note following RCW 50.24.160.

50.04.240 Employment—Newspaper vendor, carrier, or delivery person. The term "employment" shall not include services performed by a newspaper vendor, carrier, or delivery person selling or distributing newspapers on the street, to offices, to businesses, or from house to house and any freelance news correspondent or "stringer" who, using his or her own equipment, chooses to submit material for publication for free or a fee when such material is published. [2013 c 141 § 2; 2007 c 218 § 85; 1945 c 35 § 25; Rem. Supp. 1945 § 9998-163. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

50.04.310 Unemployed individual—Individual not unemployed—Unemployed corporate officer—Corporate officer not unemployed. (Effective December 29, 2013.) (1) An individual:

(a) Is "unemployed" in any week during which the individual performs no services and with respect to which no remuneration is payable to the individual, or in any week of less than full time work, if the remuneration payable to the individual with respect to such week is less than one and one-third times the individual's weekly benefit amount plus five dollars. The commissioner shall prescribe regulations applicable to unemployed individuals making such distinctions in the procedures as to such types of unemployment as the commissioner deems necessary.

(b) Is not "unemployed" in any week which falls totally within a period during which the individual, pursuant to a collective bargaining agreement or individual employment contract, is employed full time in accordance with a definition of full time contained in the agreement or contract, and for which compensation for full time work is payable. This subsection may not be applied retroactively to an individual who had no guarantee of work at the start of such period and subsequently is provided additional work by the employer.

(2)(a) An officer of a corporation who owns ten percent or more of the outstanding stock of the corporation, or a corporate officer who is a family member of an officer who owns ten percent or more of the outstanding stock of the corporation, whose claim for benefits is based on any wages with that corporation:

(i) Is not "unemployed" in any week during the individual's term of office or ownership in the corporation, even if wages are not being paid, unless the corporate officer's covered base year wages with that corporation are less than twenty-five percent of his or her total covered base year wages.

(ii) Is "unemployed" in any week upon dissolution of the corporation or if the officer permanently resigns or is permanently removed from their appointment and responsibilities with that corporation in accordance with its articles of incorporation or bylaws or if the corporate officer's covered base year wages with that corporation are less than twenty-five percent of his or her total covered base year wages.

(b) As used in this subsection (2), "family member" means persons who are members of a family by blood or marriage as parents, stepparents, grandparents, spouses, children, brothers, sisters, stepchildren, adopted children, or grandchildren. [2013 c 66 § 1; 2007 c 146 § 5; 1984 c 134 § 1; 1973 2nd ex.s. c 7 § 1; 1945 c 35 § 32; Rem. Supp. 1945 § 9998-170. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1939 c 162 § 19.]

Effective date—2013 c 66: "This act takes effect December 29, 2013." [2013 c 66 § 4.]

Conflict with federal requirements—2013 c 66: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2013 c 66 § 2.]

Effective date—2007 c 146 §§ 5, 6, and 10-12: "Sections 5, 6, and 10 through 12 of this act take effect January 1, 2008." [2007 c 146 § 25.]

Conflict with federal requirements—Severability—2007 c 146: See notes following RCW 50.04.080.

Additional notes found at www.leg.wa.gov

Chapter 50.12 RCW ADMINISTRATION

Sections

- 50.12.070 Employing unit records, reports, and registration—Unified business identifier account number records—Penalty for failure to keep records. (*Effective December 29, 2013.*)
- 50.12.290 Printed materials—Department's duties.

50.12.070 Employing unit records, reports, and registration—Unified business identifier account number records—Penalty for failure to keep records. (*Effective December 29, 2013.*) (1)(a) Each employing unit shall keep true and accurate work records, containing such information as the commissioner may prescribe. Such records shall be open to inspection and be subject to being copied by the commissioner or his or her authorized representatives at any reasonable time and as often as may be necessary. The commissioner may require from any employing unit any sworn or unsworn reports with respect to persons employed by it, which he or she deems necessary for the effective administration of this title.

(b) An employer who contracts with another person or entity for work subject to chapter 18.27 or 19.28 RCW shall obtain and preserve a record of the unified business identifier account number for and compensation paid to the person or entity performing the work. In addition to the penalty in subsection (3) of this section, failure to obtain or maintain the record is subject to RCW 39.06.010.

(2)(a) Each employer shall register with the department and obtain an employment security account number. Each employer shall make periodic reports at such intervals as the commissioner may by regulation prescribe, setting forth the remuneration paid for employment to workers in its employ, the full names and social security numbers of all such workers, and the total hours worked by each worker and such other information as the commissioner may by regulation prescribe.

(b) If the employing unit fails or has failed to report the number of hours in a reporting period for which a worker worked, such number will be computed by the commissioner and given the same force and effect as if it had been reported by the employing unit. In computing the number of such hours worked, the total wages for the reporting period, as reported by the employing unit, shall be divided by the dollar amount of the state's minimum wage in effect for such reporting period and the quotient, disregarding any remainder, shall be credited to the worker: PROVIDED, That although the computation so made will not be subject to appeal by the employing unit, monetary entitlement may be redetermined upon request if the department is provided with credible evidence of the actual hours worked. Benefits paid using computed hours are not considered an overpayment and are not subject to collections when the correction of computed hours results in an invalid or reduced claim; however:

(i) A contribution paying employer who fails to report the number of hours worked will have its experience rating account charged for all benefits paid that are based on hours computed under this subsection; and

(ii) An employer who reimburses the trust fund for benefits paid to workers and fails to report the number of hours

worked shall reimburse the trust fund for all benefits paid that are based on hours computed under this subsection.

(3) Any employer who fails to keep and preserve records required by this section shall be subject to a penalty determined by the commissioner but not to exceed two hundred fifty dollars or two hundred percent of the quarterly tax for each offense, whichever is greater. [2013 c 250 § 1; 2009 c 432 § 11; 2008 c 120 § 7; 2007 c 146 § 1; 1997 c 54 § 2; 1983 1st ex.s. c 23 § 8; 1977 ex.s. c 33 § 3; 1975 1st ex.s. c 228 § 2; 1945 c 35 § 46; Rem. Supp. 1945 § 9998-184. Prior: 1943 c 127 § 8; 1939 c 214 § 9; 1937 c 162 § 11.]

Conflict with federal requirements—2013 c 250: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2013 c 250 § 5.]

Effective date—2013 c 250: "This act takes effect December 29, 2013." [2013 c 250 § 7.]

Effective date—2009 c 432 § 11: "Section 11 of this act takes effect October 1, 2009." [2009 c 432 § 14.]

Report—2009 c 432: See RCW 18.27.800.

Conflict with federal requirements—Severability—2008 c 120: See notes following RCW 18.27.030.

Conflict with federal requirements—Severability—2007 c 146: See notes following RCW 50.04.080.

Additional notes found at www.leg.wa.gov

50.12.290 Printed materials—Department's duties.

When an employer initially files a business license application under chapter 19.02 RCW for the purpose, in whole or in part, of registering to pay unemployment insurance taxes, the employment security department must send to the employer any printed material the department recommends or requires the employer to post. Any time the printed material has substantive changes in the information, the department must send a copy to each employer. [2013 c 144 § 41; 2007 c 287 § 1.]

Chapter 50.16 RCW FUNDS

Sections

50.16.010 Unemployment compensation fund—Administrative contingency fund.

50.16.010 Unemployment compensation fund—Administrative contingency fund. (1) There shall be maintained as special funds, separate and apart from all public moneys or funds of this state an unemployment compensation fund and an administrative contingency fund, which shall be administered by the commissioner exclusively for the purposes of this title, and to which RCW 43.01.050 shall not be applicable.

(2)(a) The unemployment compensation fund shall consist of:

(i) All contributions collected under RCW 50.24.010 and payments in lieu of contributions collected pursuant to the provisions of this title;

[2013 RCW Supp—page 634]

(ii) Any property or securities acquired through the use of moneys belonging to the fund;

(iii) All earnings of such property or securities;

(iv) Any moneys received from the federal unemployment account in the unemployment trust fund in accordance with Title XII of the social security act, as amended;

(v) All money recovered on official bonds for losses sustained by the fund;

(vi) All money credited to this state's account in the unemployment trust fund pursuant to section 903 of the social security act, as amended;

(vii) All money received from the federal government as reimbursement pursuant to section 204 of the federal-state extended compensation act of 1970 (84 Stat. 708-712; 26 U.S.C. Sec. 3304);

(viii) The portion of the additional penalties as provided in RCW 50.20.070(2) that is fifteen percent of the amount of benefits overpaid or deemed overpaid; and

(ix) All moneys received for the fund from any other source.

(b) All moneys in the unemployment compensation fund shall be commingled and undivided.

(3)(a) Except as provided in (b) of this subsection, the administrative contingency fund shall consist of:

(i) All interest on delinquent contributions collected pursuant to this title;

(ii) All fines and penalties collected pursuant to the provisions of this title, except the portion of the additional penalties as provided in RCW 50.20.070(2) that is fifteen percent of the amount of benefits overpaid or deemed overpaid;

(iii) All sums recovered on official bonds for losses sustained by the fund; and

(iv) Revenue received under RCW 50.24.014.

(b) All fees, fines, forfeitures, and penalties collected or assessed by a district court because of the violation of this title or rules adopted under this title shall be remitted as provided in chapter 3.62 RCW.

(c) Except as provided in (d) of this subsection, moneys available in the administrative contingency fund, other than money in the special account created under RCW 50.24.014, shall be expended upon the direction of the commissioner, with the approval of the governor, whenever it appears to him or her that such expenditure is necessary solely for:

(i) The proper administration of this title and that insufficient federal funds are available for the specific purpose to which such expenditure is to be made, provided, the moneys are not substituted for appropriations from federal funds which, in the absence of such moneys, would be made available.

(ii) The proper administration of this title for which purpose appropriations from federal funds have been requested but not yet received, provided, the administrative contingency fund will be reimbursed upon receipt of the requested federal appropriation.

(iii) The proper administration of this title for which compliance and audit issues have been identified that establish federal claims requiring the expenditure of state resources in resolution. Claims must be resolved in the following priority: First priority is to provide services to eligible participants within the state; second priority is to provide

substitute services or program support; and last priority is the direct payment of funds to the federal government.

(d)(i) During the 2007-2009 fiscal biennium, moneys available in the administrative contingency fund, other than money in the special account created under RCW 50.24.014(1)(a), shall be expended as appropriated by the legislature for: (A) The cost of the job skills or worker retraining programs at the community and technical colleges and administrative costs at the state board for community and technical colleges; and (B) reemployment services such as business and project development assistance, local economic development capacity building, and local economic development financial assistance at the department of commerce. The remaining appropriation may be expended as specified in (c) of this subsection.

(ii) During the 2009-2011 fiscal biennium, moneys available in the administrative contingency fund, other than money in the special account created under RCW 50.24.014(1)(a), shall be expended by the department of social and health services as appropriated by the legislature for employment and training services and programs in the WorkFirst program, and for the administrative costs of state agencies participating in the WorkFirst program. The remaining appropriation may be expended as specified in (c) of this subsection.

(4) Money in the special account created under RCW 50.24.014(1)(a) may only be expended, after appropriation, for the purposes specified in this section and RCW 50.62.010, 50.62.020, 50.62.030, 50.24.014, 50.44.053, and 50.22.010. [2013 c 189 § 1; 2012 c 198 § 11; 2009 c 564 § 946; 2009 c 4 § 906; 2008 c 329 § 915; 2007 c 327 § 4; 2006 c 13 § 18. Prior: 2005 c 518 § 933; prior: 2003 2nd sp.s. c 4 § 23; 2003 1st sp.s. c 25 § 925; 2002 c 371 § 914; prior: 1993 c 483 § 7; 1993 c 226 § 10; 1993 c 226 § 9; 1991 sp.s. c 13 § 59; 1987 c 202 § 218; 1985 ex.s. c 5 § 6; 1983 1st ex.s. c 13 § 5; 1980 c 142 § 1; 1977 ex.s. c 292 § 24; 1973 c 73 § 4; 1969 ex.s. c 199 § 27; 1959 c 170 § 1; 1955 c 286 § 2; 1953 ex.s. c 8 § 5; 1945 c 35 § 60; Rem. Supp. 1945 § 9998-198; prior: 1943 c 127 § 6; 1941 c 253 §§ 7, 10; 1939 c 214 § 11; 1937 c 162 § 13.]

Conflict with federal requirements—2013 c 189: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2013 c 189 § 5.]

Effective date—2013 c 189: "This act takes effect October 20, 2013." [2013 c 189 § 7.]

Effective date—2012 c 198: See note following RCW 70.94.6532.

Expiration date—2009 c 564 § 946: "Section *946 of this act expires June 30, 2016." [2009 c 564 § 963.]

***Reviser's note:** During the course of passage of 2009 c 564 the section numbering was changed, but the section reference in section 963 was not changed accordingly. The amendments to RCW 43.325.040 were apparently intended to expire on June 30, 2016.

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

Effective date—2009 c 4: See note following RCW 43.79.460.

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

Severability—Conflict with federal requirements—Effective date—2007 c 327: See notes following RCW 50.24.014.

Retroactive application—2006 c 13 §§ 8-22: See note following RCW 50.04.293.

Conflict with federal requirements—Part headings not law—Severability—2006 c 13: See notes following RCW 50.20.120.

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

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

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

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

Additional notes found at www.leg.wa.gov

Chapter 50.20 RCW BENEFITS AND CLAIMS

Sections

50.20.070 Disqualification for misrepresentation—Penalties.
50.20.190 Recovery of benefit payments.

50.20.070 Disqualification for misrepresentation—Penalties. (1) With respect to determinations delivered or mailed before January 1, 2008, an individual is disqualified for benefits for any week he or she has knowingly made a false statement or representation involving a material fact or knowingly failed to report a material fact and, as a result, has obtained or attempted to obtain any benefits under the provisions of this title, and for an additional twenty-six weeks beginning with the first week for which he or she completes an otherwise compensable claim for waiting period credit or benefits following the date of the delivery or mailing of the determination of disqualification under this section. However, such disqualification shall not be applied after two years have elapsed from the date of the delivery or mailing of the determination of disqualification under this section.

(2) With respect to determinations delivered or mailed on or after January 1, 2008:

(a) An individual is disqualified for benefits for any week he or she has knowingly made a false statement or representation involving a material fact or knowingly failed to report a material fact and, as a result, has obtained or attempted to obtain any benefits under the provisions of this title;

(b) An individual disqualified for benefits under this subsection for the first time is also:

(i) Disqualified for an additional twenty-six weeks beginning with the Sunday of the week in which the determination is mailed or delivered; and

(ii) With respect to determinations delivered or mailed on or after October 20, 2013, subject to an additional penalty of fifteen percent of the amount of benefits overpaid or deemed overpaid;

(c) An individual disqualified for benefits under this subsection for the second time is also disqualified for an additional fifty-two weeks beginning with the Sunday of the week in which the determination is mailed or delivered, and is subject to an additional penalty of twenty-five percent of the amount of benefits overpaid or deemed overpaid;

(d) An individual disqualified for benefits under this subsection a third time and any time thereafter is also disquali-

fied for an additional one hundred four weeks beginning with the Sunday of the week in which the determination is mailed or delivered, and is subject to an additional penalty of fifty percent of the amount of benefits overpaid or deemed overpaid.

(3) All penalties collected under this section must be expended for the proper administration of this title as authorized under RCW 50.16.010 and for no other purposes.

(4) All overpayments and penalties established by such determination of disqualification must be collected as otherwise provided by this title. [2013 c 189 § 2; 2007 c 146 § 7; 1973 1st ex.s. c 158 § 5; 1953 ex.s. c 8 § 10; 1951 c 265 § 10; 1949 c 214 § 14; 1947 c 215 § 17; 1945 c 35 § 75; Rem. Supp. 1949 § 9998-213. Prior: 1943 c 127 § 3; 1941 c 253 § 3; 1939 c 214 § 3; 1937 c 162 § 5.]

Conflict with federal requirements—Effective date—2013 c 189: See notes following RCW 50.16.010.

Conflict with federal requirements—Severability—2007 c 146: See notes following RCW 50.04.080.

Additional notes found at www.leg.wa.gov

50.20.190 Recovery of benefit payments. (1) An individual who is paid any amount as benefits under this title to which he or she is not entitled shall, unless otherwise relieved pursuant to this section, be liable for repayment of the amount overpaid. The department shall issue an overpayment assessment setting forth the reasons for and the amount of the overpayment. The amount assessed, to the extent not collected, may be deducted from any future benefits payable to the individual: PROVIDED, That in the absence of a back pay award, a settlement affecting the allowance of benefits, fraud, misrepresentation, or willful nondisclosure, every determination of liability shall be mailed or personally served not later than two years after the close of or final payment made on the individual's applicable benefit year for which the purported overpayment was made, whichever is later, unless the merits of the claim are subjected to administrative or judicial review in which event the period for serving the determination of liability shall be extended to allow service of the determination of liability during the six-month period following the final decision affecting the claim.

(2) The commissioner may waive an overpayment if the commissioner finds that the overpayment was not the result of fraud, misrepresentation, willful nondisclosure, or fault attributable to the individual and that the recovery thereof would be against equity and good conscience. When determining whether the recovery would be against equity and good conscience, the department must consider whether the employer or employer's agent failed to respond timely and adequately to a written request of the department for information relating to the claim or claims without establishing good cause for the failure pursuant to RCW 50.29.021(6). An overpayment waived under this subsection shall be charged against the individual's applicable entitlement for the eligibility period containing the weeks to which the overpayment was attributed as though such benefits had been properly paid.

(3) Any assessment herein provided shall constitute a determination of liability from which an appeal may be had in the same manner and to the same extent as provided for appeals relating to determinations in respect to claims for

benefits: PROVIDED, That an appeal from any determination covering overpayment only shall be deemed to be an appeal from the determination which was the basis for establishing the overpayment unless the merits involved in the issue set forth in such determination have already been heard and passed upon by the appeal tribunal. If no such appeal is taken to the appeal tribunal by the individual within thirty days of the delivery of the notice of determination of liability, or within thirty days of the mailing of the notice of determination, whichever is the earlier, the determination of liability shall be deemed conclusive and final. Whenever any such notice of determination of liability becomes conclusive and final, the commissioner, upon giving at least twenty days' notice, using a method by which the mailing can be tracked or the delivery can be confirmed, may file with the superior court clerk of any county within the state a warrant in the amount of the notice of determination of liability plus a filing fee under RCW 36.18.012(10). The clerk of the county where the warrant is filed shall immediately designate a superior court cause number for the warrant, and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of the person(s) mentioned in the warrant, the amount of the notice of determination of liability, and the date when the warrant was filed. The amount of the warrant as docketed shall become a lien upon the title to, and any interest in, all real and personal property of the person(s) against whom the warrant is issued, the same as a judgment in a civil case duly docketed in the office of such clerk. A warrant so docketed shall be sufficient to support the issuance of writs of execution and writs of garnishment in favor of the state in the manner provided by law for a civil judgment. A copy of the warrant shall be mailed within five days of its filing with the clerk to the person(s) mentioned in the warrant using a method by which the mailing can be tracked or the delivery can be confirmed.

(4) On request of any agency which administers an employment security law of another state, the United States, or a foreign government and which has found in accordance with the provisions of such law that a claimant is liable to repay benefits received under such law, the commissioner may collect the amount of such benefits from the claimant to be refunded to the agency. In any case in which under this section a claimant is liable to repay any amount to the agency of another state, the United States, or a foreign government, such amounts may be collected without interest by civil action in the name of the commissioner acting as agent for such agency if the other state, the United States, or the foreign government extends such collection rights to the employment security department of the state of Washington, and provided that the court costs be paid by the governmental agency benefiting from such collection.

(5) Any employer who is a party to a back pay award or settlement due to loss of wages shall, within thirty days of the award or settlement, report to the department the amount of the award or settlement, the name and social security number of the recipient of the award or settlement, and the period for which it is awarded. When an individual has been awarded or receives back pay, for benefit purposes the amount of the back pay shall constitute wages paid in the period for which it was awarded. For contribution purposes, the back pay award or settlement shall constitute wages paid in the period

in which it was actually paid. The following requirements shall also apply:

(a) The employer shall reduce the amount of the back pay award or settlement by an amount determined by the department based upon the amount of unemployment benefits received by the recipient of the award or settlement during the period for which the back pay award or settlement was awarded;

(b) The employer shall pay to the unemployment compensation fund, in a manner specified by the commissioner, an amount equal to the amount of such reduction;

(c) The employer shall also pay to the department any taxes due for unemployment insurance purposes on the entire amount of the back pay award or settlement notwithstanding any reduction made pursuant to (a) of this subsection;

(d) If the employer fails to reduce the amount of the back pay award or settlement as required in (a) of this subsection, the department shall issue an overpayment assessment against the recipient of the award or settlement in the amount that the back pay award or settlement should have been reduced; and

(e) If the employer fails to pay to the department an amount equal to the reduction as required in (b) of this subsection, the department shall issue an assessment of liability against the employer which shall be collected pursuant to the procedures for collection of assessments provided herein and in RCW 50.24.110.

(6) When an individual fails to repay an overpayment assessment that is due and fails to arrange for satisfactory repayment terms, the commissioner shall impose an interest penalty of one percent per month of the outstanding balance. Interest shall accrue immediately on overpayments assessed pursuant to RCW 50.20.070 and shall be imposed when the assessment becomes final. For any other overpayment, interest shall accrue when the individual has missed two or more of the individual's monthly payments either partially or in full.

(7) The department shall: (a) Conduct social security number cross-match audits or engage in other more effective activities that ensure that individuals are entitled to all amounts of benefits that they are paid; and (b) engage in other detection and recovery of overpayment and collection activities. [2013 c 189 § 4; 2011 c 301 § 17; 2007 c 327 § 1; 2006 c 13 § 21. Prior: 2005 c 518 § 934; 2003 2nd sp.s. c 4 § 26; 2002 c 371 § 915; 2001 c 146 § 7; 1995 c 90 § 1; 1993 c 483 § 13; 1991 c 117 § 3; 1990 c 245 § 5; 1989 c 92 § 2; 1981 c 35 § 6; 1975 1st ex.s. c 228 § 3; 1973 1st ex.s. c 158 § 7; 1953 ex.s. c 8 § 14; 1951 c 215 § 8; 1947 c 215 § 18; 1945 c 35 § 87; Rem. Supp. 1947 § 9998-225; prior: 1943 c 127 § 12; 1941 c 253 § 13; 1939 c 214 § 14; 1937 c 162 § 16.]

Conflict with federal requirements—Effective date—2013 c 189: See notes following RCW 50.16.010.

Severability—Conflict with federal requirements—Effective date—2007 c 327: See notes following RCW 50.24.014.

Retroactive application—2006 c 13 §§ 8-22: See note following RCW 50.04.293.

Conflict with federal requirements—Part headings not law—Severability—2006 c 13: See notes following RCW 50.20.120.

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

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Government or retirement pension plan payments as remuneration or wages—Recovery of excess over benefits allowable, limitations: RCW 50.04.323.

Additional notes found at www.leg.wa.gov

Chapter 50.22 RCW

EXTENDED AND ADDITIONAL BENEFITS

(Formerly: Extended benefits)

Sections

50.22.010 Definitions.

50.22.010 Definitions. As used in this chapter, unless the context clearly indicates otherwise:

(1) "Extended benefit period" means a period which:

(a) Begins with the third week after a week for which there is an "on" indicator; and

(b) Ends with the third week after the first week for which there is an "off" indicator: PROVIDED, That no extended benefit period shall last for a period of less than thirteen consecutive weeks, and further that no extended benefit period may begin by reason of an "on" indicator before the fourteenth week after the close of a prior extended benefit period which was in effect with respect to this state.

(2)(a) There is an "on" indicator for this state for a week if the commissioner determines, in accordance with the regulations of the United States secretary of labor, that for the period consisting of such week and the immediately preceding twelve weeks:

(i) The rate of insured unemployment, not seasonally adjusted, equaled or exceeded one hundred twenty percent of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two calendar years and equaled or exceeded five percent; or

(ii) For benefits for weeks of unemployment beginning after March 6, 1993:

(A) The average rate of total unemployment, seasonally adjusted, as determined by the United States secretary of labor, for the period consisting of the most recent three months for which data for all states are published before the close of the week equals or exceeds six and one-half percent; and

(B) The average rate of total unemployment in the state, seasonally adjusted, as determined by the United States secretary of labor, for the three-month period referred to in (a)(ii)(A) of this subsection, equals or exceeds one hundred ten percent of the average for either or both of the corresponding three-month periods ending in the two preceding calendar years.

(b) This subsection applies as provided under the tax relief, unemployment insurance reauthorization, and job creation act of 2010 (P.L. 111-312) as it existed on December 17, 2010, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this subsection:

(i) The average rate of insured unemployment, not seasonally adjusted, equaled or exceeded one hundred twenty percent of the average of such rates for the corresponding

thirteen-week period ending in all of the preceding three calendar years and equaled or exceeded five percent; or

(ii) The average rate of total unemployment, seasonally adjusted, as determined by the United States secretary of labor, for the period consisting of the most recent three months for which data for all states are published before the close of the week equals or exceeds six and one-half percent; and

(iii) The average rate of total unemployment in the state, seasonally adjusted, as determined by the United States secretary of labor, for the three-month period referred to in (b)(ii) of this subsection, equals or exceeds one hundred ten percent of the average for any of the corresponding three-month periods ending in the three preceding calendar years.

(3)(a) "High unemployment period" means any period of unemployment beginning after March 6, 1993, during which an extended benefit period would be in effect if:

(i) The average rate of total unemployment, seasonally adjusted, as determined by the United States secretary of labor, for the period consisting of the most recent three months for which data for all states are published before the close of the week equals or exceeds eight percent; and

(ii) The average rate of total unemployment in the state, seasonally adjusted, as determined by the United States secretary of labor, for the three-month period referred to in (a)(i) of this subsection, equals or exceeds one hundred ten percent of the average for either or both of the corresponding three-month periods ending in the two preceding calendar years.

(b) This subsection applies as provided under the tax relief, unemployment insurance reauthorization, and job creation act of 2010 (P.L. 111-312) as it existed on December 17, 2010, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this subsection:

(i) The average rate of total unemployment, seasonally adjusted, as determined by the United States secretary of labor, for the period consisting of the most recent three months for which data for all states are published before the close of the week equals or exceeds eight percent; and

(ii) The average rate of total unemployment in the state, seasonally adjusted, as determined by the United States secretary of labor, for the three-month period referred to in (a)(i) of this subsection, equals or exceeds one hundred ten percent of the average for any of the corresponding three-month periods ending in the three preceding calendar years.

(4) There is an "off" indicator for this state for a week only if, for the period consisting of such week and immediately preceding twelve weeks, none of the options specified in subsection (2) or (3) of this section result in an "on" indicator.

(5) "Regular benefits" means benefits payable to an individual under this title or under any state law (including benefits payable to federal civilian employees and to ex-servicemen or ex-servicewomen pursuant to 5 U.S.C. chapter 85) other than extended benefits or additional benefits.

(6) "Extended benefits" means benefits payable for weeks of unemployment beginning in an extended benefit period to an individual under this title or under any state law (including benefits payable to federal civilian employees and to ex-servicemen or ex-servicewomen pursuant to 5 U.S.C. chapter 85) other than regular or additional benefits.

(7) "Additional benefits" are benefits totally financed by the state and payable under this title to exhaustees by reason of conditions of high unemployment or by reason of other special factors.

(8) "Eligibility period" of an individual means:

(a) The period consisting of the weeks in his or her benefit year which begin in an extended benefit period that is in effect in this state and, if his or her benefit year ends within such extended benefit period, any weeks thereafter which begin in such period; or

(b) For an individual who is eligible for emergency unemployment compensation during the extended benefit period beginning February 15, 2009, the period consisting of the week ending February 28, 2009, and applies as provided under the tax relief, unemployment insurance reauthorization, and job creation act of 2010 (P.L. 111-312) as it existed on December 17, 2010, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this subsection.

(9) "Additional benefit eligibility period" of an individual means the period consisting of the weeks in his or her benefit year which begin in an additional benefit period that is in effect and, if his or her benefit year ends within such additional benefit period, any weeks thereafter which begin in such period.

(10) "Exhaustee" means an individual who, with respect to any week of unemployment in his or her eligibility period:

(a) Has received, prior to such week, all of the regular benefits that were payable to him or her under this title or any other state law (including dependents' allowances and regular benefits payable to federal civilian employees and ex-servicemen or ex-servicewomen under 5 U.S.C. chapter 85) in his or her current benefit year that includes such week; or

(b) Has received, prior to such week, all of the regular benefits that were available to him or her under this title or any other state law (including dependents' allowances and regular benefits available to federal civilian employees and ex-servicemen or ex-servicewomen under 5 U.S.C. chapter 85) in his or her current benefit year that includes such week, after the cancellation of some or all of his or her wage credits or the total or partial reduction of his or her rights to regular benefits: PROVIDED, That, for the purposes of (a) and (b) of this subsection, an individual shall be deemed to have received in his or her current benefit year all of the regular benefits that were payable to him or her, or available to him or her, as the case may be, even though:

(i) As a result of a pending appeal with respect to wages or employment, or both, that were not included in the original monetary determination with respect to his or her current benefit year, he or she may subsequently be determined to be entitled to more regular benefits; or

(ii) By reason of the seasonal provisions of another state law, he or she is not entitled to regular benefits with respect to such week of unemployment (although he or she may be entitled to regular benefits with respect to future weeks of unemployment in the next season, as the case may be, in his or her current benefit year), and he or she is otherwise an exhaustee within the meaning of this section with respect to his or her right to regular benefits under such state law seasonal provisions during the season or off season in which that week of unemployment occurs; or

(iii) Having established a benefit year, no regular benefits are payable to him or her during such year because his or her wage credits were canceled or his or her right to regular benefits was totally reduced as the result of the application of a disqualification; or

(c) His or her benefit year having ended prior to such week, he or she has insufficient wages or employment, or both, on the basis of which he or she could establish in any state a new benefit year that would include such week, or having established a new benefit year that includes such week, he or she is precluded from receiving regular benefits by reason of the provision in RCW 50.04.030 which meets the requirement of section 3304(a)(7) of the federal unemployment tax act, or the similar provision in any other state law; and

(d)(i) Has no right for such week to unemployment benefits or allowances, as the case may be, under the railroad unemployment insurance act, the trade expansion act of 1962, and such other federal laws as are specified in regulations issued by the United States secretary of labor; and

(ii) Has not received and is not seeking for such week unemployment benefits under the unemployment compensation law of Canada, unless the appropriate agency finally determines that he or she is not entitled to unemployment benefits under such law for such week.

(11) "State law" means the unemployment insurance law of any state, approved by the United States secretary of labor under section 3304 of the internal revenue code of 1954. [2013 c 23 § 103; 2011 c 4 § 5; 2011 c 3 § 1; 2009 c 493 § 4; 1993 c 483 § 15; 1985 ex.s. c 5 § 10; 1983 c 1 § 1; 1982 1st ex.s. c 18 § 2; 1981 c 35 § 7; 1977 ex.s. c 292 § 11; 1973 c 73 § 7; 1971 c 1 § 2.]

Effective date—2011 c 4 §§ 1-6 and 16-21: See note following RCW 50.20.1202.

Conflict with federal requirements—2011 c 4: See note following RCW 50.20.1202.

Conflict with federal requirements—2011 c 3: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2011 c 3 § 4.]

Effective date—2011 c 3: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [February 11, 2011]." [2011 c 3 § 6.]

Effective date—2009 c 493 § 4: "Section 4 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 14, 2009]." [2009 c 493 § 7.]

Conflict with federal requirements—2009 c 493: See note following RCW 50.29.021.

Additional notes found at www.leg.wa.gov

Chapter 50.24 RCW

CONTRIBUTIONS BY EMPLOYERS

Sections

50.24.020 Authority to compromise.
50.24.160 Election of coverage.

50.24.020 Authority to compromise. The commissioner may compromise any claim for contributions, interest, or penalties due and owing from an employer, and any amount owed by an individual because of benefit overpayments existing or arising under this title in any case where collection of the full amount due and owing, whether reduced to judgment or otherwise, would be against equity and good conscience.

Whenever a compromise is made by the commissioner in the case of a claim for contributions, interest, or penalties, whether reduced to judgment or otherwise, there shall be placed on file in the office of the unemployment compensation division a statement of the amount of contributions, interest, and penalties imposed by law and claimed due, attorneys' fees and costs, if any, a complete record of the compromise agreement, and the amount actually paid in accordance with the terms of the compromise agreement. Whenever a compromise is made by the commissioner in the case of a claim of a benefit overpayment, whether reduced to judgment or otherwise, there shall be placed on file in the office of the unemployment compensation division a statement of the amount of the benefit overpayment, attorneys' fees and costs, if any, a complete record of the compromise agreement, and the amount actually paid in accordance with the terms of the compromise agreement.

If any such compromise is accepted by the commissioner, within such time as may be stated in the compromise or agreed to, such compromise shall be final and conclusive and except upon showing of fraud or malfeasance or misrepresentation of a material fact the case shall not be reopened as to the matters agreed upon. In any suit, action, or proceeding, such agreement or any determination, collection, payment, adjustment, refund, or credit made in accordance therewith shall not be annulled, modified, set aside, or disregarded. [2013 c 122 § 1; 1983 1st ex.s. c 23 § 14; 1955 c 286 § 5; 1945 c 35 § 90; Rem. Supp. 1945 § 9998-228.]

Conflict with federal requirements—2013 c 122: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2013 c 122 § 2.]

Effective date—2013 c 122: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 3, 2013]." [2013 c 122 § 4.]

Retroactive application—2013 c 122: "Section 1 of this act applies retroactively to January 1, 2013." [2013 c 122 § 5.]

Additional notes found at www.leg.wa.gov

50.24.160 Election of coverage. Except as provided in RCW 50.04.165, any employing unit for which services that do not constitute employment as defined in this title are performed may file with the commissioner a written election that all such services performed by any distinct class or group of individuals or by all individuals in its employment in one or more distinct establishments or places of business shall be deemed to constitute employment for all the purposes of this title for at least two calendar years. Upon the written

approval of such election by the commissioner, such services shall be deemed to constitute employment subject to this title on and after the date stated in the approval. Services covered under this section shall cease to be deemed employment as of January 1st of any calendar year subsequent to the two-calendar year period, only if the employing unit files with the commissioner before January 15th of that year a written application for termination of coverage. Services for which an employing unit may elect coverage include, but are not limited to, maritime service as described in RCW 50.04.170. [2013 c 75 § 1; 2007 c 146 § 6; 1977 ex.s. c 292 § 12; 1972 ex.s. c 35 § 1; 1971 c 3 § 14; 1959 c 266 § 6; 1951 c 265 § 8; 1951 c 215 § 9; 1945 c 35 § 104; Rem. Supp. 1945 § 9998-242.]

Conflict with federal requirements—2013 c 75: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2013 c 75 § 3.]

Effective date—2007 c 146 §§ 5, 6, and 10-12: See note following RCW 50.04.310.

Conflict with federal requirements—Severability—2007 c 146: See notes following RCW 50.04.080.

Corporate officers, election of coverage: RCW 50.04.165.

Additional notes found at www.leg.wa.gov

Chapter 50.29 RCW

EMPLOYER EXPERIENCE RATING

Sections

- 50.29.021 Experience rating accounts—Benefits not charged—Claims with an effective date on or after January 4, 2004. (*Effective until January 1, 2014.*)
- 50.29.021 Experience rating accounts—Benefits not charged—Claims with an effective date on or after January 4, 2004. (*Effective January 1, 2014.*)

50.29.021 Experience rating accounts—Benefits not charged—Claims with an effective date on or after January 4, 2004. (*Effective until January 1, 2014.*) (1) This section applies to benefits charged to the experience rating accounts of employers for claims that have an effective date on or after January 4, 2004.

(2)(a) An experience rating account shall be established and maintained for each employer, except employers as described in RCW 50.44.010, 50.44.030, and 50.50.030 who have properly elected to make payments in lieu of contributions, taxable local government employers as described in RCW 50.44.035, and those employers who are required to make payments in lieu of contributions, based on existing records of the employment security department.

(b) Benefits paid to an eligible individual shall be charged to the experience rating accounts of each of such individual's employers during the individual's base year in the same ratio that the wages paid by each employer to the individual during the base year bear to the wages paid by all employers to that individual during that base year, except as otherwise provided in this section.

(c) When the eligible individual's separating employer is a covered contribution paying base year employer, benefits paid to the eligible individual shall be charged to the experience rating account of only the individual's separating employer if the individual qualifies for benefits under:

(i) RCW 50.20.050 (1)(b)(i) or (2)(b)(i), as applicable, and became unemployed after having worked and earned wages in the bona fide work; or

(ii) RCW 50.20.050 (1)(b) (v) through (x) or (2)(b) (v) through (x).

(3) The legislature finds that certain benefit payments, in whole or in part, should not be charged to the experience rating accounts of employers except those employers described in RCW 50.44.010, 50.44.030, and 50.50.030 who have properly elected to make payments in lieu of contributions, taxable local government employers described in RCW 50.44.035, and those employers who are required to make payments in lieu of contributions, as follows:

(a) Benefits paid to any individual later determined to be ineligible shall not be charged to the experience rating account of any contribution paying employer, except as provided in subsection (5) of this section.

(b) Benefits paid to an individual filing under the provisions of chapter 50.06 RCW shall not be charged to the experience rating account of any contribution paying employer only if:

(i) The individual files under RCW 50.06.020(1) after receiving crime victims' compensation for a disability resulting from a nonwork-related occurrence; or

(ii) The individual files under RCW 50.06.020(2).

(c) Benefits paid which represent the state's share of benefits payable as extended benefits defined under RCW 50.22.010(6) shall not be charged to the experience rating account of any contribution paying employer.

(d) In the case of individuals who requalify for benefits under RCW 50.20.050 or 50.20.060, benefits based on wage credits earned prior to the disqualifying separation shall not be charged to the experience rating account of the contribution paying employer from whom that separation took place.

(e) Benefits paid to an individual who qualifies for benefits under RCW 50.20.050 (1)(b) (iv) or (xi) or (2)(b) (iv) or (xi), as applicable, shall not be charged to the experience rating account of any contribution paying employer.

(f) With respect to claims with an effective date on or after the first Sunday following April 22, 2005, benefits paid that exceed the benefits that would have been paid if the weekly benefit amount for the claim had been determined as one percent of the total wages paid in the individual's base year shall not be charged to the experience rating account of any contribution paying employer. This subsection (3)(f) does not apply to the calculation of contribution rates under RCW 50.29.025 for rate year 2010 and thereafter.

(g) The forty-five dollar increase paid as part of an individual's weekly benefit amount as provided in RCW 50.20.1201 and the twenty-five dollar increase paid as part of an individual's weekly benefit amount as provided in RCW 50.20.1202 shall not be charged to the experience rating account of any contribution paying employer.

(h) With respect to claims where the minimum amount payable weekly is increased to one hundred fifty-five dollars pursuant to RCW 50.20.1201(3), benefits paid that exceed

the benefits that would have been paid if the minimum amount payable weekly had been calculated pursuant to RCW 50.20.120 shall not be charged to the experience rating account of any contribution paying employer.

(i) Upon approval of an individual's training benefits plan submitted in accordance with RCW 50.22.155(2), an individual is considered enrolled in training, and regular benefits beginning with the week of approval shall not be charged to the experience rating account of any contribution paying employer.

(j) Training benefits paid to an individual under RCW 50.22.155 shall not be charged to the experience rating account of any contribution paying employer.

(4)(a) A contribution paying base year employer, except employers as provided in subsection (6) of this section, not otherwise eligible for relief of charges for benefits under this section, may receive such relief if the benefit charges result from payment to an individual who:

(i) Last left the employ of such employer voluntarily for reasons not attributable to the employer;

(ii) Was discharged for misconduct or gross misconduct connected with his or her work not a result of inability to meet the minimum job requirements;

(iii) Is unemployed as a result of closure or severe curtailment of operation at the employer's plant, building, work-site, or other facility. This closure must be for reasons directly attributable to a catastrophic occurrence such as fire, flood, or other natural disaster;

(iv) Continues to be employed on a regularly scheduled permanent part-time basis by a base year employer and who at some time during the base year was concurrently employed and subsequently separated from at least one other base year employer. Benefit charge relief ceases when the employment relationship between the employer requesting relief and the claimant is terminated. This subsection does not apply to shared work employers under chapter 50.60 RCW; or

(v) Was hired to replace an employee who is a member of the military reserves or National Guard and was called to federal active military service by the president of the United States and is subsequently laid off when that employee is reemployed by their employer upon release from active duty within the time provided for reemployment in RCW 73.16.035.

(b) The employer requesting relief of charges under this subsection must request relief in writing within thirty days following mailing to the last known address of the notification of the valid initial determination of such claim, stating the date and reason for the separation or the circumstances of continued employment. The commissioner, upon investigation of the request, shall determine whether relief should be granted.

(5) When a benefit claim becomes invalid due to an amendment or adjustment of a report where the employer failed to report or inaccurately reported hours worked or remuneration paid, or both, all benefits paid will be charged to the experience rating account of the contribution paying employer or employers that originally filed the incomplete or inaccurate report or reports. An employer who reimburses the trust fund for benefits paid to workers and who fails to report or inaccurately reported hours worked or remuneration paid, or both, shall reimburse the trust fund for all benefits

paid that are based on the originally filed incomplete or inaccurate report or reports.

(6) An employer's experience rating account may not be relieved of charges for a benefit payment and an employer who reimburses the trust fund for benefit payments may not be credited for a benefit payment if a benefit payment was made because the employer or employer's agent failed to respond timely or adequately to a written request of the department for information relating to the claim or claims without establishing good cause for the failure and the employer or employer's agent has a pattern of such failures. The commissioner has the authority to determine whether the employer has good cause under this subsection.

(a) For the purposes of this subsection, "adequately" means providing accurate information of sufficient quantity and quality that would allow a reasonable person to determine eligibility for benefits.

(b)(i) For the purposes of this subsection, "pattern" means a benefit payment was made because the employer or employer's agent failed to respond timely or adequately to a written request of the department for information relating to a claim or claims without establishing good cause for the failure, if the greater of the following calculations for an employer is met:

(A) At least three times in the previous two years; or

(B) Twenty percent of the total current claims against the employer.

(ii) If an employer's agent is utilized, a pattern is established based on each individual client employer that the employer's agent represents. [2013 c 189 § 3; 2011 c 4 § 14; 2010 c 25 § 1. Prior: 2009 c 493 § 1; 2009 c 50 § 1; 2009 c 3 § 13; 2008 c 323 § 2; 2007 c 146 § 2; 2006 c 13 § 6; 2005 c 133 § 4; 2003 2nd sp.s. c 4 § 21.]

Conflict with federal requirements—Effective date—2013 c 189: See notes following RCW 50.16.010.

Contingent effective date—2011 c 4 §§ 7-15: See note following RCW 50.20.099.

Contingent expiration date—2011 c 4 §§ 3 and 6: "Sections 3 and 6 of this act expire July 1, 2012, unless the United States department of labor determines by October 1, 2011, that this act does not meet the requirements of section 2003 of the federal American recovery and reinvestment act of 2009 for unemployment insurance modernization incentive funding." [2011 c 4 § 23.] The United States department of labor determined that this act meets the requirements of section 2003 of the federal American recovery and reinvestment act of 2009.

Notice—2011 c 4: "The employment security department must provide notice of the expiration date of sections 3 and 6 of this act and the effective date of sections 7 through 15 of this act to affected parties, the chief clerk of the house of representatives, the secretary of the senate, the office of the code reviser, and others as deemed appropriate by the department." [2011 c 4 § 25.] The employment security department provided notice to the office of the code reviser on July 11, 2011. See notes following RCW 50.29.021 and 50.20.099.

Effective date—2011 c 4 §§ 1-6 and 16-21: See note following RCW 50.20.1202.

Conflict with federal requirements—2011 c 4: See note following RCW 50.20.1202.

Effective date—2010 c 25 § 1: "Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 12, 2010]." [2010 c 25 § 6.]

Conflict with federal requirements—2010 c 25: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting

part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2010 c 25 § 4.]

Conflict with federal requirements—2009 c 493: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2009 c 493 § 5.]

Short title—Effective date—Conflict with federal requirements—2009 c 3: See notes following RCW 50.20.120.

Conflict with federal requirements—2008 c 323: See note following RCW 50.20.050.

Conflict with federal requirements—Severability—2007 c 146: See notes following RCW 50.04.080.

Conflict with federal requirements—Part headings not law—Severability—2006 c 13: See notes following RCW 50.20.120.

Findings—Intent—Conflict with federal requirements—Effective date—2005 c 133: See notes following RCW 50.20.120.

Additional employees authorized—2005 c 133: See note following RCW 50.01.010.

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

50.29.021 Experience rating accounts—Benefits not charged—Claims with an effective date on or after January 4, 2004. (Effective January 1, 2014.) (1) This section applies to benefits charged to the experience rating accounts of employers for claims that have an effective date on or after January 4, 2004.

(2)(a) An experience rating account shall be established and maintained for each employer, except employers as described in RCW 50.44.010, 50.44.030, and 50.50.030 who have properly elected to make payments in lieu of contributions, taxable local government employers as described in RCW 50.44.035, and those employers who are required to make payments in lieu of contributions, based on existing records of the employment security department.

(b) Benefits paid to an eligible individual shall be charged to the experience rating accounts of each of such individual's employers during the individual's base year in the same ratio that the wages paid by each employer to the individual during the base year bear to the wages paid by all employers to that individual during that base year, except as otherwise provided in this section.

(c) When the eligible individual's separating employer is a covered contribution paying base year employer, benefits paid to the eligible individual shall be charged to the experience rating account of only the individual's separating employer if the individual qualifies for benefits under:

(i) RCW 50.20.050 (1)(b)(i) or (2)(b)(i), as applicable, and became unemployed after having worked and earned wages in the bona fide work; or

(ii) RCW 50.20.050 (1)(b) (v) through (x) or (2)(b) (v) through (x).

(3) The legislature finds that certain benefit payments, in whole or in part, should not be charged to the experience rating accounts of employers except those employers described

in RCW 50.44.010, 50.44.030, and 50.50.030 who have properly elected to make payments in lieu of contributions, taxable local government employers described in RCW 50.44.035, and those employers who are required to make payments in lieu of contributions, as follows:

(a) Benefits paid to any individual later determined to be ineligible shall not be charged to the experience rating account of any contribution paying employer, except as provided in subsection (5) of this section.

(b) Benefits paid to an individual filing under the provisions of chapter 50.06 RCW shall not be charged to the experience rating account of any contribution paying employer only if:

(i) The individual files under RCW 50.06.020(1) after receiving crime victims' compensation for a disability resulting from a nonwork-related occurrence; or

(ii) The individual files under RCW 50.06.020(2).

(c) Benefits paid which represent the state's share of benefits payable as extended benefits defined under RCW 50.22.010(6) shall not be charged to the experience rating account of any contribution paying employer.

(d) In the case of individuals who requalify for benefits under RCW 50.20.050 or 50.20.060, benefits based on wage credits earned prior to the disqualifying separation shall not be charged to the experience rating account of the contribution paying employer from whom that separation took place.

(e) Benefits paid to an individual who qualifies for benefits under RCW 50.20.050 (1)(b) (iv) or (xi) or (2)(b) (iv) or (xi), as applicable, shall not be charged to the experience rating account of any contribution paying employer.

(f) With respect to claims with an effective date on or after the first Sunday following April 22, 2005, benefits paid that exceed the benefits that would have been paid if the weekly benefit amount for the claim had been determined as one percent of the total wages paid in the individual's base year shall not be charged to the experience rating account of any contribution paying employer. This subsection (3)(f) does not apply to the calculation of contribution rates under RCW 50.29.025 for rate year 2010 and thereafter.

(g) The forty-five dollar increase paid as part of an individual's weekly benefit amount as provided in RCW 50.20.1201 and the twenty-five dollar increase paid as part of an individual's weekly benefit amount as provided in RCW 50.20.1202 shall not be charged to the experience rating account of any contribution paying employer.

(h) With respect to claims where the minimum amount payable weekly is increased to one hundred fifty-five dollars pursuant to RCW 50.20.1201(3), benefits paid that exceed the benefits that would have been paid if the minimum amount payable weekly had been calculated pursuant to RCW 50.20.120 shall not be charged to the experience rating account of any contribution paying employer.

(i) Upon approval of an individual's training benefits plan submitted in accordance with RCW 50.22.155(2), an individual is considered enrolled in training, and regular benefits beginning with the week of approval shall not be charged to the experience rating account of any contribution paying employer.

(j) Training benefits paid to an individual under RCW 50.22.155 shall not be charged to the experience rating account of any contribution paying employer.

(4)(a) A contribution paying base year employer, except employers as provided in subsection (6) of this section, not otherwise eligible for relief of charges for benefits under this section, may receive such relief if the benefit charges result from payment to an individual who:

(i) Last left the employ of such employer voluntarily for reasons not attributable to the employer;

(ii) Was discharged for misconduct or gross misconduct connected with his or her work not a result of inability to meet the minimum job requirements;

(iii) Is unemployed as a result of closure or severe curtailment of operation at the employer's plant, building, work-site, or other facility. This closure must be for reasons directly attributable to a catastrophic occurrence such as fire, flood, or other natural disaster;

(iv) Continues to be employed on a regularly scheduled permanent part-time basis by a base year employer and who at some time during the base year was concurrently employed and subsequently separated from at least one other base year employer. Benefit charge relief ceases when the employment relationship between the employer requesting relief and the claimant is terminated. This subsection does not apply to shared work employers under chapter 50.60 RCW;

(v) Continues to be employed on a regularly scheduled permanent part-time basis by a base year employer and who qualified for two consecutive unemployment claims where wages were attributable to at least one employer who employed the individual in both base years. Benefit charge relief ceases when the employment relationship between the employer requesting relief and the claimant is terminated. This subsection does not apply to shared work employers under chapter 50.60 RCW; or

(vi) Was hired to replace an employee who is a member of the military reserves or National Guard and was called to federal active military service by the president of the United States and is subsequently laid off when that employee is reemployed by their employer upon release from active duty within the time provided for reemployment in RCW 73.16.035.

(b) The employer requesting relief of charges under this subsection must request relief in writing within thirty days following mailing to the last known address of the notification of the valid initial determination of such claim, stating the date and reason for the separation or the circumstances of continued employment. The commissioner, upon investigation of the request, shall determine whether relief should be granted.

(5) When a benefit claim becomes invalid due to an amendment or adjustment of a report where the employer failed to report or inaccurately reported hours worked or remuneration paid, or both, all benefits paid will be charged to the experience rating account of the contribution paying employer or employers that originally filed the incomplete or inaccurate report or reports. An employer who reimburses the trust fund for benefits paid to workers and who fails to report or inaccurately reported hours worked or remuneration paid, or both, shall reimburse the trust fund for all benefits paid that are based on the originally filed incomplete or inaccurate report or reports.

(6) An employer's experience rating account may not be relieved of charges for a benefit payment and an employer

who reimburses the trust fund for benefit payments may not be credited for a benefit payment if a benefit payment was made because the employer or employer's agent failed to respond timely or adequately to a written request of the department for information relating to the claim or claims without establishing good cause for the failure and the employer or employer's agent has a pattern of such failures. The commissioner has the authority to determine whether the employer has good cause under this subsection.

(a) For the purposes of this subsection, "adequately" means providing accurate information of sufficient quantity and quality that would allow a reasonable person to determine eligibility for benefits.

(b)(i) For the purposes of this subsection, "pattern" means a benefit payment was made because the employer or employer's agent failed to respond timely or adequately to a written request of the department for information relating to a claim or claims without establishing good cause for the failure, if the greater of the following calculations for an employer is met:

(A) At least three times in the previous two years; or

(B) Twenty percent of the total current claims against the employer.

(ii) If an employer's agent is utilized, a pattern is established based on each individual client employer that the employer's agent represents. [2013 c 244 § 1; 2013 c 189 § 3; 2011 c 4 § 14; 2010 c 25 § 1. Prior: 2009 c 493 § 1; 2009 c 50 § 1; 2009 c 3 § 13; 2008 c 323 § 2; 2007 c 146 § 2; 2006 c 13 § 6; 2005 c 133 § 4; 2003 2nd sp.s. c 4 § 21.]

Reviser's note: This section was amended by 2013 c 189 § 3 and by 2013 c 244 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Conflict with federal requirements—2013 c 244: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2013 c 244 § 2.]

Effective date—2013 c 244: "This act takes effect January 1, 2014." [2013 c 244 § 4.]

Conflict with federal requirements—Effective date—2013 c 189: See notes following RCW 50.16.010.

Contingent effective date—2011 c 4 §§ 7-15: See note following RCW 50.20.099.

Contingent expiration date—2011 c 4 §§ 3 and 6: "Sections 3 and 6 of this act expire July 1, 2012, unless the United States department of labor determines by October 1, 2011, that this act does not meet the requirements of section 2003 of the federal American recovery and reinvestment act of 2009 for unemployment insurance modernization incentive funding." [2011 c 4 § 23.] The United States department of labor determined that this act meets the requirements of section 2003 of the federal American recovery and reinvestment act of 2009.

Notice—2011 c 4: "The employment security department must provide notice of the expiration date of sections 3 and 6 of this act and the effective date of sections 7 through 15 of this act to affected parties, the chief clerk of the house of representatives, the secretary of the senate, the office of the code reviser, and others as deemed appropriate by the department." [2011 c 4 § 25.] The employment security department provided notice to the office of the code reviser on July 11, 2011. See notes following RCW 50.29.021 and 50.20.099.

Effective date—2011 c 4 §§ 1-6 and 16-21: See note following RCW 50.20.1202.

Conflict with federal requirements—2011 c 4: See note following RCW 50.20.1202.

Effective date—2010 c 25 § 1: "Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 12, 2010]." [2010 c 25 § 6.]

Conflict with federal requirements—2010 c 25: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2010 c 25 § 4.]

Conflict with federal requirements—2009 c 493: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2009 c 493 § 5.]

Short title—Effective date—Conflict with federal requirements—2009 c 3: See notes following RCW 50.20.120.

Conflict with federal requirements—2008 c 323: See note following RCW 50.20.050.

Conflict with federal requirements—Severability—2007 c 146: See notes following RCW 50.04.080.

Conflict with federal requirements—Part headings not law—Severability—2006 c 13: See notes following RCW 50.20.120.

Findings—Intent—Conflict with federal requirements—Effective date—2005 c 133: See notes following RCW 50.20.120.

Additional employees authorized—2005 c 133: See note following RCW 50.01.010.

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Chapter 50.60 RCW SHARED WORK COMPENSATION PLANS—BENEFITS

Sections

50.60.020	Definitions.
50.60.030	Compensation plan—Criteria for approval.
50.60.090	Shared work benefits—Eligibility.
50.60.110	Benefits—Charge to employers' experience rating accounts.

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

(1) "Affected employee" means a specified employee, hired on a permanent basis, to which an approved shared work compensation plan applies.

(2) "Employers' association" means an association which is a party to a collective bargaining agreement under which there is a shared work compensation plan.

(3) "Shared work benefits" means the benefits payable to an affected employee under an approved shared work compensation plan as distinguished from the benefits otherwise payable under this title.

(4) "Shared work compensation plan" means a plan of an employer, or of an employers' association, under which there is a reduction in the number of hours worked by employees rather than layoffs.

(5) "Shared work employer" means an employer, who has at least two employees, and at least one employee is covered by a shared work compensation plan.

(6) "Unemployment compensation" means the benefits payable under this title other than shared work benefits and includes any amounts payable pursuant to an agreement under federal law providing for compensation, assistance, or allowances with respect to unemployment.

(7) "Usual weekly hours of work" means the regular number of hours of work before the hours were reduced, not to exceed forty hours and not including overtime. [2013 c 79 § 1. Prior: 2009 c 3 § 7; 1983 c 207 § 2.]

Conflict with federal requirements—2013 c 79: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2013 c 79 § 5.]

Short title—Effective date—Conflict with federal requirements—2009 c 3: See notes following RCW 50.20.120.

50.60.030 Compensation plan—Criteria for approval. An employer or employers' association wishing to participate in a shared work compensation program shall submit a written and signed shared work compensation plan to the commissioner for approval. The commissioner shall approve a shared work compensation plan only if the following criteria are met:

(1) The plan identifies the affected employees to which it applies;

(2) Each affected employee is identified by name, social security number, and by any other information required by the commissioner;

(3) The usual weekly hours of work for each affected employee are reduced by not less than ten percent and not more than fifty percent;

(4) The employer certifies health benefits will continue to be provided under the same terms and conditions as when the affected employee worked his or her usual weekly hours of work. Affected employees must be allowed to maintain coverage under the same terms and conditions as employees not participating in the shared work compensation plan. However, a change in health benefits applicable to employees who are not participating in the shared work compensation plan may also apply to affected employees;

(5) The employer certifies retirement benefits under a defined benefit plan or contributions under a defined contribution plan will continue to be provided under the same terms and conditions as when the affected employee worked his or her usual weekly hours of work. Affected employees must be allowed to maintain coverage in the retirement plan under the same terms and conditions as employees not participating in the shared work compensation plan. However, a reduction in benefits under a defined benefit plan or a reduction in contributions under a defined contribution plan applicable to

employees who are not participating in the shared work compensation plan may also apply to affected employees;

(6) The employer certifies paid vacation, holidays, and sick leave continue to be provided under the same terms and conditions as when the affected employee worked his or her usual weekly hours of work. Affected employees must be allowed to maintain these benefits under the same terms and conditions as employees not participating in the shared work compensation plan. However, a reduction in these benefits applicable to employees who are not participating in the shared work compensation plan may also apply to affected employees;

(7) The plan certifies that the aggregate reduction in work hours for each affected employee is in lieu of layoffs which would have resulted in an equivalent reduction in work hours;

(8) The plan is approved in writing by the collective bargaining agent for each collective bargaining agreement covering any affected employee;

(9) The plan will not subsidize seasonal employers during the off season;

(10) The employer agrees to furnish reports necessary for the proper administration of the plan and to permit access by the commissioner to all records necessary to verify the plan before approval and after approval to evaluate the application of the plan;

(11) The plan includes an estimate of the number of layoffs that would have occurred absent the ability to participate in shared work;

(12) The shared work compensation plan includes a plan to give advance notice, when feasible, to an employee whose usual weekly hours of work will be reduced. If not feasible, the shared work compensation plan must explain why it is not feasible; and

(13) The employer must attest that participation is consistent with employer obligations under federal and state law.

In addition to subsections (1) through (13) of this section, the commissioner shall take into account any other factors which may be pertinent. [2013 c 79 § 2; 2009 c 3 § 8; 1985 c 43 § 1; 1983 c 207 § 3.]

Conflict with federal requirements—2013 c 79: See note following RCW 50.60.020.

Short title—Effective date—Conflict with federal requirements—2009 c 3: See notes following RCW 50.20.120.

Additional notes found at www.leg.wa.gov

50.60.090 Shared work benefits—Eligibility. An individual is eligible to receive shared work benefits with respect to any week only if, in addition to meeting the conditions of eligibility for other benefits under this title, the commissioner finds that:

(1) The individual was employed during that week as an affected employee under an approved shared work compensation plan which was in effect for that week;

(2) The affected employee was able to work and was available for his or her usual weekly hours of work with the shared work employer; and

(3) Notwithstanding any other provision of this chapter, an individual is deemed to have been unemployed in any week for which remuneration is payable to him or her as an affected employee for less than his or her normal weekly

hours of work as specified under the approved shared work compensation plan in effect for that week. [2013 c 79 § 3; 2009 c 3 § 11; 1983 c 207 § 9.]

Conflict with federal requirements—2013 c 79: See note following RCW 50.60.020.

Short title—Effective date—Conflict with federal requirements—2009 c 3: See notes following RCW 50.20.120.

50.60.110 Benefits—Charge to employers' experience rating accounts. (1) Except as provided in subsection (2) of this section, shared work benefits shall be charged to employers' experience rating accounts in the same manner as other benefits under this title are charged. Employers liable for payments in lieu of contributions shall have shared work benefits attributed to their accounts in the same manner as other benefits under this title are attributed.

(2) For weeks of benefits paid between July 1, 2012, and June 28, 2015, any amount of shared work benefits reimbursed by the federal government is not charged to experience rating accounts of employers or to employers who are liable for payments in lieu of contributions. The department shall remove charges for any amount of shared work benefits reimbursed by the federal government between July 1, 2012, and the week prior to July 28, 2013. [2013 c 79 § 4; 1983 c 207 § 11.]

Conflict with federal requirements—2013 c 79: See note following RCW 50.60.020.

Title 51

INDUSTRIAL INSURANCE

Chapters

51.04 General provisions.

51.12 Employments and occupations covered.

51.14 Self-insurers.

51.16 Assessment and collection of premiums—Payrolls and records.

51.28 Notice and report of accident—Application for compensation.

51.32 Compensation—Right to and amount.

51.36 Medical aid.

51.44 Funds.

Chapter 51.04 RCW

GENERAL PROVISIONS

Sections

51.04.063 Injured worker options—Claim resolution structured settlement agreements.

51.04.080 Sending notices, orders, payments to claimants.

51.04.160 Logger safety initiative—Task force—Report.

51.04.165 Information about scholarship opportunities—Costs.

51.04.063 Injured worker options—Claim resolution structured settlement agreements. (1) Notwithstanding RCW 51.04.060 or any other provision of this title, beginning on January 1, 2012, an injured worker who is at least fifty-five years of age on or after January 1, 2012, fifty-three years of age on or after January 1, 2015, or fifty years of age on or after January 1, 2016, may choose from the following: (a) To continue to receive all benefits for which they are eligible under this title, (b) to participate in vocational training if eli-

gible, or (c) to initiate and agree to a resolution of their claim with a structured settlement.

(2)(a) As provided in this section, the parties to an allowed claim may initiate and agree to resolve a claim with a structured settlement for all benefits other than medical. Parties as defined in (b) of this subsection may only initiate claim resolution structured settlements if at least one hundred eighty days have passed since the claim was received by the department or self-insurer and the order allowing the claim is final and binding. All requirements of this title regarding entitlement to and payment of benefits will apply during this period. All claim resolution structured settlement agreements must be approved by the board of industrial insurance appeals.

(b) For purposes of this section, "parties" means:

(i) For a state fund claim, the worker, the employer, and the department. The employer will not be a party if the costs of the claim or claims are no longer included in the calculation of the employer's experience factor used to determine premiums, if they cannot be located, are no longer in business, or they fail to respond or decline to participate after timely notice of the claim resolution settlement process provided by the board and the department.

(ii) For a self-insured claim, the worker and the employer.

(c) The claim resolution structured settlement agreements shall:

(i) Bind the parties with regard to all aspects of a claim except medical benefits unless revoked by one of the parties as provided in subsection (6) of this section;

(ii) Provide a periodic payment schedule to the worker equal to at least twenty-five percent but not more than one hundred fifty percent of the average monthly wage in the state pursuant to RCW 51.08.018, except for the initial payment which may be up to six times the average monthly wage in the state pursuant to RCW 51.08.018;

(iii) Not set aside or reverse an allowance order;

(iv) Not subject any employer who is not a signatory to the agreement to any responsibility or burden under any claim; and

(v) Not subject any funds covered under this title to any responsibility or burden without prior approval from the director or designee.

(d) For state fund claims, the department shall negotiate the claim resolution structured settlement agreement with the worker or their representative and with the employer or employers and their representative or representatives.

(e) For self-insured claims, the self-insured employer shall negotiate the agreement with the worker or his or her representative. Workers of self-insured employers who are unrepresented may request that the office of the ombuds for self-insured injured workers provide assistance or be present during negotiations.

(f) Terms of the agreement may include the parties' agreement that the claim shall remain open for future necessary medical or surgical treatment related to the injury where there is a reasonable expectation such treatment is necessary. The parties may also agree that specific future treatment shall be provided without the application required in RCW 51.32.160.

(g) Any claim resolution structured settlement agreement entered into under this section must be in writing and signed by the parties or their representatives and must clearly state that the parties understand and agree to the terms of the agreement.

(h) If a worker is not represented by an attorney at the time of signing a claim resolution structured settlement agreement, the parties must forward a copy of the signed agreement to the board with a request for a conference with an industrial appeals judge. The industrial appeals judge must schedule a conference with all parties within fourteen days for the purpose of (i) reviewing the terms of the proposed settlement agreement by the parties; and (ii) ensuring the worker has an understanding of the benefits generally available under this title and that a claim resolution structured settlement agreement may alter the benefits payable on the claim or claims. The judge may schedule the initial conference for a later date with the consent of the parties.

(i) Before approving the agreement, the industrial appeals judge shall ensure the worker has an adequate understanding of the agreement and its consequences to the worker.

(j) The industrial appeals judge may approve a claim resolution structured settlement agreement only if the judge finds that the agreement is in the best interest of the worker. When determining whether the agreement is in the best interest of the worker, the industrial appeals judge shall consider the following factors, taken as a whole, with no individual factor being determinative:

(i) The nature and extent of the injuries and disabilities of the worker;

(ii) The age and life expectancy of the injured worker;

(iii) Other benefits the injured worker is receiving or is entitled to receive and the effect a claim resolution structured settlement agreement might have on those benefits; and

(iv) The marital or domestic partnership status of the injured worker.

(k) Within seven days after the conference, the industrial appeals judge shall issue an order allowing or rejecting the claim resolution structured settlement agreement. There is no appeal from the industrial appeals judge's decision.

(l) If the industrial appeals judge issues an order allowing the claim resolution structured settlement agreement, the order must be submitted to the board.

(3) Upon receiving the agreement, the board shall approve it within thirty working days of receipt unless it finds that:

(a) The parties have not entered into the agreement knowingly and willingly;

(b) The agreement does not meet the requirements of a claim resolution structured settlement agreement;

(c) The agreement is the result of a material misrepresentation of law or fact;

(d) The agreement is the result of harassment or coercion; or

(e) The agreement is unreasonable as a matter of law.

(4) If a worker is represented by an attorney at the time of signing a claim resolution structured settlement agreement, the parties shall submit the agreement directly to the board without the conference described in this section.

(5) If the board approves the agreement, it shall provide notice to all parties. The department shall place the agreement in the applicable claim file or files.

(6) A party may revoke consent to the claim resolution structured settlement agreement by providing written notice to the other parties and the board within thirty days after the date the agreement is approved by the board.

(7) To the extent the worker is entitled to any benefits while a claim resolution structured settlement agreement is being negotiated or during the revocation period of an agreement, the benefits must be paid pursuant to the requirements of this title until the agreement becomes final.

(8) A claim resolution structured settlement agreement that meets the conditions in this section and that has become final and binding as provided in this section is binding on all parties to the agreement as to its terms and the injuries and occupational diseases to which the agreement applies. A claim resolution structured settlement agreement that has become final and binding is not subject to appeal.

(9) All payments made to a worker pursuant to a final claim resolution structured settlement agreement must be reported to the department as claims costs pursuant to this title. If a self-insured employer contracts with a third-party administrator for claim services and the payment of benefits under this title, the third-party administrator shall also disburse the structured settlement payments pursuant to the agreement.

(10) Claims closed pursuant to a claim resolution structured settlement agreement can be reopened pursuant to RCW 51.32.160 for medical treatment only. Further temporary total, temporary partial, permanent partial, or permanent total benefits are not payable under the same claim or claims for which a claim resolution structured settlement agreement has been approved by the board and has become final.

(11) Parties aggrieved by the failure of any other party to comply with the terms of a claim resolution structured settlement agreement have one year from the date of failure to comply to petition to the board. If the board determines that a party has failed to comply with an agreement, it will order compliance and will impose a penalty payable to the aggrieved party of up to twenty-five percent of the monetary amount unpaid at the time the petition for noncompliance was filed. The board will also decide on any disputes as to attorneys' fees for services related to claim resolution structured settlement agreements.

(12) Parties and their representatives may not use settlement offers or the claim resolution structured settlement agreement process to harass or coerce any party. If the department determines that an employer has engaged in a pattern of harassment or coercion, the employer may be subject to penalty or corrective action, and may be removed from the retrospective rating program or be decertified from self-insurance under RCW 51.14.030. [2013 c 23 § 104; 2011 1st sp.s. c 37 § 302.]

Rules—2011 1st sp.s. c 37 §§ 302 and 303: "The department of labor and industries and the board of industrial insurance appeals shall adopt rules as necessary to implement sections 302 and 303 of this act." [2011 1st sp.s. c 37 § 305.]

Finding—Effective date—2011 1st sp.s. c 37: See notes following RCW 51.32.090.

51.04.080 Sending notices, orders, payments to claimants. On all claims under this title, claimants' written notices, orders, or payments must be forwarded directly to the claimant until such time as there has been entered an order on the claim appealable to the board of industrial insurance appeals. Claimants' written notices, orders, or payments may be forwarded to the claimant in care of a representative before an order has been entered if the claimant sets forth in writing the name and address of the representative to whom the claimant desires this information to be forwarded. [2013 c 125 § 4; 2007 c 78 § 1; 1972 ex.s. c 43 § 2; 1961 c 23 § 51.04.080. Prior: 1959 c 308 § 2; 1957 c 70 § 5; prior: 1947 c 56 § 1, part; 1927 c 310 § 7, part; 1923 c 136 § 4, part; 1921 c 182 § 6, part; 1919 c 131 § 6, part; 1911 c 74 § 10, part; Rem. Supp. 1947 § 7684, part.]

51.04.160 Logger safety initiative—Task force—Report. (1) The department shall include one or more representatives of logging industry workers on the logger safety task force. In addition, the department shall reach out to all employers in the logging industry, including those having one or more on the job fatalities in the last five years, and invite them to participate in the logger safety initiative. All participants must comply with the requirements of the logger safety initiative.

(2) By December 31, 2013, the department shall report back to the appropriate committees of the legislature on the development and implementation of the logger safety initiative. The report shall provide a status update on implementation of the initiative and participation in the safety program, including a description and summary of the worker training and supervision standards and the certification process for individual companies. The report shall also contain a description and summary of any industrial insurance rate reduction or other incentive for rate year 2014 that will be applied to employers participating in the initiative. The report may provide recommendations for legislative consideration to further the goals of the initiative. [2013 c 339 § 2.]

Findings—Intent—2013 c 339: "The legislature finds that many Washington workers involved in manual logging in the logging industry suffer industrial injuries with greater frequency and severity than workers in other industries. The legislature further finds that the incidence and severity of injury is particularly high among young workers during the early periods of employment in manual logging. The legislature recognizes the importance of improving safety performance in the logging industry to reduce industrial injuries for workers and resulting workers' compensation premium rates for employers. The legislature acknowledges that industry participants, including private land owners, timber industry employers, the department of natural resources, and the department of labor and industries, have formed a logger safety task force to develop and implement a logger safety initiative. The goal of the initiative is to reduce the frequency and severity of injuries in the logging industry. The task force will create a program that will establish sector-wide standards for worker training and supervision; establish a certification process for individual company safety programs; and review the progress of logging operations through mandatory performance-based audits. The legislature further recognizes that as the safety culture in the logging industry evolves, the frequency and severity of injuries will decrease, which will drive down industrial insurance costs for logging industry employers. While the industrial insurance costs will decline over time as safety improves, the legislature acknowledges that an immediate reduction in industrial insurance rates for the 2014 rate year for participating logging employers provides an additional incentive for these employers to commit to the logger safety initiative. Therefore, the legislature intends to monitor development and implementation of the logger safety initiative." [2013 c 339 § 1.]

51.04.165 Information about scholarship opportunities—Costs. The department may provide information about scholarship opportunities offered by nonprofit organizations and available to children and spouses of workers who suffered an injury in the course of employment resulting in death or permanent total disability. The department may, in its sole discretion, provide information about one or more scholarship opportunities. The cost of printing and inserting materials, any additional mailing costs, and any other related costs must be borne by the scholarship organization. [2013 c 134 § 2.]

Chapter 51.12 RCW

EMPLOYMENTS AND OCCUPATIONS COVERED

Sections

51.12.020 Employments excluded.

51.12.020 Employments excluded. The following are the only employments which shall not be included within the mandatory coverage of this title:

(1) Any person employed as a domestic servant in a private home by an employer who has less than two employees regularly employed forty or more hours a week in such employment.

(2) Any person employed to do gardening, maintenance, or repair, in or about the private home of the employer. For the purposes of this subsection, "maintenance" means the work of keeping in proper condition, "repair" means to restore to sound condition after damage, and "private home" means a person's place of residence.

(3) A person whose employment is not in the course of the trade, business, or profession of his or her employer and is not in or about the private home of the employer.

(4) Any person performing services in return for aid or sustenance only, received from any religious or charitable organization.

(5) Sole proprietors or partners.

(6) Any child under eighteen years of age employed by his or her parent or parents in agricultural activities on the family farm.

(7) Jockeys while participating in or preparing horses for race meets licensed by the Washington horse racing commission pursuant to chapter 67.16 RCW.

(8)(a) Except as otherwise provided in (b) of this subsection, any bona fide officer of a corporation voluntarily elected or voluntarily appointed in accordance with the articles of incorporation or bylaws of the corporation, who at all times during the period involved is also a bona fide director, and who is also a shareholder of the corporation. Only such officers who exercise substantial control in the daily management of the corporation and whose primary responsibilities do not include the performance of manual labor are included within this subsection.

(b) Alternatively, a corporation that is not a "public company" as defined in RCW 23B.01.400 may exempt eight or fewer bona fide officers, who are voluntarily elected or voluntarily appointed in accordance with the articles of incorporation or bylaws of the corporation and who exercise substantial control in the daily management of the corporation, from coverage under this title without regard to the officers' per-

formance of manual labor if the exempted officer is a shareholder of the corporation, or may exempt any number of officers if all the exempted officers are related by blood within the third degree or marriage. If a corporation that is not a "public company" elects to be covered under subsection (8)(a) of this section, the corporation's election must be made on a form prescribed by the department and under such reasonable rules as the department may adopt.

(c) Determinations respecting the status of persons performing services for a corporation shall be made, in part, by reference to Title 23B RCW and to compliance by the corporation with its own articles of incorporation and bylaws. For the purpose of determining coverage under this title, substance shall control over form, and mandatory coverage under this title shall extend to all workers of this state, regardless of honorary titles conferred upon those actually serving as workers.

(d) A corporation may elect to cover officers who are exempted by this subsection in the manner provided by RCW 51.12.110.

(9) Services rendered by a musician or entertainer under a contract with a purchaser of the services, for a specific engagement or engagements when such musician or entertainer performs no other duties for the purchaser and is not regularly and continuously employed by the purchaser. A purchaser does not include the leader of a group or recognized entity who employs other than on a casual basis musicians or entertainers.

(10) Services performed by a newspaper vendor, carrier, or delivery person selling or distributing newspapers on the street, to offices, to businesses, or from house to house and any freelance news correspondent or "stringer" who, using his or her own equipment, chooses to submit material for publication for free or a fee when such material is published.

(11) Services performed by an insurance producer, as defined in RCW 48.17.010, or a surplus line broker licensed under chapter 48.15 RCW.

(12) Services performed by a booth renter. However, a person exempted under this subsection may elect coverage under RCW 51.32.030.

(13) Members of a limited liability company, if either:

(a) Management of the company is vested in its members, and the members for whom exemption is sought would qualify for exemption under subsection (5) of this section were the company a sole proprietorship or partnership; or

(b) Management of the company is vested in one or more managers, and the members for whom the exemption is sought are managers who would qualify for exemption under subsection (8) of this section were the company a corporation. [2013 c 141 § 3; 2009 c 162 § 33; 2008 c 217 § 98; 1999 c 68 § 1; 1997 c 314 § 18. Prior: 1991 c 324 § 18; 1991 c 246 § 4; 1987 c 316 § 2; 1983 c 252 § 1; 1982 c 63 § 15; 1981 c 128 § 3; 1979 c 128 § 1; 1977 ex.s. c 323 § 7; 1973 c 124 § 1; 1972 ex.s. c 43 § 7; 1971 ex.s. c 289 § 3; 1961 c 23 § 51.12.020; prior: 1955 c 74 § 3; prior: 1947 c 281 § 1, part; 1943 c 210 § 1, part; 1939 c 41 § 1, part; 1937 c 211 § 1, part; 1927 c 310 § 1, part; 1921 c 182 § 1, part; 1919 c 131 § 1, part; 1911 c 74 § 2, part; Rem. Supp. 1947 § 7674, part.]

Effective date—2009 c 162: See note following RCW 48.03.020.

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

Additional notes found at www.leg.wa.gov

Chapter 51.14 RCW SELF-INSURERS

Sections

51.14.300	Ombuds office created—Appointment—Open and competitive contracting.
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51.14.300 Ombuds office created—Appointment—Open and competitive contracting. The office of the ombuds for workers of industrial insurance self-insured employers is created. The ombuds shall be appointed by the governor and report directly to the director of the department. The office of the ombuds may be openly and competitively contracted by the governor in accordance with chapter 39.26 RCW but shall not be physically housed within the industrial insurance division. [2013 c 23 § 105; 2007 c 281 § 1.]

51.14.310 Ombuds—Term of office—Removal—Vacancies. The person appointed ombuds shall hold office for a term of six years and shall continue to hold office until reappointed or until his or her successor is appointed. The governor may remove the ombuds only for neglect of duty, misconduct, or inability to perform duties. Any vacancy shall be filled by similar appointment for the remainder of the unexpired term. [2013 c 23 § 106; 2007 c 281 § 2.]

51.14.320 Ombuds—Training or experience qualifications. Any ombuds appointed under this chapter shall have training or experience, or both, in the following areas:

- (1) Washington state industrial insurance including self-insurance programs;
- (2) The Washington state legal system;
- (3) Dispute or problem resolution techniques, including investigation, mediation, and negotiation. [2013 c 23 § 107; 2007 c 281 § 3.]

51.14.330 Ombuds office—Staffing level. During the first two years after the office of the ombuds is created, the staffing level shall be no more than four persons, including the ombuds and any administrative staff. Thereafter, the staffing levels shall be determined based upon the office of the ombuds's workload and whether any additional locations are needed. [2013 c 23 § 108; 2007 c 281 § 4.]

51.14.340 Ombuds office—Powers and duties. The office of the ombuds shall have the following powers and duties:

- (1) To act as an advocate for injured workers of self-insured employers;

- (2) To offer and provide information on industrial insurance as appropriate to workers of self-insured employers;

- (3) To identify, investigate, and facilitate resolution of industrial insurance complaints from workers of self-insured employers;

- (4) To maintain a statewide toll-free telephone number for the receipt of complaints and inquiries; and

- (5) To refer complaints to the department when appropriate. [2013 c 23 § 109; 2007 c 281 § 5.]

51.14.350 Ombuds office—Referral procedures—Department response to referred complaints. (1) The office of the ombuds shall develop referral procedures for complaints by workers of self-insured employers. The department shall act as quickly as possible on any complaint referred to them by the office of the ombuds.

(2) The department shall respond to any complaint against a self-insured employer referred to it by the office of the ombuds and shall forward the office of the ombuds a summary of the results of the investigation and action proposed or taken. [2013 c 23 § 110; 2007 c 281 § 6.]

51.14.360 Ombuds liability—Discriminatory, disciplinary, or retaliatory actions—Communications privileged and confidential—Testimony. (1) No ombuds is liable for good faith performance of responsibilities under this chapter.

(2) No discriminatory, disciplinary, or retaliatory action may be taken against any employee of a self-insured employer for any communication made, or information given or disclosed, to assist the ombuds in carrying out its duties and responsibilities, unless the same was done maliciously. This subsection is not intended to infringe on the rights of the employer to supervise, discipline, or terminate an employee for other reasons.

(3) All communications by the ombuds, if reasonably related to the requirements of his or her responsibilities under this chapter and done in good faith, are privileged and confidential, and this shall serve as a defense to any action in libel or slander.

(4) Representatives of the office of the ombuds are exempt from being required to testify as to any privileged or confidential matters except as the court may deem necessary to enforce this chapter. [2013 c 23 § 111; 2007 c 281 § 7.]

51.14.370 Confidentiality of ombuds records and files—Disclosure prohibited—Exception. All records and files of the ombuds relating to any complaint or investigation made pursuant to carrying out its duties and the identities of complainants, witnesses, or injured workers shall remain confidential unless disclosure is authorized by the complainant or injured worker or his or her guardian or legal representative. No disclosures may be made outside the office of the ombuds without the consent of any named witness or complainant unless the disclosure is made without the identity of any of these individuals being disclosed. [2013 c 23 § 112; 2007 c 281 § 8.]

51.14.380 Explaining ombuds program—Posters and brochures. The ombuds shall integrate into existing posters and brochures information explaining the ombuds

program. Both the posters and the brochures shall contain the ombuds's toll-free telephone number. Every self-insured employer must place a poster in an area where all workers have access to it. The self-insured employer must provide a brochure to all injured workers at the time the employer is notified of the worker's injury. [2013 c 23 § 113; 2007 c 281 § 9.]

51.14.390 Ombuds office—Funding. (1) To provide start-up funding for the office of the ombuds, the department shall impose a one-time assessment on all self-insurers. The amount of the assessment shall be determined by the department and shall not exceed the amount needed to pay the start-up costs.

(2) Ongoing funding for the office of the ombuds shall be obtained as part of an annual administrative assessment of self-insurers under RCW 51.44.150. This assessment shall be proportionately based on the number of claims for each self-insurer during the past year. [2013 c 23 § 114; 2007 c 281 § 10.]

51.14.400 Ombuds—Annual report to governor. (1) The ombuds shall provide the governor with an annual report that includes the following:

(a) A description of the issues addressed during the past year and a very brief description of case scenarios in a form that does not compromise confidentiality;

(b) An accounting of the monitoring activities by the ombuds; and

(c) An identification of the deficiencies in the industrial insurance system related to self-insurers, if any, and recommendations for remedial action in policy or practice.

(2) The first annual report shall be due on or before October 1, 2008. Subsequent reports shall be due on or before October 1st. [2013 c 23 § 115; 2007 c 281 § 12.]

Chapter 51.16 RCW

ASSESSMENT AND COLLECTION OF PREMIUMS— PAYROLLS AND RECORDS

Sections

51.16.210 Horse racing employment—Premiums.

51.16.210 Horse racing employment—Premiums.

(1) The department shall assess premiums, under the provisions of this section, for certain horse racing employments licensed in accordance with chapter 67.16 RCW. This premium assessment shall be for the purpose of providing industrial insurance coverage for employees of trainers licensed under chapter 67.16 RCW, including but not limited to exercise riders, pony riders, and grooms, and including all on or off track employment. The department may adopt rules under chapter 34.05 RCW to carry out the purposes of this section, including rules providing for alternative reporting periods and payment due dates for coverage under this section. The department rules shall ensure that no licensee licensed prior to May 13, 1989, shall pay more than the assessment fixed at the basic manual rate.

(2) The department shall compute industrial insurance premium rates and these premiums may be assessed at the time of each issuance or renewal of the license for owners,

trainers, and grooms in amounts established by department rule for coverage under this section. Premium assessments shall be determined in accordance with the requirements of this title, except that assessments shall not be experience rated and shall be fixed at the basic manual rate. However, rates may vary according to the risk insured, as determined according to rules adopted by the department and the Washington horse racing commission.

(3) For the purposes of paying premiums and assessments under this section and making reports under this title, individuals licensed as trainers by the Washington horse racing commission shall be considered employers. The premium assessment for a groom shall be paid by the trainer responsible for hiring the groom and is payable as required by the Washington horse racing commission.

(4) The fee to be assessed on owner licenses as required by this section shall not exceed one hundred fifty dollars. However, those owners having less than a full ownership in a horse or horses shall pay a percentage of the required license fee that is equal to the total percentage of the ownership that the owner has in the horse or horses. In no event shall an owner having an ownership percentage in more than one horse pay more than a one hundred fifty-dollar license fee. The assessment on each owner's license shall not imply that an owner is an employer, but shall be required as part of the privilege of holding an owner's license.

(5) Premium assessments under this section shall be collected by the Washington horse racing commission and deposited in the industrial insurance trust funds as provided under department rules. [2013 c 80 § 1; 1989 c 385 § 1.]

Chapter 51.28 RCW

NOTICE AND REPORT OF ACCIDENT— APPLICATION FOR COMPENSATION

Sections

51.28.060 Proof of dependency.

51.28.060 Proof of dependency. A dependent shall at all times furnish the department with proof satisfactory to the director of the nature, amount, and extent of the contribution made by the deceased worker.

Proof of dependency by any beneficiary residing without the United States shall be made before the nearest United States consul or consular agency, under the seal of such consul or consular agent, and the department may cause any payments to which such beneficiary is entitled to be transmitted to the beneficiary through the nearest United States consul or consular agent. [2013 c 125 § 5; 1977 ex.s. c 350 § 35; 1961 c 23 § 51.28.060. Prior: 1957 c 70 § 25; prior: (i) 1939 c 41 § 2, part; 1929 c 132 § 1, part; 1927 c 310 § 2, part; 1921 c 182 § 2, part; 1919 c 131 § 2, part; 1917 c 120 § 1, part; 1911 c 74 § 3, part; RRS § 7675, part. (ii) 1947 c 56 § 1, part; 1927 c 310 § 7, part; 1923 c 136 § 4, part; 1921 c 182 § 6, part; 1919 c 131 § 6, part; 1911 c 74 § 10, part; Rem. Supp. 1947 § 7684, part.]

Chapter 51.32 RCW

COMPENSATION—RIGHT TO AND AMOUNT

Sections

51.32.040	Protection of awards—Payment after death—Time limitations for filing—Confinement in institution.
51.32.045	Direct deposit or electronic payment of benefits.
51.32.095	Vocational rehabilitation services—Benefits—Priorities—Allowable costs—Performance criteria. (<i>Effective until June 30, 2016.</i>)
51.32.099	Vocational rehabilitation pilot program—Vocational plans. (<i>Expires June 30, 2016.</i>)

51.32.040 Protection of awards—Payment after death—Time limitations for filing—Confinement in institution. (1) Except as provided in RCW 43.20B.720, 72.09.111, 74.20A.260, and 51.32.380, no money paid or payable under this title shall, before the issuance and delivery of the payment, be assigned, charged, or taken in execution, attached, garnished, or pass or be paid to any other person by operation of law, any form of voluntary assignment, or power of attorney. Any such assignment or charge is void unless the transfer is to a financial institution at the request of a worker or other beneficiary and made in accordance with RCW 51.32.045.

(2)(a) If any worker suffers (i) a permanent partial injury and dies from some other cause than the accident which produced the injury before he or she receives payment of the award for the permanent partial injury or (ii) any other injury before he or she receives payment of any monthly installment covering any period of time before his or her death, the amount of the permanent partial disability award or the monthly payment, or both, shall be paid to the surviving spouse or the child or children if there is no surviving spouse. If there is no surviving spouse and no child or children, the award or the amount of the monthly payment shall be paid by the department or self-insurer and distributed consistent with the terms of the decedent's will or, if the decedent dies intestate, consistent with the terms of RCW 11.04.015.

(b) If any worker suffers an injury and dies from it before he or she receives payment of any monthly installment covering time loss for any period of time before his or her death, the amount of the monthly payment shall be paid to the surviving spouse or the child or children if there is no surviving spouse. If there is no surviving spouse and no child or children, the amount of the monthly payment shall be paid by the department or self-insurer and distributed consistent with the terms of the decedent's will or, if the decedent dies intestate, consistent with the terms of RCW 11.04.015.

(c) Any application for compensation under this subsection (2) shall be filed with the department or self-insuring employer within one year of the date of death. The department or self-insurer may satisfy its responsibilities under this subsection (2) by sending any payment due in the name of the decedent and to the last known address of the decedent.

(3)(a) Any worker or beneficiary receiving benefits under this title who is subsequently confined in, or who subsequently becomes eligible for benefits under this title while confined in, any institution under conviction and sentence shall have all payments of the compensation canceled during the period of confinement. After discharge from the institution, payment of benefits due afterward shall be paid if the

worker or beneficiary would, except for the provisions of this subsection (3), otherwise be entitled to them.

(b) If any prisoner is injured in the course of his or her employment while participating in a work or training release program authorized by chapter 72.65 RCW and is subject to the provisions of this title, he or she is entitled to payments under this title, subject to the requirements of chapter 72.65 RCW, unless his or her participation in the program has been canceled, or unless he or she is returned to a state correctional institution, as defined in RCW 72.65.010(3), as a result of revocation of parole or new sentence.

(c) If the confined worker has any beneficiaries during the confinement period during which benefits are canceled under (a) or (b) of this subsection, they shall be paid directly the monthly benefits which would have been paid to the worker for himself or herself and the worker's beneficiaries had the worker not been confined.

(4) Any lump sum benefits to which a worker would otherwise be entitled but for the provisions of this section shall be paid on a monthly basis to his or her beneficiaries. [2013 c 125 § 6; 2003 c 379 § 27; 1999 c 185 § 1; 1996 c 47 § 1; 1995 c 160 § 3; 1987 c 75 § 7; 1983 c 2 § 13. Prior: 1982 c 201 § 8; 1982 c 109 § 10; 1979 ex.s. c 171 § 11; 1977 ex.s. c 350 § 41; 1975 1st ex.s. c 224 § 8; 1974 ex.s. c 30 § 1; prior: 1973 1st ex.s. c 154 § 95; 1972 ex.s. c 43 § 18; 1971 ex.s. c 289 § 43; 1965 ex.s. c 165 § 2; 1961 c 23 § 51.32.040; prior: 1957 c 70 § 29; prior: 1947 c 56 § 1, part; 1927 c 310 § 7, part; 1923 c 136 § 4, part; 1921 c 182 § 6, part; 1919 c 131 § 6, part; 1911 c 74 § 10, part; Rem. Supp. 1947 § 7684, part.]

Severability—Effective dates—2003 c 379: See notes following RCW 9.94A.728.

Intent—Purpose—2003 c 379 §§ 13-27: See note following RCW 9.94A.760.

Additional notes found at www.leg.wa.gov

51.32.045 Direct deposit or electronic payment of benefits. Any worker or other recipient of benefits under this title may elect to have any payments due paid by debit card or other electronic means or transferred to such person's account in a financial institution for either: (1) Credit to the recipient's account in such financial institution; or (2) immediate transfer therefrom to the recipient's account in any other financial institution. The debit card or other electronic means payment option is available at the discretion of the department or self-insured employer, and the recipient must request in writing on a department-approved form or other department-approved method that the recipient's payments be made through this payment option.

A single payment may be drawn in favor of such financial institution, for the total amount due the recipients involved, and written directions provided to such financial institution of the amount to be credited to the account of a recipient or to be transferred to an account in another financial institution for such recipient. The issuance and delivery by the disbursing officer of a payment in accordance with the procedure set forth in this section and proper indorsement thereof by the financial institution shall have the same legal effect as payment directly to the recipient.

For the purposes of this section, "financial institution" shall have the meaning given in RCW 41.04.240 as now or hereafter amended. [2013 c 125 § 7; 1982 c 109 § 11.]

51.32.095 Vocational rehabilitation services—Benefits—Priorities—Allowable costs—Performance criteria. (*Effective until June 30, 2016.*) (1) One of the primary purposes of this title is to enable the injured worker to become employable at gainful employment. To this end, the department or self-insurers shall utilize the services of individuals and organizations, public or private, whose experience, training, and interests in vocational rehabilitation and retraining qualify them to lend expert assistance to the supervisor of industrial insurance in such programs of vocational rehabilitation as may be reasonable to make the worker employable consistent with his or her physical and mental status. Where, after evaluation and recommendation by such individuals or organizations and prior to final evaluation of the worker's permanent disability and in the sole opinion of the supervisor or supervisor's designee, whether or not medical treatment has been concluded, vocational rehabilitation is both necessary and likely to enable the injured worker to become employable at gainful employment, the supervisor or supervisor's designee may, in his or her sole discretion, pay or, if the employer is a self-insurer, direct the self-insurer to pay the cost as provided in subsection (4) of this section or RCW 51.32.099, as appropriate. An injured worker may not participate in vocational rehabilitation under this section or RCW 51.32.099 if such participation would result in a payment of benefits as described in RCW 51.32.240(5), and any benefits so paid shall be recovered according to the terms of that section.

(2) When in the sole discretion of the supervisor or the supervisor's designee vocational rehabilitation is both necessary and likely to make the worker employable at gainful employment, then the following order of priorities shall be used:

- (a) Return to the previous job with the same employer;
- (b) Modification of the previous job with the same employer including transitional return to work;
- (c) A new job with the same employer in keeping with any limitations or restrictions;
- (d) Modification of a new job with the same employer including transitional return to work;
- (e) Modification of the previous job with a new employer;
- (f) A new job with a new employer or self-employment based upon transferable skills;
- (g) Modification of a new job with a new employer;
- (h) A new job with a new employer or self-employment involving on-the-job training;
- (i) Short-term retraining and job placement.

(3) Notwithstanding subsection (2) of this section, vocational services may be provided to an injured worker who has suffered the loss or complete use of both legs, or arms, or one leg and one arm, or total eyesight when, in the sole discretion of the supervisor or the supervisor's designee, these services will either substantially improve the worker's quality of life or substantially improve the worker's ability to function in an employment setting, regardless of whether or not these services are either necessary or reasonably likely to make the worker employable at any gainful employment. Vocational services must be completed prior to the commencement of the worker's entitlement to benefits under RCW 51.32.060. However, workers who are eligible for vocational services

under this subsection are not eligible for option 2 benefits, as provided in RCW 51.32.099(4).

(4)(a) For vocational plans approved prior to July 1, 1999, costs for vocational rehabilitation benefits allowed by the supervisor or supervisor's designee under subsection (1) of this section may include the cost of books, tuition, fees, supplies, equipment, transportation, child or dependent care, and other necessary expenses for any such worker in an amount not to exceed three thousand dollars in any fifty-two week period, and the cost of continuing the temporary total disability compensation under RCW 51.32.090 while the worker is actively and successfully undergoing a formal program of vocational rehabilitation.

(b) When the department has approved a vocational plan for a worker between July 1, 1999, through December 31, 2007, costs for vocational rehabilitation benefits allowed by the supervisor or supervisor's designee under subsection (1) of this section may include the cost of books, tuition, fees, supplies, equipment, child or dependent care, and other necessary expenses for any such worker in an amount not to exceed four thousand dollars in any fifty-two week period, and the cost of transportation and continuing the temporary total disability compensation under RCW 51.32.090 while the worker is actively and successfully undergoing a formal program of vocational rehabilitation.

(c) The expenses allowed under (a) or (b) of this subsection may include training fees for on-the-job training and the cost of furnishing tools and other equipment necessary for self-employment or reemployment. However, compensation or payment of retraining with job placement expenses under (a) or (b) of this subsection may not be authorized for a period of more than fifty-two weeks, except that such period may, in the sole discretion of the supervisor after his or her review, be extended for an additional fifty-two weeks or portion thereof by written order of the supervisor.

(d) In cases where the worker is required to reside away from his or her customary residence, the reasonable cost of board and lodging shall also be paid.

(e) Costs paid under this subsection shall be chargeable to the employer's cost experience or shall be paid by the self-insurer as the case may be.

(5) In addition to the vocational rehabilitation expenditures provided for under subsection (4) of this section and RCW 51.32.099, an additional five thousand dollars may, upon authorization of the supervisor or the supervisor's designee, be expended for: (a) Accommodations for an injured worker that are medically necessary for the worker to participate in an approved retraining plan; and (b) accommodations necessary to perform the essential functions of an occupation in which an injured worker is seeking employment, consistent with the retraining plan or the recommendations of a vocational evaluation. The injured worker's attending physician or licensed advanced registered nurse practitioner must verify the necessity of the modifications or accommodations. The total expenditures authorized in this subsection and the expenditures authorized under RCW 51.32.250 shall not exceed five thousand dollars.

(6) When the department has approved a vocational plan for a worker prior to January 1, 2008, regardless of whether the worker has begun participating in the approved plan, costs for vocational rehabilitation benefits allowed by the

supervisor or supervisor's designee under subsection (1) of this section are limited to those provided under subsections (4) and (5) of this section.

For vocational plans approved for a worker between January 1, 2008, through June 30, 2016, total vocational costs allowed by the supervisor or supervisor's designee under subsection (1) of this section shall be limited to those provided under the pilot program established in RCW 51.32.099, and vocational rehabilitation services shall conform to the requirements in RCW 51.32.099.

(7) The department shall establish criteria to monitor the quality and effectiveness of rehabilitation services provided by the individuals and organizations used under subsection (1) of this section and under RCW 51.32.099. The state fund shall make referrals for vocational rehabilitation services based on these performance criteria.

(8) The department shall engage in, where feasible and cost-effective, a cooperative program with the state employment security department to provide job placement services under this section and RCW 51.32.099.

(9) The benefits in this section and RCW 51.32.099 shall be provided for the injured workers of self-insured employers. Self-insurers shall report both benefits provided and benefits denied under this section and RCW 51.32.099 in the manner prescribed by the department by rule adopted under chapter 34.05 RCW. The director may, in his or her sole discretion and upon his or her own initiative or at any time that a dispute arises under this section or RCW 51.32.099, promptly make such inquiries as circumstances require and take such other action as he or she considers will properly determine the matter and protect the rights of the parties.

(10) Except as otherwise provided in this section or RCW 51.32.099, the benefits provided for in this section and RCW 51.32.099 are available to any otherwise eligible worker regardless of the date of industrial injury. However, claims shall not be reopened solely for vocational rehabilitation purposes. [2013 c 331 § 1; 2011 c 291 § 1; 2007 c 72 § 1; 2004 c 65 § 10; 1999 c 110 § 1. Prior: 1996 c 151 § 1; 1996 c 59 § 1; 1988 c 161 § 9; 1985 c 339 § 2; 1983 c 70 § 2; 1982 c 63 § 11; 1980 c 14 § 10. Prior: 1977 ex.s. c 350 § 48; 1977 ex.s. c 323 § 16; 1972 ex.s. c 43 § 23; 1971 ex.s. c 289 § 12.]

Expiration date—2013 c 331 § 1: "Section 1 of this act expires June 30, 2016." [2013 c 331 § 6.]

Effective date—2013 c 331: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 21, 2013]." [2013 c 331 § 8.]

Expiration date—2013 c 331; 2011 c 291: "This act expires June 30, 2016." [2013 c 331 § 3; 2011 c 291 § 3.]

Implementation—Effective date—Expiration date—2007 c 72: See notes following RCW 51.32.099.

Report to legislature—Effective date—Severability—2004 c 65: See notes following RCW 51.04.030.

Legislative finding—1985 c 339: "The legislature finds that the vocational rehabilitation program created by chapter 63, Laws of 1982, has failed to assist injured workers to return to suitable gainful employment without undue loss of time from work and has increased costs of industrial insurance for employers and employees alike. The legislature further finds that the administrative structure established within the industrial insurance division of the department of labor and industries to develop and oversee the provision of vocational rehabilitation services has not provided efficient delivery of vocational rehabilitation services. The legislature finds that restructuring

the state's vocational rehabilitation program under the department of labor and industries is necessary." [1985 c 339 § 1.]

Additional notes found at www.leg.wa.gov

51.32.099 Vocational rehabilitation pilot program—Vocational plans. (Expires June 30, 2016.) (1)(a) The legislature intends to create improved vocational outcomes for Washington state injured workers and employers through legislative and regulatory change under a pilot program for the period of January 1, 2008, through June 30, 2016. This pilot vocational system is intended to allow opportunities for eligible workers to participate in meaningful retraining in high-demand occupations, improve successful return to work and achieve positive outcomes for workers, reduce the incidence of repeat vocational services, increase accountability and responsibility, and improve cost predictability. To facilitate the study and evaluation of the results of the proposed changes, the department shall establish the temporary funding of certain state fund vocational costs through the medical aid account to ensure the appropriate assessments to employers for the costs of their claims for vocational services in accordance with RCW 51.32.0991.

(b) In implementing the pilot program, the department shall:

(i) Establish a vocational initiative project that includes participation by the department as a partner with WorkSource, the established state system that administers the federal workforce investment act of 1998. As a partner, the department shall place vocational professional full-time employees at pilot WorkSource locations; refer some workers for vocational services to these vocational professionals; and work with employers in work source pilot areas to market the benefits of on-the-job training programs and with community colleges to reserve slots in high employer demand programs of study as defined in RCW 28B.50.030. These on-the-job training programs and community college slots may be considered by both department and private sector vocational professionals for vocational plan development. The department will also assist stakeholders in developing additional vocational training programs in various industries, including but not limited to agriculture and construction. These programs will expand the choices available to injured workers in developing their vocational training plans with the assistance of vocational professionals.

(ii) Develop and maintain a register of state fund and self-insured workers who have been retrained or have selected any of the vocational options described in this section for at least the duration of the pilot program.

(iii) Create a vocational rehabilitation subcommittee made up of members appointed by the director for at least the duration of the pilot program. This subcommittee shall provide the business and labor partnership needed to maintain focus on the intent of the pilot program, as described in this section, and provide consistency and transparency to the development of rules and policies. The subcommittee shall report to the director at least annually and recommend to the director and the legislature any additional statutory changes needed, which may include extension of the pilot period. The subcommittee shall provide input and oversight with the department concerning the study required under (b) of this subsection. The subcommittee shall provide recommenda-

tions for additional changes or incentives for injured workers to return to work with their employer of injury. The subcommittee shall also consider options that, under limited circumstances, would allow injured workers to attend baccalaureate institutions under their vocational rehabilitation plans and, by December 31, 2013, the subcommittee shall provide recommendations to the director and the legislature on statutory changes needed to develop those options.

(iv) In collaboration with the subcommittee, the department shall develop an annual report concerning Washington's workers' compensation vocational rehabilitation system to the legislature with the final report due by December 1, 2015. The final report shall include an assessment and recommendations for further legislative action.

(2)(a) For the purposes of this section, the day the worker commences vocational plan development means the date the department or self-insurer notifies the worker of his or her eligibility for plan development services or of an eligibility determination in response to a dispute of a vocational decision.

(b) When the supervisor or supervisor's designee has decided that vocational rehabilitation is both necessary and likely to make the worker employable at gainful employment, he or she shall be provided with services necessary to develop a vocational plan that, if completed, would render the worker employable. The vocational professional assigned to the claim shall, at the initial meeting with the worker, fully inform the worker of the return-to-work priorities set forth in RCW 51.32.095(2) and of his or her rights and responsibilities under the workers' compensation vocational system. The department shall provide tools to the vocational professional for communicating this and other information required by RCW 51.32.095 and this section to the worker.

(c) On the date the worker commences vocational plan development, the department shall also inform the employer in writing of the employer's right to make a valid return-to-work offer during the first fifteen days following the commencement of vocational plan development. However, at the sole discretion of the supervisor or the supervisor's designee, an employer may be granted an extension of time of up to ten additional days to make a valid return-to-work offer. The additional days may be allowed by the department with or without a request from the employer. The extension may only be granted if the employer made a return-to-work offer to the worker within fifteen days of the date the worker commenced vocational plan development that met some but not all of the requirements in this section. To be valid, the offer must be for bona fide employment with the employer of injury, consistent with the worker's documented physical and mental restrictions as provided by the worker's health care provider. When the employer makes a valid return-to-work offer, the vocational plan development services and temporary total disability compensation shall be terminated effective on the starting date for the job without regard to whether the worker accepts the return-to-work offer.

(d) Following the time period described in (c) of this subsection, the employer may still provide, and the worker may accept, any valid return-to-work offer. The worker's acceptance of such an offer shall result in the termination of vocational plan development or implementation services and

temporary total disability compensation effective the day the employment begins.

(3)(a) All vocational plans must contain an accountability agreement signed by the worker detailing expectations regarding progress, attendance, and other factors influencing successful participation in the plan. Failure to abide by the agreed expectations shall result in suspension of vocational benefits pursuant to RCW 51.32.110.

(b) Any formal education included as part of the vocational plan must be for an accredited or licensed program or other program approved by the department. The department shall develop rules that provide criteria for the approval of nonaccredited or unlicensed programs.

(c) The vocational plan for an individual worker must be completed and submitted to the department within ninety days of the day the worker commences vocational plan development. The department may extend the ninety days for good cause. Criteria for good cause shall be provided in rule. The frequency and reasons for good cause extensions shall be reported to the subcommittee created under subsection (1) (b)(iii) of this section.

(d) Costs for the vocational plan may include books, tuition, fees, supplies, equipment, child or dependent care, training fees for on-the-job training, the cost of furnishing tools and other equipment necessary for self-employment or reemployment, and other necessary expenses in an amount not to exceed twelve thousand dollars. This amount shall be adjusted effective July 1 of each year for vocational plans or retraining benefits available under subsection (4)(b) of this section approved on or after this date but before June 30 of the next year based on the average percentage change in tuition for the next fall quarter for all Washington state community colleges.

(e) The duration of the vocational plan shall not exceed two years from the date the plan is implemented. The worker shall receive temporary total disability compensation under RCW 51.32.090 and the cost of transportation while he or she is actively and successfully participating in a vocational plan.

(f) If the worker is required to reside away from his or her customary residence, the reasonable cost of board and lodging shall also be paid.

(4) Vocational plan development services shall be completed within ninety days of commencing. Except as provided in RCW 51.32.095(3), during vocational plan development the worker shall, with the assistance of a vocational professional, participate in vocational counseling and occupational exploration to include, but not be limited to, identifying possible job goals, training needs, resources, and expenses, consistent with the worker's physical and mental status. A vocational rehabilitation plan shall be developed by the worker and the vocational professional and submitted to the department or self-insurer. Following this submission, the worker shall elect one of the following options:

(a) Option 1: The department or self-insurer implements and the worker participates in the vocational plan developed by the vocational professional and approved by the worker and the department or self-insurer. For state fund claims, the department must review and approve the vocational plan before implementation may begin. If the department takes no action within fifteen days, the plan is deemed approved. The worker may, within fifteen days of the department's approval

of the plan or of a determination that the plan is valid following a dispute, elect option 2. However, in the sole discretion of the supervisor or supervisor's designee, the department may approve an election for option 2 benefits that was submitted in writing within twenty-five days of the department's approval of the plan or of a determination that the plan is valid following a dispute if the worker provides a written explanation establishing that he or she was unable to submit his or her election of option 2 benefits within fifteen days. In no circumstance may the department approve of an election for option 2 benefits that was submitted more than twenty-five days after the department's approval of a retraining plan or of a determination that a plan is valid following a dispute.

(i) Following successful completion of the vocational plan, any subsequent assessment of whether vocational rehabilitation is both necessary and likely to enable the injured worker to become employable at gainful employment under RCW 51.32.095(1) shall include consideration of transferable skills obtained in the vocational plan.

(ii) If a vocational plan is successfully completed on a claim which is thereafter reopened as provided in RCW 51.32.160, the cost and duration available for any subsequent vocational plan is limited to that in subsection (3)(d) and (e) of this section, less that previously expended.

(b) Option 2: The worker declines further vocational services under the claim and receives an amount equal to six months of temporary total disability compensation under RCW 51.32.090. The award is payable in biweekly payments in accordance with the schedule of temporary total disability payments, until such award is paid in full. These payments shall not include interest on the unpaid balance. However, upon application by the worker, and at the discretion of the department, the compensation may be converted to a lump sum payment. The vocational costs defined in subsection (3)(d) of this section shall remain available to the worker, upon application to the department or self-insurer, for a period of five years. The vocational costs shall, if expended, be available for programs or courses at any accredited or licensed institution or program from a list of those approved by the department for tuition, books, fees, supplies, equipment, and tools, without department or self-insurer oversight. The department shall issue an order as provided in RCW 51.52.050 confirming the option 2 election, setting a payment schedule, and terminating temporary total disability benefits effective the date of the order confirming that election. The department shall thereafter close the claim. A worker who elects option 2 benefits shall not be entitled to further temporary total, or to permanent total, disability benefits except upon a showing of a worsening in the condition or conditions accepted under the claim such that claim closure is not appropriate, in which case the option 2 selection will be rescinded and the amount paid to the worker will be assessed as an overpayment. A claim that was closed based on the worker's election of option 2 benefits may be reopened as provided in RCW 51.32.160, but cannot be reopened for the sole purpose of allowing the worker to seek vocational assistance.

(i) If within five years from the date the option 2 order becomes final, the worker is subsequently injured or suffers an occupational disease or reopens the claim as provided in RCW 51.32.160, and vocational rehabilitation is found both

necessary and likely to enable the injured worker to become employable at gainful employment under RCW 51.32.095(1), the duration of any vocational plan under subsection (3)(e) of this section shall not exceed eighteen months.

(ii) If the available vocational costs are utilized by the worker, any subsequent assessment of whether vocational rehabilitation is both necessary and likely to enable the injured worker to become employable at gainful employment under RCW 51.32.095(1) shall include consideration of the transferable skills obtained.

(iii) If the available vocational costs are utilized by the worker and the claim is thereafter reopened as provided in RCW 51.32.160, the cost available for any vocational plan is limited to that in subsection (3)(d) of this section less that previously expended.

(iv) Option 2 may only be elected once per worker.

(c) The director, in his or her sole discretion, may provide the worker vocational assistance not to exceed that in subsection (3) of this section, without regard to the worker's prior option selection or benefits expended, where vocational assistance would prevent permanent total disability under RCW 51.32.060.

(5)(a) As used in this section, "vocational plan interruption" means an occurrence which disrupts the plan to the extent the employability goal is no longer attainable. "Vocational plan interruption" does not include institutionally scheduled breaks in educational programs, occasional absence due to illness, or modifications to the plan which will allow it to be completed within the cost and time provisions of subsection (3)(d) and (e) of this section.

(b) When a vocational plan interruption is beyond the control of the worker, the department or self-insurer shall recommence plan development. If necessary to complete vocational services, the cost and duration of the plan may include credit for that expended prior to the interruption. A vocational plan interruption is considered outside the control of the worker when it is due to the closure of the accredited institution, when it is due to a death in the worker's immediate family, or when documented changes in the worker's accepted medical conditions prevent further participation in the vocational plan.

(c) When a vocational plan interruption is the result of the worker's actions, the worker's entitlement to benefits shall be suspended in accordance with RCW 51.32.110. If plan development or implementation is recommenced, the cost and duration of the plan shall not include credit for that expended prior to the interruption. A vocational plan interruption is considered a result of the worker's actions when it is due to the failure to meet attendance expectations set by the training or educational institution, failure to achieve passing grades or acceptable performance review, unaccepted or postinjury conditions that prevent further participation in the vocational plan, or the worker's failure to abide by the accountability agreement per subsection (3)(a) of this section. [2013 c 331 § 2; 2013 c 326 § 1; 2011 c 291 § 2; 2009 c 353 § 5; 2007 c 72 § 2.]

Reviser's note: This section was amended by 2013 c 326 § 1 and by 2013 c 331 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Expiration date—2013 c 331 § 2: "Section 2 of this act expires June 30, 2016." [2013 c 331 § 7.]

Effective date—2013 c 331: See note following RCW 51.32.095.

Expiration date—2011 c 291: See note following RCW 51.32.095.

Expiration date—2013 c 331; 2009 c 353 § 5: "Section 5 of this act expires June 30, 2016." [2013 c 331 § 4; 2009 c 353 § 7.]

Implementation—2007 c 72: "The department of labor and industries shall adopt rules necessary to implement this act." [2007 c 72 § 4.]

Effective date—2007 c 72: "This act takes effect January 1, 2008." [2007 c 72 § 5.]

Expiration date—2013 c 331; 2007 c 72: "This act expires June 30, 2016." [2013 c 331 § 5; 2007 c 72 § 6.]

Chapter 51.36 RCW MEDICAL AID

Sections

51.36.010 Findings—Minimum standards for providers—Health care provider network—Advisory group—Best practices treatment guidelines—Extent and duration of treatment—Centers for occupational health and education—Rules—Reports.

51.36.010 Findings—Minimum standards for providers—Health care provider network—Advisory group—Best practices treatment guidelines—Extent and duration of treatment—Centers for occupational health and education—Rules—Reports. (1) The legislature finds that high quality medical treatment and adherence to occupational health best practices can prevent disability and reduce loss of family income for workers, and lower labor and insurance costs for employers. Injured workers deserve high quality medical care in accordance with current health care best practices. To this end, the department shall establish minimum standards for providers who treat workers from both state fund and self-insured employers. The department shall establish a health care provider network to treat injured workers, and shall accept providers into the network who meet those minimum standards. The department shall convene an advisory group made up of representatives from or designees of the workers' compensation advisory committee and the industrial insurance medical and chiropractic advisory committees to consider and advise the department related to implementation of this section, including development of best practices treatment guidelines for providers in the network. The department shall also seek the input of various health care provider groups and associations concerning the network's implementation. Network providers must be required to follow the department's evidence-based coverage decisions and treatment guidelines, policies, and must be expected to follow other national treatment guidelines appropriate for their patient. The department, in collaboration with the advisory group, shall also establish additional best practice standards for providers to qualify for a second tier within the network, based on demonstrated use of occupational health best practices. This second tier is separate from and in addition to the centers for occupational health and education established under subsection (5) of this section.

(2)(a) Upon the occurrence of any injury to a worker entitled to compensation under the provisions of this title, he or she shall receive proper and necessary medical and surgical services at the hands of a physician or licensed advanced

registered nurse practitioner of his or her own choice, if conveniently located, except as provided in (b) of this subsection, and proper and necessary hospital care and services during the period of his or her disability from such injury.

(b) Once the provider network is established in the worker's geographic area, an injured worker may receive care from a nonnetwork provider only for an initial office or emergency room visit. However, the department or self-insurer may limit reimbursement to the department's standard fee for the services. The provider must comply with all applicable billing policies and must accept the department's fee schedule as payment in full.

(c) The department, in collaboration with the advisory group, shall adopt policies for the development, credentialing, accreditation, and continued oversight of a network of health care providers approved to treat injured workers. Health care providers shall apply to the network by completing the department's provider application which shall have the force of a contract with the department to treat injured workers. The advisory group shall recommend minimum network standards for the department to approve a provider's application, to remove a provider from the network, or to require peer review such as, but not limited to:

(i) Current malpractice insurance coverage exceeding a dollar amount threshold, number, or seriousness of malpractice suits over a specific time frame;

(ii) Previous malpractice judgments or settlements that do not exceed a dollar amount threshold recommended by the advisory group, or a specific number or seriousness of malpractice suits over a specific time frame;

(iii) No licensing or disciplinary action in any jurisdiction or loss of treating or admitting privileges by any board, commission, agency, public or private health care payer, or hospital;

(iv) For some specialties such as surgeons, privileges in at least one hospital;

(v) Whether the provider has been credentialed by another health plan that follows national quality assurance guidelines; and

(vi) Alternative criteria for providers that are not credentialed by another health plan.

The department shall develop alternative criteria for providers that are not credentialed by another health plan or as needed to address access to care concerns in certain regions.

(d) Network provider contracts will automatically renew at the end of the contract period unless the department provides written notice of changes in contract provisions or the department or provider provides written notice of contract termination. The industrial insurance medical advisory committee shall develop criteria for removal of a provider from the network to be presented to the department and advisory group for consideration in the development of contract terms.

(e) In order to monitor quality of care and assure efficient management of the provider network, the department shall establish additional criteria and terms for network participation including, but not limited to, requiring compliance with administrative and billing policies.

(f) The advisory group shall recommend best practices standards to the department to use in determining second tier network providers. The department shall develop and implement financial and nonfinancial incentives for network pro-

viders who qualify for the second tier. The department is authorized to certify and decertify second tier providers.

(3) The department shall work with self-insurers and the department utilization review provider to implement utilization review for the self-insured community to ensure consistent quality, cost-effective care for all injured workers and employers, and to reduce administrative burden for providers.

(4) The department for state fund claims shall pay, in accordance with the department's fee schedule, for any alleged injury for which a worker files a claim, any initial prescription drugs provided in relation to that initial visit, without regard to whether the worker's claim for benefits is allowed. In all accepted claims, treatment shall be limited in point of duration as follows:

In the case of permanent partial disability, not to extend beyond the date when compensation shall be awarded him or her, except when the worker returned to work before permanent partial disability award is made, in such case not to extend beyond the time when monthly allowances to him or her shall cease; in case of temporary disability not to extend beyond the time when monthly allowances to him or her shall cease: PROVIDED, That after any injured worker has returned to his or her work his or her medical and surgical treatment may be continued if, and so long as, such continuation is deemed necessary by the supervisor of industrial insurance to be necessary to his or her more complete recovery; in case of a permanent total disability not to extend beyond the date on which a lump sum settlement is made with him or her or he or she is placed upon the permanent pension roll: PROVIDED, HOWEVER, That the supervisor of industrial insurance, solely in his or her discretion, may authorize continued medical and surgical treatment for conditions previously accepted by the department when such medical and surgical treatment is deemed necessary by the supervisor of industrial insurance to protect such worker's life or provide for the administration of medical and therapeutic measures including payment of prescription medications, but not including those controlled substances currently scheduled by the pharmacy quality assurance commission as Schedule I, II, III, or IV substances under chapter 69.50 RCW, which are necessary to alleviate continuing pain which results from the industrial injury. In order to authorize such continued treatment the written order of the supervisor of industrial insurance issued in advance of the continuation shall be necessary.

The supervisor of industrial insurance, the supervisor's designee, or a self-insurer, in his or her sole discretion, may authorize inoculation or other immunological treatment in cases in which a work-related activity has resulted in probable exposure of the worker to a potential infectious occupational disease. Authorization of such treatment does not bind the department or self-insurer in any adjudication of a claim by the same worker or the worker's beneficiary for an occupational disease.

(5)(a) The legislature finds that the department and its business and labor partners have collaborated in establishing centers for occupational health and education to promote best practices and prevent preventable disability by focusing additional provider-based resources during the first twelve weeks following an injury. The centers for occupational health and education represent innovative accountable care systems in

an early stage of development consistent with national health care reform efforts. Many Washington workers do not yet have access to these innovative health care delivery models.

(b) To expand evidence-based occupational health best practices, the department shall establish additional centers for occupational health and education, with the goal of extending access to at least fifty percent of injured and ill workers by December 2013 and to all injured workers by December 2015. The department shall also develop additional best practices and incentives that span the entire period of recovery, not only the first twelve weeks.

(c) The department shall certify and decertify centers for occupational health and education based on criteria including institutional leadership and geographic areas covered by the center for occupational health and education, occupational health leadership and education, mix of participating health care providers necessary to address the anticipated needs of injured workers, health services coordination to deliver occupational health best practices, indicators to measure the success of the center for occupational health and education, and agreement that the center's providers shall, if feasible, treat certain injured workers if referred by the department or a self-insurer.

(d) Health care delivery organizations may apply to the department for certification as a center for occupational health and education. These may include, but are not limited to, hospitals and affiliated clinics and providers, multispecialty clinics, health maintenance organizations, and organized systems of network physicians.

(e) The centers for occupational health and education shall implement benchmark quality indicators of occupational health best practices for individual providers, developed in collaboration with the department. A center for occupational health and education shall remove individual providers who do not consistently meet these quality benchmarks.

(f) The department shall develop and implement financial and nonfinancial incentives for center for occupational health and education providers that are based on progressive and measurable gains in occupational health best practices, and that are applicable throughout the duration of an injured or ill worker's episode of care.

(g) The department shall develop electronic methods of tracking evidence-based quality measures to identify and improve outcomes for injured workers at risk of developing prolonged disability. In addition, these methods must be used to provide systematic feedback to physicians regarding quality of care, to conduct appropriate objective evaluation of progress in the centers for occupational health and education, and to allow efficient coordination of services.

(6) If a provider fails to meet the minimum network standards established in subsection (2) of this section, the department is authorized to remove the provider from the network or take other appropriate action regarding a provider's participation. The department may also require remedial steps as a condition for a provider to participate in the network. The department, with input from the advisory group, shall establish waiting periods that may be imposed before a provider who has been denied or removed from the network may reapply.

(7) The department may permanently remove a provider from the network or take other appropriate action when the

provider exhibits a pattern of conduct of low quality care that exposes patients to risk of physical or psychiatric harm or death. Patterns that qualify as risk of harm include, but are not limited to, poor health care outcomes evidenced by increased, chronic, or prolonged pain or decreased function due to treatments that have not been shown to be curative, safe, or effective or for which it has been shown that the risks of harm exceed the benefits that can be reasonably expected based on peer-reviewed opinion.

(8) The department may not remove a health care provider from the network for an isolated instance of poor health and recovery outcomes due to treatment by the provider.

(9) When the department terminates a provider from the network, the department or self-insurer shall assist an injured worker currently under the provider's care in identifying a new network provider or providers from whom the worker can select an attending or treating provider. In such a case, the department or self-insurer shall notify the injured worker that he or she must choose a new attending or treating provider.

(10) The department may adopt rules related to this section.

(11) The department shall report to the workers' compensation advisory committee and to the appropriate committees of the legislature on each December 1st, beginning in 2012 and ending in 2016, on the implementation of the provider network and expansion of the centers for occupational health and education. The reports must include a summary of actions taken, progress toward long-term goals, outcomes of key initiatives, access to care issues, results of disputes or controversies related to new provisions, and whether any changes are needed to further improve the occupational health best practices care of injured workers. [2013 c 19 § 48; 2011 c 6 § 1; 2007 c 134 § 1; 2004 c 65 § 11; 1986 c 58 § 6; 1977 ex.s. c 350 § 56; 1975 1st ex.s. c 234 § 1; 1971 ex.s. c 289 § 50; 1965 ex.s. c 166 § 2; 1961 c 23 § 51.36.010. Prior: 1959 c 256 § 2; prior: 1943 c 186 § 2, part; 1923 c 136 § 9, part; 1921 c 182 § 11, part; 1919 c 129 § 2, part; 1917 c 28 § 5, part; Rem. Supp. 1943 § 7714, part.]

Effective date—2011 c 6: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2011." [2011 c 6 § 2.]

Report to legislature—2007 c 134: "By December 1, 2009, the department of labor and industries must report to the senate labor, commerce, research and development committee and the house of representatives commerce and labor committee, or successor committees, on the implementation of this act." [2007 c 134 § 2.]

Effective date—2007 c 134: "This act takes effect January 1, 2008." [2007 c 134 § 3.]

Report to legislature—Effective date—Severability—2004 c 65: See notes following RCW 51.04.030.

Additional notes found at www.leg.wa.gov

Chapter 51.44 RCW

FUNDS

Sections

- 51.44.110 Disbursements of funds.
51.44.150 Assessments upon self-insurers for administration costs.

[2013 RCW Supp—page 658]

51.44.110 Disbursements of funds. Disbursement out of the several funds shall be made only upon warrants or payments drawn by the department. The state treasurer shall pay every warrant or payment out of the fund upon which it is drawn. If, at any time, there shall not be sufficient money in the fund on which any such warrant or payment is drawn wherewith to pay the same, the employer on account of whose worker it was that the warrant or payment was drawn shall pay the same, and he or she shall be credited upon his or her next following contribution to such fund the amount so paid with interest thereon at the legal rate from the date of such payment to the date such next following contribution became payable and, if the amount of the credit shall exceed the amount of the contribution, he or she shall have a warrant or payment upon the same fund for the excess and, if any such warrant or payment shall not be so paid, it shall remain, nevertheless, payable out of the fund. [2013 c 125 § 8; 1977 ex.s. c 350 § 68; 1973 c 106 § 30; 1961 c 23 § 51.44.110. Prior: 1911 c 74 § 26, part; RRS § 7705, part.]

51.44.150 Assessments upon self-insurers for administration costs. The director shall impose and collect assessments each fiscal year upon all self-insurers in the amount of the estimated costs of administering their portion of this title during such fiscal year. These assessments shall also include the assessments for the ombuds's office provided for in RCW 51.14.390. The time and manner of imposing and collecting assessments due the department shall be set forth in regulations promulgated by the director in accordance with chapter 34.05 RCW. [2013 c 23 § 116; 2007 c 281 § 11; 1971 ex.s. c 289 § 59.]

Additional notes found at www.leg.wa.gov

Title 52

FIRE PROTECTION DISTRICTS

Chapters

52.18 Benefit charges.

Chapter 52.18 RCW BENEFIT CHARGES

(Formerly: Service charges)

Sections

- 52.18.050 Voter approval of benefit charges required—Election—Ballot.

52.18.050 Voter approval of benefit charges required—Election—Ballot. (1) The initial imposition of a benefit charge authorized by this chapter must be approved by sixty percent of the voters of the district voting at a general election or at a special election called by the district for that purpose. An election held for the initial imposition of a benefit charge must be held not more than twelve months prior to the date on which the first charge is to be assessed. A benefit charge approved at an election expires in six or fewer years as authorized by the voters unless subsequently reapproved by the voters.

(2) Ballot measures calling for the initial imposition of a benefit charge must be submitted so as to enable voters favoring the authorization of a benefit charge to vote "Yes" and

those opposed to vote "No," and the ballot question must be as follows:

"Shall county fire protection district No. be authorized to impose benefit charges each year for (insert number of years not to exceed six) years, not to exceed an amount equal to sixty percent of its operating budget, and be prohibited from imposing an additional property tax under RCW 52.16.160?"

YES NO

(3)(a) The continued imposition of a benefit charge authorized by this chapter must be approved by a majority of the voters of the district voting at a general election or at a special election called by the district for that purpose.

(b) Ballot measures calling for the continued imposition of a benefit charge must be submitted so as to enable voters favoring the continued imposition of the benefit charge to vote "Yes" and those opposed to vote "No." The ballot question must be substantially in the following form:

"Shall county fire protection district No. be authorized to continue voter-authorized benefit charges each year for (insert number of years not to exceed six) years, not to exceed an amount equal to sixty percent of its operating budget, and be prohibited from imposing an additional property tax under RCW 52.16.160?"

YES NO

[2013 c 49 § 1; 1998 c 16 § 2; 1990 c 294 § 5; 1989 c 27 § 1; 1987 c 325 § 5; 1974 ex.s. c 126 § 5.]

Title 53
PORT DISTRICTS

Chapters

- 53.08 Powers.
53.12 Commissioners—Elections.

Chapter 53.08 RCW
POWERS

Sections

- 53.08.460 Transfer of ownership of port district-owned vessel—Review of vessel's physical condition.
53.08.470 Transfer of ownership of port district-owned vessel—Further requirements.

53.08.460 Transfer of ownership of port district-owned vessel—Review of vessel's physical condition. (1) Prior to transferring ownership of a vessel owned by a port district and used primarily to conduct port business, the port district shall conduct a thorough review of the physical condition of the vessel, the vessel's operating capability, and any containers and other materials that are not fixed to the vessel. (2) If the port district determines that the vessel is in a state of advanced deterioration or poses a reasonably immi-

nent threat to human health or safety, including a threat of environmental contamination, the port district may: (a) Not transfer the vessel until the conditions identified under this subsection have been corrected; or (b) permanently dispose of the vessel by landfill, deconstruction, or other related method.

(3) Vessels taken into custody under chapter 79.100 RCW are not subject to this section or RCW 53.08.470. [2013 c 291 § 21.]

53.08.470 Transfer of ownership of port district-owned vessel—Further requirements. (1) Following the inspection required under RCW 53.08.460 and prior to transferring ownership of a port district-owned vessel, a port district shall obtain the following from the transferee:

(a) The purposes for which the transferee intends to use the vessel; and

(b) Information demonstrating the prospective owner's intent to obtain legal moorage following the transfer, in the manner determined by the port district.

(2)(a) The port district shall remove any containers or other materials that are not fixed to the vessel and contain hazardous substances, as defined under RCW 70.105D.020.

(b) However, the port district may transfer a vessel with:

(i) Those containers or materials described under (a) of this subsection where the transferee demonstrates to the port district's satisfaction that the container's or material's presence is consistent with the anticipated use of the vessel; and

(ii) A reasonable amount of fuel as determined by the port district, based on factors including the vessel's size, condition, and anticipated use of the vessel including initial destination following transfer.

(c) The port district may consult with the department of ecology in carrying out the requirements of this subsection.

(3) Prior to sale, and unless the vessel has a title or valid marine document, the port district is required to apply for a certificate of title for the vessel under RCW 88.02.510 and register the vessel under RCW 88.02.550. [2013 c 291 § 22.]

Chapter 53.12 RCW

COMMISSIONERS—ELECTIONS

Sections

- 53.12.175 Reducing port commissioner terms—Ballot proposition.

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

If the ballot proposition reducing the terms of office of port commissioners is approved by a simple majority vote of the voters voting on the proposition, the commissioner or commissioners who are elected at that election shall be elected to four-year terms of office. The terms of office of the other commissioners shall not be reduced, but each successor shall be elected to a four-year term of office. [2013 c 160 § 1; 1994 c 223 § 89; 1992 c 146 § 3.]

Title 54

PUBLIC UTILITY DISTRICTS

Chapters

54.28 Privilege taxes.

Chapter 54.28 RCW PRIVILEGE TAXES

Sections

54.28.140 Tax preferences—Expiration dates.

54.28.140 Tax preferences—Expiration dates. (1) See RCW 82.32.805 for the expiration date of new tax preferences for the tax imposed under this chapter.

(2) See RCW 82.32.808 for reporting requirements for any new tax preference for the tax imposed under this chapter. [2013 2nd sp.s. c 13 § 1722.]

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.04.43393.

Title 58

BOUNDARIES AND PLATS

Chapters

58.17 Plats—Subdivisions—Dedications.

Chapter 58.17 RCW PLATS—SUBDIVISIONS—DEDICATIONS

Sections

58.17.140 Time limitation for approval or disapproval of plats—Extensions.

58.17.170 Written approval of subdivision—Original of final plat to be filed—Copies—Periods of validity, governance.

58.17.140 Time limitation for approval or disapproval of plats—Extensions. (1) Preliminary plats of any proposed subdivision and dedication shall be approved, disapproved, or returned to the applicant for modification or correction within ninety days from date of filing thereof unless the applicant consents to an extension of such time period or the ninety day limitation is extended to include up to twenty-one days as specified under RCW 58.17.095(3): PROVIDED, That if an environmental impact statement is required as provided in RCW 43.21C.030, the ninety day period shall not include the time spent preparing and circulating the environmental impact statement by the local government agency.

[2013 RCW Supp—page 660]

(2) Final plats and short plats shall be approved, disapproved, or returned to the applicant within thirty days from the date of filing thereof, unless the applicant consents to an extension of such time period.

(3)(a) Except as provided by (b) of this subsection, a final plat meeting all requirements of this chapter shall be submitted to the legislative body of the city, town, or county for approval within seven years of the date of preliminary plat approval if the date of preliminary plat approval is on or before December 31, 2014, and within five years of the date of preliminary plat approval if the date of preliminary plat approval is on or after January 1, 2015.

(b) A final plat meeting all requirements of this chapter shall be submitted to the legislative body of the city, town, or county for approval within ten years of the date of preliminary plat approval if the project is not subject to requirements adopted under chapter 90.58 RCW and the date of preliminary plat approval is on or before December 31, 2007.

(4) Nothing contained in this section shall act to prevent any city, town, or county from adopting by ordinance procedures which would allow extensions of time that may or may not contain additional or altered conditions and requirements. [2013 c 16 § 1; 2012 c 92 § 1; 2010 c 79 § 1; 1995 c 68 § 1; 1986 c 233 § 2; 1983 c 121 § 3; 1981 c 293 § 7; 1974 ex.s. c 134 § 8; 1969 ex.s. c 271 § 14.]

Additional notes found at www.leg.wa.gov

58.17.170 Written approval of subdivision—Original of final plat to be filed—Copies—Periods of validity, governance. (1) When the legislative body of the city, town or county finds that the subdivision proposed for final plat approval conforms to all terms of the preliminary plat approval, and that said subdivision meets the requirements of this chapter, other applicable state laws, and any local ordinances adopted under this chapter which were in effect at the time of preliminary plat approval, it shall suitably inscribe and execute its written approval on the face of the plat. The original of said final plat shall be filed for record with the county auditor. One reproducible copy shall be furnished to the city, town or county engineer. One paper copy shall be filed with the county assessor. Paper copies shall be provided to such other agencies as may be required by ordinance.

(2)(a) Except as provided by (b) of this subsection, any lots in a final plat filed for record shall be a valid land use notwithstanding any change in zoning laws for a period of seven years from the date of filing if the date of filing is on or before December 31, 2014, and for a period of five years from the date of filing if the date of filing is on or after January 1, 2015.

(b) Any lots in a final plat filed for record shall be a valid land use notwithstanding any change in zoning laws for a period of ten years from the date of filing if the project is not subject to requirements adopted under chapter 90.58 RCW and the date of filing is on or before December 31, 2007.

(3)(a) Except as provided by (b) of this subsection, a subdivision shall be governed by the terms of approval of the final plat, and the statutes, ordinances, and regulations in effect at the time of approval under RCW 58.17.150 (1) and (3) for a period of seven years after final plat approval if the date of final plat approval is on or before December 31, 2014, and for a period of five years after final plat approval if the

date of final plat approval is on or after January 1, 2015, unless the legislative body finds that a change in conditions creates a serious threat to the public health or safety in the subdivision.

(b) A subdivision shall be governed by the terms of approval of the final plat, and the statutes, ordinances, and regulations in effect at the time of approval under RCW 58.17.150 (1) and (3) for a period of ten years after final plat approval if the project is not subject to requirements adopted under chapter 90.58 RCW and the date of final plat approval is on or before December 31, 2007, unless the legislative body finds that a change in conditions creates a serious threat to the public health or safety in the subdivision. [2013 c 16 § 2; 2012 c 92 § 2; 2010 c 79 § 2; 1981 c 293 § 10; 1969 ex.s. c 271 § 17.]

Additional notes found at www.leg.wa.gov

Title 59

LANDLORD AND TENANT

Chapters

- 59.18 Residential landlord-tenant act.**
- 59.20 Manufactured/mobile home landlord-tenant act.**
- 59.30 Manufactured/mobile home communities—Dispute resolution and registration.**

Chapter 59.18 RCW

RESIDENTIAL LANDLORD-TENANT ACT

Sections

- 59.18.060 Landlord—Duties.
- 59.18.580 Victim protection—Limitation on tenant screening service provider disclosures and landlord’s rental decisions. (*Effective January 1, 2014.*)

59.18.060 Landlord—Duties. The landlord will at all times during the tenancy keep the premises fit for human habitation, and shall in particular:

- (1) Maintain the premises to substantially comply with any applicable code, statute, ordinance, or regulation governing their maintenance or operation, which the legislative body enacting the applicable code, statute, ordinance or regulation could enforce as to the premises rented if such condition endangers or impairs the health or safety of the tenant;
- (2) Maintain the structural components including, but not limited to, the roofs, floors, walls, chimneys, fireplaces, foundations, and all other structural components, in reasonably good repair so as to be usable;
- (3) Keep any shared or common areas reasonably clean, sanitary, and safe from defects increasing the hazards of fire or accident;
- (4) Provide a reasonable program for the control of infestation by insects, rodents, and other pests at the initiation of the tenancy and, except in the case of a single-family residence, control infestation during tenancy except where such infestation is caused by the tenant;
- (5) Except where the condition is attributable to normal wear and tear, make repairs and arrangements necessary to put and keep the premises in as good condition as it by law or rental agreement should have been, at the commencement of the tenancy;

(6) Provide reasonably adequate locks and furnish keys to the tenant;

(7) Maintain and safeguard with reasonable care any master key or duplicate keys to the dwelling unit;

(8) Maintain all electrical, plumbing, heating, and other facilities and appliances supplied by him or her in reasonably good working order;

(9) Maintain the dwelling unit in reasonably weather-tight condition;

(10) Except in the case of a single-family residence, provide and maintain appropriate receptacles in common areas for the removal of ashes, rubbish, and garbage, incidental to the occupancy and arrange for the reasonable and regular removal of such waste;

(11) Provide facilities adequate to supply heat and water and hot water as reasonably required by the tenant;

(12)(a) Provide a written notice to all tenants disclosing fire safety and protection information. The landlord or his or her authorized agent must provide a written notice to the tenant that the dwelling unit is equipped with a smoke detection device as required in RCW 43.44.110. The notice shall inform the tenant of the tenant’s responsibility to maintain the smoke detection device in proper operating condition and of penalties for failure to comply with the provisions of RCW 43.44.110(3). The notice must be signed by the landlord or the landlord’s authorized agent and tenant with copies provided to both parties. Further, except with respect to a single-family residence, the written notice must also disclose the following:

- (i) Whether the smoke detection device is hard-wired or battery operated;
- (ii) Whether the building has a fire sprinkler system;
- (iii) Whether the building has a fire alarm system;
- (iv) Whether the building has a smoking policy, and what that policy is;
- (v) Whether the building has an emergency notification plan for the occupants and, if so, provide a copy to the occupants;
- (vi) Whether the building has an emergency relocation plan for the occupants and, if so, provide a copy to the occupants; and
- (vii) Whether the building has an emergency evacuation plan for the occupants and, if so, provide a copy to the occupants.

(b) The information required under this subsection may be provided to a tenant in a multifamily residential building either as a written notice or as a checklist that discloses whether the building has fire safety and protection devices and systems. The checklist shall include a diagram showing the emergency evacuation routes for the occupants.

(c) The written notice or checklist must be provided to new tenants at the time the lease or rental agreement is signed;

(13) Provide tenants with information provided or approved by the department of health about the health hazards associated with exposure to indoor mold. Information may be provided in written format individually to each tenant, or may be posted in a visible, public location at the dwelling unit property. The information must detail how tenants can control mold growth in their dwelling units to minimize the health risks associated with indoor mold. Landlords may

obtain the information from the department's web site or, if requested by the landlord, the department must mail the information to the landlord in a printed format. When developing or changing the information, the department of health must include representatives of landlords in the development process. The information must be provided by the landlord to new tenants at the time the lease or rental agreement is signed;

(14) The landlord and his or her agents and employees are immune from civil liability for failure to comply with subsection (13) of this section except where the landlord and his or her agents and employees knowingly and intentionally do not comply with subsection (13) of this section; and

(15) Designate to the tenant the name and address of the person who is the landlord by a statement on the rental agreement or by a notice conspicuously posted on the premises. The tenant shall be notified immediately of any changes in writing, which must be either (a) delivered personally to the tenant or (b) mailed to the tenant and conspicuously posted on the premises. If the person designated in this section does not reside in the state where the premises are located, there shall also be designated a person who resides in the county who is authorized to act as an agent for the purposes of service of notices and process, and if no designation is made of a person to act as agent, then the person to whom rental payments are to be made shall be considered such agent. Regardless of such designation, any owner who resides outside the state and who violates a provision of this chapter is deemed to have submitted himself or herself to the jurisdiction of the courts of this state and personal service of any process may be made on the owner outside the state with the same force and effect as personal service within the state. Any summons or process served out-of-state must contain the same information and be served in the same manner as personal service of summons or process served within the state, except the summons or process must require the party to appear and answer within sixty days after such personal service out of the state. In an action for a violation of this chapter that is filed under chapter 12.40 RCW, service of the notice of claim outside the state must contain the same information and be served in the same manner as required under chapter 12.40 RCW, except the date on which the party is required to appear must not be less than sixty days from the date of service of the notice of claim.

No duty shall devolve upon the landlord to repair a defective condition under this section, nor shall any defense or remedy be available to the tenant under this chapter, where the defective condition complained of was caused by the conduct of such tenant, his or her family, invitee, or other person acting under his or her control, or where a tenant unreasonably fails to allow the landlord access to the property for purposes of repair. When the duty imposed by subsection (1) of this section is incompatible with and greater than the duty imposed by any other provisions of this section, the landlord's duty shall be determined pursuant to subsection (1) of this section. [2013 c 35 § 1; 2011 c 132 § 2; 2005 c 465 § 2; 2002 c 259 § 1; 1991 c 154 § 2; 1973 1st ex.s. c 207 § 6.]

Finding—2005 c 465: "The legislature finds that residents of the state face preventable exposures to mold in their homes, apartments, and schools. Exposure to mold, and the toxins they produce, have been found to have adverse health effects, including loss of memory and impairment of the abil-

[2013 RCW Supp—page 662]

ity to think coherently and function in a job, and may cause fatigue, nausea, and headaches.

As steps can be taken by landlords and tenants to minimize exposure to indoor mold, and as the reduction of exposure to mold in buildings could reduce the rising number of mold-related claims submitted to insurance companies and increase the availability of coverage, the legislature supports providing tenants and landlords with information designed to minimize the public's exposure to mold." [2005 c 465 § 1.]

59.18.580 Victim protection—Limitation on tenant screening service provider disclosures and landlord's rental decisions. (Effective January 1, 2014.) (1) A tenant screening service provider may not (a) disclose a tenant's, applicant's, or household member's status as a victim of domestic violence, sexual assault, or stalking, or (b) knowingly disclose that a tenant, applicant, or household member has previously terminated a rental agreement under RCW 59.18.575.

(2) A landlord may not terminate a tenancy, fail to renew a tenancy, or refuse to enter into a rental agreement based on the tenant's or applicant's or a household member's status as a victim of domestic violence, sexual assault, or stalking, or based on the tenant or applicant having terminated a rental agreement under RCW 59.18.575.

(3) A landlord who refuses to enter into a rental agreement in violation of subsection (2) of this section may be liable to the tenant or applicant in a civil action for damages sustained by the tenant or applicant. The prevailing party may also recover court costs and reasonable attorneys' fees.

(4) It is a defense to an unlawful detainer action under chapter 59.12 RCW that the action to remove the tenant and recover possession of the premises is in violation of subsection (2) of this section.

(5) This section does not prohibit adverse housing decisions based upon other lawful factors within the landlord's knowledge or prohibit volunteer disclosure by an applicant of any victim circumstances. [2013 c 54 § 1; 2004 c 17 § 4.]

Effective date—2013 c 54: "This act takes effect January 1, 2014." [2013 c 54 § 2.]

Findings—Intent—Effective date—2004 c 17: See notes following RCW 59.18.570.

Chapter 59.20 RCW

MANUFACTURED/MOBILE HOME LANDLORD-TENANT ACT

(Formerly: Mobile Home Landlord-Tenant Act)

Sections

59.20.210 Landlord—Failure to carry out duties—Repairs effected by tenant—Bids—Notice—Deduction of cost from rent—Limitations.

59.20.210 Landlord—Failure to carry out duties—Repairs effected by tenant—Bids—Notice—Deduction of cost from rent—Limitations. (1) If at any time during the tenancy, the landlord fails to carry out any of the duties imposed by RCW 59.20.130, and notice of the defect is given to the landlord pursuant to RCW 59.20.200, the tenant may submit to the landlord or the landlord's designated agent by certified mail or in person at least two bids to perform the repairs necessary to correct the defective condition from licensed or registered persons, or if no licensing or registration requirement applies to the type of work to be performed,

from responsible persons capable of performing such repairs. Such bids may be submitted to the landlord at the same time as notice is given pursuant to RCW 59.20.200.

(2) If the landlord fails to commence repair of the defective condition within a reasonable time after receipt of notice from the tenant, the tenant may contract with the person submitting the lowest bid to make the repair, and upon the completion of the repair and an opportunity for inspection by the landlord or the landlord’s designated agent, the tenant may deduct the cost of repair from the rent in an amount not to exceed the sum expressed in dollars representing one month’s rental of the tenant’s mobile home space in any calendar year. When, however, the landlord is required to begin remedying the defective condition within thirty days under RCW 59.20.200, the tenant cannot contract for repairs for at least fifteen days following receipt of bids by the landlord. The total costs of repairs deducted by the tenant in any calendar year under this subsection shall not exceed the sum expressed in dollars representing one month’s rental of the tenant’s mobile home space.

(3) Two or more tenants shall not collectively initiate remedies under this section. Remedial action under this section shall not be initiated for conditions in the design or construction existing in a mobile home park before June 7, 1984.

(4) The provisions of this section shall not:

(a) Create a relationship of employer and employee between landlord and tenant; or

(b) Create liability under the worker’s compensation act; or

(c) Constitute the tenant as an agent of the landlord for the purposes of mechanics’ and material suppliers’ liens under chapter 60.04 RCW.

(5) Any repair work performed under this section shall comply with the requirements imposed by any applicable code, statute, ordinance, or rule. A landlord whose property is damaged because of repairs performed in a negligent manner may recover the actual damages in an action against the tenant.

(6) Nothing in this section shall prevent the tenant from agreeing with the landlord to undertake the repairs in return for cash payment or a reasonable reduction in rent, the agreement to be between the parties, and this agreement does not alter the landlord’s obligations under this chapter. [2013 c 23 § 117; 1999 c 359 § 16; 1984 c 58 § 8.]

Additional notes found at www.leg.wa.gov

Chapter 59.30 RCW

MANUFACTURED/MOBILE HOME COMMUNITIES—DISPUTE RESOLUTION AND REGISTRATION

Sections

- 59.30.050 Registration process, fees.
- 59.30.090 Unpaid fees—Warrant—Interest—Lien.

59.30.050 Registration process, fees. (1) The department must register all manufactured/mobile home communities, which registration must be renewed annually. Each community must be registered separately. The department must mail registration notifications to all known manufac-

ured/mobile home community landlords. Registration information packets must include:

(a) Registration forms; and

(b) Registration assessment information, including registration due dates and late fees, and the collections procedures, liens, and charging costs to tenants.

(2) To apply for registration or registration renewal, the landlord of a manufactured/mobile home community must file with the department an application for registration or registration renewal on a form provided by the department and must pay a registration fee as described in subsection (3) of this section. The department may require the submission of information necessary to assist in identifying and locating a manufactured/mobile home community and other information that may be useful to the state, which must include, at a minimum:

(a) The names and addresses of the owners of the manufactured/mobile home community;

(b) The name and address of the manufactured/mobile home community;

(c) The name and address of the landlord and manager of the manufactured/mobile home community;

(d) The number of lots within the manufactured/mobile home community that are subject to chapter 59.20 RCW; and

(e) The addresses of each manufactured/mobile home lot within the manufactured/mobile home community that is subject to chapter 59.20 RCW.

(3) Each manufactured/mobile home community landlord must pay to the department:

(a) A one-time business license application fee for the first year of registration and, in subsequent years, an annual renewal application fee, as provided in RCW 19.02.075; and

(b) An annual registration assessment of ten dollars for each manufactured/mobile home that is subject to chapter 59.20 RCW within a manufactured/mobile home community. Manufactured/mobile home community landlords may charge a maximum of five dollars of this assessment to tenants. Nine dollars of the registration assessment for each manufactured/mobile home must be deposited into the manufactured/mobile home dispute resolution program account created in RCW 59.30.070 to fund the costs associated with the manufactured/mobile home dispute resolution program. The remaining one dollar must be deposited into the business license account created in RCW 19.02.210. The annual registration assessment must be reviewed once each biennium by the department and the attorney general and may be adjusted to reasonably relate to the cost of administering this chapter. The registration assessment may not exceed ten dollars, but if the assessment is reduced, the portion allocated to the manufactured/mobile home dispute resolution program account and the business license account must be adjusted proportionately.

(4) Initial registrations of manufactured/mobile home communities must be filed before November 1, 2007, or within three months of the availability of mobile home lots for rent within the community. The manufactured/mobile home community is subject to a delinquency fee of two hundred fifty dollars for late initial registrations. The delinquency fee must be deposited in the business license account. Renewal registrations that are not renewed by the expiration

date as assigned by the department are subject to delinquency fees under RCW 19.02.085.

(5) Thirty days after sending late fee notices to a non-complying landlord, the department may issue a warrant under RCW 59.30.090 for the unpaid registration assessment and delinquency fee. If a warrant is issued by the department under RCW 59.30.090, the department must add a penalty of ten percent of the amount of the unpaid registration assessment and delinquency fee, but not less than ten dollars. The warrant penalty must be deposited into the business license account created in RCW 19.02.210. Chapter 82.32 RCW applies to the collection of warrants issued under RCW 59.30.090.

(6) Registration is effective on the date determined by the department, and the department must issue a registration number to each registered manufactured/mobile home community. The department must provide an expiration date, assigned by the department, to each manufactured/mobile home community who registers. [2013 c 144 § 42; 2011 c 298 § 31; 2007 c 431 § 6.]

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

Implementation—2007 c 431: See note following RCW 59.30.010.

59.30.090 Unpaid fees—Warrant—Interest—Lien.

(1) If any registration assessment or delinquency fee is not paid in full within thirty days after sending late fee notices to a noncomplying landlord, the department may issue a warrant in the amount of such unpaid sums, together with interest thereon from the date the warrant is issued until the date of payment.

(2) Interest must be computed on a daily basis on the amount of outstanding registration assessment and delinquency fee imposed under RCW 59.30.050 at the rate as computed under RCW 82.32.050(2). The rate so computed must be adjusted on the first day of January of each year for use in computing interest for that calendar year. Interest must be deposited in the business license account created in RCW 19.02.210.

(3) The department may file a copy of the warrant with the clerk of the superior court of any county of the state in which real or personal property of the owner of the manufactured/mobile home community may be found. The clerk is entitled to a filing fee under RCW 36.18.012(10). Upon filing, the clerk must enter in the judgment docket the name of the owner of the manufactured/mobile home community mentioned in the warrant and the amount of the registration assessment and delinquency fee, or portion thereof, and any increases and penalties for which the warrant is issued, and the date when the copy is filed.

(4) The amount of the warrant so docketed becomes a lien upon the title to, and interest in, all real and personal property of the owner of the manufactured/mobile home community against whom the warrant is issued the same as a judgment in a civil case duly docketed in the office of the clerk. The warrant so docketed is sufficient to support the issuance of writs of garnishment in favor of the state in the manner provided by law in the case of judgments wholly or partially unsatisfied.

(5) The lien is not superior to bona fide interests of third persons that had vested prior to the filing of the warrant. The

phrase "bona fide interests of third persons" does not include any mortgage of real or personal property or any other credit transaction that results in the mortgagee or the holder of the security acting as trustee for unsecured creditors of the owner of the manufactured/mobile home community mentioned in the warrant who executed the chattel or real property mortgage or the document evidencing the credit transaction. [2013 c 144 § 43; 2011 c 298 § 33.]

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

Title 60 LIENS

Chapters

60.13 Processor and preparer liens for agricultural products.

60.28 Lien for labor, materials, taxes on public works.

60.36 Lien on vessels and equipment.

60.42 Commercial real estate broker lien act.

Chapter 60.13 RCW

PROCESSOR AND PREPARER LIENS FOR AGRICULTURAL PRODUCTS

Sections

60.13.010	Definitions.
60.13.020	Processor lien.
60.13.040	Filing of statement evidencing lien—Contents—Standard filing forms, fees, and procedures.
60.13.050	Priority of lien.
60.13.060	Duration of lien—Statement of discharge.

60.13.010 Definitions. As used in this chapter, the terms defined in this section have the meanings indicated unless the context clearly requires otherwise.

(1) "Agricultural product" means any unprocessed horticultural, vermicultural and its by-products, viticultural, berry, poultry, poultry product, grain, bee, or other agricultural products, and includes mint or mint oil processed by or for the producer thereof and hay and straw baled or prepared for market in any manner or form and livestock. When used in RCW 60.13.020, "agricultural product" means horticultural, viticultural, aquacultural, or berry products, hay and straw, milk and milk products, vegetable seed, or turf and forage seed and applies only when such products are delivered to a processor or conditioner in an unprocessed form.

(2) "Commercial fisher" means a person licensed to fish commercially for or to take food fish or shellfish or steelhead legally caught pursuant to executive order, treaty right, or federal statute.

(3) "Conditioner," "consignor," "person," and "producer" have the meanings defined in RCW 20.01.010.

(4) "Delivers" means that a producer completes the performance of all contractual obligations with reference to the transfer of actual or constructive possession or control of an agricultural product to a processor or conditioner or preparer, regardless of whether the processor or conditioner or preparer takes physical possession.

(5) "Fish" means food fish or shellfish or steelhead legally caught pursuant to executive order, treaty right, or federal statute.

(6) "Preparer" means a person engaged in the business of feeding livestock or preparing livestock products for market.

(7) "Processor" means any person, firm, company, or other organization that purchases agricultural products except milk and milk products from a consignor and that cans, freezes, dries, dehydrates, cooks, presses, powders, or otherwise processes those crops in any manner whatsoever for eventual resale, or that purchases or markets milk from a dairy producer and is obligated to remit payment to such dairy producer directly.

(8) "Vinifera grapes" means the agricultural product commonly known as *Vitis vinifera* and those hybrid of *Vitis vinifera* that have predominantly the character of *Vitis vinifera*.

(9) "Wine producer" means any person or other entity licensed under Title 66 RCW to produce within the state wine from vinifera grapes. [2013 c 23 § 118. Prior: 2012 c 106 § 1; 2002 c 278 § 1; 1991 c 174 § 2; 1987 c 148 § 1; 1985 c 412 § 1.]

60.13.020 Processor lien. Starting on the date a producer delivers any agricultural product to a processor or conditioner, the producer has a first priority statutory lien, referred to as a "processor lien." A commercial fisher who delivers fish to a processor also has a first priority statutory "processor lien" starting on the date the fisher delivers fish to the processor. This processor lien shall continue until twenty days after payment for the product is due and remains unpaid, without filing any notice of lien, for the contract price, if any, or the fair market value of the products delivered. The processor lien attaches to the agricultural products or fish delivered, to the processor's or conditioner's inventory, and to the processor's or conditioner's accounts receivable. However, no processor lien may attach to agricultural products or fish delivered by a producer or commercial fisher, or on the producer's or fisher's behalf, to a processor which is organized and operated on a cooperative basis and of which the producer or fisher is a member, nor may such lien attach to such processor's inventory or accounts receivable. [2013 c 23 § 119; 1987 c 148 § 2; 1985 c 412 § 2.]

60.13.040 Filing of statement evidencing lien—Contents—Standard filing forms, fees, and procedures. (1) A producer or commercial fisher claiming a wine producer, processor, or preparer lien may file a statement evidencing the lien with the department of licensing after payment from the wine producer, processor, conditioner, or preparer to the producer or fisher is due and remains unpaid. For purposes of this subsection and RCW 60.13.050, payment is due on the date specified in the contract, or if not specified, then within thirty days from time of delivery.

(2) The statement shall be in a record, authenticated by the producer or fisher, and shall contain in substance the following information:

(a) A true statement or a reasonable estimate of the amount demanded after deducting all credits and offsets;

(b) The name of the wine producer, processor, conditioner, or preparer who received the agricultural product or fish to be charged with the lien;

(c) A description sufficient to identify the agricultural product or fish to be charged with the lien;

(d) A statement that the amount claimed is a true and bona fide existing debt as of the date of the filing of the notice evidencing the lien;

(e) The date on which payment was due for the agricultural product or fish to be charged with the lien; and

(f) The department of licensing may by rule prescribe standard filing forms, fees, and uniform procedures for filing with, and obtaining information from, filing officers. [2013 c 23 § 120; 2012 c 106 § 3; 2002 c 278 § 2; 2001 c 32 § 6. Prior: 1987 c 189 § 7; 1987 c 148 § 3; 1985 c 412 § 4.]

Additional notes found at www.leg.wa.gov

60.13.050 Priority of lien. (1)(a) If a statement is filed pursuant to RCW 60.13.040 within twenty days of the date upon which payment from the processor, conditioner, or preparer to the producer or commercial fisher is due and remains unpaid, the processor or preparer lien evidenced by the statement continues its priority over all other liens or security interests upon agricultural products or fish, inventory, and accounts receivable, except as provided in (b) of this subsection. Such priority is without regard to whether the other liens or security interests attached before or after the date on which the processor or preparer lien attached.

(b) The processor or preparer lien shall be subordinate to liens for taxes or labor perfected before filing of the processor or preparer lien.

(2) If the statement provided for in RCW 60.13.040 is not filed within twenty days of the date payment is due and remains unpaid, the processor or preparer lien shall thereupon become subordinate to:

(a) A lien that has attached to the agricultural product or fish, inventory, or accounts receivable before the date on which the processor or preparer lien attaches; and

(b) A perfected security interest in the agricultural product or fish, inventory, or accounts receivable. [2013 c 23 § 121; 1987 c 148 § 4; 1985 c 412 § 5.]

60.13.060 Duration of lien—Statement of discharge. (1) The wine producer or processor lien shall terminate twelve months after, and the preparer lien shall terminate fifty days after, the later of the date of attachment or filing, unless a suit to foreclose the lien has been filed before that time as provided in RCW 60.13.070.

(2) If a statement has been filed as provided in RCW 60.13.040 and the producer or commercial fisher has received payment for the obligation secured by the lien, the producer or fisher shall promptly file with the department of licensing a statement declaring that full payment has been received and that the lien is discharged. If, after payment, the producer or fisher fails to file such statement of discharge within ten days following a request to do so, the producer or fisher shall be liable to the wine producer, processor, conditioner, or preparer in the sum of one hundred dollars plus actual damages caused by the failure. [2013 c 23 § 122; 2012 c 106 § 5; 2002 c 278 § 3; 1987 c 148 § 5; 1985 c 412 § 6.]

Chapter 60.28 RCW
LIEN FOR LABOR, MATERIALS, TAXES
ON PUBLIC WORKS

Sections

60.28.011 Retained percentage—Public transportation projects—Labor and material lien created—Bond in lieu of retained funds—Termination before completion—Chapter deemed exclusive—Release of ferry contract payments—Projects of farmers home administration—General contractor/construction manager procedure—Definitions.

60.28.011 Retained percentage—Public transportation projects—Labor and material lien created—Bond in lieu of retained funds—Termination before completion—Chapter deemed exclusive—Release of ferry contract payments—Projects of farmers home administration—General contractor/construction manager procedure—Definitions.

(1)(a) Except as provided in (b) of this subsection, public improvement contracts must provide, and public bodies must reserve, a contract retainage not to exceed five percent of the moneys earned by the contractor as a trust fund for the protection and payment of: (i) The claims of any person arising under the contract; and (ii) the state with respect to taxes, increases, and penalties imposed pursuant to Titles 50, 51, and 82 RCW which may be due from such contractor.

(b) Public improvement contracts funded in whole or in part by federal transportation funds must rely upon the contract bond as referred to in chapter 39.08 RCW for the protection and payment of: (i) The claims of any person or persons arising under the contract to the extent such claims are provided for in RCW 39.08.010; and (ii) the state with respect to taxes, increases, and penalties incurred on the public improvement project under Titles 50, 51, and 82 RCW which may be due. The contract bond must remain in full force and effect until, at a minimum, all claims filed in compliance with chapter 39.08 RCW are resolved.

(2) Every person performing labor or furnishing supplies toward the completion of a public improvement contract has a lien upon moneys reserved by a public body under the provisions of a public improvement contract. However, the notice of the lien of the claimant must be given within forty-five days of completion of the contract work, and in the manner provided in RCW 39.08.030.

(3) The contractor at any time may request the contract retainage be reduced to one hundred percent of the value of the work remaining on the project.

(a) After completion of all contract work other than landscaping, the contractor may request that the public body release and pay in full the amounts retained during the performance of the contract, and sixty days thereafter the public body must release and pay in full the amounts retained (other than continuing retention of five percent of the moneys earned for landscaping) subject to the provisions of chapters 39.12 and 60.28 RCW.

(b) Sixty days after completion of all contract work the public body must release and pay in full the amounts retained during the performance of the contract subject to the provisions of chapters 39.12 and 60.28 RCW.

(4) The moneys reserved by a public body under the provisions of a public improvement contract, at the option of the contractor, must be:

(a) Retained in a fund by the public body;

(b) Deposited by the public body in an interest bearing account in a bank, mutual savings bank, or savings and loan association. Interest on moneys reserved by a public body under the provision of a public improvement contract must be paid to the contractor;

(c) Placed in escrow with a bank or trust company by the public body. When the moneys reserved are placed in escrow, the public body must issue a check representing the sum of the moneys reserved payable to the bank or trust company and the contractor jointly. This check must be converted into bonds and securities chosen by the contractor and approved by the public body and the bonds and securities must be held in escrow. Interest on the bonds and securities must be paid to the contractor as the interest accrues.

(5) The contractor or subcontractor may withhold payment of not more than five percent from the moneys earned by any subcontractor or sub-subcontractor or supplier contracted with by the contractor to provide labor, materials, or equipment to the public project. Whenever the contractor or subcontractor reserves funds earned by a subcontractor or sub-subcontractor or supplier, the contractor or subcontractor must pay interest to the subcontractor or sub-subcontractor or supplier at a rate equal to that received by the contractor or subcontractor from reserved funds.

(6) A contractor may submit a bond for all or any portion of the contract retainage in a form acceptable to the public body and from a bonding company meeting standards established by the public body. The public body must accept a bond meeting these requirements unless the public body can demonstrate good cause for refusing to accept it. This bond and any proceeds therefrom are subject to all claims and liens and in the same manner and priority as set forth for retained percentages in this chapter. The public body must release the bonded portion of the retained funds to the contractor within thirty days of accepting the bond from the contractor. Whenever a public body accepts a bond in lieu of retained funds from a contractor, the contractor must accept like bonds from any subcontractors or suppliers from which the contractor has retained funds. The contractor must then release the funds retained from the subcontractor or supplier to the subcontractor or supplier within thirty days of accepting the bond from the subcontractor or supplier.

(7) If the public body administering a contract, after a substantial portion of the work has been completed, finds that an unreasonable delay will occur in the completion of the remaining portion of the contract for any reason not the result of a breach thereof, it may, if the contractor agrees, delete from the contract the remaining work and accept as final the improvement at the stage of completion then attained and make payment in proportion to the amount of the work accomplished and in this case any amounts retained and accumulated under this section must be held for a period of sixty days following the completion. In the event that the work is terminated before final completion as provided in this section, the public body may thereafter enter into a new contract with the same contractor to perform the remaining work or improvement for an amount equal to or less than the cost of the remaining work as was provided for in the original contract without advertisement or bid. The provisions of this chapter are exclusive and supersede all provisions and regulations in conflict herewith.

(8) Whenever the department of transportation has contracted for the construction of two or more ferry vessels, sixty days after completion of all contract work on each ferry vessel, the department must release and pay in full the amounts retained in connection with the construction of the vessel subject to the provisions of RCW 60.28.021 and chapter 39.12 RCW. However, the department of transportation may at its discretion condition the release of funds retained in connection with the completed ferry upon the contractor delivering a good and sufficient bond with two or more sureties, or with a surety company, in the amount of the retained funds to be released to the contractor, conditioned that no taxes may be certified or claims filed for work on the ferry after a period of sixty days following completion of the ferry; and if taxes are certified or claims filed, recovery may be had on the bond by the department of revenue, the employment security department, the department of labor and industries, and the material suppliers and laborers filing claims.

(9) Except as provided in subsection (1) of this section, reservation by a public body for any purpose from the moneys earned by a contractor by fulfilling its responsibilities under public improvement contracts is prohibited.

(10) Contracts on projects funded in whole or in part by farmers home administration and subject to farmers home administration regulations are not subject to subsections (1) through (9) of this section.

(11) This subsection applies only to a public body that has contracted for the construction of a facility using the general contractor/construction manager procedure, as defined under RCW 39.10.210. If the work performed by a subcontractor on the project has been completed within the first half of the time provided in the general contractor/construction manager contract for completing the work, the public body may accept the completion of the subcontract. The public body must give public notice of this acceptance. After a forty-five day period for giving notice of liens, and compliance with the retainage release procedures in RCW 60.28.021, the public body may release that portion of the retained funds associated with the subcontract. Claims against the retained funds after the forty-five day period are not valid.

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

(a) "Contract retainage" means an amount reserved by a public body from the moneys earned by a person under a public improvement contract.

(b) "Person" means a person or persons, mechanic, subcontractor, or material person who performs labor or provides materials for a public improvement contract, and any other person who supplies the person with provisions or supplies for the carrying on of a public improvement contract.

(c) "Public body" means the state, or a county, city, town, district, board, or other public body.

(d) "Public improvement contract" means a contract for public improvements or work, other than for professional services, or a work order as defined in RCW 39.10.210. [2013 c 113 § 1; 2011 c 231 § 2. Prior: 2009 c 432 § 5; 2009 c 219 § 6; prior: 2007 c 494 § 504; 2007 c 218 § 92; 2003 c 301 § 7; 2000 c 185 § 1; 1994 c 101 § 1; 1992 c 223 § 2.]

Intent—Recognition—2011 c 231: "The legislature recognizes that federal regulations include requirements that pertain to contracts funded by

federal-aid highway funds. One such requirement is that states must ensure that prime contractors pay subcontractors in full by no later than thirty days after the subcontractor's work is satisfactorily completed. One option for meeting this requirement is to decline to hold retainage from prime contractors. The legislature also recognizes that retainage is currently used to ensure that claims against the contractor are resolved in a timely manner. The legislature intends that the contract bond provided by sureties on behalf of general contractors provides adequate security for claimants under the bond." [2011 c 231 § 1.]

Report—2009 c 432: See RCW 18.27.800.

Part headings and captions not law—Effective dates—Severability—2007 c 494: See RCW 39.10.903 through 39.10.905.

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

Additional notes found at www.leg.wa.gov

Chapter 60.36 RCW LIEN ON VESSELS AND EQUIPMENT

Sections

- 60.36.030 Liens for handling cargo.
60.36.040 Liens for handling cargo—Priority.

60.36.030 Liens for handling cargo. All steamers, vessels, and boats, their tackle, apparel, and furniture shall be held liable at all ports and places within this state or within the jurisdiction of the courts of this state or within the jurisdiction of the courts of the United States in said state for services rendered by stevedores, longshore workers, or others engaged in the loading, unloading, stowing, or dunnaging of cargo in or from any steamer, vessel, or boat in any harbor or at any other place within said state, or within the jurisdiction of the courts thereof as above stated, and said steamers, vessels, and boats shall further be liable as per their contracts for all services performed upon wharfs or landing places by stevedores, longshore workers, or others: PROVIDED, That such services must have been so performed in and about and be connected with the loading, unloading, dunnaging, or stowing of said cargo. [2013 c 23 § 123; 1901 c 75 § 1; RRS § 1184.]

60.36.040 Liens for handling cargo—Priority. Demands for wages and all sums due under contracts or otherwise for the performance of all or any of the services mentioned in RCW 60.36.030 shall constitute liens upon all steamers, vessels, and boats, their tackle, apparel, and furniture, and shall have priority over all other demands save and excepting the demands mentioned in RCW 60.36.010 (1), (2), and (3), to which said demands the lien hereby provided shall be subordinate: PROVIDED, That such liens shall only continue in force for the period of three years from the date when such work was done or the last services performed by such stevedores, longshore workers, or others. [2013 c 23 § 124; 1901 c 75 § 2; RRS § 1185.]

Chapter 60.42 RCW COMMERCIAL REAL ESTATE BROKER LIEN ACT

Sections

- 60.42.040 Priority of lien claims.

60.42.040 Priority of lien claims. All statutory liens, consensual liens, mortgages, deeds of trust, assignments of

rents, and other encumbrances, including all advances or charges made or accruing thereunder, whether voluntary or obligatory, and all modifications, extensions, renewals, and replacements thereof, recorded prior to the recording of a notice of claim of lien against proceeds have priority over a lien created under this chapter. A prior recorded lien includes, without limitation, a valid material supplier's or mechanic's lien claim that is recorded after the recording of the broker's notice of claim of lien against proceeds but which relates back to a date prior to the recording date of the broker's notice of claim of lien against proceeds. [2013 c 23 § 125; 1997 c 315 § 5.]

Title 61

MORTGAGES, DEEDS OF TRUST, AND REAL ESTATE CONTRACTS

Chapters

61.24 Deeds of trust.

Chapter 61.24 RCW DEEDS OF TRUST

Sections

61.24.110 Reconveyance by trustee.

61.24.110 Reconveyance by trustee. (1) The trustee of record shall reconvey all or any part of the property encumbered by the deed of trust to the person entitled thereto on written request of the beneficiary, or upon satisfaction of the obligation secured and written request for reconveyance made by the beneficiary or the person entitled thereto.

(2) If the beneficiary fails to request reconveyance within the sixty-day period specified under RCW 61.16.030 and has received payment as specified by the beneficiary's demand statement, a title insurance company or title insurance agent as licensed and qualified under chapter 48.29 RCW, a licensed escrow agent as defined in RCW 18.44.011, or an attorney admitted to practice law in this state, who has paid the demand in full from escrow, upon receipt of notice of the beneficiary's failure to request reconveyance, may, as agent for the person entitled to receive reconveyance, in writing, submit proof of satisfaction and request the trustee of record to reconvey the deed of trust.

(3)(a) If the trustee of record is unable or unwilling to reconvey the deed of trust within one hundred twenty days following payment to the beneficiary as prescribed in the beneficiary's demand statement, a title insurance company or title insurance agent as licensed and qualified under chapter 48.29 RCW, a licensed escrow agent as defined in RCW 18.44.011, or an attorney admitted to practice law in this state may record with each county auditor where the original deed of trust was recorded a notarized declaration of payment. The notarized declaration must: (i) Identify the deed of trust, including original grantor, beneficiary, trustee, loan number if available, and the auditor's recording number and recording date; (ii) state the amount, date, and name of the beneficiary and means of payment; (iii) include a declaration that the payment tendered was sufficient to meet the beneficiary's

demand and that no written objections have been received; and (iv) be titled "declaration of payment."

(b) A copy of the recorded declaration of payment must be sent by certified mail to the last known address of the beneficiary and the trustee of record not later than two business days following the date of recording of the notarized declaration. The beneficiary or trustee of record has sixty days from the date of recording of the notarized declaration to record an objection. The objection must: (i) Include reference to the recording number of the declaration and original deed of trust, in the records where the notarized declaration was recorded; and (ii) be titled "objection to declaration of payment." If no objection is recorded within sixty days following recording of the notarized declaration, any lien of the deed of trust against the real property encumbered must cease to exist. [2013 c 114 § 1; 1998 c 295 § 13; 1981 c 161 § 7; 1965 c 74 § 11.]

Title 62A

UNIFORM COMMERCIAL CODE

Articles

- 2 Sales.**
- 4A Funds transfers.**
- 9A Secured transactions; sales of accounts, contract rights and chattel paper.**
- 11 Effective date and transition provisions.**

Article 2 SALES

Sections

- 62A.2-201 Formal requirements; statute of frauds.
- 62A.2-210 Delegation of performance; assignment of rights.
- 62A.2-304 Price payable in money, goods, realty, or otherwise.
- 62A.2-305 Open price term.
- 62A.2-308 Absence of specified place for delivery.
- 62A.2-311 Options and cooperation respecting performance.
- 62A.2-312 Warranty of title and against infringement; buyer's obligation against infringement.
- 62A.2-313 Express warranties by affirmation, promise, description, sample.
- 62A.2-316 Exclusion or modification of warranties.
- 62A.2-318 Third-party beneficiaries of warranties express or implied.
- 62A.2-319 F.O.B. and F.A.S. terms.
- 62A.2-320 C.I.F. and C.&F. terms.
- 62A.2-324 "No arrival, no sale" term.
- 62A.2-325 "Letter of credit" term; "confirmed credit".
- 62A.2-328 Sale by auction.
- 62A.2-402 Rights of seller's creditors against sold goods.
- 62A.2-501 Insurable interest in goods; manner of identification of goods.
- 62A.2-502 Buyer's right to goods on seller's insolvency.
- 62A.2-504 Shipment by seller.
- 62A.2-507 Effect of seller's tender; delivery on condition.
- 62A.2-508 Cure by seller of improper tender or delivery; replacement.
- 62A.2-510 Effect of breach on risk of loss.
- 62A.2-602 Manner and effect of rightful rejection.
- 62A.2-603 Merchant buyer's duties as to rightfully rejected goods.
- 62A.2-604 Buyer's options as to salvage of rightfully rejected goods.
- 62A.2-606 What constitutes acceptance of goods.
- 62A.2-607 Effect of acceptance; notice of breach; burden of establishing breach after acceptance; notice of claim or litigation to person answerable over.
- 62A.2-608 Revocation of acceptance in whole or in part.
- 62A.2-609 Right to adequate assurance of performance.
- 62A.2-610 Anticipatory repudiation.
- 62A.2-611 Retraction of anticipatory repudiation.
- 62A.2-612 "Installment contract"; breach.
- 62A.2-613 Casualty to identified goods.
- 62A.2-615 Excuse by failure of presupposed conditions.

62A.2-616	Procedure on notice claiming excuse.
62A.2-702	Seller's remedies on discovery of buyer's insolvency.
62A.2-704	Seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods.
62A.2-706	Seller's resale including contract for resale.
62A.2-707	"Person in the position of a seller".
62A.2-709	Action for the price.
62A.2-711	Buyer's remedies in general; buyer's security interest in rejected goods.
62A.2-712	"Cover"; buyer's procurement of substitute goods.
62A.2-714	Buyer's damages for breach in regard to accepted goods.
62A.2-716	Buyer's right to specific performance or replevin.
62A.2-717	Deduction of damages from the price.
62A.2-718	Liquidation or limitation of damages; deposits.
62A.2-722	Who can sue third parties for injury to goods.
62A.2-723	Proof of market price: Time and place.

62A.2-201 Formal requirements; statute of frauds.

(1) Except as otherwise provided in this section, a contract for the sale of goods for the price of five hundred dollars or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his or her authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this paragraph beyond the quantity of goods shown in such writing.

(2) Between merchants if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subsection (1) of this section against such party unless written notice of objection to its contents is given within ten days after it is received.

(3) A contract which does not satisfy the requirements of subsection (1) of this section but which is valid in other respects is enforceable:

(a) If the goods are to be specially manufactured for the buyer and are not suitable for sale to others in the ordinary course of the seller's business and the seller, before notice of repudiation is received and under circumstances which reasonably indicate that the goods are for the buyer, has made either a substantial beginning of their manufacture or commitments for their procurement; or

(b) If the party against whom enforcement is sought admits in his or her pleading, testimony, or otherwise in court that a contract for sale was made, but the contract is not enforceable under this provision beyond the quantity of goods admitted; or

(c) With respect to goods for which payment has been made and accepted or which have been received and accepted (RCW 62A.2-606). [2013 c 23 § 126; 1965 ex.s c 157 § 2-201. Cf. former RCW 63.04.050; 1925 ex.s. c 142 § 4; RRS § 5836-4; prior: Code 1881 § 2326.]

Statute of frauds: RCW 19.36.010.

62A.2-210 Delegation of performance; assignment of rights. (1) A party may perform his or her duty through a delegate unless otherwise agreed or unless the other party has a substantial interest in having his or her original promisor perform or control the acts required by the contract. No delegation of performance relieves the party delegating of any duty to perform or any liability for breach.

(2) Except as otherwise provided in RCW 62A.9A-406, unless otherwise agreed, all rights of either seller or buyer can be assigned except where the assignment would materially change the duty of the other party, or increase materially the burden or risk imposed on him or her by his or her contract, or impair materially his or her chance of obtaining return performance. A right to damages for breach of the whole contract or a right arising out of the assignor's due performance of his or her entire obligation can be assigned despite agreement otherwise.

(3) The creation, attachment, perfection, or enforcement of a security interest in the seller's interest under a contract is not a transfer that materially changes the duty of or increases materially the burden or risk imposed on the buyer or impairs materially the buyer's chance of obtaining return performance within the purview of subsection (2) of this section unless, and then only to the extent that, enforcement actually results in a delegation of material performance of the seller. Even in that event, the creation, attachment, perfection, and enforcement of the security interest remain effective, but (a) the seller is liable to the buyer for damages caused by the delegation to the extent that the damages could not reasonably be prevented by the buyer, and (b) a court having jurisdiction may grant other appropriate relief, including cancellation of the contract for sale or an injunction against enforcement of the security interest or consummation of the enforcement.

(4) Unless the circumstances indicate the contrary, a prohibition of assignment of "the contract" is to be construed as barring only the delegation to the assignee of the assignor's performance.

(5) An assignment of "the contract" or of "all my rights under the contract" or an assignment in similar general terms is an assignment of rights and unless the language or the circumstances (as in an assignment for security) indicate the contrary, it is a delegation of performance of the duties of the assignor and its acceptance by the assignee constitutes a promise by him or her to perform those duties. This promise is enforceable by either the assignor or the other party to the original contract.

(6) The other party may treat any assignment which delegates performance as creating reasonable grounds for insecurity and may without prejudice to his or her rights against the assignor demand assurances from the assignee (RCW 62A.2-609).

(7) Notwithstanding subsections (2) and (3) of this section, an assignment that would be a breach but for the provisions of RCW 62A.9A-406 may create reasonable grounds for insecurity with respect to the due performance of the assignor (RCW 62A.2-609). [2013 c 23 § 127; 2000 c 250 § 9A-804; 1965 ex.s. c 157 § 2-210.]

Additional notes found at www.leg.wa.gov

62A.2-304 Price payable in money, goods, realty, or otherwise. (1) The price can be made payable in money or otherwise. If it is payable in whole or in part in goods each party is a seller of the goods which he or she is to transfer.

(2) Even though all or part of the price is payable in an interest in realty the transfer of the goods and the seller's obligations with reference to them are subject to this Article, but not the transfer of the interest in realty or the transferor's obligations in connection therewith. [2013 c 23 § 128; 1965

ex.s. c 157 § 2-304. Cf. former RCW 63.04.100(2), (3); 1925 ex.s. c 142 § 9; RRS § 5836-9.]

62A.2-305 Open price term. (1) The parties if they so intend can conclude a contract for sale even though the price is not settled. In such a case, the price is a reasonable price at the time for delivery if:

(a) Nothing is said as to price; or

(b) The price is left to be agreed by the parties and they fail to agree; or

(c) The price is to be fixed in terms of some agreed market or other standard as set or recorded by a third person or agency and it is not so set or recorded.

(2) A price to be fixed by the seller or by the buyer means a price for him or her to fix in good faith.

(3) When a price left to be fixed otherwise than by agreement of the parties fails to be fixed through fault of one party the other may at his or her option treat the contract as canceled or himself or herself fix a reasonable price.

(4) Where, however, the parties intend not to be bound unless the price be fixed or agreed and it is not fixed or agreed there is no contract. In such a case, the buyer must return any goods already received or if unable so to do must pay their reasonable value at the time of delivery and the seller must return any portion of the price paid on account. [2013 c 23 § 129; 1965 ex.s. c 157 § 2-305. Cf. former RCW sections: (i) RCW 63.04.100; 1925 ex.s. c 142 § 9; RRS § 5836-9. (ii) RCW 63.04.110; 1925 ex.s. c 142 § 10; RRS § 5836-10. Subd. (3) cf. former RCW 63.04.120(2); 1925 ex.s. c 142 § 11; RRS § 5836-11.]

62A.2-308 Absence of specified place for delivery.

Unless otherwise agreed:

(a) The place for delivery of goods is the seller's place of business or if he or she has none his or her residence; but

(b) In a contract for sale of identified goods which to the knowledge of the parties at the time of contracting are in some other place, that place is the place for their delivery; and

(c) Documents of title may be delivered through customary banking channels. [2013 c 23 § 130; 1965 ex.s. c 157 § 2-308. Subd. (a), (b) cf. former RCW 63.04.440(1); 1925 ex.s. c 142 § 43; RRS § 5836-43.]

62A.2-311 Options and cooperation respecting performance. (1) An agreement for sale which is otherwise sufficiently definite (RCW 62A.2-204(3)) to be a contract is not made invalid by the fact that it leaves particulars of performance to be specified by one of the parties. Any such specification must be made in good faith and within limits set by commercial reasonableness.

(2) Unless otherwise agreed, specifications relating to assortment of the goods are at the buyer's option and except as otherwise provided in RCW 62A.2-319 (1)(c) and (3) specifications or arrangements relating to shipment are at the seller's option.

(3) Where such specification would materially affect the other party's performance but is not seasonably made or where one party's cooperation is necessary to the agreed performance of the other but is not seasonably forthcoming, the other party in addition to all other remedies:

(a) Is excused for any resulting delay in his or her own performance; and

(b) May also either proceed to perform in any reasonable manner or after the time for a material part of his or her own performance treat the failure to specify or to cooperate as a breach by failure to deliver or accept the goods. [2013 c 23 § 131; 1965 ex.s. c 157 § 2-311.]

62A.2-312 Warranty of title and against infringement; buyer's obligation against infringement. (1) Subject to subsection (2) of this section, there is in a contract for sale a warranty by the seller that:

(a) The title conveyed shall be good, and its transfer rightful; and

(b) The goods shall be delivered free from any security interest or other lien or encumbrance of which the buyer at the time of contracting has no knowledge.

(2) A warranty under subsection (1) of this section will be excluded or modified only by specific language or by circumstances which give the buyer reason to know that the person selling does not claim title in himself or herself or that he or she is purporting to sell only such right or title as he or she or a third person may have.

(3) Unless otherwise agreed, a seller who is a merchant regularly dealing in goods of the kind warrants that the goods shall be delivered free of the rightful claim of any third person by way of infringement or the like but a buyer who furnishes specifications to the seller must hold the seller harmless against any such claim which arises out of compliance with the specifications. [2013 c 23 § 132; 1965 ex.s. c 157 § 2-312. Cf. former RCW 63.04.140; 1925 ex.s. c 142 § 13; RRS § 5836-13.]

62A.2-313 Express warranties by affirmation, promise, description, sample. (1) Express warranties by the seller are created as follows:

(a) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

(b) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.

(c) Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.

(2) It is not necessary to the creation of an express warranty that the seller use formal words such as "warranty" or "guarantee" or that he or she have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create a warranty. [2013 c 23 § 133; 1965 ex.s. c 157 § 2-313. Cf. former RCW sections: (i) RCW 63.04.130; 1925 ex.s. c 142 § 12; RRS § 5836-12. (ii) RCW 63.04.150; 1925 ex.s. c 142 § 14; RRS § 5836-14. (iii) RCW 63.04.170; 1925 ex.s. c 142 § 16; RRS § 5836-16.]

Motor vehicle express warranties: Chapter 19.118 RCW.

62A.2-316 Exclusion or modification of warranties. (1) Words or conduct relevant to the creation of an express

warranty and words or conduct tending to negate or limit warranty shall be construed wherever reasonable as consistent with each other; but subject to the provisions of this Article on parol or extrinsic evidence (RCW 62A.2-202) negation or limitation is inoperative to the extent that such construction is unreasonable.

(2) Subject to subsection (3) of this section, to exclude or modify the implied warranty of merchantability or any part of it the language must mention merchantability and in case of a writing must be conspicuous, and to exclude or modify any implied warranty of fitness the exclusion must be by a writing and conspicuous. Language to exclude all implied warranties of fitness is sufficient if it states, for example, that "There are no warranties which extend beyond the description on the face hereof."

(3) Notwithstanding subsection (2) of this section:

(a) Unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is," "with all faults," or other language which in common understanding calls the buyer's attention to the exclusion of warranties and makes plain that there is no implied warranty; and

(b) When the buyer before entering into the contract has examined the goods or the sample or model as fully as he or she desired or has refused to examine the goods there is no implied warranty with regard to defects which an examination ought in the circumstances to have revealed to him or her;

(c) An implied warranty can also be excluded or modified by course of dealing or course of performance or usage of trade; and

(d) In sales of livestock, including but not limited to, horses, mules, cattle, sheep, swine, goats, poultry, and rabbits, there are no implied warranties as defined in this article that the livestock are free from sickness or disease: PROVIDED, That the seller has complied with all state and federal laws and regulations that apply to animal health and disease, and the seller is not guilty of fraud, deceit, or misrepresentation.

(4) Notwithstanding the provisions of subsections (2) and (3) of this section and the provisions of RCW 62A.2-719, as now or hereafter amended, in any case where goods are purchased primarily for personal, family, or household use and not for commercial or business use, disclaimers of the warranty of merchantability or fitness for particular purpose shall not be effective to limit the liability of merchant sellers except insofar as the disclaimer sets forth with particularity the qualities and characteristics which are not being warranted. Remedies for breach of warranty can be limited in accordance with the provisions of this Article on liquidation or limitation of damages and on contractual modification of remedy (RCW 62A.2-718 and RCW 62A.2-719). [2013 c 23 § 134; 1982 c 199 § 1; 1974 ex.s. c 180 § 1; 1974 ex.s. c 78 § 1; 1965 ex.s. c 157 § 2-316. Subd. (3)(b) cf. former RCW 63.04.160(3); 1925 ex.s. c 142 § 15; RRS § 5836-15. Subd. (3)(c) cf. former RCW 63.04.720; 1925 ex.s. c 142 § 71; RRS § 5836-71.]

Lease or rental of personal property—Disclaimer of warranty of merchantability or fitness: RCW 63.18.010.

62A.2-318 Third-party beneficiaries of warranties express or implied. A seller's warranty whether express or

implied extends to any natural person who is in the family or household of his or her buyer or who is a guest in his or her home if it is reasonable to expect that such person may use, consume, or be affected by the goods and who is injured in person by breach of the warranty. A seller may not exclude or limit the operation of this section. [2013 c 23 § 135; 1965 ex.s. c 157 § 2-318.]

62A.2-319 F.O.B. and F.A.S. terms. (1) Unless otherwise agreed, the term F.O.B. (which means "free on board") at a named place, even though used only in connection with the stated price, is a delivery term under which:

(a) When the term is F.O.B. the place of shipment, the seller must at that place ship the goods in the manner provided in this Article (RCW 62A.2-504) and bear the expense and risk of putting them into the possession of the carrier; or

(b) When the term is F.O.B. the place of destination, the seller must at his or her own expense and risk transport the goods to that place and there tender delivery of them in the manner provided in this Article (RCW 62A.2-503);

(c) When under either (a) or (b) of this subsection the term is also F.O.B. vessel, car, or other vehicle, the seller must in addition at his or her own expense and risk load the goods on board. If the term is F.O.B. vessel, the buyer must name the vessel and in an appropriate case the seller must comply with the provisions of this Article on the form of bill of lading (RCW 62A.2-323).

(2) Unless otherwise agreed the term F.A.S. vessel (which means "free alongside") at a named port, even though used only in connection with the stated price, is a delivery term under which the seller must:

(a) At his or her own expense and risk deliver the goods alongside the vessel in the manner usual in that port or on a dock designated and provided by the buyer; and

(b) Obtain and tender a receipt for the goods in exchange for which the carrier is under a duty to issue a bill of lading.

(3) Unless otherwise agreed, in any case falling within subsection (1)(a) or (c) or (2) of this section, the buyer must seasonably give any needed instructions for making delivery, including when the term is F.A.S. or F.O.B. the loading berth of the vessel and in an appropriate case its name and sailing date. The seller may treat the failure of needed instructions as a failure of cooperation under this Article (RCW 62A.2-311). He or she may also at his or her option move the goods in any reasonable manner preparatory to delivery or shipment.

(4) Under the term F.O.B. vessel or F.A.S., unless otherwise agreed, the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents. [2013 c 23 § 136; 1965 ex.s. c 157 § 2-319.]

62A.2-320 C.I.F. and C.&F. terms. (1) The term C.I.F. means that the price includes in a lump sum the cost of the goods and the insurance and freight to the named destination. The term C.&F. or C.F. means that the price so includes cost and freight to the named destination.

(2) Unless otherwise agreed and even though used only in connection with the stated price and destination, the term C.I.F. destination or its equivalent requires the seller at his or her own expense and risk to:

(a) Put the goods into the possession of a carrier at the port for shipment and obtain a negotiable bill or bills of lading covering the entire transportation to the named destination; and

(b) Load the goods and obtain a receipt from the carrier (which may be contained in the bill of lading) showing that the freight has been paid or provided for; and

(c) Obtain a policy or certificate of insurance, including any war risk insurance, of a kind and on terms then current at the port of shipment in the usual amount, in the currency of the contract, shown to cover the same goods covered by the bill of lading and providing for payment of loss to the order of the buyer or for the account of whom it may concern; but the seller may add to the price the amount of the premium for any such war risk insurance; and

(d) Prepare an invoice of the goods and procure any other documents required to effect shipment or to comply with the contract; and

(e) Forward and tender with commercial promptness all the documents in due form and with any indorsement necessary to perfect the buyer's rights.

(3) Unless otherwise agreed, the term C.&F. or its equivalent has the same effect and imposes upon the seller the same obligations and risks as a C.I.F. term except the obligation as to insurance.

(4) Under the term C.I.F. or C.&F., unless otherwise agreed, the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents. [2013 c 23 § 137; 1965 ex.s. c 157 § 2-320.]

62A.2-324 "No arrival, no sale" term. Under a term "no arrival, no sale" or terms of like meaning, unless otherwise agreed:

(a) The seller must properly ship conforming goods and if they arrive by any means he or she must tender them on arrival but he or she assumes no obligation that the goods will arrive unless he or she has caused the nonarrival; and

(b) Where without fault of the seller the goods are in part lost or have so deteriorated as no longer to conform to the contract or arrive after the contract time, the buyer may proceed as if there had been casualty to identified goods (RCW 62A.2-613). [2013 c 23 § 138; 1965 ex.s. c 157 § 2-324.]

62A.2-325 "Letter of credit" term; "confirmed credit". (1) Failure of the buyer seasonably to furnish an agreed letter of credit is a breach of the contract for sale.

(2) The delivery to seller of a proper letter of credit suspends the buyer's obligation to pay. If the letter of credit is dishonored, the seller may on seasonable notification to the buyer require payment directly from him or her.

(3) Unless otherwise agreed, the term "letter of credit" or "banker's credit" in a contract for sale means an irrevocable credit issued by a financing agency of good repute and, where the shipment is overseas, of good international repute. The term "confirmed credit" means that the credit must also carry the direct obligation of such an agency which does business in the seller's financial market. [2013 c 23 § 139; 1965 ex.s. c 157 § 2-325.]

62A.2-328 Sale by auction. (1) In a sale by auction if goods are put up in lots each lot is the subject of a separate sale.

(2) A sale by auction is complete when the auctioneer so announces by the fall of the hammer or in other customary manner. Where a bid is made while the hammer is falling in acceptance of a prior bid the auctioneer may in his or her discretion reopen the bidding or declare the goods sold under the bid on which the hammer was falling.

(3) Such a sale is with reserve unless the goods are in explicit terms put up without reserve. In an auction with reserve, the auctioneer may withdraw the goods at any time until he or she announces completion of the sale. In an auction without reserve, after the auctioneer calls for bids on an article or lot, that article or lot cannot be withdrawn unless no bid is made within a reasonable time. In either case a bidder may retract his or her bid until the auctioneer's announcement of completion of the sale, but a bidder's retraction does not revive any previous bid.

(4) If the auctioneer knowingly receives a bid on the seller's behalf or the seller makes or procures such a bid, and notice has not been given that liberty for such bidding is reserved, the buyer may at his or her option avoid the sale or take the goods at the price of the last good faith bid prior to the completion of the sale. This subsection shall not apply to any bid at a forced sale. [2013 c 23 § 140; 1965 ex.s. c 157 § 2-328. Cf. former RCW 63.04.220; 1925 ex.s. c 142 § 21; RRS § 5836-21.]

62A.2-402 Rights of seller's creditors against sold goods. (1) Except as provided in subsections (2) and (3) of this section, rights of unsecured creditors of the seller with respect to goods which have been identified to a contract for sale are subject to the buyer's rights to recover the goods under this Article (RCW 62A.2-502 and RCW 62A.2-716).

(2) A creditor of the seller may treat a sale or an identification of goods to a contract for sale as void if as against him or her a retention of possession by the seller is fraudulent under any rule of law of the state where the goods are situated, except that retention of possession in good faith and current course of trade by a merchant-seller for a commercially reasonable time after a sale or identification is not fraudulent.

(3) Nothing in this Article shall be deemed to impair the rights of creditors of the seller:

(a) Under the provisions of the Article on Secured Transactions (Article 9A); or

(b) Where identification to the contract or delivery is made not in current course of trade but in satisfaction of or as security for a preexisting claim for money, security, or the like and is made under circumstances which under any rule of law of the state where the goods are situated would apart from this Article constitute the transaction a fraudulent transfer or voidable preference. [2013 c 23 § 141; 1965 ex.s. c 157 § 2-402. Subd. (2) cf. former RCW sections: (i) RCW 63.04.270; 1925 ex.s. c 142 § 26; RRS § 5836-26. (ii) RCW 63.08.040; 1953 c 247 § 3; 1943 c 98 § 1, part; 1939 c 122 § 1, part; 1925 ex.s. c 135 § 2, part; Rem. Supp. 1943 § 5832, part; prior: 1901 c 109 § 1, part.]

62A.2-501 Insurable interest in goods; manner of identification of goods. (1) The buyer obtains a special property and an insurable interest in goods by identification of existing goods as goods to which the contract refers even though the goods so identified are nonconforming and he or she has an option to return or reject them. Such identification can be made at any time and in any manner explicitly agreed to by the parties. In the absence of explicit agreement, identification occurs:

(a) When the contract is made if it is for the sale of goods already existing and identified;

(b) If the contract is for the sale of future goods other than those described in (c) of this subsection, when goods are shipped, marked, or otherwise designated by the seller as goods to which the contract refers;

(c) When the crops are planted or otherwise become growing crops or the young are conceived if the contract is for the sale of unborn young to be born within twelve months after contracting or for the sale of crops to be harvested within twelve months or the next normal harvest season after contracting whichever is longer.

(2) The seller retains an insurable interest in goods so long as title to or any security interest in the goods remains in him or her and where the identification is by the seller alone he or she may until default or insolvency or notification to the buyer that the identification is final substitute other goods for those identified.

(3) Nothing in this section impairs any insurable interest recognized under any other statute or rule of law. [2013 c 23 § 142; 1965 ex.s. c 157 § 2-501. Cf. former RCW sections: (i) RCW 63.04.180; 1925 ex.s. c 142 § 17; RRS § 5836-17. (ii) RCW 63.04.200; 1925 ex.s. c 142 § 19; RRS § 5836-19.]

62A.2-502 Buyer's right to goods on seller's insolvency. (1) Subject to subsections (2) and (3) of this section and even though the goods have not been shipped, a buyer who has paid a part or all of the price of goods in which he or she has a special property under the provisions of the immediately preceding section may on making and keeping good a tender of any unpaid portion of their price recover them from the seller if:

(a) In the case of goods bought for personal, family, or household purposes, the seller repudiates or fails to deliver as required by the contract; or

(b) In all cases, the seller becomes insolvent within ten days after receipt of the first installment on their price.

(2) The buyer's right to recover the goods under subsection (1)(a) of this section vests upon acquisition of a special property, even if the seller had not then repudiated or failed to deliver.

(3) If the identification creating his or her special property has been made by the buyer, he or she acquires the right to recover the goods only if they conform to the contract for sale. [2013 c 23 § 143; 2000 c 250 § 9A-806; 1965 ex.s. c 157 § 2-502. Cf. former RCW sections: RCW 63.04.180 through 63.04.200; 1925 ex.s. c 142 §§ 17 through 19; RRS §§ 5836-17 through 5836-19.]

Additional notes found at www.leg.wa.gov

62A.2-504 Shipment by seller. Where the seller is required or authorized to send the goods to the buyer and the

contract does not require him or her to deliver them at a particular destination, then unless otherwise agreed he or she must:

(a) Put the goods in the possession of such a carrier and make such a contract for their transportation as may be reasonable having regard to the nature of the goods and other circumstances of the case; and

(b) Obtain and promptly deliver or tender in due form any document necessary to enable the buyer to obtain possession of the goods or otherwise required by the agreement or by usage of trade; and

(c) Promptly notify the buyer of the shipment. Failure to notify the buyer under this subsection or to make a proper contract under subsection (a) of this section is a ground for rejection only if material delay or loss ensues. [2013 c 23 § 144; 1965 ex.s. c 157 § 2-504. Cf. former RCW 63.04.470; 1925 ex.s. c 142 § 46; RRS § 5836-46.]

62A.2-507 Effect of seller's tender; delivery on condition. (1) Tender of delivery is a condition to the buyer's duty to accept the goods and, unless otherwise agreed, to his or her duty to pay for them. Tender entitles the seller to acceptance of the goods and to payment according to the contract.

(2) Where payment is due and demanded on the delivery to the buyer of goods or documents of title, his or her right as against the seller to retain or dispose of them is conditional upon his or her making the payment due. [2013 c 23 § 145; 1965 ex.s. c 157 § 2-507. Cf. former RCW sections: (i) RCW 63.04.120; 1925 ex.s. c 142 § 11; RRS § 5836-11. (ii) RCW 63.04.420; 1925 ex.s. c 142 § 41; RRS § 5836-41. (iii) RCW 63.04.430; 1925 ex.s. c 142 § 42; RRS § 5836-42. (iv) RCW 63.04.700; 1925 ex.s. c 142 § 69; RRS § 5836-69.]

62A.2-508 Cure by seller of improper tender or delivery; replacement. (1) Where any tender or delivery by the seller is rejected because nonconforming and the time for performance has not yet expired, the seller may seasonably notify the buyer of his or her intention to cure and may then within the contract time make a conforming delivery.

(2) Where the buyer rejects a nonconforming tender which the seller had reasonable grounds to believe would be acceptable with or without money allowance, the seller may if he or she seasonably notifies the buyer have a further reasonable time to substitute a conforming tender. [2013 c 23 § 146; 1965 ex.s. c 157 § 2-508.]

62A.2-510 Effect of breach on risk of loss. (1) Where a tender or delivery of goods so fails to conform to the contract as to give a right of rejection, the risk of their loss remains on the seller until cure or acceptance.

(2) Where the buyer rightfully revokes acceptance, he or she may to the extent of any deficiency in his or her effective insurance coverage treat the risk of loss as having rested on the seller from the beginning.

(3) Where the buyer as to conforming goods already identified to the contract for sale repudiates or is otherwise in breach before risk of their loss has passed to him or her, the seller may to the extent of any deficiency in his or her effective insurance coverage treat the risk of loss as resting on the

buyer for a commercially reasonable time. [2013 c 23 § 147; 1965 ex.s. c 157 § 2-510.]

62A.2-602 Manner and effect of rightful rejection.

(1) Rejection of goods must be within a reasonable time after their delivery or tender. It is ineffective unless the buyer seasonably notifies the seller.

(2) Subject to the provisions of the two following sections on rejected goods (RCW 62A.2-603 and RCW 62A.2-604):

(a) After rejection, any exercise of ownership by the buyer with respect to any commercial unit is wrongful as against the seller; and

(b) If the buyer has before rejection taken physical possession of goods in which he or she does not have a security interest under the provisions of this Article (RCW 62A.2-711(3)), he or she is under a duty after rejection to hold them with reasonable care at the seller's disposition for a time sufficient to permit the seller to remove them; but

(c) The buyer has no further obligations with regard to goods rightfully rejected.

(3) The seller's rights with respect to goods wrongfully rejected are governed by the provisions of this Article on seller's remedies in general (RCW 62A.2-703). [2013 c 23 § 148; 1965 ex.s. c 157 § 2-602. Cf. former RCW sections: (i) RCW 63.04.090; 1925 ex.s. c 142 § 8; RRS § 5836-8. (ii) RCW 63.04.510; 1925 ex.s. c 142 § 50; RRS § 5836-50.]

62A.2-603 Merchant buyer's duties as to rightfully rejected goods. (1) Subject to any security interest in the buyer (RCW 62A.2-711(3)), when the seller has no agent or place of business at the market of rejection a merchant buyer is under a duty after rejection of goods in his or her possession or control to follow any reasonable instructions received from the seller with respect to the goods and in the absence of such instructions to make reasonable efforts to sell them for the seller's account if they are perishable or threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

(2) When the buyer sells goods under subsection (1) of this section, he or she is entitled to reimbursement from the seller or out of the proceeds for reasonable expenses of caring for and selling them, and if the expenses include no selling commission then to such commission as is usual in the trade or if there is none to a reasonable sum not exceeding ten per cent on the gross proceeds.

(3) In complying with this section, the buyer is held only to good faith and good faith conduct hereunder is neither acceptance nor conversion nor the basis of an action for damages. [2013 c 23 § 149; 1965 ex.s. c 157 § 2-603.]

62A.2-604 Buyer's options as to salvage of rightfully rejected goods. Subject to the provisions of the immediately preceding section on perishables, if the seller gives no instructions within a reasonable time after notification of rejection, the buyer may store the rejected goods for the seller's account or reship them to him or her or resell them for the seller's account with reimbursement as provided in the preceding section. Such action is not acceptance or conversion. [2013 c 23 § 150; 1965 ex.s. c 157 § 2-604.]

62A.2-606 What constitutes acceptance of goods. (1)

Acceptance of goods occurs when the buyer:

(a) After a reasonable opportunity to inspect the goods signifies to the seller that the goods are conforming or that he or she will take or retain them in spite of their nonconformity; or

(b) Fails to make an effective rejection (RCW 62A.2-602(1)), but such acceptance does not occur until the buyer has had a reasonable opportunity to inspect them; or

(c) Does any act inconsistent with the seller's ownership; but if such act is wrongful as against the seller it is an acceptance only if ratified by him or her.

(2) Acceptance of a part of any commercial unit is acceptance of that entire unit. [2013 c 23 § 151; 1965 ex.s. c 157 § 2-606. Cf. former RCW sections: (i) RCW 63.04.480(1); 1925 ex.s. c 142 § 47; RRS § 5836-47. (ii) RCW 63.04.490; 1925 ex.s. c 142 § 48; RRS § 5836-48.]

62A.2-607 Effect of acceptance; notice of breach; burden of establishing breach after acceptance; notice of claim or litigation to person answerable over. (1) The buyer must pay at the contract rate for any goods accepted.

(2) Acceptance of goods by the buyer precludes rejection of the goods accepted and if made with knowledge of a nonconformity cannot be revoked because of it unless the acceptance was on the reasonable assumption that the nonconformity would be seasonably cured but acceptance does not of itself impair any other remedy provided by this Article for nonconformity.

(3) Where a tender has been accepted:

(a) The buyer must within a reasonable time after he or she discovers or should have discovered any breach notify the seller of breach or be barred from any remedy; and

(b) If the claim is one for infringement or the like (RCW 62A.2-312(3)) and the buyer is sued as a result of such a breach, he or she must so notify the seller within a reasonable time after he or she receives notice of the litigation or be barred from any remedy over for liability established by the litigation.

(4) The burden is on the buyer to establish any breach with respect to the goods accepted.

(5) Where the buyer is sued for breach of a warranty or other obligation for which his or her seller is answerable over:

(a) He or she may give his or her seller written notice of the litigation. If the notice states that the seller may come in and defend and that if the seller does not do so he or she will be bound in any action against him or her by his or her buyer by any determination of fact common to the two litigations, then unless the seller after seasonable receipt of the notice does come in and defend he or she is so bound.

(b) If the claim is one for infringement or the like (RCW 62A.2-312(3)), the original seller may demand in writing that his or her buyer turn over to him or her control of the litigation including settlement or else be barred from any remedy over and if he or she also agrees to bear all expense and to satisfy any adverse judgment, then unless the buyer after seasonable receipt of the demand does turn over control the buyer is so barred.

(6) The provisions of subsections (3), (4), and (5) of this section apply to any obligation of a buyer to hold the seller

harmless against infringement or the like (RCW 62A.2-312(3)). [2013 c 23 § 152; 1965 ex.s. c 157 § 2-607. Subd. (1) cf. former RCW 63.04.420; 1925 ex.s. c 142 § 41; RRS § 5836-41. Subd. (2), (3) cf. former RCW sections: (i) RCW 63.04.500; 1925 ex.s. c 142 § 49; RRS § 5836-49. (ii) RCW 63.04.700; 1925 ex.s. c 142 § 69; RRS § 5836-69.]

62A.2-608 Revocation of acceptance in whole or in part. (1) The buyer may revoke his or her acceptance of a lot or commercial unit whose nonconformity substantially impairs its value to him or her if he or she has accepted it:

(a) On the reasonable assumption that its nonconformity would be cured and it has not been seasonably cured; or

(b) Without discovery of such nonconformity if his or her acceptance was reasonably induced either by the difficulty of discovery before acceptance or by the seller's assurances.

(2) Revocation of acceptance must occur within a reasonable time after the buyer discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by their own defects. It is not effective until the buyer notifies the seller of it.

(3) A buyer who so revokes has the same rights and duties with regard to the goods involved as if he or she had rejected them. [2013 c 23 § 153; 1965 ex.s. c 157 § 2-608. Cf. former RCW 63.04.700 (1)(d), (3), (4), (5); 1925 ex.s. c 142 § 69; RRS § 5836-69.]

62A.2-609 Right to adequate assurance of performance. (1) A contract for sale imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party the other may in writing demand adequate assurance of due performance and until he or she receives such assurance may if commercially reasonable suspend any performance for which he or she has not already received the agreed return.

(2) Between merchants, the reasonableness of grounds for insecurity and the adequacy of any assurance offered shall be determined according to commercial standards.

(3) Acceptance of any improper delivery or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

(4) After receipt of a justified demand, failure to provide within a reasonable time not exceeding thirty days such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of the contract. [2013 c 23 § 154; 1965 ex.s. c 157 § 2-609. Cf. former RCW sections: (i) RCW 63.04.540; 1925 ex.s. c 142 § 53; RRS § 5836-53. (ii) RCW 63.04.550(1)(b); 1925 ex.s. c 142 § 54; RRS § 5836-54. (iii) RCW 63.04.560; 1925 ex.s. c 142 § 55; RRS § 5836-55. (iv) RCW 63.04.640(2); 1925 ex.s. c 142 § 63; RRS § 5836-63.]

62A.2-610 Anticipatory repudiation. When either party repudiates the contract with respect to a performance not yet due the loss of which will substantially impair the value of the contract to the other, the aggrieved party may:

(a) For a commercially reasonable time await performance by the repudiating party; or

(b) Resort to any remedy for breach (RCW 62A.2-703 or 62A.2-711), even though he or she has notified the repudiating party that he or she would await the latter's performance and has urged retraction; and

(c) In either case suspend his or her own performance or proceed in accordance with the provisions of this Article on the seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods (RCW 62A.2-704). [2013 c 23 § 155; 1965 ex.s. c 157 § 2-610. Cf. former RCW section: (i) RCW 63.04.640(2); 1925 ex.s. c 142 § 63; RRS § 5836-63. (ii) RCW 63.04.660; 1925 ex.s. c 142 § 65; RRS § 5836-65.]

62A.2-611 Retraction of anticipatory repudiation.

(1) Until the repudiating party's next performance is due, he or she can retract his or her repudiation unless the aggrieved party has since the repudiation canceled or materially changed his or her position or otherwise indicated that he or she considers the repudiation final.

(2) Retraction may be by any method which clearly indicates to the aggrieved party that the repudiating party intends to perform, but must include any assurance justifiably demanded under the provisions of this Article (RCW 62A.2-609).

(3) Retraction reinstates the repudiating party's rights under the contract with due excuse and allowance to the aggrieved party for any delay occasioned by the repudiation. [2013 c 23 § 156; 1965 ex.s. c 157 § 2-611.]

62A.2-612 "Installment contract"; breach. (1) An "installment contract" is one which requires or authorizes the delivery of goods in separate lots to be separately accepted, even though the contract contains a clause "each delivery is a separate contract" or its equivalent.

(2) The buyer may reject any installment which is nonconforming if the nonconformity substantially impairs the value of that installment and cannot be cured or if the nonconformity is a defect in the required documents; but if the nonconformity does not fall within subsection (3) of this section and the seller gives adequate assurance of its cure, the buyer must accept that installment.

(3) Whenever nonconformity or default with respect to one or more installments substantially impairs the value of the whole contract there is a breach of the whole. But the aggrieved party reinstates the contract if he or she accepts a nonconforming installment without seasonably notifying of cancellation or if he or she brings an action with respect only to past installments or demands performance as to future installments. [2013 c 23 § 157; 1965 ex.s. c 157 § 2-612. Cf. former RCW 63.04.460(2); 1925 ex.s. c 142 § 45; RRS § 5836-45.]

62A.2-613 Casualty to identified goods. Where the contract requires for its performance goods identified when the contract is made, and the goods suffer casualty without fault of either party before the risk of loss passes to the buyer, or in a proper case under a "no arrival, no sale" term (RCW 62A.2-324) then:

(a) If the loss is total, the contract is avoided; and

(b) If the loss is partial or the goods have so deteriorated as no longer to conform to the contract, the buyer may nevertheless demand inspection and at his or her option either treat the contract as avoided or accept the goods with due allowance from the contract price for the deterioration or the deficiency in quantity but without further right against the seller. [2013 c 23 § 158; 1965 ex.s. c 157 § 2-613. Cf. former RCW sections: (i) RCW 63.04.080; 1925 ex.s. c 142 § 7; RRS § 5836-7. (ii) RCW 63.04.090; 1925 ex.s. c 142 § 8; RRS § 5836-8.]

62A.2-615 Excuse by failure of presupposed conditions. Except so far as a seller may have assumed a greater obligation and subject to the preceding section on substituted performance:

(a) Delay in delivery or nondelivery in whole or in part by a seller who complies with subsections (b) and (c) of this section is not a breach of his or her duty under a contract for sale if performance as agreed has been made impracticable by the occurrence of a contingency the nonoccurrence of which was a basic assumption on which the contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order whether or not it later proves to be invalid.

(b) Where the causes mentioned in subsection (a) of this section affect only a part of the seller's capacity to perform, he or she must allocate production and deliveries among his or her customers but may at his or her option include regular customers not then under contract as well as his or her own requirements for further manufacture. He or she may so allocate in any manner which is fair and reasonable.

(c) The seller must notify the buyer seasonably that there will be delay or nondelivery and, when allocation is required under subsection (b) of this section, of the estimated quota thus made available for the buyer. [2013 c 23 § 159; 1965 ex.s. c 157 § 2-615.]

62A.2-616 Procedure on notice claiming excuse. (1) Where the buyer receives notification of a material or indefinite delay or an allocation justified under the preceding section, he or she may by written notification to the seller as to any delivery concerned, and where the prospective deficiency substantially impairs the value of the whole contract under the provisions of this Article relating to breach of installment contracts (RCW 62A.2-612), then also as to the whole:

(a) Terminate and thereby discharge any unexecuted portion of the contract; or

(b) Modify the contract by agreeing to take his or her available quota in substitution.

(2) If after receipt of such notification from the seller the buyer fails so to modify the contract within a reasonable time not exceeding thirty days, the contract lapses with respect to any deliveries affected. [2013 c 23 § 160; 1965 ex.s. c 157 § 2-616.]

62A.2-702 Seller's remedies on discovery of buyer's insolvency. (1) Where the seller discovers the buyer to be insolvent, he or she may refuse delivery except for cash including payment for all goods theretofore delivered under

the contract, and stop delivery under this Article (RCW 62A.2-705).

(2) Where the seller discovers that the buyer has received goods on credit while insolvent, he or she may reclaim the goods upon demand made within ten days after the receipt, but if misrepresentation of solvency has been made to the particular seller in writing within three months before delivery the ten-day limitation does not apply. Except as provided in this subsection, the seller may not base a right to reclaim goods on the buyer's fraudulent or innocent misrepresentation of solvency or of intent to pay.

(3) The seller's right to reclaim under subsection (2) of this section is subject to the rights of a buyer in ordinary course or other good faith purchaser under this Article (RCW 62A.2-403). Successful reclamation of goods excludes all other remedies with respect to them. [2013 c 23 § 161; 1981 c 41 § 4; 1965 ex.s. c 157 § 2-702. Subd. (1) cf. former RCW sections: (i) RCW 63.04.540(1)(b); 1925 ex.s. c 142 § 53; RRS § 5836-53. (ii) RCW 63.04.550(1)(c); 1925 ex.s. c 142 § 54; RRS § 5836-54. (iii) RCW 63.04.560; 1925 ex.s. c 142 § 55; RRS § 5836-55. (iv) RCW 63.04.580; 1925 ex.s. c 142 § 57; RRS § 5836-57. Subd. (3) cf. former RCW 63.04.755(3); 1925 ex.s. c 142 § 76; RRS § 5836-76; formerly RCW 63.04.010.]

Additional notes found at www.leg.wa.gov

62A.2-704 Seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods. (1) An aggrieved seller under the preceding section may:

(a) Identify to the contract conforming goods not already identified if at the time he or she learned of the breach they are in his or her possession or control;

(b) Treat as the subject of resale goods which have demonstrably been intended for the particular contract even though those goods are unfinished.

(2) Where the goods are unfinished, an aggrieved seller may in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization either complete the manufacture and wholly identify the goods to the contract or cease manufacture and resell for scrap or salvage value or proceed in any other reasonable manner. [2013 c 23 § 162; 1965 ex.s. c 157 § 2-704. Cf. former RCW sections: (i) RCW 63.04.640(3); 1925 ex.s. c 142 § 63; RRS § 5836-63. (ii) RCW 63.04.650(4); 1925 ex.s. c 142 § 64; RRS § 5836-64.]

62A.2-706 Seller's resale including contract for resale. (1) Under the conditions stated in RCW 62A.2-703 on seller's remedies, the seller may resell the goods concerned or the undelivered balance thereof. Where the resale is made in good faith and in a commercially reasonable manner, the seller may recover the difference between the resale price and the contract price together with any incidental damages allowed under the provisions of this Article (RCW 62A.2-710), but less expenses saved in consequence of the buyer's breach.

(2) Except as otherwise provided in subsection (3) of this section or unless otherwise agreed, resale may be at public or private sale including sale by way of one or more contracts to sell or of identification to an existing contract of the seller.

Sale may be as a unit or in parcels and at any time and place and on any terms but every aspect of the sale including the method, manner, time, place, and terms must be commercially reasonable. The resale must be reasonably identified as referring to the broken contract, but it is not necessary that the goods be in existence or that any or all of them have been identified to the contract before the breach.

(3) Where the resale is at private sale, the seller must give the buyer reasonable notification of his or her intention to resell.

(4) Where the resale is at public sale:

(a) Only identified goods can be sold except where there is a recognized market for a public sale of futures in goods of the kind; and

(b) It must be made at a usual place or market for public sale if one is reasonably available and except in the case of goods which are perishable or threaten to decline in value speedily the seller must give the buyer reasonable notice of the time and place of the resale; and

(c) If the goods are not to be within the view of those attending the sale the notification of sale must state the place where the goods are located and provide for their reasonable inspection by prospective bidders; and

(d) The seller may buy.

(5) A purchaser who buys in good faith at a resale takes the goods free of any rights of the original buyer even though the seller fails to comply with one or more of the requirements of this section.

(6) The seller is not accountable to the buyer for any profit made on any resale. A person in the position of a seller (RCW 62A.2-707) or a buyer who has rightfully rejected or justifiably revoked acceptance must account for any excess over the amount of his or her security interest, as hereinafter defined (RCW 62A.2-711(3)). [2013 c 23 § 163; 1967 c 114 § 13; 1965 ex.s. c 157 § 2-706. Cf. former RCW 63.04.610; 1925 ex.s. c 142 § 60; RRS § 5836-60.]

Additional notes found at www.leg.wa.gov

62A.2-707 "Person in the position of a seller". (1) A "person in the position of a seller" includes as against a principal an agent who has paid or become responsible for the price of goods on behalf of his or her principal or anyone who otherwise holds a security interest or other right in goods similar to that of a seller.

(2) A person in the position of a seller may as provided in this Article withhold or stop delivery (RCW 62A.2-705) and resell (RCW 62A.2-706) and recover incidental damages (RCW 62A.2-710). [2013 c 23 § 164; 1965 ex.s. c 157 § 2-707. Cf. former RCW 63.04.530(2); 1925 ex.s. c 142 § 52; RRS § 5836-52.]

62A.2-709 Action for the price. (1) When the buyer fails to pay the price as it becomes due, the seller may recover, together with any incidental damages under the next section, the price:

(a) Of goods accepted or of conforming goods lost or damaged within a commercially reasonable time after risk of their loss has passed to the buyer; and

(b) Of goods identified to the contract if the seller is unable after reasonable effort to resell them at a reasonable

price or the circumstances reasonably indicate that such effort will be unavailing.

(2) Where the seller sues for the price, he or she must hold for the buyer any goods which have been identified to the contract and are still in his or her control except that if resale becomes possible he or she may resell them at any time prior to the collection of the judgment. The net proceeds of any such resale must be credited to the buyer and payment of the judgment entitles him or her to any goods not resold.

(3) After the buyer has wrongfully rejected or revoked acceptance of the goods or has failed to make a payment due or has repudiated (RCW 62A.2-610), a seller who is held not entitled to the price under this section shall nevertheless be awarded damages for nonacceptance under the preceding section. [2013 c 23 § 165; 1965 ex.s. c 157 § 2-709. Cf. former RCW 63.04.640; 1925 ex.s. c 142 § 63; RRS § 5836-63.]

62A.2-711 Buyer's remedies in general; buyer's security interest in rejected goods. (1) Where the seller fails to make delivery or repudiates or the buyer rightfully rejects or justifiably revokes acceptance, then with respect to any goods involved, and with respect to the whole if the breach goes to the whole contract (RCW 62A.2-612), the buyer may cancel and whether or not he or she has done so may in addition to recovering so much of the price as has been paid:

(a) "Cover" and have damages under the next section as to all the goods affected whether or not they have been identified to the contract; or

(b) Recover damages for nondelivery as provided in this Article (RCW 62A.2-713).

(2) Where the seller fails to deliver or repudiates, the buyer may also:

(a) If the goods have been identified recover them as provided in this Article (RCW 62A.2-502); or

(b) In a proper case obtain specific performance or replevy the goods as provided in this Article (RCW 62A.2-716).

(3) On rightful rejection or justifiable revocation of acceptance, a buyer has a security interest in goods in his or her possession or control for any payments made on their price and any expenses reasonably incurred in their inspection, receipt, transportation, care, and custody and may hold such goods and resell them in like manner as an aggrieved seller (RCW 62A.2-706). [2013 c 23 § 166; 1965 ex.s. c 157 § 2-711. Subd. (3) cf. former RCW 63.04.700(5); 1925 ex.s. c 142 § 69; RRS § 5836-69.]

62A.2-712 "Cover"; buyer's procurement of substitute goods. (1) After a breach within the preceding section, the buyer may "cover" by making in good faith and without unreasonable delay any reasonable purchase of or contract to purchase goods in substitution for those due from the seller.

(2) The buyer may recover from the seller as damages the difference between the cost of cover and the contract price together with any incidental or consequential damages as hereinafter defined (RCW 62A.2-715), but less expenses saved in consequence of the seller's breach.

(3) Failure of the buyer to effect cover within this section does not bar him or her from any other remedy. [2013 c 23 § 167; 1965 ex.s. c 157 § 2-712.]

62A.2-714 Buyer's damages for breach in regard to accepted goods. (1) Where the buyer has accepted goods and given notification (RCW 62A.2-607(3)), he or she may recover as damages for any nonconformity of tender the loss resulting in the ordinary course of events from the seller's breach as determined in any manner which is reasonable.

(2) The measure of damages for breach of warranty is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted, unless special circumstances show proximate damages of a different amount.

(3) In a proper case, any incidental and consequential damages under the next section may also be recovered. [2013 c 23 § 168; 1965 ex.s. c 157 § 2-714. Cf. former RCW 63.04.700 (6), (7); 1925 ex.s. c 142 § 69; RRS § 5836-69.]

62A.2-716 Buyer's right to specific performance or replevin. (1) Specific performance may be decreed where the goods are unique or in other proper circumstances.

(2) The decree for specific performance may include such terms and conditions as to payment of the price, damages, or other relief as the court may deem just.

(3) The buyer has a right of replevin for goods identified to the contract if after reasonable effort he or she is unable to effect cover for such goods or the circumstances reasonably indicate that such effort will be unavailing or if the goods have been shipped under reservation and satisfaction of the security interest in them has been made or tendered. In the case of goods bought for personal, family, or household purposes, the buyer's right of replevin vests upon acquisition of a special property, even if the seller had not then repudiated or failed to deliver. [2013 c 23 § 169; 2000 c 250 § 9A-807; 1965 ex.s. c 157 § 2-716. Cf. former RCW 63.04.690; 1925 ex.s. c 142 § 68; RRS § 5836-68.]

Replevin: Chapter 7.64 RCW.

Additional notes found at www.leg.wa.gov

62A.2-717 Deduction of damages from the price. The buyer on notifying the seller of his or her intention to do so may deduct all or any part of the damages resulting from any breach of the contract from any part of the price still due under the same contract. [2013 c 23 § 170; 1965 ex.s. c 157 § 2-717. Cf. former RCW 63.04.700(1)(a); 1925 ex.s. c 142 § 69; RRS § 5836-69.]

62A.2-718 Liquidation or limitation of damages; deposits. (1) Damages for breach by either party may be liquidated in the agreement but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the breach, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy. A term fixing unreasonably large liquidated damages is void as a penalty.

(2) Where the seller justifiably withholds delivery of goods because of the buyer's breach, the buyer is entitled to restitution of any amount by which the sum of his or her payments exceeds:

(a) The amount to which the seller is entitled by virtue of terms liquidating the seller's damages in accordance with subsection (1) of this section, or

(b) In the absence of such terms, twenty per cent of the value of the total performance for which the buyer is obligated under the contract or five hundred dollars, whichever is smaller.

(3) The buyer's right to restitution under subsection (2) of this section is subject to offset to the extent that the seller establishes:

(a) A right to recover damages under the provisions of this Article other than subsection (1) of this section, and

(b) The amount or value of any benefits received by the buyer directly or indirectly by reason of the contract.

(4) Where a seller has received payment in goods, their reasonable value or the proceeds of their resale shall be treated as payments for the purposes of subsection (2) of this section; but if the seller has notice of the buyer's breach before reselling goods received in part performance, his or her resale is subject to the conditions laid down in this Article on resale by an aggrieved seller (RCW 62A.2-706). [2013 c 23 § 171; 1965 ex.s. c 157 § 2-718.]

62A.2-722 Who can sue third parties for injury to goods. Where a third party so deals with goods which have been identified to a contract for sale as to cause actionable injury to a party to that contract:

(a) A right of action against the third party is in either party to the contract for sale who has title to or a security interest or a special property or an insurable interest in the goods; and if the goods have been destroyed or converted a right of action is also in the party who either bore the risk of loss under the contract for sale or has since the injury assumed that risk as against the other;

(b) If at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the contract for sale and there is no arrangement between them for disposition of the recovery, his or her suit or settlement is, subject to his or her own interest, as a fiduciary for the other party to the contract;

(c) Either party may with the consent of the other sue for the benefit of whom it may concern. [2013 c 23 § 172; 1965 ex.s. c 157 § 2-722.]

62A.2-723 Proof of market price: Time and place.

(1) If an action based on anticipatory repudiation comes to trial before the time for performance with respect to some or all of the goods, any damages based on market price (RCW 62A.2-708 or 62A.2-713) shall be determined according to the price of such goods prevailing at the time when the aggrieved party learned of the repudiation.

(2) If evidence of a price prevailing at the times or places described in this Article is not readily available, the price prevailing within any reasonable time before or after the time described or at any other place which in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the cost of transporting the goods to or from such other place.

(3) Evidence of a relevant price prevailing at a time or place other than the one described in this Article offered by

one party is not admissible unless and until he or she has given the other party such notice as the court finds sufficient to prevent unfair surprise. [2013 c 23 § 173; 1965 ex.s. c 157 § 2-723.]

Article 4A FUNDS TRANSFERS

Sections

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62A.4A-507	Choice of law.

62A.4A-103 Payment order—Definitions. (a) In this Article:

(1) "Payment order" means an instruction of a sender to a receiving bank, transmitted orally, electronically, or in writing, to pay, or to cause another bank to pay, a fixed or determinable amount of money to a beneficiary if:

(i) The instruction does not state a condition to payment to the beneficiary other than time of payment;

(ii) The receiving bank is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender; and

(iii) The instruction is transmitted by the sender directly to the receiving bank or to an agent, funds-transfer system, or communication system for transmittal to the receiving bank.

(2) "Beneficiary" means the person to be paid by the beneficiary's bank.

(3) "Beneficiary's bank" means the bank identified in a payment order in which an account of the beneficiary is to be credited pursuant to the order or which otherwise is to make payment to the beneficiary if the order does not provide for payment to an account.

(4) "Receiving bank" means the bank to which the sender's instruction is addressed.

(5) "Sender" means the person giving the instruction to the receiving bank.

(b) If an instruction complying with subsection (a)(1) of this section is to make more than one payment to a beneficiary, the instruction is a separate payment order with respect to each payment.

(c) A payment order is issued when it is sent to the receiving bank. [2013 c 118 § 2; 1991 sp.s. c 21 § 4A-103.]

62A.4A-104 Funds transfer—Definitions. In this Article:

(a) "Funds transfer" means the series of transactions, beginning with the originator's payment order, made for the purpose of making payment to the beneficiary of the order. The term includes any payment order issued by the originator's bank or an intermediary bank intended to carry out the originator's payment order. A funds transfer is completed by acceptance by the beneficiary's bank of a payment order for the benefit of the beneficiary of the originator's payment order.

(b) "Intermediary bank" means a receiving bank other than the originator's bank or the beneficiary's bank.

(c) "Originator" means the sender of the first payment order in a funds transfer.

(d) "Originator's bank" means (i) the receiving bank to which the payment order of the originator is issued if the originator is not a bank, or (ii) the originator if the originator is a bank. [2013 c 118 § 3; 1991 sp.s. c 21 § 4A-104.]

62A.4A-105 Other definitions. (a) In this Article:

(1) "Authorized account" means a deposit account of a customer in a bank designated by the customer as a source of payment of payment orders issued by the customer to the bank. If a customer does not so designate an account, any account of the customer is an authorized account if payment of a payment order from that account is not inconsistent with a restriction on the use of that account.

(2) "Bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company. A branch or separate office of a bank is a separate bank for purposes of this Article.

(3) "Customer" means a person, including a bank, having an account with a bank or from whom a bank has agreed to receive payment orders.

(4) "Funds-transfer business day" of a receiving bank means the part of a day during which the receiving bank is open for the receipt, processing, and transmittal of payment orders and cancellations and amendments of payment orders.

(5) "Funds-transfer system" means a wire transfer network, automated clearing house, or other communication system of a clearing house or other association of banks through which a payment order by a bank may be transmitted to the bank to which the order is addressed.

(6) [Reserved.]

(7) "Prove" with respect to a fact means to meet the burden of establishing the fact (RCW 62A.1-201(b)(8)).

(b) Other definitions applying to this Article and the sections in which they appear are:

"Acceptance"	RCW 62A.4A-209
"Beneficiary"	RCW 62A.4A-103
"Beneficiary's bank"	RCW 62A.4A-103
"Executed"	RCW 62A.4A-301
"Execution date"	RCW 62A.4A-301
"Funds transfer"	RCW 62A.4A-104
"Funds-transfer system rule"	RCW 62A.4A-501
"Intermediary bank"	RCW 62A.4A-104
"Originator"	RCW 62A.4A-104
"Originator's bank"	RCW 62A.4A-104
"Payment by beneficiary's bank to beneficiary"	RCW 62A.4A-405
"Payment by originator to beneficiary"	RCW 62A.4A-406
"Payment by sender to receiving bank"	RCW 62A.4A-403
"Payment date"	RCW 62A.4A-401
"Payment order"	RCW 62A.4A-103
"Receiving bank"	RCW 62A.4A-103
"Security procedure"	RCW 62A.4A-201
"Sender"	RCW 62A.4A-103

(c) The following definitions in Article 4 (RCW 62A.4-101 through 62A.4-504) apply to this Article:

"Clearing house"	RCW 62A.4-104
"Item"	RCW 62A.4-104
"Suspends payments"	RCW 62A.4-104

(d) In addition, Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article. [2013 c 118 § 4; 2012 c 214 § 1201; 1991 sp.s. c 21 § 4A-105.]

Application—Savings—2012 c 214: See notes following RCW 62A.1-101.

62A.4A-106 Time payment order is received. (a) The time of receipt of a payment order or communication canceling or amending a payment order is determined by the rules applicable to receipt of a notice stated in RCW 62A.1-202. A receiving bank may fix a cut-off time or times on a funds-transfer business day for the receipt and processing of payment orders and communications canceling or amending payment orders. Different cut-off times may apply to payment orders, cancellations, or amendments, or to different categories of payment orders, cancellations, or amendments. A cut-off time may apply to senders generally or different cut-off times may apply to different senders or categories of payment orders. If a payment order or communication canceling or amending a payment order is received after the close of a funds-transfer business day or after the appropriate cut-off time on a funds-transfer business day, the receiving bank may treat the payment order or communication as received at the opening of the next funds-transfer business day.

(b) If this Article refers to an execution date or payment date or states a day on which a receiving bank is required to take action, and the date or day does not fall on a funds-transfer business day, the next day that is a funds-transfer business day is treated as the date or day stated, unless the contrary is stated in this Article. [2013 c 118 § 5; 2012 c 214 § 1202; 1991 sp.s. c 21 § 4A-106.]

Application—Savings—2012 c 214: See notes following RCW 62A.1-101.

62A.4A-108 Relationship to electronic fund transfer act. (a) Except as provided in subsection (b) of this section, this Article does not apply to a funds transfer any part of which is governed by the Electronic Fund Transfer Act of 1978 (Title XX, P.L. 95-630, 92 Stat. 3728, 15 U.S.C. Sec. 1693 et seq.).

(b) This Article applies to a funds transfer that is a remittance transfer as defined in the Electronic Fund Transfer Act (15 U.S.C. Sec. 1693o-1), unless the remittance transfer is an electronic fund transfer as defined in the Electronic Fund Transfer Act (15 U.S.C. Sec. 1693a).

(c) In a funds transfer to which this Article applies, in the event of an inconsistency between an applicable provision of this Article and an applicable provision of the Electronic Fund Transfer Act, the provision of the Electronic Fund Transfer Act governs to the extent of the inconsistency. [2013 c 118 § 1; 1991 sp.s. c 21 § 4A-108.]

62A.4A-202 Authorized and verified payment orders. (a) A payment order received by the receiving bank is the authorized order of the person identified as sender if that person authorized the order or is otherwise bound by it under the law of agency.

(b) If a bank and its customer have agreed that the authenticity of payment orders issued to the bank in the name of the customer as sender will be verified pursuant to a security procedure, a payment order received by the receiving bank is effective as the order of the customer, whether or not authorized, if (i) the security procedure is a commercially reasonable method of providing security against unauthorized payment orders, and (ii) the bank proves that it accepted the payment order in good faith and in compliance with the security procedure and any written agreement or instruction of the customer restricting acceptance of payment orders issued in the name of the customer. The bank is not required to follow an instruction that violates a written agreement with the customer or notice of which is not received at a time and in a manner affording the bank a reasonable opportunity to act on it before the payment order is accepted.

(c) Commercial reasonableness of a security procedure is a question of law to be determined by considering the wishes of the customer expressed to the bank, the circumstances of the customer known to the bank, including the size, type, and frequency of payment orders normally issued by the customer to the bank, alternative security procedures offered to the customer, and security procedures in general use by customers and receiving banks similarly situated. A security procedure is deemed to be commercially reasonable if (i) the security procedure was chosen by the customer after the bank offered, and the customer refused, a security procedure that was commercially reasonable for that customer, and (ii) the customer expressly agreed in writing to be bound by any payment order, whether or not authorized, issued in its name, and accepted by the bank in compliance with the security procedure chosen by the customer.

(d) The term "sender" in this Article includes the customer in whose name a payment order is issued if the order is the authorized order of the customer under subsection (a) of this section, or it is effective as the order of the customer under subsection (b) of this section.

(e) This section applies to amendments and cancellations of payment orders to the same extent it applies to payment orders.

(f) Except as provided in this section and RCW 62A.4A-203(a)(1), rights and obligations arising under this section or RCW 62A.4A-203 may not be varied by agreement. [2013 c 118 § 6; 1991 sp.s. c 21 § 4A-202.]

62A.4A-203 Unenforceability of certain verified payment orders. (a) If an accepted payment order is not, under RCW 62A.4A-202(a), an authorized order of a customer identified as sender, but is effective as an order of the customer pursuant to RCW 62A.4A-202(b), the following rules apply.

(1) By express written agreement, the receiving bank may limit the extent to which it is entitled to enforce or retain payment of the payment order.

(2) The receiving bank is not entitled to enforce or retain payment of the payment order if the customer proves that the order was not caused, directly or indirectly, by a person (i) entrusted at any time with duties to act for the customer with respect to payment orders or the security procedure, or (ii) who obtained access to transmitting facilities of the customer or who obtained, from a source controlled by the customer and without authority of the receiving bank, information facilitating breach of the security procedure, regardless of how the information was obtained or whether the customer was at fault. Information includes any access device, computer software, or the like.

(b) This section applies to amendments of payment orders to the same extent it applies to payment orders. [2013 c 118 § 7; 1991 sp.s. c 21 § 4A-203.]

62A.4A-204 Refund of payment and duty of customer to report with respect to unauthorized payment order. (a) If a receiving bank accepts a payment order issued in the name of its customer as sender which is (i) not authorized and not effective as the order of the customer under RCW 62A.4A-202, or (ii) not enforceable, in whole or in part, against the customer under RCW 62A.4A-203, the bank shall refund any payment of the payment order received from the customer to the extent the bank is not entitled to enforce payment and shall pay interest on the refundable amount calculated from the date the bank received payment to the date of the refund. However, the customer is not entitled to interest from the bank on the amount to be refunded if the customer fails to exercise ordinary care to determine that the order was not authorized by the customer and to notify the bank of the relevant facts within a reasonable time not exceeding ninety days after the date the customer received notification from the bank that the order was accepted or that the customer's account was debited with respect to the order. The bank is not entitled to any recovery from the customer on account of a failure by the customer to give notification as stated in this section.

(b) Reasonable time under subsection (a) of this section may be fixed by agreement as stated in RCW 62A.1-302(b), but the obligation of a receiving bank to refund payment as stated in subsection (a) of this section may not otherwise be varied by agreement. [2013 c 118 § 8; 2012 c 214 § 1203; 1991 sp.s. c 21 § 4A-204.]

Application—Savings—2012 c 214: See notes following RCW 62A.1-101.

62A.4A-205 Erroneous payment orders. (a) If an accepted payment order was transmitted pursuant to a security procedure for the detection of error and the payment order (i) erroneously instructed payment to a beneficiary not intended by the sender, (ii) erroneously instructed payment in an amount greater than the amount intended by the sender, or (iii) was an erroneously transmitted duplicate of a payment order previously sent by the sender, the following rules apply:

(1) If the sender proves that the sender or a person acting on behalf of the sender pursuant to RCW 62A.4A-206 complied with the security procedure and that the error would have been detected if the receiving bank had also complied, the sender is not obliged to pay the order to the extent stated in paragraphs (2) and (3) of this subsection.

(2) If the funds transfer is completed on the basis of an erroneous payment order described in clause (i) or (iii) of this subsection (a), the sender is not obliged to pay the order and the receiving bank is entitled to recover from the beneficiary any amount paid to the beneficiary to the extent allowed by the law governing mistake and restitution.

(3) If the funds transfer is completed on the basis of a payment order described in clause (ii) of this subsection (a), the sender is not obliged to pay the order to the extent the amount received by the beneficiary is greater than the amount intended by the sender. In that case, the receiving bank is entitled to recover from the beneficiary the excess amount received to the extent allowed by the law governing mistake and restitution.

(b) If (i) the sender of an erroneous payment order described in subsection (a) of this section is not obliged to pay all or part of the order, and (ii) the sender receives notification from the receiving bank that the order was accepted by the bank or that the sender's account was debited with respect to the order, the sender has a duty to exercise ordinary care, on the basis of information available to the sender, to discover the error with respect to the order and to advise the bank of the relevant facts within a reasonable time, not exceeding ninety days, after the bank's notification was received by the sender. If the bank proves that the sender failed to perform that duty, the sender is liable to the bank for the loss the bank proves it incurred as a result of the failure, but the liability of the sender may not exceed the amount of the sender's order.

(c) This section applies to amendments to payment orders to the same extent it applies to payment orders. [2013 c 118 § 9; 1991 sp.s. c 21 § 4A-205.]

62A.4A-206 Transmission of payment order through funds-transfer or other communication system. (a) If a payment order addressed to a receiving bank is transmitted to a funds-transfer system or other third-party communication system for transmittal to the bank, the system is deemed to be an agent of the sender for the purpose of transmitting the payment order to the bank. If there is a discrepancy between the terms of the payment order transmitted to the system and the terms of the payment order transmitted by the system to the bank, the terms of the payment order of the sender are those

transmitted by the system. This section does not apply to a funds-transfer system of the federal reserve banks.

(b) This section applies to cancellations and amendments of payment orders to the same extent it applies to payment orders. [2013 c 118 § 10; 1991 sp.s. c 21 § 4A-206.]

62A.4A-207 Misdescription of beneficiary. (a) Subject to subsection (b) of this section, if, in a payment order received by the beneficiary's bank, the name, bank account number, or other identification of the beneficiary refers to a nonexistent or unidentifiable person or account, no person has rights as a beneficiary of the order and acceptance of the order cannot occur.

(b) If a payment order received by the beneficiary's bank identifies the beneficiary both by name and by an identifying or bank account number and the name and number identify different persons, the following rules apply:

(1) Except as otherwise provided in subsection (c) of this section, if the beneficiary's bank does not know that the name and number refer to different persons, it may rely on the number as the proper identification of the beneficiary of the order. The beneficiary's bank need not determine whether the name and number refer to the same person.

(2) If the beneficiary's bank pays the person identified by name or knows that the name and number identify different persons, no person has rights as beneficiary except the person paid by the beneficiary's bank if that person was entitled to receive payment from the originator of the funds transfer. If no person has rights as beneficiary, acceptance of the order cannot occur.

(c) If (i) a payment order described in subsection (b) of this section is accepted, (ii) the originator's payment order described the beneficiary inconsistently by name and number, and (iii) the beneficiary's bank pays the person identified by number as permitted by subsection (b)(1) of this section, the following rules apply:

(1) If the originator is a bank, the originator is obliged to pay its order.

(2) If the originator is not a bank and proves that the person identified by number was not entitled to receive payment from the originator, the originator is not obliged to pay its order unless the originator's bank proves that the originator, before acceptance of the originator's order, had notice that payment of a payment order issued by the originator might be made by the beneficiary's bank on the basis of an identifying or bank account number even if it identifies a person different from the named beneficiary. Proof of notice may be made by any admissible evidence. The originator's bank satisfies the burden of proof if it proves that the originator, before the payment order was accepted, signed a writing stating the information to which the notice relates.

(d) In a case governed by subsection (b)(1) of this section, if the beneficiary's bank rightfully pays the person identified by number and that person was not entitled to receive payment from the originator, the amount paid may be recovered from that person to the extent allowed by the law governing mistake and restitution as follows:

(1) If the originator is obliged to pay its payment order as stated in subsection (c) of this section, the originator has the right to recover.

(2) If the originator is not a bank and is not obliged to pay its payment order, the originator's bank has the right to recover. [2013 c 118 § 11; 1991 sp.s. c 21 § 4A-207.]

62A.4A-208 Misdescription of intermediary bank or beneficiary's bank. (a) This subsection applies to a payment order identifying an intermediary bank or the beneficiary's bank only by an identifying number.

(1) The receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank and need not determine whether the number identifies a bank.

(2) The sender is obliged to compensate the receiving bank for any loss and expenses incurred by the receiving bank as a result of its reliance on the number in executing or attempting to execute the order.

(b) This subsection applies to a payment order identifying an intermediary bank or the beneficiary's bank both by name and an identifying number if the name and number identify different persons.

(1) If the sender is a bank, the receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank if the receiving bank, when it executes the sender's order, does not know that the name and number identify different persons. The receiving bank need not determine whether the name and number refer to the same person or whether the number refers to a bank. The sender is obliged to compensate the receiving bank for any loss and expenses incurred by the receiving bank as a result of its reliance on the number in executing or attempting to execute the order.

(2) If the sender is not a bank and the receiving bank proves that the sender, before the payment order was accepted, had notice that the receiving bank might rely on the number as the proper identification of the intermediary or beneficiary's bank even if it identifies a person different from the bank identified by name, the rights and obligations of the sender and the receiving bank are governed by subsection (b)(1) of this section, as though the sender were a bank. Proof of notice may be made by any admissible evidence. The receiving bank satisfies the burden of proof if it proves that the sender, before the payment order was accepted, signed a writing stating the information to which the notice relates.

(3) Regardless of whether the sender is a bank, the receiving bank may rely on the name as the proper identification of the intermediary or beneficiary's bank if the receiving bank, at the time it executes the sender's order, does not know that the name and number identify different persons. The receiving bank need not determine whether the name and number refer to the same person.

(4) If the receiving bank knows that the name and number identify different persons, reliance on either the name or the number in executing the sender's payment order is a breach of the obligation stated in RCW 62A.4A-302(a)(1). [2013 c 118 § 12; 1991 sp.s. c 21 § 4A-208.]

62A.4A-209 Acceptance of payment order. (a) Subject to subsection (d) of this section, a receiving bank other than the beneficiary's bank accepts a payment order when it executes the order.

(b) Subject to subsections (c) and (d) of this section, a beneficiary's bank accepts a payment order at the earliest of the following times:

(1) When the bank (i) pays the beneficiary as stated in RCW 62A.4A-405 (a) or (b) or (ii) notifies the beneficiary of receipt of the order or that the account of the beneficiary has been credited with respect to the order unless the notice indicates that the bank is rejecting the order or that funds with respect to the order may not be withdrawn or used until receipt of payment from the sender of the order;

(2) When the bank receives payment of the entire amount of the sender's order pursuant to RCW 62A.4A-403(a) (1) or (2); or

(3) The opening of the next funds-transfer business day of the bank following the payment date of the order if, at that time, the amount of the sender's order is fully covered by a withdrawable credit balance in an authorized account of the sender or the bank has otherwise received full payment from the sender, unless the order was rejected before that time or is rejected within (i) one hour after that time, or (ii) one hour after the opening of the next business day of the sender following the payment date if that time is later. If notice of rejection is received by the sender after the payment date and the authorized account of the sender does not bear interest, the bank is obliged to pay interest to the sender on the amount of the order for the number of days elapsing after the payment date to the day the sender receives notice or learns that the order was not accepted, counting that day as an elapsed day. If the withdrawable credit balance during that period falls below the amount of the order, the amount of interest payable is reduced accordingly.

(c) Acceptance of a payment order cannot occur before the order is received by the receiving bank. Acceptance does not occur under subsection (b)(2) or (3) of this section if the beneficiary of the payment order does not have an account with the receiving bank, the account has been closed, or the receiving bank is not permitted by law to receive credits for the beneficiary's account.

(d) A payment order issued to the originator's bank cannot be accepted until the payment date if the bank is the beneficiary's bank, or the execution date if the bank is not the beneficiary's bank. If the originator's bank executes the originator's payment order before the execution date or pays the beneficiary of the originator's payment order before the payment date and the payment order is subsequently canceled pursuant to RCW 62A.4A-211(b), the bank may recover from the beneficiary any payment received to the extent allowed by the law governing mistake and restitution. [2013 c 118 § 13; 1991 sp.s. c 21 § 4A-209.]

62A.4A-210 Rejection of payment order. (a) A payment order is rejected by the receiving bank by a notice of rejection transmitted to the sender orally, electronically, or in writing. A notice of rejection need not use any particular words and is sufficient if it indicates that the receiving bank is rejecting the order or will not execute or pay the order. Rejection is effective when the notice is given if transmission is by a means that is reasonable in the circumstances. If notice of rejection is given by a means that is not reasonable, rejection is effective when the notice is received. If an agreement of the sender and receiving bank establishes the means

to be used to reject a payment order, (i) any means complying with the agreement is reasonable and (ii) any means not complying is not reasonable unless no significant delay in receipt of the notice resulted from the use of the noncomplying means.

(b) This subsection applies if a receiving bank other than the beneficiary's bank fails to execute a payment order despite the existence on the execution date of a withdrawable credit balance in an authorized account of the sender sufficient to cover the order. If the sender does not receive notice of rejection of the order on the execution date and the authorized account of the sender does not bear interest, the bank is obliged to pay interest to the sender on the amount of the order for the number of days elapsing after the execution date to the earlier of the day the order is canceled pursuant to RCW 62A.4A-211(d) or the day the sender receives notice or learns that the order was not executed, counting the final day of the period as an elapsed day. If the withdrawable credit balance during that period falls below the amount of the order, the amount of interest is reduced accordingly.

(c) If a receiving bank suspends payments, all unaccepted payment orders issued to it are deemed rejected at the time the bank suspends payments.

(d) Acceptance of a payment order precludes a later rejection of the order. Rejection of a payment order precludes a later acceptance of the order. [2013 c 118 § 14; 1991 sp.s. c 21 § 4A-210.]

62A.4A-211 Cancellation and amendment of payment order. (a) A communication of the sender of a payment order canceling or amending the order may be transmitted to the receiving bank orally, electronically, or in writing. If a security procedure is in effect between the sender and the receiving bank, the communication is not effective to cancel or amend the order unless the communication is verified pursuant to the security procedure or the bank agrees to the cancellation or amendment.

(b) Subject to subsection (a) of this section, a communication by the sender canceling or amending a payment order is effective to cancel or amend the order if notice of the communication is received at a time and in a manner affording the receiving bank a reasonable opportunity to act on the communication before the bank accepts the payment order.

(c) After a payment order has been accepted, cancellation or amendment of the order is not effective unless the receiving bank agrees or a funds-transfer system rule allows cancellation or amendment without agreement of the bank.

(1) With respect to a payment order accepted by a receiving bank other than the beneficiary's bank, cancellation or amendment is not effective unless a conforming cancellation or amendment of the payment order issued by the receiving bank is also made.

(2) With respect to a payment order accepted by the beneficiary's bank, cancellation or amendment is not effective unless the order was issued in execution of an unauthorized payment order, or because of a mistake by a sender in the funds transfer which resulted in the issuance of a payment order (i) that is a duplicate of a payment order previously issued by the sender, (ii) that orders payment to a beneficiary not entitled to receive payment from the originator, or (iii) that orders payment in an amount greater than the amount the

beneficiary was entitled to receive from the originator. If the payment order is canceled or amended, the beneficiary's bank is entitled to recover from the beneficiary any amount paid to the beneficiary to the extent allowed by the law governing mistake and restitution.

(d) An unaccepted payment order is canceled by operation of law at the close of the fifth funds-transfer business day of the receiving bank after the execution date or payment date of the order.

(e) A canceled payment order cannot be accepted. If an accepted payment order is canceled, the acceptance is nullified and no person has any right or obligation based on the acceptance. Amendment of a payment order is deemed to be cancellation of the original order at the time of amendment and issue of a new payment order in the amended form at the same time.

(f) Unless otherwise provided in an agreement of the parties or in a funds-transfer system rule, if the receiving bank, after accepting a payment order, agrees to cancellation or amendment of the order by the sender or is bound by a funds-transfer system rule allowing cancellation or amendment without the bank's agreement, the sender, whether or not cancellation or amendment is effective, is liable to the bank for any loss and expenses, including reasonable attorneys' fees, incurred by the bank as a result of the cancellation or amendment or attempted cancellation or amendment.

(g) A payment order is not revoked by the death or legal incapacity of the sender unless the receiving bank knows of the death or of an adjudication of incapacity by a court of competent jurisdiction and has reasonable opportunity to act before acceptance of the order.

(h) A funds-transfer system rule is not effective to the extent it conflicts with subsection (c)(2) of this section. [2013 c 118 § 15; 1991 sp.s. c 21 § 4A-211.]

62A.4A-212 Liability and duty of receiving bank regarding unaccepted payment order. If a receiving bank fails to accept a payment order that it is obliged by express agreement to accept, the bank is liable for breach of the agreement to the extent provided in the agreement or in this Article, but does not otherwise have any duty to accept a payment order or, before acceptance, to take any action, or refrain from taking action, with respect to the order except as provided in this Article or by express agreement. Liability based on acceptance arises only when acceptance occurs as stated in RCW 62A.4A-209, and liability is limited to that provided in this Article. A receiving bank is not the agent of the sender or beneficiary of the payment order it accepts, or of any other party to the funds transfer, and the bank owes no duty to any party to the funds transfer except as provided in this Article or by express agreement. [2013 c 118 § 16; 1991 sp.s. c 21 § 4A-212.]

62A.4A-301 Execution and execution date. (a) A payment order is "executed" by the receiving bank when it issues a payment order intended to carry out the payment order received by the bank. A payment order received by the beneficiary's bank can be accepted but cannot be executed.

(b) "Execution date" of a payment order means the day on which the receiving bank may properly issue a payment order in execution of the sender's order. The execution date

may be determined by instruction of the sender but cannot be earlier than the day the order is received and, unless otherwise determined, is the day the order is received. If the sender's instruction states a payment date, the execution date is the payment date or an earlier date on which execution is reasonably necessary to allow payment to the beneficiary on the payment date. [2013 c 118 § 17; 1991 sp.s. c 21 § 4A-301.]

62A.4A-302 Obligations of receiving bank in execution of payment order. (a) Except as provided in subsections (b) through (d) of this section, if the receiving bank accepts a payment order pursuant to RCW 62A.4A-209(a), the bank has the following obligations in executing the order.

(1) The receiving bank is obliged to issue, on the execution date, a payment order complying with the sender's order and to follow the sender's instructions concerning (i) any intermediary bank or funds-transfer system to be used in carrying out the funds transfer, or (ii) the means by which payment orders are to be transmitted in the funds transfer. If the originator's bank issues a payment order to an intermediary bank, the originator's bank is obliged to instruct the intermediary bank according to the instruction of the originator. An intermediary bank in the funds transfer is similarly bound by an instruction given to it by the sender of the payment order it accepts.

(2) If the sender's instruction states that the funds transfer is to be carried out telephonically or by wire transfer or otherwise indicates that the funds transfer is to be carried out by the most expeditious means, the receiving bank is obliged to transmit its payment order by the most expeditious available means, and to instruct any intermediary bank accordingly. If a sender's instruction states a payment date, the receiving bank is obliged to transmit its payment order at a time and by means reasonably necessary to allow payment to the beneficiary on the payment date or as soon thereafter as is feasible.

(b) Unless otherwise instructed, a receiving bank executing a payment order may (i) use any funds-transfer system if use of that system is reasonable in the circumstances, and (ii) issue a payment order to the beneficiary's bank or to an intermediary bank through which a payment order conforming to the sender's order can expeditiously be issued to the beneficiary's bank if the receiving bank exercises ordinary care in the selection of the intermediary bank. A receiving bank is not required to follow an instruction of the sender designating a funds-transfer system to be used in carrying out the funds transfer if the receiving bank, in good faith, determines that it is not feasible to follow the instruction or that following the instruction would unduly delay completion of the funds transfer.

(c) Unless subsection (a)(2) of this section applies or the receiving bank is otherwise instructed, the bank may execute a payment order by transmitting its payment order by first class mail or by any means reasonable in the circumstances. If the receiving bank is instructed to execute the sender's order by transmitting its payment order by a particular means, the receiving bank may issue its payment order by the means stated or by any means as expeditious as the means stated.

(d) Unless instructed by the sender, (i) the receiving bank may not obtain payment of its charges for services and

expenses in connection with the execution of the sender's order by issuing a payment order in an amount equal to the amount of the sender's order less the amount of the charges, and (ii) may not instruct a subsequent receiving bank to obtain payment of its charges in the same manner. [2013 c 118 § 18; 1991 sp.s. c 21 § 4A-302.]

62A.4A-303 Erroneous execution of payment order.

(a) A receiving bank that (i) executes the payment order of the sender by issuing a payment order in an amount greater than the amount of the sender's order, or (ii) issues a payment order in execution of the sender's order and then issues a duplicate order, is entitled to payment of the amount of the sender's order under RCW 62A.4A-402(c) if that subsection is otherwise satisfied. The bank is entitled to recover from the beneficiary of the erroneous order the excess payment received to the extent allowed by the law governing mistake and restitution.

(b) A receiving bank that executes the payment order of the sender by issuing a payment order in an amount less than the amount of the sender's order is entitled to payment of the amount of the sender's order under RCW 62A.4A-402(c) if (i) that subsection is otherwise satisfied and (ii) the bank corrects its mistake by issuing an additional payment order for the benefit of the beneficiary of the sender's order. If the error is not corrected, the issuer of the erroneous order is entitled to receive or retain payment from the sender of the order it accepted only to the extent of the amount of the erroneous order. This subsection does not apply if the receiving bank executes the sender's payment order by issuing a payment order in an amount less than the amount of the sender's order for the purpose of obtaining payment of its charges for services and expenses pursuant to instruction of the sender.

(c) If a receiving bank executes the payment order of the sender by issuing a payment order to a beneficiary different from the beneficiary of the sender's order and the funds transfer is completed on the basis of that error, the sender of the payment order that was erroneously executed and all previous senders in the funds transfer are not obliged to pay the payment orders they issued. The issuer of the erroneous order is entitled to recover from the beneficiary of the order the payment received to the extent allowed by the law governing mistake and restitution. [2013 c 118 § 19; 1991 sp.s. c 21 § 4A-303.]

62A.4A-304 Duty of sender to report erroneously executed payment order. If the sender of a payment order that is erroneously executed as stated in RCW 62A.4A-303 receives notification from the receiving bank that the order was executed or that the sender's account was debited with respect to the order, the sender has a duty to exercise ordinary care to determine, on the basis of information available to the sender, that the order was erroneously executed and to notify the bank of the relevant facts within a reasonable time not exceeding ninety days after the notification from the bank was received by the sender. If the sender fails to perform that duty, the bank is not obliged to pay interest on any amount refundable to the sender under RCW 62A.4A-402(d) for the period before the bank learns of the execution error. The bank is not entitled to any recovery from the sender on

account of a failure by the sender to perform the duty stated in this section. [2013 c 118 § 20; 1991 sp.s. c 21 § 4A-304.]

62A.4A-305 Liability for late or improper execution or failure to execute payment order. (a) If a funds transfer is completed but execution of a payment order by the receiving bank in breach of RCW 62A.4A-302 results in delay in payment to the beneficiary, the bank is obliged to pay interest to either the originator or the beneficiary of the funds transfer for the period of delay caused by the improper execution. Except as provided in subsection (c) of this section, additional damages are not recoverable.

(b) If execution of a payment order by a receiving bank in breach of RCW 62A.4A-302 results in (i) noncompletion of the funds transfer, (ii) failure to use an intermediary bank designated by the originator, or (iii) issuance of a payment order that does not comply with the terms of the payment order of the originator, the bank is liable to the originator for its expenses in the funds transfer and for incidental expenses and interest losses, to the extent not covered by subsection (a) of this section, resulting from the improper execution. Except as provided in subsection (c) of this section, additional damages are not recoverable.

(c) In addition to the amounts payable under subsections (a) and (b) of this section, damages, including consequential damages, are recoverable to the extent provided in an express written agreement of the receiving bank.

(d) If a receiving bank fails to execute a payment order it was obliged by express agreement to execute, the receiving bank is liable to the sender for its expenses in the transaction and for incidental expenses and interest losses resulting from the failure to execute. Additional damages, including consequential damages, are recoverable to the extent provided in an express written agreement of the receiving bank, but are not otherwise recoverable.

(e) Reasonable attorneys' fees are recoverable if demand for compensation under subsection (a) or (b) of this section is made and refused before an action is brought on the claim. If a claim is made for breach of an agreement under subsection (d) of this section and the agreement does not provide for damages, reasonable attorneys' fees are recoverable if demand for compensation under subsection (d) of this section is made and refused before an action is brought on the claim.

(f) Except as stated in this section, the liability of a receiving bank under subsections (a) and (b) of this section may not be varied by agreement. [2013 c 118 § 21; 1991 sp.s. c 21 § 4A-305.]

62A.4A-402 Obligation of sender to pay receiving bank. (a) This section is subject to RCW 62A.4A-205 and 62A.4A-207.

(b) With respect to a payment order issued to the beneficiary's bank, acceptance of the order by the bank obliges the sender to pay the bank the amount of the order, but payment is not due until the payment date of the order.

(c) This subsection is subject to subsection (e) of this section and to RCW 62A.4A-303. With respect to a payment order issued to a receiving bank other than the beneficiary's bank, acceptance of the order by the receiving bank obliges the sender to pay the bank the amount of the sender's order. Payment by the sender is not due until the execution date of

the sender's order. The obligation of that sender to pay its payment order is excused if the funds transfer is not completed by acceptance by the beneficiary's bank of a payment order instructing payment to the beneficiary of that sender's payment order.

(d) If the sender of a payment order pays the order and was not obliged to pay all or part of the amount paid, the bank receiving payment is obliged to refund payment to the extent the sender was not obliged to pay. Except as provided in RCW 62A.4A-204 and 62A.4A-304, interest is payable on the refundable amount from the date of payment.

(e) If a funds transfer is not completed as stated in (c) of this section and an intermediary bank is obliged to refund payment as stated in subsection (d) of this section but is unable to do so because not permitted by applicable law or because the bank suspends payments, a sender in the funds transfer that executed a payment order in compliance with an instruction, as stated in RCW 62A.4A-302(a)(1), to route the funds transfer through that intermediary bank is entitled to receive or retain payment from the sender of the payment order that it accepted. The first sender in the funds transfer that issued an instruction requiring routing through that intermediary bank is subrogated to the right of the bank that paid the intermediary bank to refund as stated in subsection (d) of this section.

(f) The right of the sender of a payment order to be excused from the obligation to pay the order as stated in subsection (c) of this section or to receive refund under subsection (d) of this section may not be varied by agreement. [2013 c 118 § 22; 1991 sp.s. c 21 § 4A-402.]

62A.4A-403 Payment by sender to receiving bank.

(a) Payment of the sender's obligation under RCW 62A.4A-402 to pay the receiving bank occurs as follows:

(1) If the sender is a bank, payment occurs when the receiving bank receives final settlement of the obligation through a federal reserve bank or through a funds-transfer system.

(2) If the sender is a bank and the sender (i) credited an account of the receiving bank with the sender, or (ii) caused an account of the receiving bank in another bank to be credited, payment occurs when the credit is withdrawn or, if not withdrawn, at midnight of the day on which the credit is withdrawable and the receiving bank learns of that fact.

(3) If the receiving bank debits an account of the sender with the receiving bank, payment occurs when the debit is made to the extent the debit is covered by a withdrawable credit balance in the account.

(b) If the sender and receiving bank are members of a funds-transfer system that nets obligations multilaterally among participants, the receiving bank receives final settlement when settlement is complete in accordance with the rules of the system. The obligation of the sender to pay the amount of a payment order transmitted through the funds-transfer system may be satisfied, to the extent permitted by the rules of the system, by setting off and applying against the sender's obligation the right of the sender to receive payment from the receiving bank of the amount of any other payment order transmitted to the sender by the receiving bank through the funds-transfer system. The aggregate balance of obligations owed by each sender to each receiving bank in the

funds-transfer system may be satisfied, to the extent permitted by the rules of the system, by setting off and applying against that balance the aggregate balance of obligations owed to the sender by other members of the system. The aggregate balance is determined after the right of setoff stated in the second sentence of this subsection has been exercised.

(c) If two banks transmit payment orders to each other under an agreement that settlement of the obligations of each bank to the other under RCW 62A.4A-402 will be made at the end of the day or other period, the total amount owed with respect to all orders transmitted by one bank shall be set off against the total amount owed with respect to all orders transmitted by the other bank. To the extent of the setoff, each bank has made payment to the other.

(d) In a case not covered by subsection (a) of this section, the time when payment of the sender's obligation under RCW 62A.4A-402 (b) or (c) occurs is governed by applicable principles of law that determine when an obligation is satisfied. [2013 c 118 § 23; 1991 sp.s. c 21 § 4A-403.]

62A.4A-404 Obligation of beneficiary's bank to pay and give notice to beneficiary.

(a) Subject to RCW 62A.4A-211(e), 62A.4A-405(d), and 62A.4A-405(e), if a beneficiary's bank accepts a payment order, the bank is obliged to pay the amount of the order to the beneficiary of the order. Payment is due on the payment date of the order, but if acceptance occurs on the payment date after the close of the funds-transfer business day of the bank, payment is due on the next funds-transfer business day. If the bank refuses to pay after demand by the beneficiary and receipt of notice of particular circumstances that will give rise to consequential damages as a result of nonpayment, the beneficiary may recover damages resulting from the refusal to pay to the extent the bank had notice of the damages, unless the bank proves that it did not pay because of a reasonable doubt concerning the right of the beneficiary to payment.

(b) If a payment order accepted by the beneficiary's bank instructs payment to an account of the beneficiary, the bank is obliged to notify the beneficiary of receipt of the order before midnight of the next funds-transfer business day following the payment date. If the payment order does not instruct payment to an account of the beneficiary, the bank is required to notify the beneficiary only if notice is required by the order. Notice may be given by first-class mail or any other means reasonable in the circumstances. If the bank fails to give the required notice, the bank is obliged to pay interest to the beneficiary on the amount of the payment order from the day notice should have been given until the day the beneficiary learned of receipt of the payment order by the bank. No other damages are recoverable. Reasonable attorneys' fees are also recoverable if demand for interest is made and refused before an action is brought on the claim.

(c) The right of a beneficiary to receive payment and damages as stated in subsection (a) of this section may not be varied by agreement or a funds-transfer system rule. The right of a beneficiary to be notified as stated in subsection (b) of this section may be varied by agreement of the beneficiary or by a funds-transfer system rule if the beneficiary is notified of the rule before initiation of the funds transfer. [2013 c 118 § 24; 1991 sp.s. c 21 § 4A-404.]

62A.4A-405 Payment by beneficiary's bank to beneficiary. (a) If the beneficiary's bank credits an account of the beneficiary of a payment order, payment of the bank's obligation under RCW 62A.4A-404(a) occurs when and to the extent (i) the beneficiary is notified of the right to withdraw the credit, (ii) the bank lawfully applies the credit to a debt of the beneficiary, or (iii) funds with respect to the order are otherwise made available to the beneficiary by the bank.

(b) If the beneficiary's bank does not credit an account of the beneficiary of a payment order, the time when payment of the bank's obligation under RCW 62A.4A-404(a) occurs is governed by principles of law that determine when an obligation is satisfied.

(c) Except as stated in subsections (d) and (e) of this section, if the beneficiary's bank pays the beneficiary of a payment order under a condition to payment or agreement of the beneficiary giving the bank the right to recover payment from the beneficiary if the bank does not receive payment of the order, the condition to payment or agreement is not enforceable.

(d) A funds-transfer system rule may provide that payments made to beneficiaries of funds transfers made through the system are provisional until receipt of payment by the beneficiary's bank of the payment order it accepted. A beneficiary's bank that makes a payment that is provisional under the rule is entitled to refund from the beneficiary if (i) the rule requires that both the beneficiary and the originator be given notice of the provisional nature of the payment before the funds transfer is initiated, (ii) the beneficiary, the beneficiary's bank and the originator's bank agreed to be bound by the rule, and (iii) the beneficiary's bank did not receive payment of the payment order that it accepted. If the beneficiary is obliged to refund payment to the beneficiary's bank, acceptance of the payment order by the beneficiary's bank is nullified and no payment by the originator of the funds transfer to the beneficiary occurs under RCW 62A.4A-406.

(e) This subsection applies to a funds transfer that includes a payment order transmitted over a funds-transfer system that (i) nets obligations multilaterally among participants, and (ii) has in effect a loss-sharing agreement among participants for the purpose of providing funds necessary to complete settlement of the obligations of one or more participants that do not meet their settlement obligations. If the beneficiary's bank in the funds transfer accepts a payment order and the system fails to complete settlement pursuant to its rules with respect to any payment order in the funds transfer, (i) the acceptance by the beneficiary's bank is nullified and no person has any right or obligation based on the acceptance, (ii) the beneficiary's bank is entitled to recover payment from the beneficiary, (iii) no payment by the originator to the beneficiary occurs under RCW 62A.4A-406, and (iv) subject to RCW 62A.4A-402(e), each sender in the funds transfer is excused from its obligation to pay its payment order under RCW 62A.4A-402(c) because the funds transfer has not been completed. [2013 c 118 § 25; 1991 sp.s. c 21 § 4A-405.]

62A.4A-406 Payment by originator to beneficiary; discharge of underlying obligation. (a) Subject to RCW 62A.4A-211(e), 62A.4A-405(d), and 62A.4A-405(e), the originator of a funds transfer pays the beneficiary of the orig-

inator's payment order (i) at the time a payment order for the benefit of the beneficiary is accepted by the beneficiary's bank in the funds transfer and (ii) in an amount equal to the amount of the order accepted by the beneficiary's bank, but not more than the amount of the originator's order.

(b) If payment under subsection (a) of this section is made to satisfy an obligation, the obligation is discharged to the same extent discharge would result from payment to the beneficiary of the same amount in money, unless (i) the payment under subsection (a) of this section was made by a means prohibited by the contract of the beneficiary with respect to the obligation, (ii) the beneficiary, within a reasonable time after receiving notice of receipt of the order by the beneficiary's bank, notified the originator of the beneficiary's refusal of the payment, (iii) funds with respect to the order were not withdrawn by the beneficiary or applied to a debt of the beneficiary, and (iv) the beneficiary would suffer a loss that could reasonably have been avoided if payment had been made by a means complying with the contract. If payment by the originator does not result in discharge under this section, the originator is subrogated to the rights of the beneficiary to receive payment from the beneficiary's bank under RCW 62A.4A-404(a).

(c) For the purpose of determining whether discharge of an obligation occurs under subsection (b) of this section, if the beneficiary's bank accepts a payment order in an amount equal to the amount of the originator's payment order less charges of one or more receiving banks in the funds transfer, payment to the beneficiary is deemed to be in the amount of the originator's order unless upon demand by the beneficiary the originator does not pay the beneficiary the amount of the deducted charges.

(d) Rights of the originator or of the beneficiary of a funds transfer under this section may be varied only by agreement of the originator and the beneficiary. [2013 c 118 § 26; 1991 sp.s. c 21 § 4A-406.]

62A.4A-501 Variation by agreement and effect of funds-transfer system rule. (a) Except as otherwise provided in this Article, the rights and obligations of a party to a funds transfer may be varied by agreement of the affected party.

(b) "Funds-transfer system rule" means a rule of an association of banks (i) governing transmission of payment orders by means of a funds-transfer system of the association or rights and obligations with respect to those orders, or (ii) to the extent the rule governs rights and obligations between banks that are parties to a funds transfer in which a federal reserve bank, acting as an intermediary bank, sends a payment order to the beneficiary's bank. Except as otherwise provided in this Article, a funds-transfer system rule governing rights and obligations between participating banks using the system may be effective even if the rule conflicts with this Article and indirectly affects another party to the funds transfer who does not consent to the rule. A funds-transfer system rule may also govern rights and obligations of parties other than participating banks using the system to the extent stated in RCW 62A.4A-404(c), 62A.4A-405(d), and 62A.4A-507(c). [2013 c 118 § 27; 1991 sp.s. c 21 § 4A-501.]

62A.4A-502 Creditor process served on receiving bank; setoff by beneficiary's bank. (a) As used in this section, "creditor process" means levy, attachment, garnishment, notice of lien, sequestration, or similar process issued by or on behalf of a creditor or other claimant with respect to an account.

(b) This subsection applies to creditor process with respect to an authorized account of the sender of a payment order if the creditor process is served on the receiving bank. For the purpose of determining rights with respect to the creditor process, if the receiving bank accepts the payment order the balance in the authorized account is deemed to be reduced by the amount of the payment order to the extent the bank did not otherwise receive payment of the order, unless the creditor process is served at a time and in a manner affording the bank a reasonable opportunity to act on it before the bank accepts the payment order.

(c) If a beneficiary's bank has received a payment order for payment to the beneficiary's account in the bank, the following rules apply:

(1) The bank may credit the beneficiary's account. The amount credited may be set off against an obligation owed by the beneficiary to the bank or may be applied to satisfy creditor process served on the bank with respect to the account.

(2) The bank may credit the beneficiary's account and allow withdrawal of the amount credited unless creditor process with respect to the account is served at a time and in a manner affording the bank a reasonable opportunity to act to prevent withdrawal.

(3) If creditor process with respect to the beneficiary's account has been served and the bank has had a reasonable opportunity to act on it, the bank may not reject the payment order except for a reason unrelated to the service of process.

(d) Creditor process with respect to a payment by the originator to the beneficiary pursuant to a funds transfer may be served only on the beneficiary's bank with respect to the debt owed by that bank to the beneficiary. Any other bank served with the creditor process is not obliged to act with respect to the process. [2013 c 118 § 28; 1991 sp.s. c 21 § 4A-502.]

62A.4A-503 Injunction or restraining order with respect to funds transfer. For proper cause and in compliance with applicable law, a court may restrain (i) a person from issuing a payment order to initiate a funds transfer, (ii) an originator's bank from executing the payment order of the originator, or (iii) the beneficiary's bank from releasing funds to the beneficiary or the beneficiary from withdrawing the funds. A court may not otherwise restrain a person from issuing a payment order, paying or receiving payment of a payment order, or otherwise acting with respect to a funds transfer. [2013 c 118 § 29; 1991 sp.s. c 21 § 4A-503.]

62A.4A-504 Order in which items and payment orders may be charged to account; order of withdrawals from account. (a) If a receiving bank has received more than one payment order of the sender or one or more payment orders and other items that are payable from the sender's account, the bank may charge the sender's account with respect to the various orders and items in any sequence.

(b) In determining whether a credit to an account has been withdrawn by the holder of the account or applied to a debt of the holder of the account, credits first made to the account are first withdrawn or applied. [2013 c 118 § 30; 1991 sp.s. c 21 § 4A-504.]

62A.4A-506 Rate of interest. (a) If, under this Article, a receiving bank is obliged to pay interest with respect to a payment order issued to the bank, the amount payable may be determined (i) by agreement of the sender and receiving bank, or (ii) by a funds-transfer system rule if the payment order is transmitted through a funds-transfer system.

(b) If the amount of interest is not determined by an agreement or rule as stated in subsection (a) of this section, the amount is calculated by multiplying the applicable federal funds rate by the amount on which interest is payable, and then multiplying the product by the number of days for which interest is payable. The applicable federal funds rate is the average of the federal funds rates published by the federal reserve bank of New York for each of the days for which interest is payable divided by three hundred sixty. The federal funds rate for any day on which a published rate is not available is the same as the published rate for the next preceding day for which there is a published rate. If a receiving bank that accepted a payment order is required to refund payment to the sender of the order because the funds transfer was not completed, but the failure to complete was not due to any fault by the bank, the interest payable is reduced by a percentage equal to the reserve requirement on deposits of the receiving bank. [2013 c 118 § 31; 1991 sp.s. c 21 § 4A-506.]

62A.4A-507 Choice of law. (a) The following rules apply unless the affected parties otherwise agree or subsection (c) of this section applies:

(1) The rights and obligations between the sender of a payment order and the receiving bank are governed by the law of the jurisdiction in which the receiving bank is located.

(2) The rights and obligations between the beneficiary's bank and the beneficiary are governed by the law of the jurisdiction in which the beneficiary's bank is located.

(3) The issue of when payment is made pursuant to a funds transfer by the originator to the beneficiary is governed by the law of the jurisdiction in which the beneficiary's bank is located.

(b) If the parties described in each paragraph of subsection (a) of this section have made an agreement selecting the law of a particular jurisdiction to govern rights and obligations between each other, the law of that jurisdiction governs those rights and obligations, whether or not the payment order or the funds transfer bears a reasonable relation to that jurisdiction.

(c) A funds-transfer system rule may select the law of a particular jurisdiction to govern (i) rights and obligations between participating banks with respect to payment orders transmitted or processed through the system, or (ii) the rights and obligations of some or all parties to a funds transfer any part of which is carried out by means of the system. A choice of law made pursuant to clause (i) of this subsection is binding on participating banks. A choice of law made pursuant to clause (ii) of this subsection is binding on the originator, other sender, or a receiving bank having notice that the funds-

transfer system might be used in the funds transfer and of the choice of law by the system when the originator, other sender, or receiving bank issued or accepted a payment order. The beneficiary of a funds transfer is bound by the choice of law if, when the funds transfer is initiated, the beneficiary has notice that the funds-transfer system might be used in the funds transfer and of the choice of law by the system. The law of a jurisdiction selected pursuant to this subsection may govern, whether or not that law bears a reasonable relation to the matter in issue.

(d) In the event of inconsistency between an agreement under subsection (b) of this section and a choice-of-law rule under subsection (c) of this section, the agreement under subsection (b) of this section prevails.

(e) If a funds transfer is made by use of more than one funds-transfer system and there is inconsistency between choice-of-law rules of the systems, the matter in issue is governed by the law of the selected jurisdiction that has the most significant relationship to the matter in issue. [2013 c 118 § 32; 1991 sp.s. c 21 § 4A-507.]

Article 9A

SECURED TRANSACTIONS; SALES OF ACCOUNTS, CONTRACT RIGHTS AND CHATTEL PAPER

Sections

62A.9A-502 Contents of financing statement; record of mortgage as financing statement; time of filing financing statement.

62A.9A-503 Name of debtor and secured party.

62A.9A-502 Contents of financing statement; record of mortgage as financing statement; time of filing financing statement. (a) **Sufficiency of financing statement.** Subject to subsection (b) of this section, a financing statement is sufficient only if it:

- (1) Provides the name of the debtor;
- (2) Provides the name of the secured party or a representative of the secured party; and
- (3) Indicates the collateral covered by the financing statement.

(b) **Real-property-related financing statements.** Except as otherwise provided in RCW 62A.9A-501(b), to be sufficient, a financing statement that covers as-extracted collateral or timber to be cut, or which is filed as a fixture filing and covers goods that are or are to become fixtures, must satisfy subsection (a) of this section and also:

- (1) Indicate that it covers this type of collateral;
- (2) Indicate that it is to be filed for record in the real property records;
- (3) Provide a description of the real property to which the collateral is related sufficient to give constructive notice of a mortgage under the law of this state if the description were contained in a record of the mortgage of the real property; and
- (4) If the debtor does not have an interest of record in the real property, provide the name of a record owner.

(c) **Record of mortgage as financing statement.** A record of a mortgage is effective, from the date of recording, as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut only if:

(1) The record indicates the goods or accounts that it covers;

(2) The goods are or are to become fixtures related to the real property described in the record or the collateral is related to the real property described in the record and is as-extracted collateral or timber to be cut;

(3) The record satisfies the requirements for a financing statement in this section, but:

(A) The record need not indicate that it is to be filed in the real property records; and

(B) The record sufficiently provides the name of a debtor who is an individual if it provides the individual name of the debtor or the surname and first personal name of the debtor, even if the debtor is an individual to whom RCW 62A.9A-503(a)(4) applies; and

(4) The record is recorded.

(d) **Filing before security agreement or attachment.** A financing statement may be filed before a security agreement is made or a security interest otherwise attaches. [2013 c 118 § 33; 2000 c 250 § 9A-502.]

Effective date—2013 c 118 §§ 33 and 34: "Sections 33 and 34 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 2013." [2013 c 118 § 36.]

62A.9A-503 Name of debtor and secured party. (a) **Sufficiency of debtor's name.** A financing statement sufficiently provides the name of the debtor:

(1) Except as otherwise provided in (3) of this subsection (a), if the debtor is a registered organization or the collateral is held in a trust that is a registered organization, only if the financing statement provides the name that is stated to be the registered organization's name on the public organic record most recently filed with or issued or enacted by the registered organization's jurisdiction of organization which purports to state, amend, or restate the registered organization's name;

(2) Subject to subsection (f) of this section, if the collateral is being administered by the personal representative of a decedent, only if the financing statement provides, as the name of the debtor, the name of the decedent and, in a separate part of the financing statement, indicates that the collateral is being administered by a personal representative;

(3) If the collateral is held in a trust that is not a registered organization, only if the financing statement:

(A) Provides, as the name of the debtor:

- (i) If the organic record of the trust specifies a name for the trust, the name specified; or

- (ii) If the organic record of the trust does not specify a name for the trust, the name of the settlor or testator; and

(B) In a separate part of the financing statement:

- (i) If the name is provided in accordance with (3)(A)(i) of this subsection, indicates that the collateral is held in a trust; or

- (ii) If the name is provided in accordance with (3)(A)(ii) of this subsection, provides additional information sufficient to distinguish the trust from other trusts having one or more of the same settlors or the same testator and indicates that the collateral is held in a trust, unless the additional information so indicates;

(4) Subject to subsection (g) of this section, if the debtor is an individual to whom this state has issued a driver's

license or identification card that has not expired, only if the financing statement provides the name of the individual which is indicated on the driver's license or identification card;

(5) If the debtor is an individual to whom (4) of this subsection (a) does not apply, only if the financing statement provides the individual name of the debtor or the surname and first personal name of the debtor; and

(6) In other cases:

(A) If the debtor has a name, only if the financing statement provides the organizational name of the debtor; and

(B) If the debtor does not have a name, only if the financing statement provides the names of the partners, members, associates, or other persons comprising the debtor, in a manner that each name provided would be sufficient if the person named were the debtor.

(b) **Additional debtor-related information.** A financing statement that provides the name of the debtor in accordance with subsection (a) of this section is not rendered ineffective by the absence of:

(1) A trade name or other name of the debtor; or

(2) Unless required under subsection (a)(6)(B) of this section, names of partners, members, associates, or other persons comprising the debtor.

(c) **Debtor's trade name insufficient.** A financing statement that provides only the debtor's trade name does not sufficiently provide the name of the debtor.

(d) **Representative capacity.** Failure to indicate the representative capacity of a secured party or representative of a secured party does not affect the sufficiency of a financing statement.

(e) **Multiple debtors and secured parties.** A financing statement may provide the name of more than one debtor and the name of more than one secured party.

(f) **Name of decedent.** The name of the decedent indicated on the order appointing the personal representative of the decedent issued by the court having jurisdiction over the collateral is sufficient as the "name of the decedent" under subsection (a)(2) of this section.

(g) **Multiple driver's licenses.** If this state has issued to an individual more than one driver's license or identification card of a kind described in subsection (a)(4) of this section, the one that was issued most recently is the one to which subsection (a)(4) of this section refers.

(h) **Definition.** In this section, the "name of the settlor or testator" means:

(1) If the settlor is a registered organization, the name that is stated to be the settlor's name on the public organic record most recently filed with or issued or enacted by the settlor's jurisdiction of organization which purports to state, amend, or restate the settlor's name; or

(2) In other cases, the name of the settlor or testator indicated in the trust's organic record. [2013 c 118 § 34; 2011 c 74 § 401; 2000 c 250 § 9A-503.]

Effective date—2013 c 118 §§ 33 and 34: See note following RCW 62A.9A-502.

Application—Effective date—2011 c 74: See notes following RCW 62A.9A-102.

Article 11

EFFECTIVE DATE AND TRANSITION PROVISIONS

Sections

62A.11-109 Effective financing statement; certificate by county auditor.

62A.11-109 Effective financing statement; certificate by county auditor. From and after midnight June 30, 1982, upon request of any person, the county auditor shall issue his or her certificate showing whether there is on file with the county auditor's office on the date and hour stated therein, any presently effective financing statement filed with the county auditor's office before midnight June 30, 1982, naming a particular debtor and any statement of assignment thereof and if there is, giving the date and hour of filing of each such statement and the names and addresses of each secured party therein. The uniform fee for such a certificate shall be four dollars. Upon request, the county auditor shall issue his or her certificate and shall furnish a copy of any filed financing statements or statements of assignment for a uniform fee of ten dollars for each particular debtor's statements requested. [2013 c 23 § 174; 1981 c 41 § 45.]

Additional notes found at www.leg.wa.gov

Title 64

REAL PROPERTY AND CONVEYANCES

Chapters

64.04 Conveyances.

64.34 Condominium act.

64.38 Homeowners' associations.

64.44 Contaminated properties.

Chapter 64.04 RCW CONVEYANCES

Sections

64.04.130 Interests in land for purposes of conservation, protection, preservation, etc.—Ownership by certain entities—Conveyances—Definitions.

64.04.130 Interests in land for purposes of conservation, protection, preservation, etc.—Ownership by certain entities—Conveyances—Definitions. A development right, easement, covenant, restriction, or other right, or any interest less than the fee simple, to protect, preserve, maintain, improve, restore, limit the future use of, or conserve for open space purposes, any land or improvement on the land, whether the right or interest be appurtenant or in gross, may be held or acquired by any state agency, federal agency, county, city, town, federally recognized Indian tribe, or metropolitan municipal corporation, nonprofit historic preservation corporation, or nonprofit nature conservancy corporation. Any such right or interest constitutes and is classified as real property. All instruments for the conveyance thereof must be substantially in the form required by law for the conveyance of any land or other real property.

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

(1) "Nonprofit historic preservation corporation" means an organization which qualifies as being tax exempt under 26

U.S.C. section 501(c)(3) of the United States Internal Revenue Code of 1954, as amended, and which has as one of its principal purposes the conducting or facilitating of historic preservation activities within the state, including conservation or preservation of historic sites, districts, buildings, and artifacts.

(2) "Nonprofit nature conservancy corporation" means an organization which qualifies as being tax exempt under 26 U.S.C. section 501(c)(3) (of the United States Internal Revenue Code of 1954, as amended) as it existed on June 25, 1976, and which has as one of its principal purposes the conducting or facilitating of scientific research; the conserving of natural resources, including but not limited to biological resources, for the general public; or the conserving of natural areas including but not limited to wildlife or plant habitat. [2013 c 120 § 1; 1987 c 341 § 1; 1979 ex.s. c 21 § 1.]

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

Acquisition of open space, land, or rights to future development by certain entities: RCW 84.34.200 through 84.34.250.

Property tax exemption for conservation futures on agricultural land: RCW 84.36.500.

Chapter 64.34 RCW CONDOMINIUM ACT

Sections

64.34.364 Lien for assessments.

64.34.364 Lien for assessments. (1) The association has a lien on a unit for any unpaid assessments levied against a unit from the time the assessment is due.

(2) A lien under this section shall be prior to all other liens and encumbrances on a unit except: (a) Liens and encumbrances recorded before the recording of the declaration; (b) a mortgage on the unit recorded before the date on which the assessment sought to be enforced became delinquent; and (c) liens for real property taxes and other governmental assessments or charges against the unit. A lien under this section is not subject to the provisions of chapter 6.13 RCW.

(3) Except as provided in subsections (4) and (5) of this section, the lien shall also be prior to the mortgages described in subsection (2)(b) of this section to the extent of assessments for common expenses, excluding any amounts for capital improvements, based on the periodic budget adopted by the association pursuant to RCW 64.34.360(1) which would have become due during the six months immediately preceding the date of a sheriff's sale in an action for judicial foreclosure by either the association or a mortgagee, the date of a trustee's sale in a nonjudicial foreclosure by a mortgagee, or the date of recording of the declaration of forfeiture in a proceeding by the vendor under a real estate contract.

(4) The priority of the association's lien against units encumbered by a mortgage held by an eligible mortgagee or by a mortgagee which has given the association a written request for a notice of delinquent assessments shall be reduced by up to three months if and to the extent that the lien priority under subsection (3) of this section includes delinquencies which relate to a period after such holder becomes an eligible mortgagee or has given such notice and before the

association gives the holder a written notice of the delinquency. This subsection does not affect the priority of mechanics' or material suppliers' liens, or the priority of liens for other assessments made by the association.

(5) If the association forecloses its lien under this section nonjudicially pursuant to chapter 61.24 RCW, as provided by subsection (9) of this section, the association shall not be entitled to the lien priority provided for under subsection (3) of this section.

(6) Unless the declaration otherwise provides, if two or more associations have liens for assessments created at any time on the same real estate, those liens have equal priority.

(7) Recording of the declaration constitutes record notice and perfection of the lien for assessments. While no further recording of any claim of lien for assessment under this section shall be required to perfect the association's lien, the association may record a notice of claim of lien for assessments under this section in the real property records of any county in which the condominium is located. Such recording shall not constitute the written notice of delinquency to a mortgagee referred to in subsection (2) of this section.

(8) A lien for unpaid assessments and the personal liability for payment of assessments is extinguished unless proceedings to enforce the lien or collect the debt are instituted within three years after the amount of the assessments sought to be recovered becomes due.

(9) The lien arising under this section may be enforced judicially by the association or its authorized representative in the manner set forth in chapter 61.12 RCW. The lien arising under this section may be enforced nonjudicially in the manner set forth in chapter 61.24 RCW for nonjudicial foreclosure of deeds of trust if the declaration (a) contains a grant of the condominium in trust to a trustee qualified under RCW 61.24.010 to secure the obligations of the unit owners to the association for the payment of assessments, (b) contains a power of sale, (c) provides in its terms that the units are not used principally for agricultural or farming purposes, and (d) provides that the power of sale is operative in the case of a default in the obligation to pay assessments. The association or its authorized representative shall have the power, unless prohibited by the declaration, to purchase the unit at the foreclosure sale and to acquire, hold, lease, mortgage, or convey the same. Upon an express waiver in the complaint of any right to a deficiency judgment in a judicial foreclosure action, the period of redemption shall be eight months. Nothing in this section shall prohibit an association from taking a deed in lieu of foreclosure.

(10) From the time of commencement of an action by the association to foreclose a lien for nonpayment of delinquent assessments against a unit that is not occupied by the owner thereof, the association shall be entitled to the appointment of a receiver to collect from the lessee thereof the rent for the unit as and when due. If the rental is not paid, the receiver may obtain possession of the unit, refurbish it for rental up to a reasonable standard for rental units in this type of condominium, rent the unit or permit its rental to others, and apply the rents first to the cost of the receivership and attorneys' fees thereof, then to the cost of refurbishing the unit, then to applicable charges, then to costs, fees, and charges of the foreclosure action, and then to the payment of the delinquent assessments. Only a receiver may take possession and collect

rents under this subsection, and a receiver shall not be appointed less than ninety days after the delinquency. The exercise by the association of the foregoing rights shall not affect the priority of preexisting liens on the unit.

(11) Except as provided in subsection (3) of this section, the holder of a mortgage or other purchaser of a unit who obtains the right of possession of the unit through foreclosure shall not be liable for assessments or installments thereof that became due prior to such right of possession. Such unpaid assessments shall be deemed to be common expenses collectible from all the unit owners, including such mortgagee or other purchaser of the unit. Foreclosure of a mortgage does not relieve the prior owner of personal liability for assessments accruing against the unit prior to the date of such sale as provided in this subsection.

(12) In addition to constituting a lien on the unit, each assessment shall be the joint and several obligation of the owner or owners of the unit to which the same are assessed as of the time the assessment is due. In a voluntary conveyance, the grantee of a unit shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor up to the time of the grantor's conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. Suit to recover a personal judgment for any delinquent assessment shall be maintainable in any court of competent jurisdiction without foreclosing or waiving the lien securing such sums.

(13) The association may from time to time establish reasonable late charges and a rate of interest to be charged on all subsequent delinquent assessments or installments thereof. In the absence of another established nonusurious rate, delinquent assessments shall bear interest from the date of delinquency at the maximum rate permitted under RCW 19.52.020 on the date on which the assessments became delinquent.

(14) The association shall be entitled to recover any costs and reasonable attorneys' fees incurred in connection with the collection of delinquent assessments, whether or not such collection activities result in suit being commenced or prosecuted to judgment. In addition, the association shall be entitled to recover costs and reasonable attorneys' fees if it prevails on appeal and in the enforcement of a judgment.

(15) The association upon written request shall furnish to a unit owner or a mortgagee a statement signed by an officer or authorized agent of the association setting forth the amount of unpaid assessments against that unit. The statement shall be furnished within fifteen days after receipt of the request and is binding on the association, the board of directors, and every unit owner, unless and to the extent known by the recipient to be false.

(16) To the extent not inconsistent with this section, the declaration may provide for such additional remedies for collection of assessments as may be permitted by law. [2013 c 23 § 175; 1990 c 166 § 6; 1989 c 43 § 3-117.]

Additional notes found at www.leg.wa.gov

Chapter 64.38 RCW HOMEOWNERS' ASSOCIATIONS

Sections

64.38.035 Association meetings—Notice—Board of directors.

64.38.035 Association meetings—Notice—Board of directors. (1) A meeting of the association must be held at least once each year. Special meetings of the association may be called by the president, a majority of the board of directors, or by owners having ten percent of the votes in the association.

(2) Not less than fourteen nor more than sixty days in advance of any meeting of the association, the secretary or other officers specified in the bylaws shall provide written notice to each owner of record by:

(a) Hand-delivery to the mailing address of the owner or other address designated in writing by the owner;

(b) Prepaid first-class United States mail to the mailing address of the owner or to any other mailing address designated in writing by the owner; or

(c) Electronic transmission to an address, location, or system designated in writing by the owner. Notice to owners by an electronic transmission complies with this section only with respect to those owners who have delivered to the secretary or other officers specified in the bylaws a written record consenting to receive electronically transmitted notices. An owner who has consented to receipt of electronically transmitted notices may revoke the consent at any time by delivering a written record of the revocation to the secretary or other officer specified in the bylaws. Consent is deemed revoked if the secretary or other officer specified in the bylaws is unable to electronically transmit two consecutive notices given in accordance with the consent.

(3) The notice of any meeting shall state the time and place of the meeting and the business to be placed on the agenda by the board of directors for a vote by the owners, including the general nature of any proposed amendment to the articles of incorporation, bylaws, any budget or changes in the previously approved budget that result in a change in assessment obligation, and any proposal to remove a director.

(4) Except as provided in this subsection, all meetings of the board of directors shall be open for observation by all owners of record and their authorized agents. The board of directors shall keep minutes of all actions taken by the board, which shall be available to all owners. Upon the affirmative vote in open meeting to assemble in closed session, the board of directors may convene in closed executive session to consider personnel matters; consult with legal counsel or consider communications with legal counsel; and discuss likely or pending litigation, matters involving possible violations of the governing documents of the association, and matters involving the possible liability of an owner to the association. The motion shall state specifically the purpose for the closed session. Reference to the motion and the stated purpose for the closed session shall be included in the minutes. The board of directors shall restrict the consideration of matters during the closed portions of meetings only to those purposes specifically exempted and stated in the motion. No motion, or other action adopted, passed, or agreed to in closed session may become effective unless the board of directors, follow-

ing the closed session, reconvenes in open meeting and votes in the open meeting on such motion, or other action which is reasonably identified. The requirements of this subsection shall not require the disclosure of information in violation of law or which is otherwise exempt from disclosure. [2013 c 108 § 1; 1995 c 283 § 7.]

Chapter 64.44 RCW CONTAMINATED PROPERTIES

Sections

64.44.010	Definitions.
64.44.060	Certification of contractors, supervisors, or workers—Denial, suspension, revocation, or restrictions on certificate—Penalties—Fees.

64.44.010 Definitions. The words and phrases defined in this section shall have the following meanings when used in this chapter unless the context clearly indicates otherwise.

(1) "Authorized contractor" means a person who decontaminates, demolishes, or disposes of contaminated property as required by this chapter who is certified by the department as provided for in RCW 64.44.060.

(2) "Contaminated" or "contamination" means polluted by hazardous chemicals so that the property is unfit for human habitation or use due to immediate or long-term hazards. Property that at one time was contaminated but has been satisfactorily decontaminated according to procedures established by the state board of health is not "contaminated."

(3) "Department" means the department of health.

(4) "Hazardous chemicals" means the following substances associated with the illegal manufacture of controlled substances: (a) Hazardous substances as defined in RCW 70.105D.020; (b) precursor substances as defined in RCW 69.43.010 which the state board of health, in consultation with the pharmacy quality assurance commission, has determined present an immediate or long-term health hazard to humans; and (c) the controlled substance or substances being manufactured, as defined in RCW 69.50.101.

(5) "Officer" means a local health officer authorized under chapters 70.05, 70.08, and 70.46 RCW.

(6) "Property" means any real or personal property, or segregable part thereof, that is involved in or affected by the unauthorized manufacture, distribution, or storage of hazardous chemicals. This includes but is not limited to single-family residences, units of multiplexes, condominiums, apartment buildings, boats, motor vehicles, trailers, manufactured housing, any shop, booth, garden, or storage shed, and all contents of the items referenced in this subsection. [2013 c 19 § 49; 2006 c 339 § 201; 1999 c 292 § 2; 1990 c 213 § 2.]

Intent—Part headings not law—2006 c 339: See notes following RCW 70.96A.325.

Finding—Intent—1999 c 292: "The legislature finds that the contamination of properties used for illegal drug manufacturing poses a threat to public health. The toxic chemicals left behind by the illegal drug manufacturing must be cleaned up to prevent harm to subsequent occupants of the properties. It is the intent of the legislature that properties are decontaminated in a manner that is efficient, prompt, and that makes them safe to reoccupy." [1999 c 292 § 1.]

Additional notes found at www.leg.wa.gov

64.44.060 Certification of contractors, supervisors, or workers—Denial, suspension, revocation, or restrictions on certificate—Penalties—Fees.

(1) A contractor, supervisor, or worker may not perform decontamination, demolition, or disposal work unless issued a certificate by the state department of health. The department shall establish performance standards for contractors, supervisors, and workers by rule in accordance with chapter 34.05 RCW, the administrative procedure act. The department shall train and test, or may approve courses to train and test, contractors, supervisors, and workers on the essential elements in assessing property used as an illegal controlled substances manufacturing or storage site to determine hazard reduction measures needed, techniques for adequately reducing contaminants, use of personal protective equipment, methods for proper decontamination, demolition, removal, and disposal of contaminated property, and relevant federal and state regulations. Upon successful completion of the training, and after a background check, the contractor, supervisor, or worker shall be certified.

(2) The department may require the successful completion of annual refresher courses provided or approved by the department for the continued certification of the contractor or employee.

(3) The department shall provide for reciprocal certification of any individual trained to engage in decontamination, demolition, or disposal work in another state when the prior training is shown to be substantially similar to the training required by the department. The department may require such individuals to take an examination or refresher course before certification.

(4) The department may deny, suspend, revoke, or place restrictions on a certificate for failure to comply with the requirements of this chapter or any rule adopted pursuant to this chapter. A certificate may be denied, suspended, revoked, or have restrictions placed on it on any of the following grounds:

(a) Failing to perform decontamination, demolition, or disposal work under the supervision of trained personnel;

(b) Failing to perform decontamination, demolition, or disposal work using department of health certified decontamination personnel;

(c) Failing to file a work plan;

(d) Failing to perform work pursuant to the work plan;

(e) Failing to perform work that meets the requirements of the department and the requirements of the local health officers;

(f) Failing to properly dispose of contaminated property;

(g) Committing fraud or misrepresentation in: (i) Applying for or obtaining a certification, recertification, or reinstatement; (ii) seeking approval of a work plan; and (iii) documenting completion of work to the department or local health officer;

(h) Failing the evaluation and inspection of decontamination projects pursuant to RCW 64.44.075; or

(i) If the person has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order or a *residential or visitation order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the department's receipt of a release issued

by the department of social and health services stating that the person is in compliance with the order.

(5) A contractor, supervisor, or worker who violates any provision of this chapter may be assessed a fine not to exceed five hundred dollars for each violation.

(6) The department of health shall prescribe fees as provided for in RCW 43.70.250 for: The issuance and renewal of certificates, conducting background checks of applicants, the administration of examinations, and the review of training courses. [2013 c 251 § 6; 2006 c 339 § 206; 1999 c 292 § 7; 1997 c 58 § 878; 1990 c 213 § 7.]

***Reviser's note:** 1997 c 58 § 886 requiring a court to order certification of noncompliance with residential provisions of a court-ordered parenting plan was vetoed. Provisions ordering the department of social and health services to certify a responsible parent based on a court order to certify for noncompliance with residential provisions of a parenting plan were vetoed. See RCW 74.20A.320.

Residual balance of funds—Effective date—2013 c 251: See notes following RCW 41.06.280.

Intent—Part headings not law—2006 c 339: See notes following RCW 70.96A.325.

Finding—Intent—1999 c 292: See note following RCW 64.44.010.

Effective dates—Intent—1997 c 58: See notes following RCW 74.20A.320.

Additional notes found at www.leg.wa.gov

Title 66

ALCOHOLIC BEVERAGE CONTROL

Chapters

- 66.08 Liquor control board—General provisions.**
- 66.20 Liquor permits.**
- 66.24 Licenses—Stamp taxes.**
- 66.28 Miscellaneous regulatory provisions.**
- 66.44 Enforcement—Penalties.**

Chapter 66.08 RCW

LIQUOR CONTROL BOARD— GENERAL PROVISIONS

Sections

- 66.08.250 Report on streamlining liquor tax collection.

66.08.250 Report on streamlining liquor tax collection. By September 30, 2013, and in compliance with RCW 43.01.036, the board and the department of revenue must make recommendations to the legislature that detail the statutory changes necessary to: Streamline the collection of liquor taxes, fees, and reports; and require a singular state agency to be responsible for the collection of this revenue and information. [2013 c 95 § 2.]

Findings—2013 c 95: "The legislature finds that the adoption of Initiative Measure No. 1183 by the voters in 2011 privatized the sale and distribution of spirits in Washington. The legislature also finds that reporting requirements for all liquor taxes and fees are administratively complex and require payment and reporting to multiple state agencies." [2013 c 95 § 1.]

[2013 RCW Supp—page 694]

Chapter 66.20 RCW LIQUOR PERMITS

Sections

- 66.20.010 Permits classified—Issuance—Fees—Waiver of provisions during state of emergency.
- 66.20.120 Hospital, etc., may administer liquor—Penalty.
- 66.20.300 Alcohol servers—Definitions.
- 66.20.310 Alcohol servers—Permits—Requirements—Suspension, revocation—Violations—Exemptions.

66.20.010 Permits classified—Issuance—Fees—Waiver of provisions during state of emergency. Upon application in the prescribed form being made to any employee authorized by the board to issue permits, accompanied by payment of the prescribed fee, and upon the employee being satisfied that the applicant should be granted a permit under this title, the employee must issue to the applicant under such regulations and at such fee as may be prescribed by the board a permit of the class applied for, as follows:

(1) Where the application is for a special permit by a physician or dentist, or by any person in charge of an institution regularly conducted as a hospital or sanatorium for the care of persons in ill health, or as a home devoted exclusively to the care of aged people, a special liquor purchase permit, except that the governor may waive the requirement for a special liquor purchase permit under this subsection pursuant to an order issued under RCW 43.06.220(2);

(2) Where the application is for a special permit by a person engaged within the state in mechanical or manufacturing business or in scientific pursuits requiring alcohol for use therein, or by any private individual, a special permit to purchase alcohol for the purpose named in the permit, except that the governor may waive the requirement for a special liquor purchase permit under this subsection pursuant to an order issued under RCW 43.06.220(2);

(3) Where the application is for a special permit to consume liquor at a banquet, at a specified date and place, a special permit to purchase liquor for consumption at such banquet, to such applicants as may be fixed by the board;

(4) Where the application is for a special permit to consume liquor on the premises of a business not licensed under this title, a special permit to purchase liquor for consumption thereon for such periods of time and to such applicants as may be fixed by the board;

(5) Where the application is for a special permit by a manufacturer to import or purchase within the state alcohol, malt, and other materials containing alcohol to be used in the manufacture of liquor, or other products, a special permit;

(6) Where the application is for a special permit by a person operating a drug store to purchase liquor at retail prices only, to be thereafter sold by such person on the prescription of a physician, a special liquor purchase permit, except that the governor may waive the requirement for a special liquor purchase permit under this subsection pursuant to an order issued under RCW 43.06.220(2);

(7) Where the application is for a special permit by an authorized representative of a military installation operated by or for any of the armed forces within the geographical boundaries of the state of Washington, a special permit to purchase liquor for use on such military installation;

(8) Where the application is for a special permit by a vendor that manufactures or sells a product which cannot be effectively presented to potential buyers without serving it with liquor or by a manufacturer, importer, or distributor, or representative thereof, to serve liquor without charge to delegates and guests at a convention of a trade association composed of licensees of the board, when the said liquor is served in a hospitality room or from a booth in a board-approved suppliers' display room at the convention, and when the liquor so served is for consumption in the said hospitality room or display room during the convention, anything in this title to the contrary notwithstanding. Any such spirituous liquor must be purchased from a spirits retailer or distributor, and any such liquor is subject to the taxes imposed by RCW 66.24.290 and 66.24.210;

(9) Where the application is for a special permit by a manufacturer, importer, or distributor, or representative thereof, to donate liquor for a reception, breakfast, luncheon, or dinner for delegates and guests at a convention of a trade association composed of licensees of the board, when the liquor so donated is for consumption at the said reception, breakfast, luncheon, or dinner during the convention, anything in this title to the contrary notwithstanding. Any such spirituous liquor must be purchased from a spirits retailer or distributor, and any such liquor is subject to the taxes imposed by RCW 66.24.290 and 66.24.210;

(10) Where the application is for a special permit by a manufacturer, importer, or distributor, or representative thereof, to donate and/or serve liquor without charge to delegates and guests at an international trade fair, show, or exposition held under the auspices of a federal, state, or local governmental entity or organized and promoted by a nonprofit organization, anything in this title to the contrary notwithstanding. Any such spirituous liquor must be purchased from a liquor spirits retailer or distributor, and any such liquor is subject to the taxes imposed by RCW 66.24.290 and 66.24.210;

(11) Where the application is for an annual special permit by a person operating a bed and breakfast lodging facility to donate or serve wine or beer without charge to overnight guests of the facility if the wine or beer is for consumption on the premises of the facility. "Bed and breakfast lodging facility," as used in this subsection, means a facility offering from one to eight lodging units and breakfast to travelers and guests;

(12) Where the application is for a special permit to allow tasting of alcohol by persons at least eighteen years of age under the following circumstances:

(a) The application is from a community or technical college as defined in RCW 28B.50.030;

(b) The person who is permitted to taste under this subsection is enrolled as a student in a required or elective class that is part of a culinary, wine technology, beer technology, or spirituous technology-related degree program;

(c) The alcohol served to any person in the degree-related programs under (b) of this subsection is tasted but not consumed for the purposes of educational training as part of the class curriculum with the approval of the educational provider;

(d) The service and tasting of alcoholic beverages is supervised by a faculty or staff member of the educational

provider who is twenty-one years of age or older. The supervising faculty or staff member shall possess a class 12 or 13 alcohol server permit under the provisions of RCW 66.20.310;

(e) The enrolled student permitted to taste the alcoholic beverages does not purchase the alcoholic beverages; and

(f) The permit fee for the special permit provided for in this subsection (12) shall be waived by the board. [2013 c 59 § 1; 2012 c 2 § 109 (Initiative Measure No. 1183, approved November 8, 2011); 2011 c 119 § 213; 2008 c 181 § 602; (2008 c 181 § 601 expired July 1, 2008); 2007 c 370 § 16; 1998 c 126 § 1; 1997 c 321 § 43; 1984 c 78 § 6; 1984 c 45 § 1; 1983 c 13 § 1; 1982 c 85 § 1; 1975-'76 2nd ex.s. c 62 § 2; 1959 c 111 § 2; 1951 2nd ex.s. c 13 § 1; 1933 ex.s. c 62 § 12; RRS § 7306-12.]

Finding—Application—Rules—Effective date—Contingent effective date—2012 c 2 (Initiative Measure No. 1183): See notes following RCW 66.24.620.

Effective date—2008 c 181 § 602: "Section 602 of this act takes effect July 1, 2008." [2008 c 181 § 604.]

Expiration date—2008 c 181 § 601: "Section 601 of this act expires July 1, 2008." [2008 c 181 § 603.]

Part headings not law—2008 c 181: See note following RCW 43.06.220.

Effective date—2007 c 370 §§ 10-20: See note following RCW 66.04.010.

Finding and declaration—Severability—1984 c 78: See notes following RCW 66.12.160.

Additional notes found at www.leg.wa.gov

66.20.120 Hospital, etc., may administer liquor—Penalty. Any person in charge of an institution regularly conducted as a hospital or sanatorium for the care of persons in ill health, or as a home devoted exclusively to the care of aged people, may, if he or she holds a special permit under this title for that purpose, administer liquor purchased by him or her under his or her special permit to any patient or inmate of the institution who is in need of the same, either by way of external application or otherwise for medicinal purposes, and may charge for the liquor so administered; but no liquor shall be administered by any person under this section except to bona fide patients or inmates of the institution of which he or she is in charge and in cases of actual need and every person in charge of an institution who administers liquor in evasion or violation of this title shall be guilty of a violation of this title. [2013 c 23 § 176; 1933 ex.s. c 62 § 22; RRS § 7306-22.]

66.20.300 Alcohol servers—Definitions. The definitions in this section apply throughout RCW 66.20.310 through 66.20.350 unless the context clearly requires otherwise.

(1) "Alcohol" has the same meaning as "liquor" in RCW 66.04.010.

(2) "Alcohol server" means any person who as part of his or her employment participates in the sale or service of alcoholic beverages for on-premise consumption at a retail licensed premise as a regular requirement of his or her employment, and includes those persons eighteen years of age or older permitted by the liquor laws of this state to serve alcoholic beverages with meals.

(3) "Board" means the Washington state liquor control board.

(4) "Retail licensed premises" means any:

(a) Premises licensed to sell alcohol by the glass or by the drink, or in original containers primarily for consumption on the premises as authorized by this section and RCW 66.20.310, 66.24.320, 66.24.330, 66.24.350, 66.24.400, 66.24.425, 66.24.450, 66.24.570, 66.24.610, 66.24.650, and 66.24.655;

(b) Distillery licensed pursuant to RCW 66.24.140 that is authorized to serve samples of its own production;

(c) Facility established by a domestic winery for serving and selling wine pursuant to RCW 66.24.170(4); and

(d) Grocery store licensed under RCW 66.24.360, but only with respect to employees whose duties include serving during tasting activities under RCW 66.24.363.

(5) "Training entity" means any liquor licensee associations, independent contractors, private persons, and private or public schools, that have been certified by the board. [2013 c 237 § 2; 2013 c 219 § 2; 2011 c 325 § 5; 2010 c 141 § 3. Prior: 2008 c 94 § 10; 2008 c 41 § 1; 1997 c 321 § 44; 1996 c 218 § 2; 1995 c 51 § 2.]

Reviser's note: (1) The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

(2) This section was amended by 2013 c 219 § 2 and by 2013 c 237 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—1995 c 51: "The legislature finds that education of alcohol servers on issues such as the physiological effects of alcohol on consumers, liability and legal implications of serving alcohol, driving while intoxicated, and methods of intervention with the problem customer are important in protecting the health and safety of the public. The legislature further finds that it is in the best interest of the citizens of the state of Washington to have an alcohol server education program." [1995 c 51 § 1.]

Additional notes found at www.leg.wa.gov

66.20.310 Alcohol servers—Permits—Requirements—Suspension, revocation—Violations—Exemptions. (1)(a) There is an alcohol server permit, known as a class 12 permit, for a manager or bartender selling or mixing alcohol, spirits, wines, or beer for consumption at an on-premises licensed facility.

(b) There is an alcohol server permit, known as a class 13 permit, for a person who only serves alcohol, spirits, wines, or beer for consumption at an on-premises licensed facility.

(c) As provided by rule by the board, a class 13 permit holder may be allowed to act as a bartender without holding a class 12 permit.

(2)(a) Effective January 1, 1997, except as provided in (d) of this subsection, every alcohol server employed, under contract or otherwise, at a retail licensed premise must be issued a class 12 or class 13 permit.

(b) Every class 12 and class 13 permit issued must be issued in the name of the applicant and no other person may use the permit of another permit holder. The holder must present the permit upon request to inspection by a representative of the board or a peace officer. The class 12 or class 13 permit is valid for employment at any retail licensed premises described in (a) of this subsection.

(c) Except as provided in (d) of this subsection, no licensee holding a license as authorized by this section and RCW 66.20.300, 66.24.320, 66.24.330, 66.24.350, 66.24.400, 66.24.425, 66.24.450, 66.24.570, 66.24.600, 66.24.610, 66.24.650, and 66.24.655 may employ or accept

the services of any person without the person first having a valid class 12 or class 13 permit.

(d) Within sixty days of initial employment, every person whose duties include the compounding, sale, service, or handling of liquor must have a class 12 or class 13 permit.

(e) No person may perform duties that include the sale or service of alcoholic beverages on a retail licensed premises without possessing a valid alcohol server permit.

(3) A permit issued by a training entity under this section is valid for employment at any retail licensed premises described in subsection (2)(a) of this section for a period of five years unless suspended by the board.

(4) The board may suspend or revoke an existing permit if any of the following occur:

(a) The applicant or permittee has been convicted of violating any of the state or local intoxicating liquor laws of this state or has been convicted at any time of a felony; or

(b) The permittee has performed or permitted any act that constitutes a violation of this title or of any rule of the board.

(5) The suspension or revocation of a permit under this section does not relieve a licensee from responsibility for any act of the employee or agent while employed upon the retail licensed premises. The board may, as appropriate, revoke or suspend either the permit of the employee who committed the violation or the license of the licensee upon whose premises the violation occurred, or both the permit and the license.

(6)(a) After January 1, 1997, it is a violation of this title for any retail licensee or agent of a retail licensee as described in subsection (2)(a) of this section to employ in the sale or service of alcoholic beverages, any person who does not have a valid alcohol server permit or whose permit has been revoked, suspended, or denied.

(b) It is a violation of this title for a person whose alcohol server permit has been denied, suspended, or revoked to accept employment in the sale or service of alcoholic beverages.

(7) Grocery stores licensed under RCW 66.24.360, the primary commercial activity of which is the sale of grocery products and for which the sale and service of beer and wine for on-premises consumption with food is incidental to the primary business, and employees of such establishments, are exempt from RCW 66.20.300 through 66.20.350, except for employees whose duties include serving during tasting activities under RCW 66.24.363. [2013 c 237 § 3; 2013 c 219 § 3; 2011 c 325 § 4; 2010 c 141 § 2. Prior: 2009 c 271 § 5; 2009 c 187 § 4; prior: 2008 c 94 § 11; 2008 c 41 § 3; (2008 c 41 § 2 expired July 1, 2008); 2007 c 370 § 17; 1997 c 321 § 45; prior: 1996 c 311 § 1; 1996 c 218 § 3; 1995 c 51 § 3.]

Reviser's note: This section was amended by 2013 c 219 § 3 and by 2013 c 237 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2008 c 94 §§ 4 and 11: See note following RCW 66.04.010.

Effective date—2008 c 41 §§ 3, 10, and 11: "Sections 3, 10, and 11 of this act take effect July 1, 2008." [2008 c 41 § 16.]

Expiration date—2008 c 41 § 2: "Section 2 of this act expires July 1, 2008." [2008 c 41 § 13.]

Effective date—2007 c 370 §§ 10-20: See note following RCW 66.04.010.

Findings—1995 c 51: See note following RCW 66.20.300.

Additional notes found at www.leg.wa.gov

Chapter 66.24 RCW LICENSES—STAMP TAXES

Sections

66.24.055	Spirits distributor license.
66.24.145	Craft distillery—Sales and samples of spirits.
66.24.170	Domestic winery license—Winery as distributor and/or retailer of own wine—Off-premise samples—Domestic wine made into sparkling wine—Sales at qualifying farmers markets.
66.24.175	Farmers markets—Wine and beer sampling endorsement.
66.24.244	Microbrewery's license—Fee.
66.24.363	Grocery store—Beer and wine tasting endorsement.
66.24.632	Spirits retail licensee—License issuance fee exemption.
66.24.650	Theater license—Beer, strong beer, and wine.
66.24.655	Theater license—Spirits, beer, strong beer, and wine.
66.24.660	Liquor sales at self-checkout registers.
66.24.670	Liquor sampling activities.

66.24.055 Spirits distributor license. (1) There is a license for spirits distributors to (a) sell spirits purchased from manufacturers, distillers, or suppliers including, without limitation, licensed Washington distilleries, licensed spirits importers, other Washington spirits distributors, or suppliers of foreign spirits located outside of the United States, to spirits retailers including, without limitation, spirits retail licensees, special occasion license holders, interstate common carrier license holders, restaurant spirits retailer license holders, spirits, beer, and wine private club license holders, hotel license holders, sports entertainment facility license holders, and spirits, beer, and wine nightclub license holders, and to other spirits distributors; and (b) export the same from the state.

(2) By January 1, 2012, the board must issue spirits distributor licenses to all applicants who, upon December 8, 2011, have the right to purchase spirits from a spirits manufacturer, spirits distiller, or other spirits supplier for resale in the state, or are agents of such supplier authorized to sell to licensees in the state, unless the board determines that issuance of a license to such applicant is not in the public interest.

(3)(a) As limited by (b) of this subsection and subject to (c) of this subsection, each spirits distributor licensee must pay to the board, for deposit into the liquor revolving fund, a license issuance fee calculated as follows:

(i) In each of the first twenty-seven months of licensure, ten percent of the total revenue from all the licensee's sales of spirits made during the month for which the fee is due, respectively; and

(ii) In the twenty-eighth month of licensure and each month thereafter, five percent of the total revenue from all the licensee's sales of spirits made during the month for which the fee is due, respectively.

(b) The fee required under this subsection (3) is calculated only on sales of items which the licensee was the first spirits distributor in the state to have received:

(i) In the case of spirits manufactured in the state, from the distiller; or

(ii) In the case of spirits manufactured outside the state, from an authorized out-of-state supplier.

(c) By March 31, 2013, all persons holding spirits distributor licenses on or before March 31, 2013, must have paid collectively one hundred fifty million dollars or more in spir-

its distributor license fees. If the collective payment through March 31, 2013, totals less than one hundred fifty million dollars, the board must, according to rules adopted by the board for the purpose, collect by May 31, 2013, as additional spirits distributor license fees the difference between one hundred fifty million dollars and the actual receipts, allocated among persons holding spirits distributor licenses at any time on or before March 31, 2013, ratably according to their spirits sales made during calendar year 2012. Any amount by which such payments exceed one hundred fifty million dollars by March 31, 2013, must be credited to future license issuance fee obligations of spirits distributor licensees according to rules adopted by the board.

(d) A retail licensee selling for resale must pay a distributor license fee under the terms and conditions in this section on resales of spirits the licensee has purchased on which no other distributor license fee has been paid. The board must establish rules setting forth the frequency and timing of such payments and reporting of sales dollar volume by the licensee, with payments due quarterly in arrears.

(e) No spirits inventory may be subject to calculation of more than a single spirits distributor license issuance fee.

(4) In addition to the payment set forth in subsection (3) of this section, each spirits distributor licensee renewing its annual license must pay an annual license renewal fee of one thousand three hundred twenty dollars for each licensed location.

(5) There is no minimum facility size or capacity for spirits distributor licenses, and no limit on the number of such licenses issued to qualified applicants. License applicants must provide physical security of the product that is substantially as effective as the physical security of the distribution facilities currently operated by the board with respect to preventing pilferage. License issuances and renewals are subject to RCW 66.24.010 and the regulations promulgated thereunder, including without limitation rights of cities, towns, county legislative authorities, the public, churches, schools, and public institutions to object to or prevent issuance of local liquor licenses. However, existing distributor premises licensed to sell beer and/or wine are deemed to be premises "now licensed" under RCW 66.24.010(9)(a) for the purpose of processing applications for spirits distributor licenses. [2013 2nd sp.s. c 12 § 1; 2012 c 2 § 105 (Initiative Measure No. 1183, approved November 8, 2011).]

Application—2013 2nd sp.s. c 12 § 1: "The changes made in section 1 of this act apply to spirits distributors licensed on or after January 1, 2012." [2013 2nd sp.s. c 12 § 2.]

Effective date—2013 2nd sp.s. c 12: See note following RCW 66.24.632.

Finding—Application—Rules—Effective date—Contingent effective date—2012 c 2 (Initiative Measure No. 1183): See notes following RCW 66.24.620.

66.24.145 Craft distillery—Sales and samples of spirits. (1) Any craft distillery may sell spirits of its own production for consumption off the premises, up to three liters per person per day. A craft distillery selling spirits under this subsection must comply with the applicable laws and rules relating to retailers.

(2) Any craft distillery may contract distilled spirits for, and sell contract distilled spirits to, holders of distillers' or

manufacturers' licenses, including licenses issued under RCW 66.24.520, or for export.

(3) Any craft distillery licensed under this section may provide, free of charge, one-half ounce or less samples of spirits of its own production to persons on the premises of the distillery. The maximum total per person per day is two ounces. Every person who participates in any manner in the service of samples must obtain a class 12 alcohol server permit.

(4) The board must adopt rules to implement the alcohol server permit requirement and may adopt additional rules to implement this section.

(5) Distilling is an agricultural practice. [2013 c 98 § 1; 2012 c 2 § 205 (Initiative Measure No. 1183, approved November 8, 2011); 2010 c 290 § 2; 2008 c 94 § 2.]

Finding—Application—Rules—Effective date—Contingent effective date—2012 c 2 (Initiative Measure No. 1183): See notes following RCW 66.24.620.

66.24.170 Domestic winery license—Winery as distributor and/or retailer of own wine—Off-premise samples—Domestic wine made into sparkling wine—Sales at qualifying farmers markets. (1) There shall be a license for domestic wineries; fee to be computed only on the liters manufactured: Less than two hundred fifty thousand liters per year, one hundred dollars per year; and two hundred fifty thousand liters or more per year, four hundred dollars per year.

(2) The license allows for the manufacture of wine in Washington state from grapes or other agricultural products.

(3) Any domestic winery licensed under this section may also act as a retailer of wine of its own production. Any domestic winery licensed under this section may act as a distributor of its own production. Notwithstanding any language in this title to the contrary, a domestic winery may use a common carrier to deliver up to one hundred cases of its own production, in the aggregate, per month to licensed Washington retailers. A domestic winery may not arrange for any such common carrier shipments to licensed retailers of wine not of its own production. Except as provided in this section, any winery operating as a distributor and/or retailer under this subsection shall comply with the applicable laws and rules relating to distributors and/or retailers, except that a winery operating as a distributor may maintain a warehouse off the premises of the winery for the distribution of wine of its own production provided that: (a) The warehouse has been approved by the board under RCW 66.24.010; and (b) the number of warehouses off the premises of the winery does not exceed one.

(4) A domestic winery licensed under this section, at locations separate from any of its production or manufacturing sites, may serve samples of its own products, with or without charge, and sell wine of its own production at retail, provided that: (a) Each additional location has been approved by the board under RCW 66.24.010; (b) the total number of additional locations does not exceed two; (c) a winery may not act as a distributor at any such additional location; and (d) any person selling or serving wine at an additional location for on-premise consumption must obtain a class 12 or class 13 alcohol server permit. Each additional location is deemed to be part of the winery license for the pur-

pose of this title. At additional locations operated by multiple wineries under this section, if the board cannot connect a violation of RCW 66.44.200 or 66.44.270 to a single licensee, the board may hold all licensees operating the additional location jointly liable. Nothing in this subsection shall be construed to prevent a domestic winery from holding multiple domestic winery licenses.

(5)(a) A domestic winery licensed under this section may apply to the board for an endorsement to sell wine of its own production at retail for off-premises consumption at a qualifying farmers market. The annual fee for this endorsement is seventy-five dollars. An endorsement issued pursuant to this subsection does not count toward the two additional retail locations limit specified in this section.

(b) For each month during which a domestic winery will sell wine at a qualifying farmers market, the winery must provide the board or its designee a list of the dates, times, and locations at which bottled wine may be offered for sale. This list must be received by the board before the winery may offer wine for sale at a qualifying farmers market.

(c) The wine sold at qualifying farmers markets must be made entirely from grapes grown in a recognized Washington appellation or from other agricultural products grown in this state.

(d) Each approved location in a qualifying farmers market is deemed to be part of the winery license for the purpose of this title. The approved locations under an endorsement granted under this subsection include tasting or sampling privileges subject to the conditions pursuant to RCW 66.24.175. The winery may not store wine at a farmers market beyond the hours that the winery offers bottled wine for sale. The winery may not act as a distributor from a farmers market location.

(e) Before a winery may sell bottled wine at a qualifying farmers market, the farmers market must apply to the board for authorization for any winery with an endorsement approved under this subsection to sell bottled wine at retail at the farmers market. This application shall include, at a minimum: (i) A map of the farmers market showing all booths, stalls, or other designated locations at which an approved winery may sell bottled wine; and (ii) the name and contact information for the on-site market managers who may be contacted by the board or its designee to verify the locations at which bottled wine may be sold. Before authorizing a qualifying farmers market to allow an approved winery to sell bottled wine at retail at its farmers market location, the board shall notify the persons or entities of such application for authorization pursuant to RCW 66.24.010 (8) and (9). An authorization granted under this subsection (5)(e) may be withdrawn by the board for any violation of this title or any rules adopted under this title.

(f) The board may adopt rules establishing the application and approval process under this section and such additional rules as may be necessary to implement this section.

(g) For the purposes of this subsection:

(i) "Qualifying farmers market" means an entity that sponsors a regular assembly of vendors at a defined location for the purpose of promoting the sale of agricultural products grown or produced in this state directly to the consumer under conditions that meet the following minimum requirements:

(A) There are at least five participating vendors who are farmers selling their own agricultural products;

(B) The total combined gross annual sales of vendors who are farmers exceeds the total combined gross annual sales of vendors who are processors or resellers;

(C) The total combined gross annual sales of vendors who are farmers, processors, or resellers exceeds the total combined gross annual sales of vendors who are not farmers, processors, or resellers;

(D) The sale of imported items and secondhand items by any vendor is prohibited; and

(E) No vendor is a franchisee.

(ii) "Farmer" means a natural person who sells, with or without processing, agricultural products that he or she raises on land he or she owns or leases in this state or in another state's county that borders this state.

(iii) "Processor" means a natural person who sells processed food that he or she has personally prepared on land he or she owns or leases in this state or in another state's county that borders this state.

(iv) "Reseller" means a natural person who buys agricultural products from a farmer and resells the products directly to the consumer.

(6) Wine produced in Washington state by a domestic winery licensee may be shipped out-of-state for the purpose of making it into sparkling wine and then returned to such licensee for resale. Such wine shall be deemed wine manufactured in the state of Washington for the purposes of RCW 66.24.206, and shall not require a special license. [2013 c 238 § 2; 2009 c 373 § 4; (2011 c 62 § 2 expired December 1, 2012); 2008 c 41 § 5; 2007 c 16 § 2; 2006 c 302 § 1; 2003 c 44 § 1; 2000 c 141 § 1; 1997 c 321 § 3; 1991 c 192 § 2; 1982 c 85 § 4; 1981 1st ex.s. c 5 § 31; 1939 c 172 § 1 (23C); 1937 c 217 § 1 (23C) (adding new section 23-C to 1933 ex.s. c 62); RRS § 7306-23C. Formerly RCW 66.24.170, 66.24.180, and 66.24.190.]

Expiration date—2011 c 62: "This act expires December 1, 2012." [2011 c 62 § 5.]

Effective date—2006 c 302: "Except for sections 10 and 12 of this act, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect April 14, 2006." [2006 c 302 § 16.]

Additional notes found at www.leg.wa.gov

66.24.175 Farmers markets—Wine and beer sampling endorsement. (1) A qualifying farmers market authorized to allow wineries to sell bottled wine at retail under RCW 66.24.170 or microbreweries to sell bottled beer at retail under RCW 66.24.244, or both, may apply to the liquor control board for an endorsement to allow sampling of wine or beer or both. A winery or microbrewery offering samples under this section must have an endorsement from the board to sell wine or beer, as the case may be, of its own production at a qualifying farmers market under RCW 66.24.170 or 66.24.244, respectively.

(2) Samples may be offered only under the following conditions:

(a) No more than three wineries or microbreweries combined may offer samples at a qualifying farmers market per day.

(b) Samples must be two ounces or less. A winery or microbrewery may provide a maximum of two ounces of wine or beer to a customer per day.

(c) A winery or microbrewery may advertise that it offers samples only at its designated booth, stall, or other designated location at the farmers market.

(d) Customers must remain at the designated booth, stall, or other designated location while sampling beer or wine.

(e) Winery and microbrewery licensees and employees who are involved in sampling activities under this section must hold a class 12 or class 13 alcohol server permit.

(f) A winery or microbrewery must have food available for customers to consume while sampling beer or wine, or must be adjacent to a vendor offering prepared food.

(3) The board may establish additional requirements to ensure that persons under twenty-one years of age and apparently intoxicated persons may not possess or consume alcohol under the authority granted in this section.

(4) The board may prohibit sampling at a farmers market that is within the boundaries of an alcohol impact area recognized by resolution of the board if the board finds that the sampling activities at the farmers market have an adverse effect on the reduction of chronic public inebriation in the area.

(5) If a winery or microbrewery is found to have committed a public safety violation in conjunction with tasting activities, the board may suspend the licensee's farmers market endorsement and not reissue the endorsement for up to two years from the date of the violation. If mitigating circumstances exist, the board may offer a monetary penalty in lieu of suspension during a settlement conference.

(6) For the purposes of this section, a "qualifying farmers market" has the same meaning as defined in RCW 66.24.170. However, if a farmers market does not satisfy RCW 66.24.170(5)(g)(i)(B), which requires that the total combined gross annual sales of vendors who are farmers exceed the total combined gross annual sales of vendors who are processors or resellers, a farmers market is still considered a "qualifying farmers market" if the total combined gross annual sales of vendors at the farmers market is one million dollars or more. [2013 c 238 § 1.]

66.24.244 Microbrewery's license—Fee. (1) There shall be a license for microbreweries; fee to be one hundred dollars for production of less than sixty thousand barrels of malt liquor, including strong beer, per year.

(2) Any microbrewery licensed under this section may also act as a distributor and/or retailer for beer and strong beer of its own production. Strong beer may not be sold at a farmers market or under any endorsement which may authorize microbreweries to sell beer at farmers markets. Any microbrewery operating as a distributor and/or retailer under this subsection shall comply with the applicable laws and rules relating to distributors and/or retailers, except that a microbrewery operating as a distributor may maintain a warehouse off the premises of the microbrewery for the distribution of beer provided that (a) the warehouse has been approved by the board under RCW 66.24.010 and (b) the number of warehouses off the premises of the microbrewery does not exceed one. A microbrewery holding a spirits, beer, and wine restaurant license may sell beer of its own produc-

tion for off-premises consumption from its restaurant premises in kegs or in a sanitary container brought to the premises by the purchaser or furnished by the licensee and filled at the tap by the licensee at the time of sale.

(3) Any microbrewery licensed under this section may also sell beer produced by another microbrewery or a domestic brewery for on and off-premises consumption from its premises as long as the other breweries' brands do not exceed twenty-five percent of the microbrewery's on-tap offering of its own brands.

(4) The board may issue up to two retail licenses allowing a microbrewery to operate an on or off-premise tavern, beer and/or wine restaurant, or spirits, beer, and wine restaurant.

(5) A microbrewery that holds a tavern license, spirits, beer, and wine restaurant license, or a beer and/or wine restaurant license shall hold the same privileges and endorsements as permitted under RCW 66.24.320, 66.24.330, and 66.24.420.

(6)(a) A microbrewery licensed under this section may apply to the board for an endorsement to sell bottled beer of its own production at retail for off-premises consumption at a qualifying farmers market. The annual fee for this endorsement is seventy-five dollars.

(b) For each month during which a microbrewery will sell beer at a qualifying farmers market, the microbrewery must provide the board or its designee a list of the dates, times, and locations at which bottled beer may be offered for sale. This list must be received by the board before the microbrewery may offer beer for sale at a qualifying farmers market.

(c) Any person selling or serving beer must obtain a class 12 or class 13 alcohol server permit.

(d) The beer sold at qualifying farmers markets must be produced in Washington.

(e) Each approved location in a qualifying farmers market is deemed to be part of the microbrewery license for the purpose of this title. The approved locations under an endorsement granted under this subsection (6) include tasting or sampling privileges subject to the conditions pursuant to RCW 66.24.175. The microbrewery may not store beer at a farmers market beyond the hours that the microbrewery offers bottled beer for sale. The microbrewery may not act as a distributor from a farmers market location.

(f) Before a microbrewery may sell bottled beer at a qualifying farmers market, the farmers market must apply to the board for authorization for any microbrewery with an endorsement approved under this subsection (6) to sell bottled beer at retail at the farmers market. This application shall include, at a minimum: (i) A map of the farmers market showing all booths, stalls, or other designated locations at which an approved microbrewery may sell bottled beer; and (ii) the name and contact information for the on-site market managers who may be contacted by the board or its designee to verify the locations at which bottled beer may be sold. Before authorizing a qualifying farmers market to allow an approved microbrewery to sell bottled beer at retail at its farmers market location, the board shall notify the persons or entities of the application for authorization pursuant to RCW 66.24.010 (8) and (9). An authorization granted under this

subsection (6)(f) may be withdrawn by the board for any violation of this title or any rules adopted under this title.

(g) The board may adopt rules establishing the application and approval process under this section and any additional rules necessary to implement this section.

(h) For the purposes of this subsection (6):

(i) "Qualifying farmers market" means an entity that sponsors a regular assembly of vendors at a defined location for the purpose of promoting the sale of agricultural products grown or produced in this state directly to the consumer under conditions that meet the following minimum requirements:

(A) There are at least five participating vendors who are farmers selling their own agricultural products;

(B) The total combined gross annual sales of vendors who are farmers exceeds the total combined gross annual sales of vendors who are processors or resellers;

(C) The total combined gross annual sales of vendors who are farmers, processors, or resellers exceeds the total combined gross annual sales of vendors who are not farmers, processors, or resellers;

(D) The sale of imported items and secondhand items by any vendor is prohibited; and

(E) No vendor is a franchisee.

(ii) "Farmer" means a natural person who sells, with or without processing, agricultural products that he or she raises on land he or she owns or leases in this state or in another state's county that borders this state.

(iii) "Processor" means a natural person who sells processed food that he or she has personally prepared on land he or she owns or leases in this state or in another state's county that borders this state.

(iv) "Reseller" means a natural person who buys agricultural products from a farmer and resells the products directly to the consumer.

(7) Any microbrewery licensed under this section may contract-produce beer for another microbrewer. This contract-production is not a sale for the purposes of RCW 66.28.170 and 66.28.180. [2013 c 238 § 3; 2011 c 195 § 5; (2011 c 62 § 3 expired December 1, 2012). Prior: 2008 c 248 § 2; (2008 c 248 § 1 expired June 30, 2008); 2008 c 41 § 9; (2008 c 41 § 8 expired June 30, 2008); prior: 2007 c 370 § 5; (2007 c 370 § 4 expired June 30, 2008); 2007 c 222 § 2; (2007 c 222 § 1 expired June 30, 2008); 2006 c 302 § 3; 2006 c 44 § 2; prior: 2003 c 167 § 1; 2003 c 154 § 2; 1998 c 126 § 3; 1997 c 321 § 12.]

Expiration date—2011 c 62: See note following RCW 66.24.170.

Effective date—2008 c 248 § 2: "Section 2 of this act takes effect June 30, 2008." [2008 c 248 § 4.]

Expiration date—2008 c 248 § 1: "Section 1 of this act expires June 30, 2008." [2008 c 248 § 3.]

Effective date—2008 c 41 §§ 7 and 9: See note following RCW 66.24.240.

Expiration date—2008 c 41 §§ 6 and 8: See note following RCW 66.24.240.

Effective date—2007 c 370 §§ 5 and 7: "Sections 5 and 7 of this act take effect June 30, 2008." [2007 c 370 § 22.]

Expiration date—2007 c 370 §§ 4 and 6: "Sections 4 and 6 of this act expire June 30, 2008." [2007 c 370 § 21.]

Effective date—2007 c 222 § 2: "Section 2 of this act takes effect June 30, 2008." [2007 c 222 § 5.]

Expiration date—2007 c 222 § 1: "Section 1 of this act expires June 30, 2008." [2007 c 222 § 4.]

Effective date—2006 c 302: See note following RCW 66.24.170.

Effective date—2003 c 167: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003." [2003 c 167 § 14.]

Report to legislature—2003 c 167: See note following RCW 66.24.250.

Additional notes found at www.leg.wa.gov

66.24.363 Grocery store—Beer and wine tasting endorsement. (1) A grocery store licensed under RCW 66.24.360 may apply for an endorsement to offer beer and wine tasting under this section.

(2) To be issued an endorsement, a licensee must meet the following criteria:

(a) The licensee operates a fully enclosed retail area encompassing at least ten thousand square feet of fully enclosed retail space within a single structure, including storerooms and other interior auxiliary areas but excluding covered or fenced exterior areas, whether or not attached to the structure, except that the board may issue an endorsement to a licensee with a retail area encompassing less than ten thousand square feet if the board determines that no licensee in the community the licensee serves meets the square footage requirement and the licensee meets operational requirements established by the board by rule; and

(b) The licensee has not had more than one public safety violation within the past two years.

(3) A tasting must be conducted under the following conditions:

(a) Each sample must be two ounces or less, up to a total of four ounces, per customer during any one visit to the premises;

(b) No more than one sample of the same product offering of beer or wine may be provided to a customer during any one visit to the premises;

(c) The licensee must have food available for the tasting participants;

(d) Customers must remain in the service area while consuming samples; and

(e) The service area and facilities must be located within the licensee's fully enclosed retail area and must be of a size and design such that the licensee can observe and control persons in the area to ensure that persons under twenty-one years of age and apparently intoxicated persons cannot possess or consume alcohol.

(4) Employees of licensees whose duties include serving during tasting activities under this section must hold a class 12 alcohol server permit.

(5) Tasting activities under this section are subject to RCW 66.28.305 and 66.28.040 and the cost of sampling may not be borne, directly or indirectly, by any liquor manufacturer, importer, or distributor.

(6) A licensee may advertise a tasting event only within the store, on a store web site, in store newsletters and flyers, and via e-mail and mail to customers who have requested notice of events. Advertising under this subsection may not be targeted to or appeal principally to youth.

(7)(a) If a licensee is found to have committed a public safety violation in conjunction with tasting activities, the

board may suspend the licensee's tasting endorsement and not reissue the endorsement for up to two years from the date of the violation. If mitigating circumstances exist, the board may offer a monetary penalty in lieu of suspension during a settlement conference.

(b) The board may revoke an endorsement granted to a licensee that is located within the boundaries of an alcohol impact area recognized by resolution of the board if the board finds that the tasting activities by the licensee are having an adverse effect on the reduction of chronic public inebriation in the area.

(c) RCW 66.08.150 applies to the suspension or revocation of an endorsement.

(8) The board may establish additional requirements under this section to assure that persons under twenty-one years of age and apparently intoxicated persons cannot possess or consume alcohol.

(9) The annual fee for the endorsement is two hundred dollars. The board shall review the fee annually and may increase the fee by rule to a level sufficient to defray the cost of administration and enforcement of the endorsement, except that the board may not increase the fee by more than ten percent annually.

(10) The board must adopt rules to implement this section. [2013 c 52 § 1; 2010 c 141 § 1.]

66.24.632 Spirits retail licensee—License issuance fee exemption. (1) Beginning June 30, 2013, the license issuance fee under RCW 66.24.630(4) does not apply to a spirits retail licensee that was a contract liquor store manager with respect to sales of spirits in original containers from the location of its spirits retail licensed premises to retailers licensed to sell spirits for consumption on the premises for resale at their licensed premises.

(2) Beginning June 30, 2013, the license issuance fee under RCW 66.24.630(4) does not apply to a spirits retail licensee that was a former state store auction buyer, with respect to sales of spirits in original containers from the location of its spirits retail licensed premises to retailers licensed to sell spirits for consumption on the premises for resale at their licensed premises.

(3) The exemptions created in this section attach to any successor, by purchase or otherwise, to the spirits retail license, except that an exemption does not attach to any such successor that owns, directly or indirectly, any interest in a spirits retail license that is not derived directly from a former contract liquor store manager or a former state store auction buyer. [2013 2nd sp.s. c 12 § 3.]

Effective date—2013 2nd sp.s. c 12: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 30, 2013]." [2013 2nd sp.s. c 12 § 4.]

66.24.650 Theater license—Beer, strong beer, and wine. (1) There is a theater license to sell beer, including strong beer, or wine, or both, at retail, for consumption on theater premises. The annual fee is four hundred dollars for a beer and wine theater license.

(2) If the theater premises is to be frequented by minors, an alcohol control plan must be submitted to the board at the time of application. The alcohol control plan must be

approved by the board, and be prominently posted on the premises, prior to minors being allowed.

(3) For the purposes of this section:

(a) "Alcohol control plan" means a written, dated, and signed plan submitted to the board by an applicant or licensee for the entire theater premises, or rooms or areas therein, that shows where and when alcohol is permitted, where and when minors are permitted, and the control measures used to ensure that minors are not able to obtain alcohol or be exposed to environments where drinking alcohol predominates.

(b) "Theater" means a place of business where motion pictures or other primarily nonparticipatory entertainment are shown, and includes only theaters with up to four screens.

(4) The board must adopt rules regarding alcohol control plans and necessary control measures to ensure that minors are not able to obtain alcohol or be exposed to areas where drinking alcohol predominates. All alcohol control plans must include a requirement that any person involved in the serving of beer and/or wine must have completed a mandatory alcohol server training program.

(5)(a) A licensee that is an entity that is exempt from taxation under Title 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code of 1986, as amended as of January 1, 2013, may enter into arrangements with a beer or wine manufacturer, importer, or distributor for brand advertising at the theater or promotion of events held at the theater. The financial arrangements providing for the brand advertising or promotion of events may not be used as an inducement to purchase the products of the manufacturer, importer, or distributor entering into the arrangement and such arrangements may not result in the exclusion of brands or products of other companies.

(b) The arrangements allowed under this subsection (5) are an exception to arrangements prohibited under RCW 66.28.305. The board must monitor the impacts of these arrangements. The board may conduct audits of a licensee and the affiliated business to determine compliance with this subsection (5). Audits may include, but are not limited to: Product selection at the facility; purchase patterns of the licensee; contracts with the beer or wine manufacturer, importer, or distributor; and the amount allocated or used for wine or beer advertising by the licensee, affiliated business, manufacturer, importer, or distributor under the arrangements.

(6) The maximum penalties prescribed by the board in WAC 314-29-020 relating to fines and suspensions are double for violations involving minors or the failure to follow the alcohol control plan with respect to theaters licensed under this section. [2013 c 219 § 1.]

66.24.655 Theater license—Spirits, beer, strong beer, and wine. (1) There is a theater license to sell spirits, beer, including strong beer, or wine, or all, at retail, for consumption on theater premises. A spirits, beer, and wine theater license may be issued only to theaters that have no more than one hundred twenty seats per screen and that are maintained in a substantial manner as a place for preparing, cooking, and serving complete meals and providing tabletop accommodations for in-theater dining. Requirements for complete meals are the same as those adopted by the board in rules pursuant to chapter 34.05 RCW for a spirits, beer, and wine restaurant

license authorized by RCW 66.24.400. The annual fee for a spirits, beer, and wine theater license is two thousand dollars.

(2) If the theater premises is to be frequented by minors, an alcohol control plan must be submitted to the board at the time of application. The alcohol control plan must be approved by the board and be prominently posted on the premises, prior to minors being allowed.

(3) For the purposes of this section:

(a) "Alcohol control plan" means a written, dated, and signed plan submitted to the board by an applicant or licensee for the entire theater premises, or rooms or areas therein, that shows where and when alcohol is permitted, where and when minors are permitted, and the control measures used to ensure that minors are not able to obtain alcohol or be exposed to environments where drinking alcohol predominates.

(b) "Theater" means a place of business where motion pictures or other primarily nonparticipatory entertainment are shown.

(4) The board must adopt rules regarding alcohol control plans and necessary control measures to ensure that minors are not able to obtain alcohol or be exposed to areas where drinking alcohol predominates. All alcohol control plans must include a requirement that any person involved in the serving of spirits, beer, and/or wine must have completed a mandatory alcohol server training program.

(5)(a) A licensee that is an entity that is exempt from taxation under Title 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code of 1986, as amended as of January 1, 2013, may enter into arrangements with a spirits, beer, or wine manufacturer, importer, or distributor for brand advertising at the theater or promotion of events held at the theater. The financial arrangements providing for the brand advertising or promotion of events may not be used as an inducement to purchase the products of the manufacturer, importer, or distributor entering into the arrangement and such arrangements may not result in the exclusion of brands or products of other companies.

(b) The arrangements allowed under this subsection (5) are an exception to arrangements prohibited under RCW 66.28.305. The board must monitor the impacts of these arrangements. The board may conduct audits of a licensee and the affiliated business to determine compliance with this subsection (5). Audits may include, but are not limited to: Product selection at the facility; purchase patterns of the licensee; contracts with the spirits, beer, or wine manufacturer, importer, or distributor; and the amount allocated or used for spirits, beer, or wine advertising by the licensee, affiliated business, manufacturer, importer, or distributor under the arrangements.

(6) The maximum penalties prescribed by the board in WAC 314-29-020 relating to fines and suspensions are double for violations involving minors or the failure to follow the alcohol control plan with respect to theaters licensed under this section. [2013 c 237 § 1.]

66.24.660 Liquor sales at self-checkout registers. Retailers may sell liquor as defined in RCW 66.04.010(25) through self-checkout registers if that register is programmed to halt that transaction during the purchase of liquor until an employee of the retailer intervenes and verifies the age of the purchaser by reviewing established forms of acceptable iden-

tification. Once age is successfully verified, the employee can release the transaction for payment. If the purchaser cannot provide acceptable forms of identification to verify age, the employee must refuse the purchase and void the transaction. [2013 c 89 § 1.]

66.24.670 Liquor sampling activities. (1) The holder of a spirits retail license that is also a participant in the responsible vendor program, created under RCW 66.24.630, may provide, free or for a charge, single-serving samples of one-half ounce or less of spirits, and no more than a total of one and one-half ounces in spirits samples per person, for the purpose of sale promotion. Servers who provide spirit samples must hold a class 12 alcohol server permit. Sampling conducted under this section must be conducted in accordance with rules established for sampling activities in beer and wine specialty shops and grocery stores.

(2) Sampling activities under this section are subject to RCW 66.28.305 and 66.28.040 and the cost of sampling under this section may not be borne, directly or indirectly, by any manufacturer, importer, distiller, or distributor of spirits. [2013 c 234 § 1.]

Chapter 66.28 RCW

MISCELLANEOUS REGULATORY PROVISIONS

Sections

66.28.310 Three-tier system—Promotional items.

66.28.310 Three-tier system—Promotional items.

(1)(a) Nothing in RCW 66.28.305 prohibits an industry member from providing retailers branded promotional items which are of nominal value, singly or in the aggregate. Such items include but are not limited to: Trays, lighters, blotters, postcards, pencils, coasters, menu cards, meal checks, napkins, clocks, mugs, glasses, bottles or can openers, corkscrews, matches, printed recipes, shirts, hats, visors, and other similar items. Branded promotional items:

(i) Must be used exclusively by the retailer or its employees in a manner consistent with its license;

(ii) Must bear imprinted advertising matter of the industry member only, except imprinted advertising matter of the industry member can include the logo of a professional sports team which the industry member is licensed to use;

(iii) May be provided by industry members only to retailers and their employees and may not be provided by or through retailers or their employees to retail customers; and

(iv) May not be targeted to or appeal principally to youth.

(b) An industry member is not obligated to provide any such branded promotional items, and a retailer may not require an industry member to provide such branded promotional items as a condition for selling any alcohol to the retailer.

(c) Any industry member or retailer or any other person asserting that the provision of branded promotional items as allowed in (a) of this subsection has resulted or is more likely than not to result in undue influence or an adverse impact on public health and safety, or is otherwise inconsistent with the criteria in (a) of this subsection may file a complaint with the board. Upon receipt of a complaint the board may conduct

such investigation as it deems appropriate in the circumstances. If the investigation reveals the provision of branded promotional items has resulted in or is more likely than not to result in undue influence or has resulted or is more likely than not to result in an adverse impact on public health and safety or is otherwise inconsistent with (a) of this subsection the board may issue an administrative violation notice to the industry member, to the retailer, or both. The recipient of the administrative violation notice may request a hearing under chapter 34.05 RCW.

(2) Nothing in RCW 66.28.305 prohibits:

(a) An industry member from providing to a special occasion licensee and a special occasion licensee from receiving services for:

(i) Installation of draft beer dispensing equipment or advertising;

(ii) Advertising, pouring, or dispensing of beer or wine at a beer or wine tasting exhibition or judging event; or

(iii) Pouring or dispensing of spirits by a licensed domestic distiller or the accredited representative of a distiller, manufacturer, importer, or distributor of spirituous liquor licensed under RCW 66.24.310; or

(b) Special occasion licensees from paying for beer or wine immediately following the end of the special occasion event; or

(c) Wineries or breweries that are participating in a special occasion event from paying reasonable booth fees to the special occasion licensee.

(3) Nothing in RCW 66.28.305 prohibits industry members from performing, and retailers from accepting the service of building, rotating, and restocking displays and stockroom inventories; rotating and rearranging can and bottle displays of their own products; providing point of sale material and brand signs; pricing case goods of their own brands; and performing such similar business services consistent with board rules, or personal services as described in subsection (5) of this section.

(4) Nothing in RCW 66.28.305 prohibits:

(a) Industry members from listing on their internet web sites information related to retailers who sell or promote their products, including direct links to the retailers' internet web sites; and

(b) Retailers from listing on their internet web sites information related to industry members whose products those retailers sell or promote, including direct links to the industry members' web sites; or

(c) Industry members and retailers from producing, jointly or together with regional, state, or local industry associations, brochures and materials promoting tourism in Washington state which contain information regarding retail licensees, industry members, and their products.

(5) Nothing in RCW 66.28.305 prohibits the performance of personal services offered from time to time by a domestic winery or certificate of approval holder to retailers when the personal services are (a) conducted at a licensed premises, and (b) intended to inform, educate, or enhance customers' knowledge or experience of the manufacturer's products. The performance of personal services may include participation and pouring, bottle signing events, and other similar informational or educational activities at the premises of a retailer holding a spirits, beer, and wine restaurant

license, a wine and/or beer restaurant license, a specialty wine shop license, a special occasion license, a grocery store license with a tasting endorsement, or a private club license. A domestic winery or certificate of approval holder is not obligated to perform any such personal services, and a retail licensee may not require a domestic winery or certificate of approval holder to conduct any personal service as a condition for selling any alcohol to the retail licensee, or as a condition for including any product of the domestic winery or certificate of approval holder in any tasting conducted by the licensee. Except as provided in RCW 66.28.150, the cost of sampling may not be borne, directly or indirectly, by any domestic winery or certificate of approval holder or any distributor. Nothing in this section prohibits wineries, breweries, microbreweries, certificate of approval holders, and retail licensees from identifying the producers on private labels authorized under RCW 66.24.400, 66.24.425, 66.24.450, 66.24.360, and 66.24.371.

(6) Nothing in RCW 66.28.305 prohibits an industry member from entering into an arrangement with any holder of a sports entertainment facility license or an affiliated business for brand advertising at the licensed facility or promoting events held at the sports entertainment facility as authorized under RCW 66.24.570.

(7) Nothing in RCW 66.28.305 prohibits the performance of personal services offered from time to time by a domestic brewery, microbrewery, or beer certificate of approval holder to grocery store licensees with a tasting endorsement when the personal services are (a) conducted at a licensed premises in conjunction with a tasting event, and (b) intended to inform, educate, or enhance customers' knowledge or experience of the manufacturer's products. The performance of personal services may include participation and pouring, bottle signing events, and other similar informational or educational activities. A domestic brewery, microbrewery, or beer certificate of approval holder is not obligated to perform any such personal services, and a grocery store licensee may not require the performance of any personal service as a condition for including any product in any tasting conducted by the licensee.

(8) Nothing in RCW 66.28.305 prohibits an arrangement between a domestic winery and a restaurant licensed under RCW 66.24.320 or 66.24.400 to waive a corkage fee.

(9) Nothing in this section prohibits professional sports teams who hold a retail liquor license or their agents from accepting bona fide liquor advertising from manufacturers, importers, distributors, or their agents for use in the sporting arena. Professional sports teams who hold a retail liquor license or their agents may license the manufacturer, importer, distributor, or their agents to use the name and trademarks of the professional sports team in their advertising and promotions, under the following conditions:

(a) Such advertising must be paid for by said manufacturer, importer, distributor, or their agent at the published advertising rate or at a reasonable fair market value.

(b) Such advertising may carry with it no express or implied offer on the part of the manufacturer, importer, distributor, or their agent, or promise on the part of the retail licensee whose operation is directly or indirectly part of the sporting arena, to stock or list any particular brand of liquor to the total or partial exclusion of any other brand. [2013 c

107 § 1. Prior: 2011 c 119 § 101; 2011 c 66 § 3; prior: 2010 c 290 § 3; 2010 c 141 § 4; 2009 c 506 § 7.]

Finding—Intent—2011 c 66: See note following RCW 66.28.295.

Chapter 66.44 RCW ENFORCEMENT—PENALTIES

Sections

66.44.270 Furnishing liquor to minors—Possession, use—Penalties—Exhibition of effects—Exceptions.

66.44.270 Furnishing liquor to minors—Possession, use—Penalties—Exhibition of effects—Exceptions. (1) It is unlawful for any person to sell, give, or otherwise supply liquor to any person under the age of twenty-one years or permit any person under that age to consume liquor on his or her premises or on any premises under his or her control. For the purposes of this subsection, "premises" includes real property, houses, buildings, and other structures, and motor vehicles and watercraft. A violation of this subsection is a gross misdemeanor punishable as provided for in chapter 9A.20 RCW.

(2)(a) It is unlawful for any person under the age of twenty-one years to possess, consume, or otherwise acquire any liquor. A violation of this subsection is a gross misdemeanor punishable as provided for in chapter 9A.20 RCW.

(b) It is unlawful for a person under the age of twenty-one years to be in a public place, or to be in a motor vehicle in a public place, while exhibiting the effects of having consumed liquor. For purposes of this subsection, exhibiting the effects of having consumed liquor means that a person has the odor of liquor on his or her breath and either: (i) Is in possession of or close proximity to a container that has or recently had liquor in it; or (ii) by speech, manner, appearance, behavior, lack of coordination, or otherwise, exhibits that he or she is under the influence of liquor. This subsection (2)(b) does not apply if the person is in the presence of a parent or guardian or has consumed or is consuming liquor under circumstances described in subsection (4), (5), or (6) of this section.

(3) Subsections (1) and (2)(a) of this section do not apply to liquor given or permitted to be given to a person under the age of twenty-one years by a parent or guardian and consumed in the presence of the parent or guardian. This subsection shall not authorize consumption or possession of liquor by a person under the age of twenty-one years on any premises licensed under chapter 66.24 RCW.

(4) This section does not apply to liquor given for medicinal purposes to a person under the age of twenty-one years by a parent, guardian, physician, or dentist.

(5) This section does not apply to liquor given to a person under the age of twenty-one years when such liquor is being used in connection with religious services and the amount consumed is the minimal amount necessary for the religious service.

(6)(a) A person under the age of twenty-one years acting in good faith who seeks medical assistance for someone experiencing alcohol poisoning shall not be charged or prosecuted under subsection (2)(a) of this section, if the evidence for the charge was obtained as a result of the person seeking medical assistance.

(b) A person under the age of twenty-one years who experiences alcohol poisoning and is in need of medical assistance shall not be charged or prosecuted under subsection (2)(a) of this section, if the evidence for the charge was obtained as a result of the poisoning and need for medical assistance.

(c) The protection in this subsection shall not be grounds for suppression of evidence in other criminal charges.

(7) Conviction or forfeiture of bail for a violation of this section by a person under the age of twenty-one years at the time of such conviction or forfeiture shall not be a disqualification of that person to acquire a license to sell or dispense any liquor after that person has attained the age of twenty-one years. [2013 c 112 § 2; 1998 c 4 § 1; 1993 c 513 § 1; 1987 c 458 § 3; 1955 c 70 § 2. Prior: 1935 c 174 § 6(1); 1933 ex.s. c 62 § 37(1); RRS § 7306-37(1); prior: Code 1881 § 939; 1877 p 205 § 5.]

Intent—2013 c 112: "The legislature intends to save lives by increasing timely medical attention to alcohol poisoning victims through the establishment of limited immunity from prosecution for people under the age of twenty-one years who seek medical assistance in alcohol poisoning situations. Dozens of alcohol poisonings occur each year in Washington state. Many of these incidents occur because people delay or forego seeking medical assistance for fear of arrest or police involvement, which researchers continually identify as a significant barrier to the ideal response of calling 911." [2013 c 112 § 1.]

Minors, access to tobacco, role of liquor control board: Chapter 70.155 RCW.

Additional notes found at www.leg.wa.gov

Title 67

SPORTS AND RECREATION— CONVENTION FACILITIES

Chapters

- 67.08** Boxing, martial arts, and wrestling.
- 67.16** Horse racing.
- 67.28** Public stadium, convention, arts, and tourism facilities.
- 67.70** State lottery.

Chapter 67.08 RCW

BOXING, MARTIAL ARTS, AND WRESTLING

(Formerly: Boxing, sparring, and wrestling)

Sections

67.08.080 Rounds and bouts limited—Weight of gloves—Rules.

67.08.080 Rounds and bouts limited—Weight of gloves—Rules. A boxing event held in this state may not be for more than ten rounds and no one round of any bout shall be scheduled for longer than three minutes and there shall be not less than one minute intermission between each round. In the event of bouts involving state, regional, national, or world championships, the department may grant an extension of no more than two additional rounds to allow total bouts of twelve rounds. A contestant in any boxing event under this chapter may not be permitted to wear gloves weighing less than eight ounces. The director shall adopt rules to assure clean and sporting conduct on the part of all contestants and officials, and the orderly and proper conduct of the event in all respects, and to otherwise make rules consistent with this

chapter, but such rules shall apply only to events held under the provisions of this chapter. The director may adopt rules with respect to round and bout limitations and clean and sporting conduct for kickboxing, martial arts, or wrestling events. [2013 c 23 § 177; 1999 c 282 § 5; 1997 c 205 § 8; 1993 c 278 § 18; 1989 c 127 § 8; 1974 ex.s. c 45 § 1; 1959 c 305 § 5; 1933 c 184 § 14; RRS § 8276-14.]

Chapter 67.16 RCW HORSE RACING

Sections

67.16.200 Parimutuel wagering at satellite locations—Simulcasts.
67.16.280 Washington horse racing commission operating account.

67.16.200 Parimutuel wagering at satellite locations—Simulcasts. (1) A class 1 racing association licensed by the commission to conduct a race meet may seek approval from the commission to conduct parimutuel wagering at a satellite location or locations within the state of Washington. In order to participate in parimutuel wagering at a satellite location or locations within the state of Washington, the holder of a class 1 racing association license must have conducted at least one full live racing season. All class 1 racing associations must hold a live race meet within each succeeding twelve-month period to maintain eligibility to continue to participate in parimutuel wagering at a satellite location or locations. The sale of parimutuel pools at satellite locations shall be conducted simultaneous to all parimutuel wagering activity conducted at the licensee's live racing facility in the state of Washington. The commission's authority to approve satellite wagering at a particular location is subject to the following limitations:

(a) The commission may approve only one satellite location in each county in the state; provided however, the commission may approve two satellite locations in counties with a population exceeding one million. The commission may grant approval for more than one licensee to conduct wagering at each satellite location. A satellite location shall not be operated within twenty driving miles of any class 1 racing facility. For the purposes of this section, "driving miles" means miles measured by the most direct route as determined by the commission; and

(b) A licensee shall not conduct satellite wagering at any satellite location within sixty driving miles of any other racing facility conducting a live race meet.

(2) Subject to local zoning and other land use ordinances, the commission shall be the sole judge of whether approval to conduct wagering at a satellite location shall be granted.

(3) The licensee shall combine the parimutuel pools of the satellite location with those of the racing facility for the purpose of determining odds and computing payoffs. The amount wagered at the satellite location shall be combined with the amount wagered at the racing facility for the application of take out formulas and distribution as provided in RCW 67.16.102, 67.16.105, 67.16.170, and 67.16.175. A satellite extension of the licensee's racing facility shall be subject to the same application of the rules of racing as the licensee's racing facility.

(4) Upon written application to the commission, a class 1 racing association may be authorized to transmit simulcasts

of live horse races conducted at its racetrack to locations outside of the state of Washington approved by the commission and in accordance with the interstate horse racing act of 1978 (15 U.S.C. Sec. 3001 to 3007) or any other applicable laws. The commission may permit parimutuel pools on the simulcast races to be combined in a common pool. A racing association that transmits simulcasts of its races to locations outside this state shall pay at least fifty percent of the fee that it receives for sale of the simulcast signal to the horsemen's or horsewomen's purse account for its live races after first deducting the actual cost of sending the signal out of state.

(5) Upon written application to the commission, a class 1 racing association may be authorized to transmit simulcasts of live horse races conducted at its racetrack to licensed racing associations located within the state of Washington and approved by the commission for the receipt of the simulcasts. The commission shall permit parimutuel pools on the simulcast races to be combined in a common pool. The fee for in-state, track-to-track simulcasts shall be five and one-half percent of the gross parimutuel receipts generated at the receiving location and payable to the sending racing association. A racing association that transmits simulcasts of its races to other licensed racing associations shall pay at least fifty percent of the fee that it receives for the simulcast signal to the horsemen's or horsewomen's purse account for its live race meet after first deducting the actual cost of sending the simulcast signal. A racing association that receives races simulcast from class 1 racing associations within the state shall pay at least fifty percent of its share of the parimutuel receipts to the horsemen's or horsewomen's purse account for its live race meet after first deducting the purchase price and the actual direct costs of importing the race.

(6) A class 1 racing association may be allowed to import simulcasts of horse races from out-of-state racing facilities. With the prior approval of the commission, the class 1 racing association may participate in a multijurisdictional common pool and may change its commission and breakage rates to achieve a common rate with other participants in the common pool.

(a) The class 1 racing association shall make written application with the commission for permission to import simulcast horse races for the purpose of parimutuel wagering. Subject to the terms of this section, the commission is the sole authority in determining whether to grant approval for an imported simulcast race.

(b) When open for parimutuel wagering, a class 1 racing association which imports simulcast races shall also conduct simulcast parimutuel wagering within its licensed racing enclosure on all races simulcast from other class 1 racing associations within the state of Washington.

(c) On any imported simulcast race, the class 1 racing association shall pay fifty percent of its share of the parimutuel receipts to the horsemen's or horsewomen's purse account for its live race meet after first deducting the purchase price of the imported race and the actual costs of importing and offering the race.

(7) A licensed nonprofit racing association may be approved to import one simulcast race of regional or national interest on each live race day.

(8) For purposes of this section, a class 1 racing association is defined as a licensee approved by the commission to

conduct during each twelve-month period at least forty days of live racing. If a live race day is canceled due to reasons directly attributable to acts of God, labor disruptions affecting live race days but not directly involving the licensee or its employees, or other circumstances that the commission decides are beyond the control of the class 1 racing association, then the canceled day counts toward the forty-day requirement. The commission may by rule increase the number of live racing days required to maintain class 1 racing association status or make other rules necessary to implement this section.

(9) This section does not establish a new form of gaming in Washington or allow expanded gaming within the state beyond what has been previously authorized. Simulcast wagering has been allowed in Washington before April 19, 1997. Therefore, this section does not allow gaming of any nature or scope that was prohibited before April 19, 1997. This section is necessary to protect the Washington equine breeding and racing industries, and in particular those sectors of these industries that are dependent upon live horse racing. The purpose of this section is to protect these industries from adverse economic impacts and to promote fan attendance at class 1 racing facilities. Therefore, a licensed class 1 racing association may be approved to disseminate imported simulcast race card programs to satellite locations approved under this section, provided that the class 1 racing association has conducted at least forty live racing days with an average on-track handle on the live racing product of a minimum of one hundred fifty thousand dollars per day during the twelve months immediately preceding the application date. However, to promote the development of a new class 1 racing association facility and to meet the best interests of the Washington equine breeding and racing industries, the commission may by rule reduce the required minimum average on-track handle on the live racing product from one hundred fifty thousand dollars per day to thirty thousand dollars per day.

(10) A licensee conducting simulcasting under this section shall place signs in the licensee's gambling establishment under RCW 9.46.071. The informational signs concerning problem and compulsive gambling must include a toll-free telephone number for problem and pathological gamblers and be developed under RCW 9.46.071.

(11) Chapter 10, Laws of 2001 1st sp. sess. does not establish a new form of gaming in Washington or allow expanded gaming within the state beyond what has been previously authorized. Simulcast wagering has been allowed in Washington before August 23, 2001. Therefore, this section does not allow gaming of any nature or scope that was prohibited before August 23, 2001. Chapter 10, Laws of 2001 1st sp. sess. is necessary to protect the Washington equine breeding and racing industries, and in particular those sectors of these industries that are dependent upon live horse racing. The purpose of chapter 10, Laws of 2001 1st sp. sess. is to protect these industries from adverse economic impacts and to promote fan attendance at class 1 racing facilities. [2013 c 23 § 178; 2013 c 18 § 1; 2007 c 100 § 1; 2004 c 274 § 2; 2001 1st sp.s. c 10 § 2; 2000 c 223 § 1; 1997 c 87 § 4; 1991 c 270 § 10; 1987 c 347 § 1.]

Reviser's note: This section was amended by 2013 c 18 § 1 and by 2013 c 23 § 178, each without reference to the other. Both amendments are

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

Effective date—2007 c 100: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 18, 2007]." [2007 c 100 § 2.]

Effective date—2004 c 274: See note following RCW 67.16.260.

Finding—Purpose—2001 1st sp.s. c 10: "The legislature finds that Washington's equine racing industry creates economic, environmental, and recreational impacts across the state affecting agriculture, horse breeding, the horse training industry, agricultural fairs and youth programs, and tourism and employment opportunities. The Washington equine industry has incurred a financial decline coinciding with increased competition from the gaming industry in the state and from the lack of a class 1 racing facility in western Washington from 1993 through 1995. This act is necessary to preserve, restore, and revitalize the equine breeding and racing industries and to preserve in Washington the economic and social impacts associated with these industries. Preserving Washington's equine breeding and racing industries, and in particular those sectors of the industries that are dependent upon live horse racing, is in the public interest of the state. The purpose of this act is to preserve Washington's equine breeding and racing industries and to protect these industries from adverse economic impacts. This act does not establish a new form of gaming in Washington or allow expanded gaming within the state beyond what has been previously authorized. Simulcast wagering has been allowed in Washington before August 23, 2001. Therefore, this act does not allow gaming of any nature or scope that was prohibited before August 23, 2001." [2001 1st sp.s. c 10 § 1.]

Findings—Purpose—1997 c 87: "The legislature finds that Washington's equine racing industry creates economic, environmental, and recreational impacts across the state affecting agriculture, horse breeding, the horse training industry, agricultural fairs and youth programs, and tourism and employment opportunities. The Washington equine industry has incurred a financial decline coinciding with increased competition from the gaming industry in the state and from the lack of a class 1 racing facility in western Washington from 1993 through 1995. This act is necessary to preserve, restore, and revitalize the equine breeding and racing industries and to preserve in Washington the economic and social impacts associated with these industries. Preserving Washington's equine breeding and racing industries, and in particular those sectors of the industries that are dependent upon live horse racing, is in the public interest of the state. The purpose of this act is to preserve Washington's equine breeding and racing industries and to protect these industries from adverse economic impacts. This act does not establish a new form of gaming in Washington or allow expanded gaming within the state beyond what has been previously authorized. Simulcast wagering has been allowed in Washington before April 19, 1997. Therefore, this act does not allow gaming of any nature or scope that was prohibited before April 19, 1997." [1997 c 87 § 1.]

Additional notes found at www.leg.wa.gov

67.16.280 Washington horse racing commission operating account. (1) The Washington horse racing commission operating account is created in the custody of the state treasurer. All receipts collected by the commission under RCW 67.16.105(2) must be deposited into the account. The commission has the authority to receive such gifts, grants, and endowments from public or private sources as may be made from time to time in trust or otherwise for the use and purpose of regulating or supporting nonprofit race meets as set forth in RCW 67.16.130 and 67.16.105(1); such gifts, grants, and endowments must also be deposited into the account and expended according to the terms of such gift, grant, or endowment. Moneys in the account may be spent only after appropriation. Except as provided in subsection (2) of this section, expenditures from the account may be used only for operating expenses of the commission.

(2) In order to provide funding in support of the legislative findings in RCW 67.16.101 (1) through (3), and to provide additional necessary support to the nonprofit race meets beyond the funding provided by RCW 67.16.101(4) and

67.16.102(2), the commission is authorized to spend up to three hundred thousand dollars per fiscal year from its operating account for the purpose of developing the equine industry, maintaining and upgrading racing facilities, and assisting equine health research. When determining how to allocate the funds available for these purposes, the commission must give first consideration to uses that regulate and assist the nonprofit race meets and equine health research. These expenditures may occur only when sufficient funds remain for the continued operations of the horse racing commission. [2013 c 88 § 2; 2011 c 12 § 2; 2006 c 174 § 1; 2004 c 246 § 3.]

Effective date—2011 c 12: See note following RCW 67.16.105.

Effective date—2004 c 246: See note following RCW 67.16.270.

Chapter 67.28 RCW PUBLIC STADIUM, CONVENTION, ARTS, AND TOURISM FACILITIES

Sections

67.28.080 Definitions.
67.28.1816 Lodging tax—Tourism promotion.

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

(1) "Acquisition" includes, but is not limited to, siting, acquisition, design, construction, refurbishing, expansion, repair, and improvement, including paying or securing the payment of all or any portion of general obligation bonds, leases, revenue bonds, or other obligations issued or incurred for such purpose or purposes under this chapter.

(2) "Municipality" means any county, city or town of the state of Washington.

(3) "Operation" includes, but is not limited to, operation, management, and marketing.

(4) "Person" means the federal government or any agency thereof, the state or any agency, subdivision, taxing district or municipal corporation thereof other than county, city or town, any private corporation, partnership, association, or individual.

(5) "Tourism" means economic activity resulting from tourists, which may include sales of overnight lodging, meals, tours, gifts, or souvenirs.

(6) "Tourism promotion" means activities, operations, and expenditures designed to increase tourism, including but not limited to advertising, publicizing, or otherwise distributing information for the purpose of attracting and welcoming tourists; developing strategies to expand tourism; operating tourism promotion agencies; and funding the marketing of or the operation of special events and festivals designed to attract tourists.

(7) "Tourism-related facility" means real or tangible personal property with a usable life of three or more years, or constructed with volunteer labor that is: (a)(i) Owned by a public entity; (ii) owned by a nonprofit organization described under section 501(c)(3) of the federal internal revenue code of 1986, as amended; or (iii) owned by a nonprofit organization described under section 501(c)(6) of the federal internal revenue code of 1986, as amended, a business organization, destination marketing organization, main street organization, lodging association, or chamber of commerce

and (b) used to support tourism, performing arts, or to accommodate tourist activities. [2013 c 196 § 2. Prior: 2007 c 497 § 1; 1997 c 452 § 2; 1991 c 357 § 1; 1967 c 236 § 1.]

Effective date—2013 c 196: See note following RCW 67.28.1816.

Intent—1997 c 452: "The intent of this act is to provide uniform standards for local option excise taxation of lodging." [1997 c 452 § 1.]

Clarification of permitted use or purpose: 2000 c 256.

Additional notes found at www.leg.wa.gov

67.28.1816 Lodging tax—Tourism promotion. (1) Lodging tax revenues under this chapter may be used, directly by any municipality or indirectly through a convention and visitors bureau or destination marketing organization for:

- (a) Tourism marketing;
- (b) The marketing and operations of special events and festivals designed to attract tourists;
- (c) Supporting the operations and capital expenditures of tourism-related facilities owned or operated by a municipality or a public facilities district created under chapters 35.57 and 36.100 RCW; or
- (d) Supporting the operations of tourism-related facilities owned or operated by nonprofit organizations described under 26 U.S.C. Sec. 501(c)(3) and 26 U.S.C. Sec. 501(c)(6) of the internal revenue code of 1986, as amended.

(2)(a) Except as provided in (b) of this subsection, applicants applying for use of revenues in this chapter must provide the municipality to which they are applying estimates of how any moneys received will result in increases in the number of people traveling for business or pleasure on a trip:

- (i) Away from their place of residence or business and staying overnight in paid accommodations;
- (ii) To a place fifty miles or more one way from their place of residence or business for the day or staying overnight; or
- (iii) From another country or state outside of their place of residence or their business.

(b)(i) In a municipality with a population of five thousand or more, applicants applying for use of revenues in this chapter must submit their applications and estimates described under (a) of this subsection to the local lodging tax advisory committee.

(ii) The local lodging tax advisory committee must select the candidates from amongst the applicants applying for use of revenues in this chapter and provide a list of such candidates and recommended amounts of funding to the municipality for final determination. The municipality may choose only recipients from the list of candidates and recommended amounts provided by the local lodging tax advisory committee.

(c)(i) All recipients must submit a report to the municipality describing the actual number of people traveling for business or pleasure on a trip:

- (A) Away from their place of residence or business and staying overnight in paid accommodations;
- (B) To a place fifty miles or more one way from their place of residence or business for the day or staying overnight; or
- (C) From another country or state outside of their place of residence or their business. A municipality receiving a report must: Make such report available to the local legisla-

tive body and the public; and furnish copies of the report to the joint legislative audit and review committee and members of the local lodging tax advisory committee.

(ii) The joint legislative audit and review committee must on a biennial basis report to the economic development committees of the legislature on the use of lodging tax revenues by municipalities. Reporting under this subsection must begin in calendar year 2015.

(d) This section does not apply to the revenues of any lodging tax authorized under this chapter imposed by a county with a population of one million five hundred thousand or more. [2013 c 196 § 1; 2008 c 28 § 1; 2007 c 497 § 2.]

Effective date—2013 c 196: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2013." [2013 c 196 § 3.]

Chapter 67.70 RCW STATE LOTTERY

Sections

67.70.190	Unclaimed prizes.
67.70.240	Use of moneys in state lottery account limited.
67.70.500	Repealed.

67.70.190 Unclaimed prizes. Unclaimed prizes shall be retained in the state lottery account for the person entitled thereto for one hundred eighty days after the drawing in which the prize is won, or after the official end of the game for instant prizes. If no claim is made for the prize within this time, all rights to the prize shall be extinguished, and the prize shall be retained in the state lottery fund for further use as prizes, except that one-third of all unclaimed prize money shall be deposited in the economic development strategic reserve account created in RCW 43.330.250.

On July 1, 2009, June 30, 2010, and June 30, 2011, all unclaimed prize money retained in the state lottery account in excess of three million dollars, excluding amounts distributed to the economic development strategic reserve account, shall be transferred into the state general fund.

During the 2013-2015 fiscal biennium, the legislature may transfer to the education legacy trust account such amounts as reflect the excess fund balance in the state lottery account from unclaimed prizes. [2013 2nd sp.s. c 4 § 987; 2009 c 564 § 949; 2005 c 427 § 2; 1994 c 218 § 5; 1988 c 289 § 802; 1987 c 511 § 8; 1982 2nd ex.s. c 7 § 19.]

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

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

Additional notes found at www.leg.wa.gov

67.70.240 Use of moneys in state lottery account limited. (1) The moneys in the state lottery account may be used only:

- (a) For the payment of prizes to the holders of winning lottery tickets or shares;
- (b) For purposes of making deposits into the reserve account created by RCW 67.70.250 and into the lottery administrative account created by RCW 67.70.260;
- (c) For purposes of making deposits into the Washington opportunity pathways account created in RCW 28B.76.526.

Moneys in the state lottery account deposited in the Washington opportunity pathways account are included in "general state revenues" under RCW 39.42.070;

(d) For distribution to the stadium and exhibition center account, created in RCW 43.99N.060. Subject to the conditions of RCW 43.99N.070, six million dollars must be distributed under this subsection during the calendar year 1998. During subsequent years, such distribution must equal the prior year's distributions increased by four percent. No distribution may be made under this subsection after December 31, 1999, unless the conditions for issuance of the bonds under RCW 43.99N.020(2) are met. Distributions under this subsection must cease when the bonds are retired, but not later than December 31, 2020;

(e) For the purchase and promotion of lottery games and game-related services; and

(f) For the payment of agent compensation.

(2) The office of financial management shall require the allotment of all expenses paid from the account and shall report to the ways and means committees of the senate and house of representatives any changes in the allotments. [2013 c 136 § 1; 2011 c 352 § 3; 2010 1st sp.s. c 27 § 3. Prior: 2009 c 500 § 11; 2009 c 479 § 44; 2001 c 3 § 4 (Initiative Measure No. 728, approved November 7, 2000); 1997 c 220 § 206 (Referendum Bill No. 48, approved June 17, 1997); 1995 3rd sp.s. c 1 § 105; 1987 c 513 § 7; 1985 c 375 § 5; 1982 2nd ex.s. c 7 § 24.]

Intent—2011 c 352: "In recognition of the extraordinary sacrifices made by the men and women serving in the United States armed forces, including Washington state's national guard and reserves, the legislature intends to authorize an ongoing source of funding to preserve the veterans innovations program. This important program provides assistance to military members and their families who face extreme financial hardships due to extended deployments." [2011 c 352 § 1.]

Findings—Intent—2010 1st sp.s. c 27: See note following RCW 28B.76.526.

Effective date—2009 c 500: See note following RCW 39.42.070.

Effective date—2009 c 479: See note following RCW 2.56.030.

Purpose—Intent—2001 c 3 (Initiative Measure No. 728): "The citizens of Washington state expect and deserve great public schools for our generation of school children and for those who will follow. A quality public education system is crucial for our state's future economic success and prosperity, and for our children and their children to lead successful lives.

The purpose of this act is to improve public education and to achieve higher academic standards for all students through smaller class sizes and other improvements. A portion of the state's surplus general fund revenues is dedicated to this purpose.

In 1993, Washington state made a major commitment to improved public education by passing the Washington education reform act. This act established new, higher standards of academic achievement for all students. It also established new levels of accountability for students, teachers, schools, and school districts. However, the K-12 finance system has not been changed to respond to the new standards and individual student needs.

To make higher student achievement a reality, schools need the additional resources and flexibility to provide all students with more individualized quality instruction, more time, and the extra support that they may require. We need to ensure that curriculum, instruction methods, and assessments of student performance are aligned with the new standards and student needs. The current level of state funding does not provide adequate resources to support higher academic achievement for all students. In fact, inflation-adjusted per-student state funding has declined since the legislature adopted the 1993 education reform act.

The erosion of state funding for K-12 education is directly at odds with the state's "paramount duty to make ample provision for the education of all children...." Now is the time to invest some of our surplus state revenues in K-12 education and redirect state lottery funds to education, as was originally intended, so that we can fulfill the state's paramount duty.

Conditions and needs vary across Washington's two hundred ninety-

six school districts. School boards accountable to their local communities should therefore have the flexibility to decide which of the following strategies will be most effective in increasing student performance and in helping students meet the state's new, higher academic standards:

(1) Major reductions in K-4 class size;

(2) Selected class size reductions in grades 5-12, such as small high school writing classes;

(3) Extended learning opportunities for students who need or want additional time in school;

(4) Investments in educators and their professional development;

(5) Early assistance for children who need prekindergarten support in order to be successful in school; and

(6) Providing improvements or additions to facilities to support class size reductions and extended learning opportunities.

REDUCING CLASS SIZE

Smaller classes in the early grades can significantly increase the amount of learning that takes place in the classroom. Washington state now ranks forty-eighth in the nation in its student-teacher ratio. This is unacceptable.

Significant class size reductions will provide our children with more individualized instruction and the attention they need and deserve and will reduce behavioral problems in classrooms. The state's long-term goal should be to reduce class size in grades K-4 to no more than eighteen students per teacher in a class.

The people recognize that class size reduction should be phased-in over several years. It should be accompanied by the necessary funds for school construction and modernization and for high-quality, well-trained teachers.

EXTENDED LEARNING OPPORTUNITIES

Student achievement will also be increased if we expand learning opportunities beyond our traditional-length school day and year. In many school districts, educators and parents want a longer school day, a longer school year, and/or all-day kindergarten to help students improve their academic performance or explore new learning opportunities. In addition, special programs such as before-and-after-school tutoring will help struggling students catch and keep up with their classmates. Extended learning opportunities will be increasingly important as attainment of a certificate of mastery becomes a high school graduation requirement.

TEACHER QUALITY

Key to every student's academic success is a quality teacher in every classroom. Washington state's new standards for student achievement make teacher quality more important than ever. We are asking our teachers to teach more demanding curriculum in new ways, and we are holding our educators and schools to new, higher levels of accountability for student performance. Resources are needed to give teachers the content knowledge and skills to teach to higher standards and to give school leaders the skills to improve instruction and manage organizational change.

The ability of school districts throughout the state to attract and retain the highest quality teaching corps by offering competitive salaries and effective working conditions is an essential element of basic education. The state legislature is responsible for establishing teacher salaries. It is imperative that the legislature fund salary levels that ensure school districts' ability to recruit and retain the highest quality teachers.

EARLY ASSISTANCE

The importance of a child's intellectual development in the first five years has been established by widespread scientific research. This is especially true for children with disabilities and special needs. Providing assistance appropriate to children's developmental needs will enhance the academic achievement of these children in grades K-12. Early assistance will also lessen the need for more expensive remedial efforts in later years.

NO SUPPLANTING OF EXISTING EDUCATION FUNDS

It is the intent of the people that existing state funding for education, including all sources of such funding, shall not be reduced, supplanted, or otherwise adversely impacted by appropriations or expenditures from the *student achievement fund created in RCW 43.135.045 or the education construction fund.

INVESTING SURPLUS IN SCHOOLS UNTIL GOAL MET

It is the intent of the people to invest a portion of state surplus revenues in their schools. This investment should continue until the state's contribution to funding public education achieves a reasonable goal. The goal should reflect the state's paramount duty to make ample provision for the education of all children and our citizens' desire that all students receive a quality education. The people set a goal of per-student state funding for the mainte-

nance and operation of K-12 education being equal to at least ninety percent of the national average per-student expenditure from all sources. When this goal is met, further deposits to the *student achievement fund shall be required only to the extent necessary to maintain the ninety-percent level." [2001 c 3 § 2 (Initiative Measure No. 728, approved November 7, 2000).]

*Reviser's note: The "student achievement fund" created in RCW 43.135.045 was deleted pursuant to 2009 c 479 § 37.

Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220: See RCW 36.102.800 through 36.102.803.

State contribution for baseball stadium limited: RCW 82.14.0486.

Additional notes found at www.leg.wa.gov

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

Title 68

CEMETERIES, MORGUES, AND HUMAN REMAINS

Chapters

68.50 Human remains.

68.52 Public cemeteries and morgues.

Chapter 68.50 RCW HUMAN REMAINS

Sections

- 68.50.105 Autopsies, postmortems—Reports and records confidential—Exceptions. (*Effective January 1, 2014.*)
68.50.115 Coroner and medical examiner liability—Release of information. (*Effective January 1, 2014.*)

68.50.105 Autopsies, postmortems—Reports and records confidential—Exceptions. (*Effective January 1, 2014.*) (1) Reports and records of autopsies or postmortems shall be confidential, except that the following persons may examine and obtain copies of any such report or record: The personal representative of the decedent as defined in RCW 11.02.005, any family member, the attending physician or advanced registered nurse practitioner, the prosecuting attorney or law enforcement agencies having jurisdiction, public health officials, the department of labor and industries in cases in which it has an interest under RCW 68.50.103, or the secretary of the department of social and health services or his or her designee in cases being reviewed under RCW 74.13.640.

(2)(a) Notwithstanding the restrictions contained in this section regarding the dissemination of records and reports of autopsies or postmortems, nor the exemptions referenced under RCW 42.56.240(1), nothing in this chapter prohibits a coroner, medical examiner, or his or her designee, from publicly discussing his or her findings as to any death subject to the jurisdiction of his or her office where actions of a law enforcement officer or corrections officer have been determined to be a proximate cause of the death, except as provided in (b) of this subsection.

(b) A coroner, medical examiner, or his or her designee may not publicly discuss his or her findings outside of formal court or inquest proceedings if there is a pending or active

criminal investigation, or a criminal or civil action, concerning a death that has commenced prior to January 1, 2014.

(3) The coroner, the medical examiner, or the attending physician shall, upon request, meet with the family of the decedent to discuss the findings of the autopsy or postmortem. For the purposes of this section, the term "family" means the surviving spouse, state registered domestic partner, or any child, parent, grandparent, grandchild, brother, or sister of the decedent, or any person who was guardian of the decedent at the time of death. [2013 c 295 § 1; 2011 c 61 § 1. Prior: 2007 c 439 § 1; 2007 c 156 § 23; 1987 c 331 § 58; 1985 c 300 § 1; 1977 c 79 § 2; 1953 c 188 § 9. Formerly RCW 68.08.105.]

Effective date—2013 c 295: See note following RCW 68.50.115.

68.50.115 Coroner and medical examiner liability—Release of information. (*Effective January 1, 2014.*) No coroner, medical examiner, or his or her designee shall be liable, nor shall a cause of action exist, for any loss or damage based upon the release of any information related to his or her findings under RCW 68.50.105 if the coroner, medical examiner, or his or her designee acted in good faith in attempting to comply with the provisions of this chapter. [2013 c 295 § 2.]

Effective date—2013 c 295: "This act takes effect January 1, 2014." [2013 c 295 § 3.]

Chapter 68.52 RCW PUBLIC CEMETERIES AND MORGUES

Sections

- 68.52.100 Petition—Requisites—Examination.
68.52.110 Hearing—Place and date.
68.52.120 Publication and posting of petition and notice of hearing.
68.52.130 Hearing—Inclusion and exclusion of lands.
68.52.140 Formation of district and election of first commissioners.
68.52.150 Election, how conducted—Notice.
68.52.170 Canvass of returns—Votes required for district formation.
68.52.180 Review—When district formation is complete.
68.52.220 District commissioners—Compensation—Election.

68.52.100 Petition—Requisites—Examination. (1) To form a cemetery district, a petition designating the boundaries of the proposed district by metes and bounds or describing the lands to be included in the proposed district by government townships, ranges, and legal subdivisions, setting forth the object of the formation of the proposed district, and stating that the formation of the proposed district will be conducive to the public welfare and convenience, must be filed with the county auditor of the county in which the proposed district is located, accompanied by an obligation signed by two or more petitioners agreeing to pay the cost of publishing the notice specified in RCW 68.52.120.

(2) The petition must be signed by at least ten percent of the registered voters in the proposed district. However, in counties with only one municipality the petition must be signed by at least ten percent of the registered voters in the proposed district, based on the total vote cast in the most recent county general election.

(3) The county auditor must, within thirty days from the date of filing of the petition, examine the signatures and certify the sufficiency or insufficiency of the petition.

(4) Notwithstanding subsection (3) of this section, in counties with only one municipality the county auditor must examine the signatures and certify the sufficiency or insufficiency of the petition within fifteen days from the date of filing of the petition. If the county auditor certifies that the petition is insufficient, the county auditor must afford the person who filed the petition ten days from that certification to add additional signatures to the petition. The petition must be refiled by the end of that period. Within fifteen days from the date of refiled, the county auditor must examine the signatures and certify the sufficiency or insufficiency of the petition.

(5) The name of any person who signed a petition may not be withdrawn from the petition after it has been filed with the county auditor.

(6) If the petition is found to contain a sufficient number of valid signatures, the county auditor must transmit it, with a certificate of sufficiency attached, to the county legislative authority, which must thereupon, by resolution entered upon its minutes, receive the petition and fix a day and hour when it will publicly hear the petition.

(7) For the purposes of this section, "municipality" means a city or town. [2013 c 167 § 1; 2008 c 96 § 1; 1994 c 223 § 74; 1947 c 6 § 2; Rem. Supp. 1947 § 3778-151. Formerly RCW 68.16.020.]

68.52.110 Hearing—Place and date. The county legislative authority must conduct a hearing on the petition not less than twenty nor more than forty days from the date of receipt of the petition from the county auditor. The hearing may be completed on the day set for hearing the petition or it may be adjourned from time to time as necessary, but an adjournment may not extend the time for the county legislative authority's determination pursuant to RCW 68.52.140 more than sixty days from the date of receipt of the petition from the county auditor. [2013 c 167 § 2; 1947 c 6 § 3; Rem. Supp. 1947 § 3778-152. Formerly RCW 68.16.030.]

68.52.120 Publication and posting of petition and notice of hearing. The text of the petition with the names of petitioners omitted and a notice signed by the clerk of the county legislative authority stating the day, hour, and place of the hearing must be published in three consecutive weekly issues of the official newspaper of the county prior to the date of the hearing. The clerk must also cause a copy of the petition with the names of petitioners omitted, with a copy of the notice attached, to be posted for not less than fifteen days before the date of the hearing in three public places in the proposed district, to be previously designated by him or her and made a matter of record in the proceedings. [2013 c 167 § 3; 2012 c 117 § 319; 1947 c 6 § 4; Rem. Supp. 1947 § 3778-153. Formerly RCW 68.16.040.]

68.52.130 Hearing—Inclusion and exclusion of lands. At the time and place fixed for the hearing on the petition or at any adjournment thereof, the county legislative authority must hear the petition and receive such evidence as it may deem material in favor of or opposed to the formation of the proposed cemetery district or to the inclusion or exclusion of any lands in the proposed district, but no lands not within the boundaries of the proposed district as described in

the petition may be included without a written waiver describing the land, executed by all persons having any interest of record therein, having been filed in the proceedings. No land within the boundaries described in the petition may be excluded from the proposed district. [2013 c 167 § 4; 1947 c 6 § 5; Rem. Supp. 1947 § 3778-154. Formerly RCW 68.16.050.]

68.52.140 Formation of district and election of first commissioners. (1) After conducting the hearing on the petition, if the county legislative authority determines that the formation of the proposed cemetery district will be conducive to the public welfare and convenience, the county legislative authority must by resolution so declare, otherwise the county legislative authority must deny the petition.

(2) If the county legislative authority finds in favor of the formation of the proposed district, the county legislative authority must designate the name and number of the proposed district, fix the boundaries of the proposed district, and cause an election to be held in the proposed district to determine whether the proposed district will be formed under the provisions of this chapter, and to elect the first cemetery district commissioners.

(3) Three cemetery district commissioners must be elected at the election to determine whether the proposed district will be formed, but the election of the commissioners is null and void if the district is not formed. No primary will be held for the office of cemetery district commissioner. A special filing period must be opened as provided in RCW 29A.24.171 and 29A.24.181. Candidates must run for specific commissioner positions. The person receiving the greatest number of votes for each commissioner position is elected to that position. The terms of office of the initial commissioners are as provided in RCW 68.52.220. [2013 c 167 § 5; 1996 c 324 § 3; 1994 c 223 § 75; 1982 c 60 § 2; 1947 c 6 § 6; Rem. Supp. 1947 § 3778-155. Formerly RCW 68.16.060.]

68.52.150 Election, how conducted—Notice. Except as otherwise provided in this chapter, the election must insofar as possible be called, noticed, held, conducted, and canvassed in the same manner and by the same officials as provided by law for special elections in the county. The notice of election must: State generally and briefly the purpose of the election; describe the boundaries of the proposed cemetery district; list the names of the candidates for first cemetery district commissioners; and specify the election date. [2013 c 167 § 6; 1947 c 6 § 7; Rem. Supp. 1947 § 3778-156. Formerly RCW 68.16.070.]

Elections: Title 29A RCW.

68.52.170 Canvass of returns—Votes required for district formation. (1) The returns of the election must be canvassed following the election, but the canvass may be adjourned from time to time to await the receipt of election returns. Upon conclusion of the canvass, the canvassing officials must certify the results to the county legislative authority.

(2) The cemetery district is formed if two-thirds of all votes cast at the election were in favor of the formation of the proposed district. However, in counties with only one municipality the district is formed if a majority of all votes

cast at the election were in favor of the formation of the proposed district.

(3) If the proposition to form the proposed district received the voter approval required under this section, the county legislative authority must by resolution recorded in the county legislative authority's minutes: Declare the district formed under the name and number previously designated; and declare the three candidates receiving the highest number of votes for cemetery district commissioners as the duly elected first commissioners of the district. The clerk of the county legislative authority must certify a copy of the resolution and cause it to be filed for record in the offices of the county auditor and the county assessor of the county. The certified copy may be recorded without payment of a recording fee.

(4) If the proposition to form the proposed district failed to receive the voter approval required under this section, the county legislative authority must record in the county legislative authority's minutes the failed vote, and all proceedings relating to the proposed district are null and void.

(5) For the purposes of this section, "municipality" means a city or town. [2013 c 167 § 7; 1947 c 6 § 9; Rem. Supp. 1947 § 3778-158. Formerly RCW 68.16.090.]

68.52.180 Review—When district formation is complete. (1) Any person, firm, or corporation having a substantial interest involved, and feeling aggrieved by any finding, determination, or resolution of the county legislative authority under the provisions of this chapter, may appeal within five days after the finding, determination, or resolution was made to the superior court of the county in the same manner as provided by law for appeals from orders of the county legislative authority.

(2) After the expiration of five days from the date of the resolution declaring the district formed, and upon filing of certified copies of the resolution in the offices of the county auditor and county assessor, the formation of the cemetery district is complete and its legal existence may not thereafter be questioned by any person by reason of any defect in the proceedings for the formation of the cemetery district. [2013 c 167 § 8; 1947 c 6 § 10; Rem. Supp. 1947 § 3778-159. Formerly RCW 68.16.100.]

Appeals from action of board of county commissioners: RCW 36.32.330.

68.52.220 District commissioners—Compensation—Election. (1) The affairs of the cemetery district must be managed by a board of cemetery district commissioners composed of three members. The board may provide, by resolution passed by the commissioners, for the payment of compensation to each of its commissioners at a rate of up to ninety dollars for each day or portion of a day spent in actual attendance at official meetings of the district commission, or in performance of other official services or duties on behalf of the district. However, the compensation for each commissioner must not exceed eight thousand six hundred forty dollars per year.

(2) Any commissioner may waive all or any portion of his or her compensation payable under this section as to any month or months during his or her term of office, by a written waiver filed with the clerk of the board. The waiver, to be effective, must be filed any time after the commissioner's

election and prior to the date on which the compensation would otherwise be paid. The waiver must specify the month or period of months for which it is made. The board must fix the compensation to be paid the secretary and other employees of the district. Cemetery district commissioners and candidates for cemetery district commissioner are exempt from the requirements of chapter 42.17A RCW.

(3) The initial cemetery district commissioners must assume office immediately upon their election and qualification. Staggering of terms of office must be accomplished as follows: (a) The person elected receiving the greatest number of votes is elected to a six-year term of office if the election is held in an odd-numbered year or a five-year term of office if the election is held in an even-numbered year; (b) the person who is elected receiving the next greatest number of votes is elected to a four-year term of office if the election is held in an odd-numbered year or a three-year term of office if the election is held in an even-numbered year; and (c) the other person who is elected is elected to a two-year term of office if the election is held in an odd-numbered year or a one-year term of office if the election is held in an even-numbered year. The initial commissioners must assume office immediately after they are elected and qualified but their terms of office must be calculated from the first day of January after the election.

(4) Thereafter, commissioners are elected to six-year terms of office. Commissioners must serve until their successors are elected and qualified and assume office as provided in *RCW 29A.20.040.

(5) The dollar thresholds established in this section must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2008, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, for Washington state, for wage earners and clerical workers, all items, compiled by the bureau of labor and statistics, United States department of labor. If the bureau of labor and statistics develops more than one consumer price index for areas within the state, the index covering the greatest number of people, covering areas exclusively within the boundaries of the state, and including all items must be used for the adjustments for inflation in this section. The office of financial management must calculate the new dollar threshold and transmit it to the office of the code reviser for publication in the Washington State Register at least one month before the new dollar threshold is to take effect.

(6) A person holding office as commissioner for two or more special purpose districts may receive only that per diem compensation authorized for one of his or her commissioner positions as compensation for attending an official meeting or conducting official services or duties while representing more than one of his or her districts. However, such commissioner may receive additional per diem compensation if approved by resolution of all boards of the affected commissions. [2013 c 167 § 9; 2011 c 60 § 47; 2007 c 469 § 6; 1998 c 121 § 6; 1994 c 223 § 77; 1990 c 259 § 33; 1982 c 60 § 3; 1979 ex.s. c 126 § 40; 1947 c 6 § 14; Rem. Supp. 1947 § 3778-163. Formerly RCW 68.16.140.]

*Reviser's note: RCW 29A.20.040 was recodified as RCW 29A.60.280 pursuant to 2013 c 11 § 93.

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

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

Title 69

**FOOD, DRUGS, COSMETICS,
AND POISONS**

Chapters

- 69.04 Intrastate commerce in food, drugs, and cosmetics.**
- 69.25 Washington wholesome eggs and egg products act.**
- 69.38 Poisons—Sales and manufacturing.**
- 69.40 Poisons and dangerous drugs.**
- 69.41 Legend drugs—Prescription drugs.**
- 69.43 Precursor drugs.**
- 69.45 Drug samples.**
- 69.50 Uniform controlled substances act.**
- 69.51 Controlled substances therapeutic research act.**
- 69.60 Over-the-counter medications.**
- 69.70 Access to prescription drugs.**

Chapter 69.04 RCW

**INTRASTATE COMMERCE IN FOOD, DRUGS,
AND COSMETICS**

(Formerly: Food, drug, and cosmetic act)

Sections

- 69.04.060 Criminal penalty for violations.
- 69.04.315 Repealed.
- 69.04.565 DMSO (dimethyl sulfoxide) authorized.
- 69.04.730 Enforcement, where vested—Regulations.
- 69.04.928 Seafood labeling requirements—Pamphlet.
- 69.04.932 Definitions.
- 69.04.933 Food fish and shellfish labeling—Identification of species—Exceptions—Penalty.
- 69.04.934 Salmon labeling—Identification as farm-raised or commercially caught—Exceptions—Penalty.
- 69.04.935 Salmon labeling—Rules for identification and enforcement.
- 69.04.938 Misbranding of food fish or shellfish—Penalties.

69.04.060 Criminal penalty for violations. Except as otherwise provided in this chapter, any person who violates any provision of RCW 69.04.040 is guilty of a misdemeanor and shall on conviction thereof be subject to the following penalties:

- (1) A fine of not more than two hundred dollars; or
- (2) If the violation is committed after a conviction of such person under this section has become final, imprisonment for not more than thirty days, or a fine of not more than five hundred dollars, or both such imprisonment and fine.

[2013 c 290 § 1; 2003 c 53 § 314; 1945 c 257 § 24; Rem. Supp. 1945 § 6163-73. Prior: 1907 c 211 § 12; 1901 c 94 § 11.]

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

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

69.04.565 DMSO (dimethyl sulfoxide) authorized. Notwithstanding any other provision of state law, DMSO (dimethyl sulfoxide) may be introduced into intrastate commerce as long as (1) it is manufactured or distributed by per-

sons licensed pursuant to chapter 18.64 RCW or chapter 18.92 RCW, and (2) it is used, or intended to be used, in the treatment of human beings or animals for any ailment or adverse condition: PROVIDED, That DMSO intended for topical application, consistent with rules governing purity and labeling promulgated by the pharmacy quality assurance commission, shall not be considered a legend drug and may be sold by any retailer. [2013 c 19 § 50; 1981 c 50 § 1.]

DMSO use by health facilities, physicians: RCW 70.54.190.

69.04.730 Enforcement, where vested—Regulations.

The authority to promulgate regulations for the efficient enforcement of this chapter is hereby vested in the director: PROVIDED, HOWEVER, That the director shall designate the pharmacy quality assurance commission to carry out all the provisions of this chapter pertaining to drugs and cosmetics, with authority to promulgate regulations for the efficient enforcement thereof. [2013 c 19 § 51; 1945 c 257 § 91 (vetoed); 1947 c 25 (passed notwithstanding veto); Rem. Supp. 1947 § 6163-139a.]

69.04.928 Seafood labeling requirements—Pamphlet. The department of agriculture may:

- (1) Develop a pamphlet that generally describes the labeling requirements for seafood as set forth in this chapter;
- (2) Provide to the department of fish and wildlife a web site link to the pamphlet; and
- (3) Make the pamphlet available to holders of any license associated with buying and selling fish or shellfish under chapter 77.65 RCW. [2013 c 290 § 2; 2002 c 301 § 11.]

Finding—Effective date—2002 c 301: See notes following RCW 77.65.510.

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

(1) "Commercially caught" means wild or hatchery-raised salmon harvested in the wild by commercial fishers. The term does not apply to farmed fish raised exclusively by private sector aquaculture.

(2) "Food fish" means fresh or saltwater finfish and other forms of aquatic animal life other than crustaceans, mollusks, birds, and mammals where the animal life is intended for human consumption.

(3) "Salmon" means all species of the genus *Oncorhynchus*, except those classified as game fish in RCW 77.08.020, and includes:

SCIENTIFIC NAME	COMMON NAME
<i>Oncorhynchus tshawytscha</i>	Chinook salmon or king salmon
<i>Oncorhynchus kisutch</i>	Coho salmon or silver salmon
<i>Oncorhynchus keta</i>	Chum or "keta" salmon
<i>Oncorhynchus gorbuscha</i>	Pink salmon
<i>Oncorhynchus nerka</i>	Sockeye or "red" salmon
<i>Salmo salar</i> (in other than its landlocked form)	Atlantic salmon

(4) "Shellfish" means crustaceans and all mollusks where the animal life is intended for human consumption. [2013 c 290 § 3; 1993 c 282 § 2.]

Finding—1993 c 282: "The legislature finds that salmon consumers in Washington benefit from knowing the species and origin of the salmon they purchase. The accurate identification of such species, as well as knowledge

of the country or state of origin and of whether they were caught commercially or were farm-raised, is important to consumers." [1993 c 282 § 1.]

69.04.933 Food fish and shellfish labeling—Identification of species—Exceptions—Penalty. (1) It is unlawful to knowingly sell or offer for sale at wholesale or retail any fresh, frozen, or processed food fish or shellfish without identifying for the buyer at the point of sale the species of food fish or shellfish by its common name, such that the buyer can make an informed purchasing decision for his or her protection, health, and safety.

(2) It is unlawful to knowingly label or offer for sale any food fish designated as halibut, with or without additional descriptive words, unless the food fish product is *Hippoglossus hippoglossus* or *Hippoglossus stenolepis*.

(3) This section does not apply to salmon that is minced, pulverized, coated with batter, or breaded.

(4) This section does not apply to a commercial fisher properly licensed under chapter 77.65 RCW and engaged in sales of fish to a fish buyer.

(5) A violation of this section constitutes misbranding under RCW 69.04.938 and is punishable as a misdemeanor, gross misdemeanor, or felony depending on the fair market value of the fish or shellfish involved in the violation.

(6)(a) The common names for salmon species are as listed in RCW 69.04.932.

(b) The common names for all other food fish and shellfish are the common names for food fish and shellfish species as defined by rule of the director. If the common name for a species is not defined by rule of the director, then the common name is the acceptable market name or common name as provided in the United States food and drug administration's publication "Seafood list - FDA's guide to acceptable market names for seafood sold in interstate commerce," as the publication existed on the effective date of this section.

(7) For the purposes of this section, "processed" means food fish or shellfish processed by heat for human consumption, such as food fish or shellfish that is kippered, smoked, boiled, canned, cleaned, portioned, or prepared for sale or attempted sale for human consumption.

(8) Nothing in this section precludes using additional descriptive language or trade names to describe food fish or shellfish as long as the labeling requirements in this section are met. [2013 c 290 § 4; 1993 c 282 § 3.]

Finding—1993 c 282: See note following RCW 69.04.932.

69.04.934 Salmon labeling—Identification as farm-raised or commercially caught—Exceptions—Penalty.

(1) It is unlawful to knowingly sell or offer for sale at wholesale or retail any fresh, frozen, or processed salmon without identifying private sector cultured aquatic salmon or salmon products as farm-raised salmon, or identifying commercially caught salmon or salmon products as commercially caught salmon.

(2) Identification of the products under subsection (1) of this section must be made to the buyer at the point of sale such that the buyer can make an informed purchasing decision for his or her protection, health, and safety.

(3) A violation of this section constitutes misbranding under RCW 69.04.938 and is punishable as a misdemeanor,

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gross misdemeanor, or felony depending on the fair market value of the fish or shellfish involved in the violation.

(4) This section does not apply to salmon that is minced, pulverized, coated with batter, or breaded.

(5) This section does not apply to a commercial fisher properly licensed under chapter 77.65 RCW and lawfully engaged in the sale of fish to a fish buyer.

(6) Nothing in this section precludes using additional descriptive language or trade names to describe food fish or shellfish as long as the labeling requirements of this section are met. [2013 c 290 § 5; 2003 c 39 § 29; 1993 c 282 § 4.]

Finding—1993 c 282: See note following RCW 69.04.932.

69.04.935 Salmon labeling—Rules for identification and enforcement. To promote honesty and fair dealing for consumers and to protect public health and safety, the director, in consultation with the director of the department of fish and wildlife, may adopt rules as necessary to:

(1) Establish and implement a reasonable definition and identification standard for species of food fish and shellfish that are sold for human consumption;

(2) Provide procedures for enforcing this chapter's food fish and shellfish labeling requirements and misbranding prohibitions. [2013 c 290 § 6; 1994 c 264 § 39; 1993 c 282 § 5.]

Finding—1993 c 282: See note following RCW 69.04.932.

69.04.938 Misbranding of food fish or shellfish—Penalties. (1) A person is guilty of unlawful misbranding of food fish or shellfish in the third degree if the person commits an act that violates RCW 69.04.933 or 69.04.934, and the misbranding involves food fish or shellfish with a fair market value up to five hundred dollars. Unlawful misbranding of food fish or shellfish in the third degree is a misdemeanor.

(2) A person is guilty of unlawful misbranding of food fish or shellfish in the second degree if the person commits an act that violates RCW 69.04.933 or 69.04.934, and the misbranding involves food fish or shellfish with a fair market value of five hundred dollars or more, up to five thousand dollars. Unlawful misbranding of food fish or shellfish in the second degree is a gross misdemeanor.

(3) A person is guilty of unlawful misbranding of food fish or shellfish in the first degree if the person commits an act that violates RCW 69.04.933 or 69.04.934, and the misbranding involves food fish or shellfish with a fair market value of five thousand dollars or more. Unlawful misbranding of food fish or shellfish in the first degree is a class C felony. [2013 c 290 § 7.]

Chapter 69.25 RCW

WASHINGTON WHOLESOME EGGS AND EGG PRODUCTS ACT

Sections

69.25.020	Definitions.
69.25.050	Egg handler's or dealer's license and number—Branch license—Application, fee, posting required, procedure.
69.25.060	Egg handler's or dealer's license—Late renewal fee.

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

(1) "Adulterated" applies to any egg or egg product under one or more of the following circumstances:

(a) If it bears or contains any poisonous or deleterious substance that may render it injurious to health; but in case the substance is not an added substance, such article is not considered adulterated under this clause if the quantity of such substance in or on such article does not ordinarily render it injurious to health;

(b) If it bears or contains any added poisonous or added deleterious substance (other than one which is: (i) A pesticide chemical in or on a raw agricultural commodity; (ii) a food additive; or (iii) a color additive) which may, in the judgment of the director, make such article unfit for human food;

(c) If it is, in whole or in part, a raw agricultural commodity and such commodity bears or contains a pesticide chemical which is unsafe within the meaning of RCW 69.04.392, as enacted or hereafter amended;

(d) If it bears or contains any food additive which is unsafe within the meaning of RCW 69.04.394, as enacted or hereafter amended;

(e) If it bears or contains any color additive which is unsafe within the meaning of RCW 69.04.396; however, an article which is not otherwise deemed adulterated under (c), (d), or (e) of this subsection are nevertheless deemed adulterated if use of the pesticide chemical, food additive, or color additive, in or on such article, is prohibited by regulations of the director in official plants;

(f) If it consists in whole or in part of any filthy, putrid, or decomposed substance, or if it is otherwise unfit for human food;

(g) If it consists in whole or in part of any damaged egg or eggs to the extent that the egg meat or white is leaking, or it has been contacted by egg meat or white leaking from other eggs;

(h) If it has been prepared, packaged, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health;

(i) If it is an egg which has been subjected to incubation or the product of any egg which has been subjected to incubation;

(j) If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

(k) If it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to RCW 69.04.394; or

(l) If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or if any substance has been substituted, wholly or in part therefor; or if damage or inferiority has been concealed in any manner; or if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is.

(2) "Ambient temperature" means the atmospheric temperature surrounding or encircling shell eggs.

(3) "At retail" means any transaction in intrastate commerce between a retailer and a consumer.

(4) "Business licensing system" means the mechanism established by chapter 19.02 RCW by which business

licenses, endorsed for individual state-issued licenses, are issued and renewed utilizing a business license application and a business license expiration date common to each renewable license endorsement.

(5) "Candling" means the examination of the interior of eggs by the use of transmitted light used in a partially dark room or place.

(6) "Capable of use as human food" applies to any egg or egg product unless it is denatured, or otherwise identified, as required by regulations prescribed by the director, to deter its use as human food.

(7) "Check" means an egg that has a broken shell or crack in the shell but has its shell membranes intact and contents not leaking.

(8) "Clean and sound shell egg" means any egg whose shell is free of adhering dirt or foreign material and is not cracked or broken.

(9) "Consumer" means any person who purchases eggs for his or her own family use or consumption; or any restaurant, hotel, boarding house, bakery, or other institution or concern which purchases eggs for serving to guests or patrons thereof, or for its own use in cooking or baking.

(10) "Container" or "package" includes any box, can, tin, plastic, or other receptacle, wrapper, or cover.

(11) "Department" means the department of agriculture of the state of Washington.

(12) "Director" means the director of the department or his duly authorized representative.

(13) "Dirty egg" means an egg that has a shell that is unbroken and has adhering dirt or foreign material.

(14) "Egg" means the shell egg of the domesticated chicken, turkey, duck, goose, or guinea, or any other species of fowl.

(15) "Egg handler" or "dealer" means any person who produces, contracts for or obtains possession or control of any eggs or egg products for the purpose of sale to another dealer or retailer, or for processing and sale to a dealer, retailer or consumer. For the purpose of this chapter, "sell" or "sale" includes the following: Offer for sale, expose for sale, have in possession for sale, exchange, barter, trade, or as an inducement for the sale of another product.

(16)(a) "Egg product" means any dried, frozen, or liquid eggs, with or without added ingredients, excepting products which contain eggs only in a relatively small proportion, or historically have not been, in the judgment of the director, considered by consumers as products of the egg food industry, and which may be exempted by the director under such conditions as the director may prescribe to assure that the egg ingredients are not adulterated and are not represented as egg products.

(b) The following products are not included in the definition of "egg product" if they are prepared from eggs or egg products that have been either inspected by the United States department of agriculture or by the department under a cooperative agreement with the United States department of agriculture: Freeze-dried products, imitation egg products, egg substitutes, dietary foods, dried no-bake custard mixes, egg-nog mixes, acidic dressings, noodles, milk and egg dip, cake mixes, French toast, balut and other similar ethnic delicacies, and sandwiches containing eggs or egg products.

(17) "Immediate container" means any consumer package, or any other container in which egg products, not consumer-packaged, are packed.

(18) "Incubator reject" means an egg that has been subjected to incubation and has been removed from incubation during the hatching operations as infertile or otherwise unhatchable.

(19) "Inedible" means eggs of the following descriptions: Black rots, yellow rots, white rots, mixed rots (addled eggs), sour eggs, eggs with green whites, eggs with stuck yolks, moldy eggs, musty eggs, eggs showing blood rings, and eggs containing embryo chicks (at or beyond the blood ring stage).

(20) "Inspection" means the application of such inspection methods and techniques as are deemed necessary by the director to carry out the provisions of this chapter.

(21) "Inspector" means any employee or official of the department authorized to inspect eggs or egg products under the authority of this chapter.

(22) "Intrastate commerce" means any eggs or egg products in intrastate commerce, whether such eggs or egg products are intended for sale, held for sale, offered for sale, sold, stored, transported, or handled in this state in any manner and prepared for eventual distribution in this state, whether at wholesale or retail.

(23) "Leaker" means an egg that has a crack or break in the shell and shell membranes to the extent that the egg contents are exposed or are exuding or free to exude through the shell.

(24) "Loss" means an egg that is unfit for human food because it is smashed or broken so that its contents are leaking; or overheated, frozen, or contaminated; or an incubator reject; or because it contains a bloody white, large meat spots, a large quantity of blood, or other foreign material.

(25) "Misbranded" applies to egg products that are not labeled and packaged in accordance with the requirements prescribed by regulations of the director under RCW 69.25.100.

(26) "Official certificate" means any certificate prescribed by regulations of the director for issuance by an inspector or other person performing official functions under this chapter.

(27) "Official device" means any device prescribed or authorized by the director for use in applying any official mark.

(28) "Official inspection legend" means any symbol prescribed by regulations of the director showing that egg products were inspected in accordance with this chapter.

(29) "Official mark" means the official inspection legend or any other symbol prescribed by regulations of the director to identify the status of any article under this chapter.

(30) "Official plant" means any plant which is licensed under the provisions of this chapter, at which inspection of the processing of egg products is maintained by the United States department of agriculture or by the state under cooperative agreements with the United States department of agriculture or by the state.

(31) "Official standards" means the standards of quality, grades, and weight classes for eggs, adopted under the provisions of this chapter.

(32) "Pasteurize" means the subjecting of each particle of egg products to heat or other treatments to destroy harmful, viable micro-organisms by such processes as may be prescribed by regulations of the director.

(33) "Person" means any natural person, firm, partnership, exchange, association, trustee, receiver, corporation, and any member, officer, or employee thereof, or assignee for the benefit of creditors.

(34) "Pesticide chemical," "food additive," "color additive," and "raw agricultural commodity" have the same meaning for purposes of this chapter as prescribed in chapter 69.04 RCW.

(35) "Plant" means any place of business where egg products are processed.

(36) "Processing" means manufacturing egg products, including breaking eggs or filtering, mixing, blending, pasteurizing, stabilizing, cooling, freezing, drying, or packaging egg products.

(37) "Restricted egg" means any check, dirty egg, incubator reject, inedible, leaker, or loss.

(38) "Retailer" means any person in intrastate commerce who sells eggs to a consumer.

(39) "Shipping container" means any container used in packaging a product packed in an immediate container. [2013 c 144 § 44. Prior: 2011 c 306 § 1; 1995 c 374 § 25; 1982 c 182 § 42; 1975 1st ex.s. c 201 § 3.]

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

Effective date—2011 c 306: "This act takes effect August 1, 2012." [2011 c 306 § 7.]

Additional notes found at www.leg.wa.gov

69.25.050 Egg handler's or dealer's license and number—Branch license—Application, fee, posting required, procedure. (1)(a) No person may act as an egg handler or dealer without first obtaining an annual license and permanent dealer's number from the department.

(b) Application for an egg dealer license and renewal or egg dealer branch license must be made through the business licensing system as provided under chapter 19.02 RCW and expires on the business license expiration date. The annual egg dealer license fee is thirty dollars and the annual egg dealer branch license fee is fifteen dollars. A copy of the business license issued under chapter 19.02 RCW must be posted at each location where the licensee operates. The application must include the full name of the applicant for the license, the location of each facility the applicant intends to operate, and, if applicable, documentation of compliance with RCW 69.25.065 or 69.25.103.

(2) If an applicant is an individual, receiver, trustee, firm, partnership, association or corporation, the full name of each member of the firm or partnership or the names of the officers of the association or corporation must be given on the application. The application must further state the principal business address of the applicant in the state and elsewhere and the name of a person domiciled in this state authorized to receive and accept service of summons of legal notices of all kinds for the applicant and any other necessary information prescribed by the director.

(3) The applicant must be issued a license or renewal under this section upon the approval of the application and

compliance with the provisions of this chapter, including the applicable rules adopted by the department.

(4) The license and permanent egg handler or dealer's number is nontransferable. [2013 c 144 § 45; 2011 c 306 § 2; 1995 c 374 § 26; 1982 c 182 § 43; 1975 1st ex.s. c 201 § 6.]

Effective date—2011 c 306: See note following RCW 69.25.020.

Business license—Expiration date: RCW 19.02.090.

Business licensing system

definition: RCW 69.25.020.

to include additional licenses: RCW 19.02.110.

Additional notes found at www.leg.wa.gov

69.25.060 Egg handler's or dealer's license—Late renewal fee. If the application for the renewal of an egg handler's or dealer's license is not filed before the business license expiration date, the business license delinquency fee must be assessed under chapter 19.02 RCW and must be paid by the applicant before the renewal license is issued. [2013 c 144 § 46; 1982 c 182 § 44; 1975 1st ex.s. c 201 § 7.]

Business license

delinquency fee—Rate—Disposition: RCW 19.02.085.

expiration date: RCW 19.02.090.

Chapter 69.38 RCW

POISONS—SALES AND MANUFACTURING

Sections

- 69.38.010 "Poison" defined.
69.38.060 Manufacturers and sellers of poisons—License required—Penalty.

69.38.010 "Poison" defined. As used in this chapter "poison" means:

- (1) Arsenic and its preparations;
- (2) Cyanide and its preparations, including hydrocyanic acid;
- (3) Strychnine; and
- (4) Any other substance designated by the pharmacy quality assurance commission which, when introduced into the human body in quantities of sixty grains or less, causes violent sickness or death. [2013 c 19 § 52; 1987 c 34 § 1.]

69.38.060 Manufacturers and sellers of poisons—License required—Penalty. The pharmacy quality assurance commission, after consulting with the department of health, shall require and provide for the annual licensure of every person now or hereafter engaged in manufacturing or selling poisons within this state. Upon a payment of a fee as set by the department, the department shall issue a license in such form as it may prescribe to such manufacturer or seller. Such license shall be displayed in a conspicuous place in such manufacturer's or seller's place of business for which it is issued.

Any person manufacturing or selling poison within this state without a license is guilty of a misdemeanor. [2013 c 19 § 53; 1989 1st ex.s. c 9 § 440; 1987 c 34 § 6.]

Additional notes found at www.leg.wa.gov

Chapter 69.40 RCW

POISONS AND DANGEROUS DRUGS

Sections

- 69.40.055 Selling repackaged poison without labeling—Penalty.

69.40.055 Selling repackaged poison without labeling—Penalty. It shall be unlawful for any person to sell at retail or furnish any repackaged poison drug or product without affixing or causing to be affixed to the bottle, box, vessel, or package a label containing the name of the article, all labeling required by the Food and Drug Administration and other federal or state laws or regulations, and the word "poison" distinctly shown with the name and place of the business of the seller.

This section shall not apply to the dispensing of drugs or poisons on the prescription of a practitioner.

The pharmacy quality assurance commission shall have the authority to promulgate rules for the enforcement and implementation of this section.

Every person who shall violate any of the provisions of this section shall be guilty of a misdemeanor. [2013 c 19 § 54; 1981 c 147 § 4.]

Chapter 69.41 RCW

LEGEND DRUGS—PRESCRIPTION DRUGS

Sections

- 69.41.010 Definitions.
69.41.030 Sale, delivery, or possession of legend drug without prescription or order prohibited—Exceptions—Penalty.
69.41.075 Rules—Availability of lists of drugs.
69.41.080 Animal control—Rules for possession and use of legend drugs.
69.41.180 Rules.
69.41.210 Definitions.
69.41.240 Rules—Labeling and marking.
69.41.250 Exemptions.
69.41.280 Confidentiality.
69.41.310 Rules.

69.41.010 Definitions. As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise:

(1) "Administer" means the direct application of a legend drug whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

- (a) A practitioner; or
- (b) The patient or research subject at the direction of the practitioner.

(2) "Community-based care settings" include: Community residential programs for persons with developmental disabilities, certified by the department of social and health services under chapter 71A.12 RCW; adult family homes licensed under chapter 70.128 RCW; and assisted living facilities licensed under chapter 18.20 RCW. Community-based care settings do not include acute care or skilled nursing facilities.

(3) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a legend drug, whether or not there is an agency relationship.

(4) "Department" means the department of health.

(5) "Dispense" means the interpretation of a prescription or order for a legend drug and, pursuant to that prescription or

order, the proper selection, measuring, compounding, labeling, or packaging necessary to prepare that prescription or order for delivery.

(6) "Dispenser" means a practitioner who dispenses.

(7) "Distribute" means to deliver other than by administering or dispensing a legend drug.

(8) "Distributor" means a person who distributes.

(9) "Drug" means:

(a) Substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them;

(b) Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in human beings or animals;

(c) Substances (other than food, minerals or vitamins) intended to affect the structure or any function of the body of human beings or animals; and

(d) Substances intended for use as a component of any article specified in (a), (b), or (c) of this subsection. It does not include devices or their components, parts, or accessories.

(10) "Electronic communication of prescription information" means the transmission of a prescription or refill authorization for a drug of a practitioner using computer systems. The term does not include a prescription or refill authorization transmitted verbally by telephone nor a facsimile manually signed by the practitioner.

(11) "In-home care settings" include an individual's place of temporary and permanent residence, but does not include acute care or skilled nursing facilities, and does not include community-based care settings.

(12) "Legend drugs" means any drugs which are required by state law or regulation of the pharmacy quality assurance commission to be dispensed on prescription only or are restricted to use by practitioners only.

(13) "Legible prescription" means a prescription or medication order issued by a practitioner that is capable of being read and understood by the pharmacist filling the prescription or the nurse or other practitioner implementing the medication order. A prescription must be hand printed, typewritten, or electronically generated.

(14) "Medication assistance" means assistance rendered by a nonpractitioner to an individual residing in a community-based care setting or in-home care setting to facilitate the individual's self-administration of a legend drug or controlled substance. It includes reminding or coaching the individual, handing the medication container to the individual, opening the individual's medication container, using an enabler, or placing the medication in the individual's hand, and such other means of medication assistance as defined by rule adopted by the department. A nonpractitioner may help in the preparation of legend drugs or controlled substances for self-administration where a practitioner has determined and communicated orally or by written direction that such medication preparation assistance is necessary and appropriate. Medication assistance shall not include assistance with intravenous medications or injectable medications, except prefilled insulin syringes.

(15) "Person" means individual, corporation, government or governmental subdivision or agency, business trust,

estate, trust, partnership or association, or any other legal entity.

(16) "Practitioner" means:

(a) A physician under chapter 18.71 RCW, an osteopathic physician or an osteopathic physician and surgeon under chapter 18.57 RCW, a dentist under chapter 18.32 RCW, a podiatric physician and surgeon under chapter 18.22 RCW, a veterinarian under chapter 18.92 RCW, a registered nurse, advanced registered nurse practitioner, or licensed practical nurse under chapter 18.79 RCW, an optometrist under chapter 18.53 RCW who is certified by the optometry board under RCW 18.53.010, an osteopathic physician assistant under chapter 18.57A RCW, a physician assistant under chapter 18.71A RCW, a naturopath licensed under chapter 18.36A RCW, a pharmacist under chapter 18.64 RCW, or, when acting under the required supervision of a dentist licensed under chapter 18.32 RCW, a dental hygienist licensed under chapter 18.29 RCW;

(b) A pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a legend drug in the course of professional practice or research in this state; and

(c) A physician licensed to practice medicine and surgery or a physician licensed to practice osteopathic medicine and surgery in any state, or province of Canada, which shares a common border with the state of Washington.

(17) "Secretary" means the secretary of health or the secretary's designee. [2013 c 276 § 1; 2013 c 19 § 55; 2012 c 10 § 44; 2009 c 549 § 1024; 2006 c 8 § 115. Prior: 2003 c 257 § 2; 2003 c 140 § 11; 2000 c 8 § 2; prior: 1998 c 222 § 1; 1998 c 70 § 2; 1996 c 178 § 16; 1994 sp.s. c 9 § 736; prior: 1989 1st ex.s. c 9 § 426; 1989 c 36 § 3; 1984 c 153 § 17; 1980 c 71 § 1; 1979 ex.s. c 139 § 1; 1973 1st ex.s. c 186 § 1.]

Reviser's note: This section was amended by 2013 c 19 § 55 and by 2013 c 276 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Application—2012 c 10: See note following RCW 18.20.010.

Findings—2006 c 8: "The legislature finds that prescription drug errors occur because the pharmacist or nurse cannot read the prescription from the physician or other provider with prescriptive authority. The legislature further finds that legible prescriptions can prevent these errors." [2006 c 8 § 114.]

Findings—Intent—Part headings and subheadings not law—Severability—2006 c 8: See notes following RCW 5.64.010.

Effective date—2003 c 140: See note following RCW 18.79.040.

Findings—Intent—2000 c 8: "The legislature finds that we have one of the finest health care systems in the world and excellent professionals to deliver that care. However, there are incidents of medication errors that are avoidable and serious mistakes that are preventable. Medical errors throughout the health care system constitute one of the nation's leading causes of death and injury resulting in over seven thousand deaths a year, according to a recent report from the institute of medicine. The majority of medical errors do not result from individual recklessness, but from basic flaws in the way the health system is organized. There is a need for a comprehensive strategy for government, industry, consumers, and health providers to reduce medical errors. The legislature declares a need to bring about greater safety for patients in this state who depend on prescription drugs.

It is the intent of the legislature to promote medical safety as a top priority for all citizens of our state." [2000 c 8 § 1.]

Additional notes found at www.leg.wa.gov

69.41.030 Sale, delivery, or possession of legend drug without prescription or order prohibited—Exceptions—Penalty. (1) It shall be unlawful for any person to sell, deliver, or possess any legend drug except upon the order or prescription of a physician under chapter 18.71 RCW, an osteopathic physician and surgeon under chapter 18.57 RCW, an optometrist licensed under chapter 18.53 RCW who is certified by the optometry board under RCW 18.53.010, a dentist under chapter 18.32 RCW, a podiatric physician and surgeon under chapter 18.22 RCW, a veterinarian under chapter 18.92 RCW, a commissioned medical or dental officer in the United States armed forces or public health service in the discharge of his or her official duties, a duly licensed physician or dentist employed by the veterans administration in the discharge of his or her official duties, a registered nurse or advanced registered nurse practitioner under chapter 18.79 RCW when authorized by the nursing care quality assurance commission, a pharmacist licensed under chapter 18.64 RCW to the extent permitted by drug therapy guidelines or protocols established under RCW 18.64.011 and authorized by the board of pharmacy and approved by a practitioner authorized to prescribe drugs, an osteopathic physician assistant under chapter 18.57A RCW when authorized by the board of osteopathic medicine and surgery, a physician assistant under chapter 18.71A RCW when authorized by the medical quality assurance commission, or any of the following professionals in any province of Canada that shares a common border with the state of Washington or in any state of the United States: A physician licensed to practice medicine and surgery or a physician licensed to practice osteopathic medicine and surgery, a dentist licensed to practice dentistry, a podiatric physician and surgeon licensed to practice podiatric medicine and surgery, a licensed advanced registered nurse practitioner, a licensed physician assistant, a licensed osteopathic physician assistant, or a veterinarian licensed to practice veterinary medicine: PROVIDED, HOWEVER, That the above provisions shall not apply to sale, delivery, or possession by drug wholesalers or drug manufacturers, or their agents or employees, or to any practitioner acting within the scope of his or her license, or to a common or contract carrier or warehouse operator, or any employee thereof, whose possession of any legend drug is in the usual course of business or employment: PROVIDED FURTHER, That nothing in this chapter or chapter 18.64 RCW shall prevent a family planning clinic that is under contract with the health care authority from selling, delivering, possessing, and dispensing commercially prepackaged oral contraceptives prescribed by authorized, licensed health care practitioners.

(2)(a) A violation of this section involving the sale, delivery, or possession with intent to sell or deliver is a class B felony punishable according to chapter 9A.20 RCW.

(b) A violation of this section involving possession is a misdemeanor. [2013 c 71 § 1; 2013 c 12 § 1. Prior: 2011 1st sp.s. c 15 § 79; 2011 c 336 § 837; 2010 c 83 § 1; prior: 2003 c 142 § 3; 2003 c 53 § 323; 1996 c 178 § 17; 1994 sp.s. c 9 § 737; 1991 c 30 § 1; 1990 c 219 § 2; 1987 c 144 § 1; 1981 c 120 § 1; 1979 ex.s. c 139 § 2; 1977 c 69 § 1; 1973 1st ex.s. c 186 § 3.]

Reviser's note: This section was amended by 2013 c 12 § 1 and by 2013 c 71 § 1, each without reference to the other. Both amendments are

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

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Severability—2003 c 142: See note following RCW 18.53.010.

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

Finding—1990 c 219: "The legislature finds that Washington citizens in the border areas of this state are prohibited from having prescriptions from out-of-state dentists and veterinarians filled at their in-state pharmacies, and that it is in the public interest to remove this barrier for the state's citizens." [1990 c 219 § 1.]

Additional notes found at www.leg.wa.gov

69.41.075 Rules—Availability of lists of drugs. The pharmacy quality assurance commission may make such rules for the enforcement of this chapter as are deemed necessary or advisable. The commission shall identify, by rule-making pursuant to chapter 34.05 RCW, those drugs which may be dispensed only on prescription or are restricted to use by practitioners, only. In so doing the commission shall consider the toxicity or other potentiality for harmful effect of the drug, the method of its use, and any collateral safeguards necessary to its use. The commission shall classify a drug as a legend drug where these considerations indicate the drug is not safe for use except under the supervision of a practitioner.

In identifying legend drugs the commission may incorporate in its rules lists of drugs contained in commercial pharmaceutical publications by making specific reference to each such list and the date and edition of the commercial publication containing it. Any such lists so incorporated shall be available for public inspection at the headquarters of the department of health and shall be available on request from the department of health upon payment of a reasonable fee to be set by the department. [2013 c 19 § 56; 1989 1st ex.s. c 9 § 427; 1979 ex.s. c 139 § 3.]

Additional notes found at www.leg.wa.gov

69.41.080 Animal control—Rules for possession and use of legend drugs. Humane societies and animal control agencies registered with the pharmacy quality assurance commission under chapter 69.50 RCW and authorized to euthanize animals may purchase, possess, and administer approved legend drugs for the sole purpose of sedating animals prior to euthanasia, when necessary, and for use in chemical capture programs. For the purposes of this section, "approved legend drugs" means those legend drugs designated by the commission by rule as being approved for use by such societies and agencies for animal sedating or capture and does not include any substance regulated under chapter 69.50 RCW. Any society or agency so registered shall not permit persons to administer any legend drugs unless such person has demonstrated to the satisfaction of the commission adequate knowledge of the potential hazards involved in and the proper techniques to be used in administering the drugs.

The commission shall promulgate rules to regulate the purchase, possession, and administration of legend drugs by such societies and agencies and to insure strict compliance with the provisions of this section. Such rules shall require that the storage, inventory control, administration, and

recordkeeping for approved legend drugs conform to the standards adopted by the commission under chapter 69.50 RCW to regulate the use of controlled substances by such societies and agencies. The commission may suspend or revoke a registration under chapter 69.50 RCW upon a determination by the commission that the person administering legend drugs has not demonstrated adequate knowledge as herein provided. This authority is granted in addition to any other power to suspend or revoke a registration as provided by law. [2013 c 19 § 57; 1989 c 242 § 1.]

69.41.180 Rules. The pharmacy quality assurance commission may adopt any necessary rules under chapter 34.05 RCW for the implementation, continuation, or enforcement of RCW 69.41.100 through 69.41.180, including, but not limited to, a list of therapeutically or nontherapeutically equivalent drugs which, when adopted, shall be provided to all registered pharmacists in the state and shall be updated as necessary. [2013 c 19 § 58; 1979 c 110 § 7; 1977 ex.s. c 352 § 9.]

69.41.210 Definitions. The terms defined in this section shall have the meanings indicated when used in RCW 69.41.200 through 69.41.260.

(1) "Commission" means the pharmacy quality assurance commission.

(2) "Distributor" means any corporation, person, or other entity which distributes for sale a legend drug under its own label even though it is not the actual manufacturer of the legend drug.

(3) "Legend drug" means any drugs which are required by state law or regulation of the commission to be dispensed as prescription only or are restricted to use by prescribing practitioners only and shall include controlled substances in Schedules II through V of chapter 69.50 RCW.

(4) "Solid dosage form" means capsules or tablets or similar legend drug products intended for administration and which could be ingested orally. [2013 c 19 § 59; 1980 c 83 § 2.]

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

69.41.240 Rules—Labeling and marking. The commission shall have authority to promulgate rules and regulations for the enforcement and implementation of RCW 69.41.050 and 69.41.200 through 69.41.260. [2013 c 19 § 60; 1980 c 83 § 5.]

69.41.250 Exemptions. (1) The commission, upon application of a manufacturer, may exempt a particular legend drug from the requirements of RCW 69.41.050 and 69.41.200 through 69.41.260 on the grounds that imprinting is infeasible because of size, texture, or other unique characteristics.

(2) The provisions of RCW 69.41.050 and 69.41.200 through 69.41.260 shall not apply to any legend drug which is prepared or manufactured by a pharmacy in this state and is for the purpose of retail sale from such pharmacy and not intended for resale. [2013 c 19 § 61; 1980 c 83 § 6.]

69.41.280 Confidentiality. All records, reports, and information obtained by the pharmacy quality assurance

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commission or its authorized representatives from or on behalf of a pharmaceutical manufacturer, representative of a manufacturer, wholesaler, pharmacy, or practitioner who purchases, dispenses, or distributes legend drugs under this chapter are confidential and exempt from public inspection and copying under chapter 42.56 RCW. Nothing in this section restricts the investigations or the proceedings of the commission so long as the commission and its authorized representatives comply with the provisions of chapter 42.56 RCW. [2013 c 19 § 62; 2005 c 274 § 329; 1989 c 352 § 6.]

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

69.41.310 Rules. The pharmacy quality assurance commission shall specify by rule drugs to be classified as steroids as defined in RCW 69.41.300.

On or before December 1 of each year, the commission shall inform the appropriate legislative committees of reference of the drugs that the commission has added to the steroids in RCW 69.41.300. The commission shall submit a statement of rationale for the changes. [2013 c 19 § 63; 1989 c 369 § 2.]

Chapter 69.43 RCW PRECURSOR DRUGS

Sections

69.43.010	Report to pharmacy quality assurance commission—List of substances—Modification of list—Identification of purchasers—Report of transactions—Penalties.
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69.43.010 Report to pharmacy quality assurance commission—List of substances—Modification of list—Identification of purchasers—Report of transactions—Penalties. (1) A report to the pharmacy quality assurance commission shall be submitted in accordance with this chapter by a manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes to any person any of the following substances or their salts or isomers:

- Anthranilic acid;
- Barbituric acid;
- Chlorepheдрine;

- (d) Diethyl malonate;
- (e) D-lysergic acid;
- (f) Ephedrine;
- (g) Ergotamine tartrate;
- (h) Ethylamine;
- (i) Ethyl malonate;
- (j) Ethylephedrine;
- (k) Lead acetate;
- (l) Malonic acid;
- (m) Methylamine;
- (n) Methylformamide;
- (o) Methylephedrine;
- (p) Methylpseudoephedrine;
- (q) N-acetylanthranilic acid;
- (r) Norpseudoephedrine;
- (s) Phenylacetic acid;
- (t) Phenylpropanolamine;
- (u) Piperidine;
- (v) Pseudoephedrine; and
- (w) Pyrrolidine.

(2) The pharmacy quality assurance commission shall administer this chapter and may, by rule adopted pursuant to chapter 34.05 RCW, add a substance to or remove a substance from the list in subsection (1) of this section. In determining whether to add or remove a substance, the commission shall consider the following:

- (a) The likelihood that the substance is useable as a precursor in the illegal production of a controlled substance as defined in chapter 69.50 RCW;
- (b) The availability of the substance;
- (c) The relative appropriateness of including the substance in this chapter or in chapter 69.50 RCW; and
- (d) The extent and nature of legitimate uses for the substance.

(3)(a) Any manufacturer, wholesaler, retailer, or other person shall, before selling, transferring, or otherwise furnishing any substance specified in subsection (1) of this section to any person, require proper identification from the purchaser.

(b) For the purposes of this subsection, "proper identification" means:

- (i) A motor vehicle operator's license or other official state-issued identification of the purchaser containing a photograph of the purchaser, and includes the residential or mailing address of the purchaser, other than a post office box number;
- (ii) The motor vehicle license number of any motor vehicle owned or operated by the purchaser;
- (iii) A letter of authorization from any business for which any substance specified in subsection (1) of this section is being furnished, which includes the business license number and address of the business;
- (iv) A description of how the substance is to be used; and
- (v) The signature of the purchaser.

The person selling, transferring, or otherwise furnishing any substance specified in subsection (1) of this section shall affix his or her signature as a witness to the signature and identification of the purchaser.

(c) A violation of or a failure to comply with this subsection is a misdemeanor.

(4) Any manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes the substance specified in subsection (1) of this section to any person shall, not less than twenty-one days before delivery of the substance, submit a report of the transaction, which includes the identification information specified in subsection (3) of this section to the pharmacy quality assurance commission. However, the pharmacy quality assurance commission may authorize the submission of the reports on a monthly basis with respect to repeated, regular transactions between the furnisher and the recipient involving the same substance if the pharmacy quality assurance commission determines that either of the following exist:

(a) A pattern of regular supply of the substance exists between the manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes such substance and the recipient of the substance; or

(b) The recipient has established a record of using the substance for lawful purposes.

(5) Any person specified in subsection (4) of this section who does not submit a report as required by subsection (4) of this section is guilty of a gross misdemeanor. [2013 c 19 § 64; 2001 c 96 § 2; 1998 c 245 § 107; 1988 c 147 § 1.]

Intent—2001 c 96: "Communities all over the state of Washington have experienced an increase in the illegal manufacture of methamphetamine. Illegal methamphetamine labs create a significant threat to the health and safety of the people of the state. Some of the chemicals and compounds used to make methamphetamine, and the toxic wastes the process generates, are hazards to the public health. Increases in crime, violence, and the abuse and neglect of children present at laboratory sites are also associated with the increasing number of illegal laboratory sites. The drugs ephedrine, pseudoephedrine, and phenylpropanolamine, which are used in the illegal manufacture of methamphetamine, have been identified as factors in the increase in the number of illegal methamphetamine labs. Therefore, it is the intent of the legislature to place restrictions on the sale and possession of those three drugs in order to reduce the proliferation of illegal methamphetamine laboratories and the associated threats to public health and safety." [2001 c 96 § 1.]

Additional notes found at www.leg.wa.gov

69.43.020 Receipt of substance from source outside state—Report—Penalty. (1) Any manufacturer, wholesaler, retailer, or other person who receives from a source outside of this state any substance specified in RCW 69.43.010(1) shall submit a report of such transaction to the pharmacy quality assurance commission under rules adopted by the commission.

(2) Any person specified in subsection (1) of this section who does not submit a report as required by subsection (1) of this section is guilty of a gross misdemeanor. [2013 c 19 § 65; 2001 c 96 § 3; 1988 c 147 § 2.]

Intent—Severability—2001 c 96: See notes following RCW 69.43.010.

69.43.030 Exemptions. RCW 69.43.010 and 69.43.020 do not apply to any of the following:

(1) Any pharmacist or other authorized person who sells or furnishes a substance upon the prescription of a practitioner, as defined in chapter 69.41 RCW;

(2) Any practitioner who administers or furnishes a substance to his or her patients;

(3) Any manufacturer or wholesaler licensed by the pharmacy quality assurance commission who sells, transfers,

or otherwise furnishes a substance to a licensed pharmacy or practitioner;

(4) Any sale, transfer, furnishing, or receipt of any drug that contains ephedrine, phenylpropanolamine, or pseudoephedrine, or of any cosmetic that contains a substance specified in RCW 69.43.010(1), if such drug or cosmetic is lawfully sold, transferred, or furnished, over the counter without a prescription under chapter 69.04 or 69.41 RCW. [2013 c 19 § 66; 1988 c 147 § 3.]

69.43.035 Suspicious transactions—Report—Penalty. (1) Any manufacturer or wholesaler who sells, transfers, or otherwise furnishes any substance specified in RCW 69.43.010(1) to any person in a suspicious transaction shall report the transaction in writing to the pharmacy quality assurance commission.

(2) Any person specified in subsection (1) of this section who does not submit a report as required by subsection (1) of this section is guilty of a gross misdemeanor.

(3) For the purposes of this section, "suspicious transaction" means a sale or transfer to which any of the following applies:

(a) The circumstances of the sale or transfer would lead a reasonable person to believe that the substance is likely to be used for the purpose of unlawfully manufacturing a controlled substance under chapter 69.50 RCW, based on such factors as the amount involved, the method of payment, the method of delivery, and any past dealings with any participant in the transaction. The pharmacy quality assurance commission shall adopt by rule criteria for determining whether a transaction is suspicious, taking into consideration the recommendations in appendix A of the report to the United States attorney general by the suspicious orders task force under the federal comprehensive methamphetamine control act of 1996.

(b) The transaction involves payment for any substance specified in RCW 69.43.010(1) in cash or money orders in a total amount of more than two hundred dollars.

(4) The pharmacy quality assurance commission shall transmit to the department of revenue a copy of each report of a suspicious transaction that it receives under this section. [2013 c 19 § 67; 2004 c 52 § 6; 2001 c 96 § 4.]

Finding—Severability—Effective date—2004 c 52: See notes following RCW 18.64.044.

Intent—Severability—2001 c 96: See notes following RCW 69.43.010.

69.43.040 Reporting form. (1) The department of health, in accordance with rules developed by the pharmacy quality assurance commission shall provide a common reporting form for the substances in RCW 69.43.010 that contains at least the following information:

- (a) Name of the substance;
- (b) Quantity of the substance sold, transferred, or furnished;
- (c) The date the substance was sold, transferred, or furnished;
- (d) The name and address of the person buying or receiving the substance; and

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(e) The name and address of the manufacturer, wholesaler, retailer, or other person selling, transferring, or furnishing the substance.

(2) Monthly reports authorized under RCW 69.43.010(4) may be computer-generated in accordance with rules adopted by the department. [2013 c 19 § 68; 2001 c 96 § 7; 1989 1st ex.s. c 9 § 441; 1988 c 147 § 4.]

Intent—Severability—2001 c 96: See notes following RCW 69.43.010.

Additional notes found at www.leg.wa.gov

69.43.043 Recordkeeping requirements—Penalty. (1) Any manufacturer or wholesaler who sells, transfers, or otherwise furnishes any substance specified in RCW 69.43.010(1) to any person shall maintain a record of each such sale or transfer. The records must contain:

- (a) The name of the substance;
- (b) The quantity of the substance sold, transferred, or furnished;
- (c) The date the substance was sold, transferred, or furnished;
- (d) The name and address of the person buying or receiving the substance; and
- (e) The method of and amount of payment for the substance.

(2) The records of sales and transfers required by this section shall be available for inspection by the pharmacy quality assurance commission and its authorized representatives and shall be maintained for two years.

(3) A violation of this section is a gross misdemeanor. [2013 c 19 § 69; 2001 c 96 § 5.]

Intent—Severability—2001 c 96: See notes following RCW 69.43.010.

69.43.048 Reporting and recordkeeping requirements—Submission of computer readable data, copies of federal reports. A manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes any substance specified in RCW 69.43.010(1) and who is subject to the reporting or recordkeeping requirements of this chapter may satisfy the requirements by submitting to the pharmacy quality assurance commission, and its authorized representatives:

- (1) Computer readable data from which all of the required information may be readily derived; or
- (2) Copies of reports that are filed under federal law that contain all of the information required by the particular reporting or recordkeeping requirement of this chapter which it is submitted to satisfy. [2013 c 19 § 70; 2001 c 96 § 6.]

Intent—Severability—2001 c 96: See notes following RCW 69.43.010.

69.43.050 Rules. (1) The pharmacy quality assurance commission may adopt all rules necessary to carry out this chapter.

(2) Notwithstanding subsection (1) of this section, the department of health may adopt rules necessary for the administration of this chapter. [2013 c 19 § 71; 1989 1st ex.s. c 9 § 442; 1988 c 147 § 5.]

Additional notes found at www.leg.wa.gov

69.43.060 Theft—Missing quantity—Reporting.

(1) The theft or loss of any substance under RCW 69.43.010 discovered by any person regulated by this chapter shall be reported to the pharmacy quality assurance commission within seven days after such discovery.

(2) Any difference between the quantity of any substance under RCW 69.43.010 received and the quantity shipped shall be reported to the pharmacy quality assurance commission within seven days of the receipt of actual knowledge of the discrepancy. When applicable, any report made pursuant to this subsection shall also include the name of any common carrier or person who transported the substance and the date of shipment of the substance. [2013 c 19 § 72; 1988 c 147 § 6.]

69.43.090 Permit to sell, transfer, furnish, or receive substance—Exemptions—Application for permit—Fee—Renewal—Penalty.

(1) Any manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes any substance specified in RCW 69.43.010 to any person or who receives from a source outside of the state any substance specified in RCW 69.43.010 shall obtain a permit for the conduct of that business from the pharmacy quality assurance commission. However, a permit shall not be required of any manufacturer, wholesaler, retailer, or other person for the sale, transfer, furnishing, or receipt of any drug that contains ephedrine, phenylpropanolamine, or pseudoephedrine, or of any cosmetic that contains a substance specified in RCW 69.43.010(1), if such drug or cosmetic is lawfully sold, transferred, or furnished over the counter without a prescription or by a prescription under chapter 69.04 or 69.41 RCW.

(2) Applications for permits shall be filed with the department in writing and signed by the applicant, and shall set forth the name of the applicant, the business in which the applicant is engaged, the business address of the applicant, and a full description of any substance sold, transferred, or otherwise furnished, or received.

(3) The commission may grant permits on forms prescribed by it. The permits shall be effective for not more than one year from the date of issuance.

(4) Each applicant shall pay at the time of filing an application for a permit a fee determined by the department.

(5) A permit granted under this chapter may be renewed on a date to be determined by the commission, and annually thereafter, upon the filing of a renewal application and the payment of a permit renewal fee determined by the department.

(6) Permit fees charged by the department shall not exceed the costs incurred by the department in administering this chapter.

(7) Selling, transferring, or otherwise furnishing, or receiving any substance specified in RCW 69.43.010 without a required permit, is a gross misdemeanor. [2013 c 19 § 73; 2001 c 96 § 8; 1989 1st ex.s. c 9 § 443; 1988 c 147 § 9.]

Intent—Severability—2001 c 96: See notes following RCW 69.43.010.

Additional notes found at www.leg.wa.gov

69.43.100 Refusal, suspension, or revocation of a manufacturer's or wholesaler's permit.

The pharmacy quality assurance commission shall have the power to refuse, suspend, or revoke the permit of any manufacturer or wholesaler upon proof that:

(1) The permit was procured through fraud, misrepresentation, or deceit;

(2) The permittee has violated or has permitted any employee to violate any of the laws of this state relating to drugs, controlled substances, cosmetics, or nonprescription drugs, or has violated any of the rules and regulations of the pharmacy quality assurance commission. [2013 c 19 § 74; 1988 c 147 § 10.]

69.43.105 Ephedrine, pseudoephedrine, phenylpropanolamine—Sales restrictions—Record of transaction—Exceptions—Penalty.

(1) For purposes of this section, "traditional Chinese herbal practitioner" means a person who is certified as a diplomate in Chinese herbology from the national certification commission for acupuncture and oriental medicine or who has received a certificate in Chinese herbology from a school accredited by the accreditation council on acupuncture and oriental medicine.

(2) A pharmacy licensed by, or shopkeeper or itinerant vendor registered with, the department of health under chapter 18.64 RCW, or an employee thereof, a practitioner as defined in RCW 18.64.011, or a traditional Chinese herbal practitioner may not knowingly sell, transfer, or otherwise furnish to any person a product at retail that he or she knows to contain any detectable quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, without first obtaining photo identification of the person that shows the date of birth of the person.

(3) A person buying or receiving a product at retail containing any detectable quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, from a pharmacy licensed by, or shopkeeper or itinerant vendor registered with, the department of health under chapter 18.64 RCW, or an employee thereof, a practitioner as defined in RCW 18.64.011, or a traditional Chinese herbal practitioner must first produce photo identification of the person that shows the date of birth of the person.

(4) Any product containing any detectable quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, shall be kept (a) behind a counter where the public is not permitted, or (b) in a locked display case so that a customer wanting access must ask an employee of the merchant for assistance.

(5) No pharmacy licensed by, or shopkeeper or itinerant vendor registered with, the department of health under chapter 18.64 RCW, or an employee thereof, a practitioner as defined in RCW 18.64.011, or a traditional Chinese herbal practitioner may sell any product containing any detectable quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, to a person that is not at least eighteen years old.

(6) A pharmacy licensed by, or shopkeeper or itinerant vendor registered with, the department of health under chapter 18.64 RCW selling a nonprescription drug containing ephedrine, pseudoephedrine, phenylpropanolamine, or their salts, isomers, or salts of isomers shall require the purchaser to electronically or manually sign a record of the transaction. The record must include the name and address of the pur-

chaser, the date and time of the sale, the name and initials of the shopkeeper, itinerant vendor, pharmacist, pharmacy technician, or employee conducting the transaction, the name of the product being sold, as well as the total quantity in grams, of ephedrine, pseudoephedrine, phenylpropanolamine, or their salts, isomers, or salts of isomers, being sold.

(7) The pharmacy quality assurance commission, by rule, may exempt products containing ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, in combination with another active ingredient from the requirements of this section if they are found not to be used in the illegal manufacture of methamphetamine or other controlled dangerous substances. A manufacturer of a drug product may apply for removal of the product from the requirements of this section if the product is determined by the commission to have been formulated in such a way as to effectively prevent the conversion of the active ingredient into methamphetamine. The burden of proof for exemption is upon the person requesting the exemption. The petitioner shall provide the commission with evidence that the product has been formulated in such a way as to serve as an effective general deterrent to the conversion of pseudoephedrine into methamphetamine. The evidence must include the furnishing of a valid scientific study, conducted by an independent, professional laboratory and evincing professional quality chemical analysis. Factors to be considered in whether a product should be excluded from this section include but are not limited to:

(a) Ease with which the product can be converted to methamphetamine;

(b) Ease with which ephedrine, pseudoephedrine, or phenylpropanolamine is extracted from the substance and whether it forms an emulsion, salt, or other form;

(c) Whether the product contains a "molecular lock" that renders it incapable of being converted into methamphetamine;

(d) Presence of other ingredients that render the product less likely to be used in the manufacture of methamphetamine; and

(e) Any pertinent data that can be used to determine the risk of the substance being used in the illegal manufacture of methamphetamine or any other controlled substance.

(8) Nothing in this section applies:

(a) To any product containing ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers that is not the only active ingredient and that is in liquid, liquid capsule, or gel capsule form;

(b) To the sale of a product that may only be sold upon the presentation of a prescription;

(c) To the sale of a product by a traditional Chinese herbal practitioner to a patient; or

(d) When the details of the transaction are recorded in a pharmacy profile individually identified with the recipient and maintained by a licensed pharmacy.

(9)(a) No pharmacy licensed by, or shopkeeper or itinerant vendor registered with, the department of health under chapter 18.64 RCW, a practitioner as defined in RCW 18.64.011, or a traditional Chinese herbal practitioner may retaliate against any employee that has made a good faith attempt to comply with the requirements of this section by

requesting that a customer present photo identification, making a reasonable effort to determine the customer's age.

(b) No pharmacy licensed by, or shopkeeper or itinerant vendor registered with, the department of health under chapter 18.64 RCW, a practitioner as defined in RCW 18.64.011, or a traditional Chinese herbal practitioner is subject to prosecution under subsection (10) of this section if they made a good faith attempt to comply with the requirements of this section by requesting that a customer present photo identification, making a reasonable effort to determine the customer's age.

(10) A violation of this section is a gross misdemeanor. [2013 c 19 § 75; 2010 c 182 § 1; 2005 c 388 § 2.]

Finding—2005 c 388: "Restricting access to certain precursor drugs used to manufacture methamphetamine to ensure that they are only sold at retail to individuals who will use them for legitimate purposes upon production of proper identification is an essential step to controlling the manufacture of methamphetamine." [2005 c 388 § 1.]

Effective dates—2005 c 388: "(1) Section 2 of this act takes effect October 1, 2005.

(2) Sections 1, 3 through 7, 9, and 10 of this act take effect January 1, 2006.

(3) Section 8 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 11, 2005]." [2005 c 388 § 11.]

Severability—2005 c 388: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2005 c 388 § 10.]

69.43.110 Ephedrine, pseudoephedrine, phenylpropanolamine—Sales restrictions—Electronic sales tracking system—Penalty.

(1) It is unlawful for a pharmacy licensed by, or shopkeeper or itinerant vendor registered with, the department of health under chapter 18.64 RCW, or an employee thereof, or a practitioner as defined in RCW 18.64.011, knowingly to sell, transfer, or to otherwise furnish, in a single transaction a total of more than 3.6 grams of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of isomers, in any twenty-four hour period or more than a total of nine grams per purchaser in any thirty-day period.

(2) It is unlawful for a person who is not a manufacturer, wholesaler, pharmacy, practitioner, shopkeeper, or itinerant vendor licensed by or registered with the department of health under chapter 18.64 RCW to purchase or acquire more than 3.6 grams in any twenty-four hour period, or more than a total of nine grams in any thirty-day period, of the substances specified in subsection (1) of this section.

(3) It is unlawful for any person to sell or distribute any of the substances specified in subsection (1) of this section unless the person is licensed by or registered with the department of health under chapter 18.64 RCW, or is a practitioner as defined in RCW 18.64.011.

(4)(a) Beginning July 1, 2011, or the date upon which the electronic sales tracking system established under RCW 69.43.165 is available, whichever is later, a pharmacy licensed by, or shopkeeper or itinerant vendor registered with, the department of health under chapter 18.64 RCW shall, before completing a sale under this section, submit the required information to the electronic sales tracking system established under RCW 69.43.165, as long as such a system

is available without cost to the pharmacy, shopkeeper, or itinerant vendor for accessing the system. The pharmacy, shopkeeper, or itinerant vendor may not complete the sale if the system generates a stop sale alert, except as permitted in RCW 69.43.165.

(b) If a pharmacy, shopkeeper, or itinerant vendor selling a nonprescription drug containing ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers experiences mechanical or electronic failure of the electronic sales tracking system and is unable to comply with the electronic sales tracking requirement, he or she shall maintain a written log or an alternative electronic recordkeeping mechanism until such time as he or she is able to comply with the electronic sales tracking requirement.

(c) A pharmacy, shopkeeper, or itinerant vendor selling a nonprescription drug containing ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers may seek an exemption from submitting transactions to the electronic sales tracking system in writing to the pharmacy quality assurance commission stating the reasons for the exemption. The commission may grant an exemption for good cause shown, but in no event shall a granted exemption exceed one hundred eighty days. The commission may grant multiple exemptions for any pharmacy, shopkeeper, or itinerant vendor if the good cause shown indicates significant hardship for compliance with this section. A pharmacy, shopkeeper, or itinerant vendor that receives an exemption shall maintain a logbook in hardcopy form and must require the purchaser to provide the information required under this section before the completion of any sale. The logbook shall be maintained as a record of each sale for inspection by any law enforcement officer or commission inspector during normal business hours in accordance with any rules adopted pursuant to RCW 69.43.165. For purposes of this subsection (4)(c), "good cause" includes, but is not limited to, situations where the installation of the necessary equipment to access the system is unavailable or cost prohibitive to the pharmacy, shopkeeper, or itinerant vendor.

(d) A pharmacy, shopkeeper, or itinerant vendor may withdraw from participating in the electronic sales tracking system if the system is no longer being furnished without cost for accessing the system. A pharmacy, shopkeeper, or itinerant vendor who withdraws from the electronic sales tracking system is subject to the same requirements as a pharmacy, shopkeeper, or itinerant vendor who has been granted an exemption under (c) of this subsection.

(e) For the purposes of this subsection (4) and RCW 69.43.165:

(i) "Cost for accessing the system" means costs relating to:

(A) Access to the web-based electronic sales tracking software, including inputting and retrieving data;

(B) The web-based software known as software as a service;

(C) Training; and

(D) Technical support to integrate to point of sale vendors, if necessary.

(ii) "Cost for accessing the system" does not include:

(A) Costs relating to required internet access;

(B) Optional hardware that a pharmacy may choose to purchase for work flow purposes; or

(C) Other equipment.

(5) A violation of this section is a gross misdemeanor. [2013 c 19 § 76; 2010 c 182 § 2; 2005 c 388 § 4; 2004 c 52 § 5; 2001 c 96 § 9.]

Finding—Effective dates—Severability—2005 c 388: See notes following RCW 69.43.105.

Finding—Severability—Effective date—2004 c 52: See notes following RCW 18.64.044.

Intent—Severability—2001 c 96: See notes following RCW 69.43.010.

69.43.130 Exemptions—Pediatric products—Products exempted by the pharmacy quality assurance commission. RCW 69.43.110 and 69.43.120 do not apply to:

(1) Pediatric products primarily intended for administration to children under twelve years of age, according to label instructions, either: (a) In solid dosage form whose individual dosage units do not exceed fifteen milligrams of ephedrine, pseudoephedrine, or phenylpropanolamine; or (b) in liquid form whose recommended dosage, according to label instructions, does not exceed fifteen milligrams of ephedrine, pseudoephedrine, or phenylpropanolamine per five milliliters of liquid product;

(2) Pediatric liquid products primarily intended for administration to children under two years of age for which the recommended dosage does not exceed two milliliters and the total package content does not exceed one fluid ounce;

(3) Products that the pharmacy quality assurance commission, upon application of a manufacturer, exempts by rule from RCW 69.43.110 and 69.43.120 because the product has been formulated in such a way as to effectively prevent the conversion of the active ingredient into methamphetamine, or its salts or precursors; or

(4) Products, as packaged, that the pharmacy quality assurance commission, upon application of a manufacturer, exempts from RCW 69.43.110(1) and 69.43.120 because:

(a) The product meets the federal definition of an ordinary over-the-counter pseudoephedrine product as defined in 21 U.S.C. 802;

(b) The product is a salt, isomer, or salts of isomers of pseudoephedrine and, as packaged, has a total weight of more than three grams but the net weight of the pseudoephedrine base is equal to or less than three grams; and

(c) The pharmacy quality assurance commission determines that the value to the people of the state of having the product, as packaged, available for sale to consumers outweighs the danger, and the product, as packaged, has not been used in the illegal manufacture of methamphetamine. [2013 c 19 § 77; 2004 c 52 § 7; 2001 c 96 § 11.]

Finding—Severability—Effective date—2004 c 52: See notes following RCW 18.64.044.

Intent—Severability—2001 c 96: See notes following RCW 69.43.010.

69.43.140 Civil penalty—Pharmacy quality assurance commission waiver. (1) In addition to the other penalties provided for in this chapter or in chapter 18.64 RCW, the pharmacy quality assurance commission may impose a civil penalty, not to exceed ten thousand dollars for each violation,

on any licensee or registrant who has failed to comply with this chapter or the rules adopted under this chapter. In the case of a continuing violation, every day the violation continues shall be considered a separate violation.

(2) The pharmacy quality assurance commission may waive the suspension or revocation of a license or registration issued under chapter 18.64 RCW, or waive any civil penalty under this chapter, if the licensee or registrant establishes that he or she acted in good faith to prevent violations of this chapter, and the violation occurred despite the licensee's or registrant's exercise of due diligence. In making such a determination, the pharmacy quality assurance commission may consider evidence that an employer trained employees on how to sell, transfer, or otherwise furnish substances specified in RCW 69.43.010(1) in accordance with applicable laws. [2013 c 19 § 78; 2001 c 96 § 12.]

Intent—Severability—2001 c 96: See notes following RCW 69.43.010.

69.43.165 Ephedrine, pseudoephedrine, phenylpropanolamine—Electronic sales tracking system—Pharmacy quality assurance commission authority to adopt rules. (1) The pharmacy quality assurance commission shall implement a real-time electronic sales tracking system to monitor the nonprescription sale of products in this state containing any detectable quantity of ephedrine, pseudoephedrine, phenylpropanolamine, or their salts, isomers, or salts of isomers, provided that the system is available to the state without cost for accessing the system to the state or retailers. The commission is authorized to enter into a public-private partnership, through a memorandum of understanding or similar arrangement, to make the system available.

(2) The records submitted to the tracking system are for the confidential use of the pharmacy, shopkeeper, or itinerant vendor who submitted them, except that:

(a) The records must be produced in court when lawfully required;

(b) The records must be open for inspection by the pharmacy quality assurance commission; and

(c) The records must be available to any general or limited authority Washington peace officer to enforce the provisions of this chapter or to federal law enforcement officers in accordance with rules adopted by the pharmacy quality assurance commission regarding the privacy of the purchaser of products covered by chapter 182, Laws of 2010 and law enforcement access to the records submitted to the tracking system as provided in this section consistent with the federal combat meth act.

(3) The electronic sales tracking system shall be capable of generating a stop sale alert, which shall be a notification that completion of the sale would result in the seller or purchaser violating the quantity limits in RCW 69.43.110 (1) and (2). The system shall contain an override function for use by a dispenser of ephedrine, pseudoephedrine, phenylpropanolamine, or their salts, isomers, or salts of isomers, who has a reasonable fear of imminent bodily harm. Each instance in which the override function is utilized shall be logged by the system.

(4) The pharmacy quality assurance commission shall have the authority to adopt rules necessary to implement and enforce the provisions of this section. The pharmacy quality

assurance commission shall adopt rules regarding the privacy of the purchaser of products covered by chapter 182, Laws of 2010, and any public or law enforcement access to the records submitted to the tracking system as provided in subsection (2)(c) of this section consistent with the federal combat meth act.

(5) The pharmacy quality assurance commission may not raise licensing or registration fees to fund the rule making or implementation of this section. [2013 c 19 § 79; 2010 c 182 § 3.]

69.43.180 Expansion of log requirements—Petition by law enforcement. (1) The Washington association of sheriffs and police chiefs or the Washington state patrol may petition the pharmacy quality assurance commission to apply the log requirements in *RCW 69.43.170 to one or more products that contain ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, that is not the only active ingredient and that is in liquid, liquid capsule, or gel capsule form. The petition shall establish that:

(a) Ephedrine, pseudoephedrine, or phenylpropanolamine can be effectively extracted from the product and converted into methamphetamine or another controlled dangerous substance; and

(b) Law enforcement, the Washington state patrol, or the department of ecology are finding substantial evidence that the product is being used for the illegal manufacture of methamphetamine or another controlled dangerous substance.

(2) The pharmacy quality assurance commission shall adopt rules when a petition establishes that requiring the application of the log requirements in *RCW 69.43.170 to the sale of the product at retail is warranted based upon the effectiveness and extent of use of the product for the illegal manufacture of methamphetamine or other controlled dangerous substances and the extent of the burden of any restrictions upon consumers. The pharmacy quality assurance commission may adopt emergency rules to apply the log requirements to the sale of a product when the petition establishes that the immediate restriction of the product is necessary in order to protect public health and safety. [2013 c 19 § 80; 2005 c 388 § 3.]

***Reviser's note:** RCW 69.43.170 was repealed by 2010 c 182 § 6.

Finding—Effective dates—Severability—2005 c 388: See notes following RCW 69.43.105.

Chapter 69.45 RCW DRUG SAMPLES

Sections

69.45.010	Definitions.
69.45.020	Registration of manufacturers—Additional information required by the department.
69.45.060	Disposal of surplus, outdated, or damaged drug samples.
69.45.080	Violations of chapter—Manufacturer's liability—Penalty—Seizure of drug samples.
69.45.090	Confidentiality.

69.45.010 Definitions. The definitions in this section apply throughout this chapter.

(1) "Commission" means the pharmacy quality assurance commission.

(2) "Controlled substance" means a drug, substance, or immediate precursor of such drug or substance, so designated under or pursuant to chapter 69.50 RCW, the uniform controlled substances act.

(3) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a drug or device, whether or not there is an agency relationship.

(4) "Department" means the department of health.

(5) "Dispense" means the interpretation of a prescription or order for a drug, biological, or device and, pursuant to that prescription or order, the proper selection, measuring, compounding, labeling, or packaging necessary to prepare that prescription or order for delivery.

(6) "Distribute" means to deliver, other than by administering or dispensing, a legend drug.

(7) "Drug samples" means any federal food and drug administration approved controlled substance, legend drug, or products requiring prescriptions in this state, which is distributed at no charge to a practitioner by a manufacturer or a manufacturer's representative, exclusive of drugs under clinical investigations approved by the federal food and drug administration.

(8) "Legend drug" means any drug that is required by state law or by regulations of the commission to be dispensed on prescription only or is restricted to use by practitioners only.

(9) "Manufacturer" means a person or other entity engaged in the manufacture or distribution of drugs or devices, but does not include a manufacturer's representative.

(10) "Manufacturer's representative" means an agent or employee of a drug manufacturer who is authorized by the drug manufacturer to possess drug samples for the purpose of distribution in this state to appropriately authorized health care practitioners.

(11) "Person" means any individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.

(12) "Practitioner" means a physician under chapter 18.71 RCW, an osteopathic physician or an osteopathic physician and surgeon under chapter 18.57 RCW, a dentist under chapter 18.32 RCW, a podiatric physician and surgeon under chapter 18.22 RCW, a veterinarian under chapter 18.92 RCW, a pharmacist under chapter 18.64 RCW, a commissioned medical or dental officer in the United States armed forces or the public health service in the discharge of his or her official duties, a duly licensed physician or dentist employed by the veterans administration in the discharge of his or her official duties, a registered nurse or advanced registered nurse practitioner under chapter 18.79 RCW when authorized to prescribe by the nursing care quality assurance commission, an osteopathic physician assistant under chapter 18.57A RCW when authorized by the board of osteopathic medicine and surgery, or a physician assistant under chapter 18.71A RCW when authorized by the medical quality assurance commission.

(13) "Reasonable cause" means a state of facts found to exist that would warrant a reasonably intelligent and prudent person to believe that a person has violated state or federal drug laws or regulations.

(14) "Secretary" means the secretary of health or the secretary's designee. [2013 c 19 § 81; 1994 sp.s. c 9 § 738; 1989 1st ex.s. c 9 § 444; 1987 c 411 § 1.]

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

Additional notes found at www.leg.wa.gov

69.45.020 Registration of manufacturers—Additional information required by the department. A manufacturer that intends to distribute drug samples in this state shall register annually with the department, providing the name and address of the manufacturer, and shall:

(1) Provide a twenty-four hour telephone number and the name of the individual(s) who shall respond to reasonable official inquiries from the department, as directed by the commission, based on reasonable cause, regarding required records, reports, or requests for information pursuant to a specific investigation of a possible violation. Each official request by the department and each response by a manufacturer shall be limited to the information specifically relevant to the particular official investigation. Requests for the address of sites in this state at which drug samples are stored by the manufacturer's representative and the names and addresses of the individuals who are responsible for the storage or distribution of the drug samples shall be responded to as soon as possible but not later than the close of business on the next business day following the request; or

(2) If a twenty-four hour telephone number is not available, provide the addresses of sites in this state at which drug samples are stored by the manufacturer's representative, and the names and addresses of the individuals who are responsible for the storage or distribution of the drug samples. The manufacturer shall annually submit a complete updated list of the sites and individuals to the department. [2013 c 19 § 82; 1989 1st ex.s. c 9 § 445; 1987 c 411 § 2.]

Additional notes found at www.leg.wa.gov

69.45.060 Disposal of surplus, outdated, or damaged drug samples. Surplus, outdated, or damaged drug samples shall be disposed of as follows:

(1) Returned to the manufacturer; or

(2) Witnessed destruction by such means as to assure that the drug cannot be retrieved. However, controlled substances shall be returned to the manufacturer or disposed of in accordance with rules adopted by the commission: PROVIDED, That the commission shall adopt by rule the regulations of the federal drug enforcement administration or its lawful successor unless, stating reasonable grounds, it adopts rules consistent with such regulations. [2013 c 19 § 83; 1987 c 411 § 6.]

69.45.080 Violations of chapter—Manufacturer's liability—Penalty—Seizure of drug samples. (1) The manufacturer is responsible for the actions and conduct of its representatives with regard to drug samples.

(2) The commission may hold a public hearing to examine a possible violation and may require a designated representative of the manufacturer to attend.

(3) If a manufacturer fails to comply with this chapter following notification by the commission, the commission may impose a civil penalty of up to five thousand dollars.

The commission shall take no action to impose any civil penalty except pursuant to a hearing held in accordance with chapter 34.05 RCW.

(4) Specific drug samples which are distributed in this state in violation of this chapter, following notification by the commission, shall be subject to seizure following the procedures set out in RCW 69.41.060. [2013 c 19 § 84; 1987 c 411 § 8.]

69.45.090 Confidentiality. All records, reports, and information obtained by the commission from or on behalf of a manufacturer or manufacturer's representative under this chapter are confidential and exempt from public inspection and copying under chapter 42.56 RCW. This section does not apply to public disclosure of the identity of persons found by the commission to have violated state or federal law, rules, or regulations. This section is not intended to restrict the investigations and proceedings of the commission so long as the commission maintains the confidentiality required by this section. [2013 c 19 § 85; 2005 c 274 § 330; 1987 c 411 § 9.]

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

Chapter 69.50 RCW UNIFORM CONTROLLED SUBSTANCES ACT

Sections

69.50.101	Definitions.
69.50.1011	Definition—Commission.
69.50.201	Enforcement of chapter—Authority to change schedules of controlled substances.
69.50.203	Schedule I tests.
69.50.205	Schedule II tests.
69.50.207	Schedule III tests.
69.50.208	Schedule III.
69.50.209	Schedule IV tests.
69.50.210	Schedule IV.
69.50.211	Schedule V tests.
69.50.213	Republishing of schedules.
69.50.214	Controlled substance analog.
69.50.301	Rules—Fees.
69.50.302	Registration requirements.
69.50.303	Registration.
69.50.304	Revocation and suspension of registration—Seizure or placement under seal of controlled substances.
69.50.305	Procedure for denial, suspension, or revocation of registration.
69.50.306	Records of registrants.
69.50.308	Prescriptions.
69.50.310	Sodium pentobarbital—Registration of humane societies and animal control agencies for use in animal control.
69.50.312	Electronic communication of prescription information—Commission may adopt rules.
69.50.320	Registration of department of fish and wildlife for use in chemical capture programs—Rules.
69.50.402	Prohibited acts: B—Penalties.
69.50.501	Administrative inspections.
69.50.504	Cooperative arrangements.
69.50.507	Judicial review.
69.50.508	Education and research.
69.50.515	Pharmacies—Marijuana—Notification and disposal.
69.50.601	Pending proceedings.

69.50.101 Definitions. Unless the context clearly requires otherwise, definitions of terms shall be as indicated where used in this chapter:

(a) "Administer" means to apply a controlled substance, whether by injection, inhalation, ingestion, or any other means, directly to the body of a patient or research subject by:

(1) a practitioner authorized to prescribe (or, by the practitioner's authorized agent); or

(2) the patient or research subject at the direction and in the presence of the practitioner.

(b) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseperson, or employee of the carrier or warehouseperson.

(c) "Board" means the state board of pharmacy.

(d) "Controlled substance" means a drug, substance, or immediate precursor included in Schedules I through V as set forth in federal or state laws, or federal or board rules.

(e)(1) "Controlled substance analog" means a substance the chemical structure of which is substantially similar to the chemical structure of a controlled substance in Schedule I or II and:

(i) that has a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance included in Schedule I or II; or

(ii) with respect to a particular individual, that the individual represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance included in Schedule I or II.

(2) The term does not include:

(i) a controlled substance;

(ii) a substance for which there is an approved new drug application;

(iii) a substance with respect to which an exemption is in effect for investigational use by a particular person under Section 505 of the federal Food, Drug and Cosmetic Act, 21 U.S.C. Sec. 355, to the extent conduct with respect to the substance is pursuant to the exemption; or

(iv) any substance to the extent not intended for human consumption before an exemption takes effect with respect to the substance.

(f) "Deliver" or "delivery," means the actual or constructive transfer from one person to another of a substance, whether or not there is an agency relationship.

(g) "Department" means the department of health.

(h) "Dispense" means the interpretation of a prescription or order for a controlled substance and, pursuant to that prescription or order, the proper selection, measuring, compounding, labeling, or packaging necessary to prepare that prescription or order for delivery.

(i) "Dispenser" means a practitioner who dispenses.

(j) "Distribute" means to deliver other than by administering or dispensing a controlled substance.

(k) "Distributor" means a person who distributes.

(l) "Drug" means (1) a controlled substance recognized as a drug in the official United States pharmacopoeia/national formulary or the official homeopathic pharmacopoeia of the United States, or any supplement to them; (2) controlled substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in individuals or animals; (3) controlled substances (other than food) intended to affect the structure or any function of the body of individuals or animals; and (4) controlled substances intended for use as a component of any article specified in (1), (2), or (3) of this

subsection. The term does not include devices or their components, parts, or accessories.

(m) "Drug enforcement administration" means the drug enforcement administration in the United States Department of Justice, or its successor agency.

(n) "Electronic communication of prescription information" means the transmission of a prescription or refill authorization for a drug of a practitioner using computer systems. The term does not include a prescription or refill authorization verbally transmitted by telephone nor a facsimile manually signed by the practitioner.

(o) "Immediate precursor" means a substance:

(1) that the state board of pharmacy has found to be and by rule designates as being the principal compound commonly used, or produced primarily for use, in the manufacture of a controlled substance;

(2) that is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance; and

(3) the control of which is necessary to prevent, curtail, or limit the manufacture of the controlled substance.

(p) "Isomer" means an optical isomer, but in subsection (y)(5) of this section, RCW 69.50.204(a) (12) and (34), and 69.50.206(b)(4), the term includes any geometrical isomer; in RCW 69.50.204(a) (8) and (42), and 69.50.210(c) the term includes any positional isomer; and in RCW 69.50.204(a)(35), 69.50.204(c), and 69.50.208(a) the term includes any positional or geometric isomer.

(q) "Lot" means a definite quantity of marijuana, useable marijuana, or marijuana-infused product identified by a lot number, every portion or package of which is uniform within recognized tolerances for the factors that appear in the labeling.

(r) "Lot number" shall identify the licensee by business or trade name and Washington state unified business identifier number, and the date of harvest or processing for each lot of marijuana, useable marijuana, or marijuana-infused product.

(s) "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly or by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container. The term does not include the preparation, compounding, packaging, repackaging, labeling, or relabeling of a controlled substance:

(1) by a practitioner as an incident to the practitioner's administering or dispensing of a controlled substance in the course of the practitioner's professional practice; or

(2) by a practitioner, or by the practitioner's authorized agent under the practitioner's supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

(t) "Marijuana" or "marihuana" means all parts of the plant Cannabis, whether growing or not, with a THC concentration greater than 0.3 percent on a dry weight basis; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. The term does

not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

(u) "Marijuana processor" means a person licensed by the state liquor control board to process marijuana into useable marijuana and marijuana-infused products, package and label useable marijuana and marijuana-infused products for sale in retail outlets, and sell useable marijuana and marijuana-infused products at wholesale to marijuana retailers.

(v) "Marijuana producer" means a person licensed by the state liquor control board to produce and sell marijuana at wholesale to marijuana processors and other marijuana producers.

(w) "Marijuana-infused products" means products that contain marijuana or marijuana extracts and are intended for human use. The term "marijuana-infused products" does not include useable marijuana.

(x) "Marijuana retailer" means a person licensed by the state liquor control board to sell useable marijuana and marijuana-infused products in a retail outlet.

(y) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium, opium derivative, and any derivative of opium or opium derivative, including their salts, isomers, and salts of isomers, whenever the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation. The term does not include the isoquinoline alkaloids of opium.

(2) Synthetic opiate and any derivative of synthetic opiate, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of the isomers, esters, ethers, and salts is possible within the specific chemical designation.

(3) Poppy straw and concentrate of poppy straw.

(4) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives or ecgonine or their salts have been removed.

(5) Cocaine, or any salt, isomer, or salt of isomer thereof.

(6) Cocaine base.

(7) Ecgonine, or any derivative, salt, isomer, or salt of isomer thereof.

(8) Any compound, mixture, or preparation containing any quantity of any substance referred to in subparagraphs (1) through (7).

(z) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. The term includes opium, substances derived from opium (opium derivatives), and synthetic opiates. The term does not include, unless specifically designated as controlled under RCW 69.50.201, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). The term includes the racemic and levorotatory forms of dextromethorphan.

(aa) "Opium poppy" means the plant of the species *Papaver somniferum* L., except its seeds.

(bb) "Person" means individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

(cc) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(dd) "Practitioner" means:

(1) A physician under chapter 18.71 RCW; a physician assistant under chapter 18.71A RCW; an osteopathic physician and surgeon under chapter 18.57 RCW; an osteopathic physician assistant under chapter 18.57A RCW who is licensed under RCW 18.57A.020 subject to any limitations in RCW 18.57A.040; an optometrist licensed under chapter 18.53 RCW who is certified by the optometry board under RCW 18.53.010 subject to any limitations in RCW 18.53.010; a dentist under chapter 18.32 RCW; a podiatric physician and surgeon under chapter 18.22 RCW; a veterinarian under chapter 18.92 RCW; a registered nurse, advanced registered nurse practitioner, or licensed practical nurse under chapter 18.79 RCW; a naturopathic physician under chapter 18.36A RCW who is licensed under RCW 18.36A.030 subject to any limitations in RCW 18.36A.040; a pharmacist under chapter 18.64 RCW or a scientific investigator under this chapter, licensed, registered or otherwise permitted insofar as is consistent with those licensing laws to distribute, dispense, conduct research with respect to or administer a controlled substance in the course of their professional practice or research in this state.

(2) A pharmacy, hospital or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state.

(3) A physician licensed to practice medicine and surgery, a physician licensed to practice osteopathic medicine and surgery, a dentist licensed to practice dentistry, a podiatric physician and surgeon licensed to practice podiatric medicine and surgery, a licensed physician assistant or a licensed osteopathic physician assistant specifically approved to prescribe controlled substances by his or her state's medical quality assurance commission or equivalent and his or her supervising physician, an advanced registered nurse practitioner licensed to prescribe controlled substances, or a veterinarian licensed to practice veterinary medicine in any state of the United States.

(ee) "Prescription" means an order for controlled substances issued by a practitioner duly authorized by law or rule in the state of Washington to prescribe controlled substances within the scope of his or her professional practice for a legitimate medical purpose.

(ff) "Production" includes the manufacturing, planting, cultivating, growing, or harvesting of a controlled substance.

(gg) "Retail outlet" means a location licensed by the state liquor control board for the retail sale of useable marijuana and marijuana-infused products.

(hh) "Secretary" means the secretary of health or the secretary's designee.

(ii) "State," unless the context otherwise requires, means a state of the United States, the District of Columbia, the

Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

(jj) "THC concentration" means percent of delta-9 tetrahydrocannabinol content per dry weight of any part of the plant *Cannabis*, or per volume or weight of marijuana product, or the combined percent of delta-9 tetrahydrocannabinol and tetrahydrocannabinolic acid in any part of the plant *Cannabis* regardless of moisture content.

(kk) "Ultimate user" means an individual who lawfully possesses a controlled substance for the individual's own use or for the use of a member of the individual's household or for administering to an animal owned by the individual or by a member of the individual's household.

(ll) "Useable marijuana" means dried marijuana flowers. The term "useable marijuana" does not include marijuana-infused products. [2013 c 276 § 2; 2013 c 116 § 1; 2013 c 12 § 2. Prior: 2013 c 3 § 2 (Initiative Measure No. 502, approved November 6, 2012); 2012 c 8 § 1; 2010 c 177 § 1; 2003 c 142 § 4; 1998 c 222 § 3; 1996 c 178 § 18; 1994 sp.s. c 9 § 739; 1993 c 187 § 1; prior: 1990 c 248 § 1; 1990 c 219 § 3; 1990 c 196 § 8; 1989 1st ex.s. c 9 § 429; 1987 c 144 § 2; 1986 c 124 § 1; 1984 c 153 § 18; 1980 c 71 § 2; 1973 2nd ex.s. c 38 § 1; 1971 ex.s. c 308 § 69.50.101.]

Reviser's note: (1) The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

(2) This section was amended by 2013 c 116 § 1 and by 2013 c 276 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2013 c 116: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 1, 2013]." [2013 c 116 § 2.]

Intent—2013 c 3 (Initiative Measure No. 502): "The people intend to stop treating adult marijuana use as a crime and try a new approach that:

(1) Allows law enforcement resources to be focused on violent and property crimes;

(2) Generates new state and local tax revenue for education, health care, research, and substance abuse prevention; and

(3) Takes marijuana out of the hands of illegal drug organizations and brings it under a tightly regulated, state-licensed system similar to that for controlling hard alcohol.

This measure authorizes the state liquor control board to regulate and tax marijuana for persons twenty-one years of age and older, and add a new threshold for driving under the influence of marijuana." [2013 c 3 § 1 (Initiative Measure No. 502, approved November 6, 2012).]

Severability—2003 c 142: See note following RCW 18.53.010.

Finding—1990 c 219: See note following RCW 69.41.030.

Additional notes found at www.leg.wa.gov

69.50.1011 Definition—Commission. "Commission" means the pharmacy quality assurance commission. [2013 c 19 § 86.]

69.50.201 Enforcement of chapter—Authority to change schedules of controlled substances. (a) The commission shall enforce this chapter and may add substances to or delete or reschedule substances listed in RCW 69.50.204, 69.50.206, 69.50.208, 69.50.210, or 69.50.212 pursuant to the procedures of chapter 34.05 RCW.

(1) In making a determination regarding a substance, the commission shall consider the following:

(i) the actual or relative potential for abuse;

- (ii) the scientific evidence of its pharmacological effect, if known;
- (iii) the state of current scientific knowledge regarding the substance;
- (iv) the history and current pattern of abuse;
- (v) the scope, duration, and significance of abuse;
- (vi) the risk to the public health;
- (vii) the potential of the substance to produce psychic or physiological dependence liability; and
- (viii) whether the substance is an immediate precursor of a controlled substance.

(2) The commission may consider findings of the federal Food and Drug Administration or the Drug Enforcement Administration as prima facie evidence relating to one or more of the determinative factors.

(b) After considering the factors enumerated in subsection (a) of this section, the commission shall make findings with respect thereto and adopt and cause to be published a rule controlling the substance upon finding the substance has a potential for abuse.

(c) The commission, without regard to the findings required by subsection (a) of this section or RCW 69.50.203, 69.50.205, 69.50.207, 69.50.209, and 69.50.211 or the procedures prescribed by subsections (a) and (b) of this section, may place an immediate precursor in the same schedule in which the controlled substance of which it is an immediate precursor is placed or in any other schedule. If the commission designates a substance as an immediate precursor, substances that are precursors of the controlled precursor are not subject to control solely because they are precursors of the controlled precursor.

(d) If a substance is designated, rescheduled, or deleted as a controlled substance under federal law, the commission shall similarly control the substance under this chapter after the expiration of thirty days from the date of publication in the federal register of a final order designating the substance as a controlled substance or rescheduling or deleting the substance or from the date of issuance of an order of temporary scheduling under Section 508 of the federal Dangerous Drug Diversion Control Act of 1984, 21 U.S.C. Sec. 811(h), unless within that thirty-day period, the commission or an interested party objects to inclusion, rescheduling, temporary scheduling, or deletion. If no objection is made, the commission shall adopt and cause to be published, without the necessity of making determinations or findings as required by subsection (a) of this section or RCW 69.50.203, 69.50.205, 69.50.207, 69.50.209, and 69.50.211, a final rule, for which notice of proposed rule making is omitted, designating, rescheduling, temporarily scheduling, or deleting the substance. If an objection is made, the commission shall make a determination with respect to the designation, rescheduling, or deletion of the substance as provided by subsection (a) of this section. Upon receipt of an objection to inclusion, rescheduling, or deletion under this chapter by the commission, the commission shall publish notice of the receipt of the objection, and control under this chapter is stayed until the commission adopts a rule as provided by subsection (a) of this section.

(e) The commission, by rule and without regard to the requirements of subsection (a) of this section, may schedule a substance in Schedule I regardless of whether the substance

is substantially similar to a controlled substance in Schedule I or II if the commission finds that scheduling of the substance on an emergency basis is necessary to avoid an imminent hazard to the public safety and the substance is not included in any other schedule or no exemption or approval is in effect for the substance under Section 505 of the federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sec. 355. Upon receipt of notice under RCW 69.50.214, the commission shall initiate scheduling of the controlled substance analog on an emergency basis pursuant to this subsection. The scheduling of a substance under this subsection expires one year after the adoption of the scheduling rule. With respect to the finding of an imminent hazard to the public safety, the commission shall consider whether the substance has been scheduled on a temporary basis under federal law or factors set forth in subsection (a)(1)(iv), (v), and (vi) of this section, and may also consider clandestine importation, manufacture, or distribution, and, if available, information concerning the other factors set forth in subsection (a)(1) of this section. A rule may not be adopted under this subsection until the commission initiates a rule-making proceeding under subsection (a) of this section with respect to the substance. A rule adopted under this subsection must be vacated upon the conclusion of the rule-making proceeding initiated under subsection (a) of this section with respect to the substance.

(f) Authority to control under this section does not extend to distilled spirits, wine, malt beverages, or tobacco as those terms are defined or used in Titles 66 and 26 RCW. [2013 c 19 § 87; 1998 c 245 § 108; 1993 c 187 § 2; 1989 1st ex.s. c 9 § 430; 1986 c 124 § 2; 1971 ex.s. c 308 § 69.50.201.]

Additional notes found at www.leg.wa.gov

69.50.203 Schedule I tests. (a) The commission shall place a substance in Schedule I upon finding that the substance:

- (1) has high potential for abuse;
- (2) has no currently accepted medical use in treatment in the United States; and
- (3) lacks accepted safety for use in treatment under medical supervision.

(b) The commission may place a substance in Schedule I without making the findings required by subsection (a) of this section if the substance is controlled under Schedule I of the federal Controlled Substances Act by a federal agency as the result of an international treaty, convention, or protocol. [2013 c 19 § 88; 1993 c 187 § 3; 1971 ex.s. c 308 § 69.50.203.]

69.50.205 Schedule II tests. (a) The commission shall place a substance in Schedule II upon finding that:

- (1) the substance has high potential for abuse;
- (2) the substance has currently accepted medical use in treatment in the United States, or currently accepted medical use with severe restrictions; and
- (3) the abuse of the substance may lead to severe psychological or physical dependence.

(b) The commission may place a substance in Schedule II without making the findings required by subsection (a) of this section if the substance is controlled under Schedule II of the federal Controlled Substances Act by a federal agency as the result of an international treaty, convention, or protocol.

[2013 c 19 § 89; 1993 c 187 § 5; 1971 ex.s. c 308 § 69.50.205.]

69.50.207 Schedule III tests. (a) The commission shall place a substance in Schedule III upon finding that:

(1) the substance has a potential for abuse less than the substances included in Schedules I and II;

(2) the substance has currently accepted medical use in treatment in the United States; and

(3) abuse of the substance may lead to moderate or low physical dependence or high psychological dependence.

(b) The commission may place a substance in Schedule III without making the findings required by subsection (a) of this section if the substance is controlled under Schedule III of the federal Controlled Substances Act by a federal agency as the result of an international treaty, convention, or protocol. [2013 c 19 § 90; 1993 c 187 § 7; 1971 ex.s. c 308 § 69.50.207.]

69.50.208 Schedule III. Unless specifically excepted by state or federal law or regulation or more specifically included in another schedule, the following controlled substances are listed in Schedule III:

(a) Stimulants. Any material, compound, mixture, or preparation containing any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers, whether optical, position, or geometric, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Any compound, mixture, or preparation in dosage unit form containing any stimulant substance included in Schedule II and which was listed as an excepted compound on August 25, 1971, pursuant to the federal Controlled Substances Act, and any other drug of the quantitative composition shown in that list for those drugs or which is the same except for containing a lesser quantity of controlled substances;

- (2) Benzphetamine;
- (3) Chlorphentermine;
- (4) Clortermine;
- (5) Phendimetrazine.

(b) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:

- (1) Any compound, mixture, or preparation containing:
 - (i) Amobarbital;
 - (ii) Secobarbital;
 - (iii) Pentobarbital;

or any salt thereof and one or more other active medicinal ingredients which are not listed in any schedule;

- (2) Any suppository dosage form containing:
 - (i) Amobarbital;
 - (ii) Secobarbital;
 - (iii) Pentobarbital;

or any salt of any of these drugs and approved by the Food and Drug Administration for marketing only as a suppository;

(3) Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid;

(4) Chlorhexadol;

(5) Embutramide;

(6) Any drug product containing gamma hydroxybutyric acid, including its salts, isomers, and salts of isomers, for which an application is approved under section 505 of the federal food, drug, and cosmetic act;

(7) Ketamine, its salts, isomers, and salts of isomers, some other names for ketamine: (<plus-minus>)-2-(2-chlorophenyl)-2-(methylamino)-cyclohexanone;

(8) Lysergic acid;

(9) Lysergic acid amide;

(10) Methyprylon;

(11) Sulfondiethylmethane;

(12) Sulfonethylmethane;

(13) Sulfonmethane;

(14) Tiletamine and zolazepam or any of their salts—some trade or other names for a tiletamine-zolazepam combination product: Telazol, some trade or other names for tiletamine: 2-(ethylamino)-2-(2-thienyl) cyclohexanone, some trade or other names for zolazepam: 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-[3,4-e][1,4]-diazepin-7(1H)-one flupyrzapon.

(c) Nalorphine.

(d) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof calculated as the free anhydrous base or alkaloid, in limited quantities as set forth in this subsection:

(1) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(2) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(3) Not more than 300 milligrams of dihydrocodeinone (hydrocodone) per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(4) Not more than 300 milligrams of dihydrocodeinone (hydrocodone) per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(5) Not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(6) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(7) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; and

(8) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(e) Any material, compound, mixture, or preparation containing any of the following narcotic drugs or their salts: Buprenorphine.

(f) Hallucinogenic substances. Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a United States food and drug administration approved product. Some other names for dronabinol: [6a R-trans]-6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo[b,d]pyran-i-ol, or (-)-delta-9-(trans)-tetrahydrocannabinol.

(g) Anabolic steroids. The term "anabolic steroids" means any drug or hormonal substance, chemically and pharmacologically related to testosterone, other than estrogens, progestins, corticosteroids, and dehydroepiandrosterone, that promotes muscle growth and includes:

- (1) 3 β ,17-dihydroxy-5 α -androstane;
- (2) 3 α ,17 β -dihydroxy-5 α -androstane;
- (3) 5 α -androst-3,17-dione;
- (4) 1-androstenediol (3 β ,17 β -dihydroxy-5 α -androst-1-ene);
- (5) 1-androstenediol (3 α ,17 β -dihydroxy-5 α -androst-1-ene);
- (6) 4-androstenediol (3 β ,17 β -dihydroxy-androst-4-ene);
- (7) 5-androstenediol (3 β ,17 β -dihydroxy-androst-5-ene);
- (8) 1-androstenedione ([5 α]-androst-1-en-3,17-dione);
- (9) 4-androstenedione (androst-4-en-3,17-dione);
- (10) 5-androstenedione (androst-5-en-3,17-dione);
- (11) Bolasterone (7 α ,17 α -dimethyl-17 β -hydroxyandrost-4-en-3-one);
- (12) Boldenone (17 β -hydroxyandrost-1,4,-diene-3-one);
- (13) Calusterone (7 β ,17 α -dimethyl-17 β -hydroxyandrost-4-en-3-one);
- (14) Clostebol (4-chloro-17 β -hydroxyandrost-4-en-3-one);
- (15) Dehydrochloromethyltestosterone (4-chloro-17 β -hydroxy-17 α -methyl-androst-1,4-dien-3-one);
- (16) Δ 1-dihydrotestosterone (a.k.a. '1-testosterone') (17 β -hydroxy-5 α -androst-1-en-3-one);
- (17) 4-dihydrotestosterone (17 β -hydroxy-androst-3-one);
- (18) Drostanolone (17 β -hydroxy-2 α -methyl-5 α -androst-3-one);
- (19) Ethylestrenol (17 α -ethyl-17 β -hydroxyestr-4-ene);
- (20) Fluoxymesterone (9-fluoro-17 α -methyl-11 β ,17 β -dihydroxyandrost-4-en-3-one);
- (21) Formebolone (2-formyl-17 α -methyl-11 α ,17 β -dihydroxyandrost-1,4-dien-3-one);
- (22) Furazabol (17 α -methyl-17 β -hydroxyandrostano[2,3-c]-furan);
- (23) 13 β -ethyl-17 β -hydroxygon-4-en-3-one;
- (24) 4-hydroxytestosterone (4,17 β -dihydroxy-androst-4-en-3-one);
- (25) 4-hydroxy-19-nortestosterone (4,17 β -dihydroxyestr-4-en-3-one);
- (26) Mestanolone (17 α -methyl-17 β -hydroxy-5-androst-3-one);

- (27) Mesterolone (1 α -methyl-17 β -hydroxy-[5 α]-androst-3-one);
- (28) Methandienone (17 α -methyl-17 β -hydroxyandrost-1,4-dien-3-one);
- (29) Methandriol (17 α -methyl-3 β ,17 β -dihydroxyandrost-5-ene);
- (30) Methenolone (1-methyl-17 β -hydroxy-5 α -androst-1-en-3-one);
- (31) 17 α -methyl-3 β ,17 β -dihydroxy-5 α -androstane;
- (32) 17 α -methyl-3 α ,17 β -dihydroxy-5 α -androstane;
- (33) 17 α -methyl-3 β ,17 β -dihydroxyandrost-4-ene;
- (34) 17 α -methyl-4-hydroxynandrolone (17 α -methyl-4-hydroxy-17 β -hydroxyestr-4-en-3-one);
- (35) Methyldienolone (17 α -methyl-17 β -hydroxyestr-4,9(10)-dien-3-one);
- (36) Methyltrienolone (17 α -methyl-17 β -hydroxyestr-4,9-11-trien-3-one);
- (37) Methyltestosterone (17 α -methyl-17 β -hydroxyandrost-4-en-3-one);
- (38) Mibolerone (7 α ,17 α -dimethyl-17 β -hydroxyestr-4-en-3-one);
- (39) 17 α -methyl- Δ 1-dihydrotestosterone (17 β -hydroxy-17 α -methyl-5 α -androst-1-en-3-one) (also known as '17- α -methyl-1-testosterone');
- (40) Nandrolone (17 β -hydroxyestr-4-en-3-one);
- (41) 19-nor-4-androstenediol (3 β , 17 β -dihydroxyestr-4-ene);
- (42) 19-nor-4-androstenediol (3 α , 17 β -dihydroxyestr-4-ene);
- (43) 19-nor-5-androstenediol (3 β , 17 β -dihydroxyestr-5-ene);
- (44) 19-nor-5-androstenediol (3 α , 17 β -dihydroxyestr-5-ene);
- (45) 19-nor-4-androstenedione (estr-4-en-3,17-dione);
- (46) 19-nor-5-androstenedione (estr-5-en-3,17-dione);
- (47) Norbolethone (13 β , 17 α -diethyl-17 β -hydroxygon-4-en-3-one);
- (48) Norclostebol (4-chloro-17 β -hydroxyestr-4-en-3-one);
- (49) Norethandrolone (17 α -ethyl-17 β -hydroxyestr-4-en-3-one);
- (50) Normethandrolone (17 α -methyl-17 β -hydroxyestr-4-en-3-one);
- (51) Oxandrolone (17 α -methyl-17 β -hydroxy-2-oxa-[5 α]-androst-3-one);
- (52) Oxymesterone (17 α -methyl-4,17 β -dihydroxyandrost-4-en-3-one);
- (53) Oxymetholone (17 α -methyl-2-hydroxymethylene-17 β -hydroxy-[5 α]-androst-3-one);
- (54) Stanozolol (17 α -methyl-17 β -hydroxy-[5 α]-androst-2-eno[3,2-c]-pyrazole);
- (55) Stenbolone (17 β -hydroxy-2-methyl-[5 α]-androst-1-en-3-one);
- (56) Testolactone (13-hydroxy-3-oxo-13,17-secoandrosta-1,4-dien-17-oic acid lactone);
- (57) Testosterone (17 β -hydroxyandrost-4-en-3-one);

(58) Tetrahydrogestrinone (13 β , 17 α -diethyl-17 β -hydroxygon-4,9,11-trien-3-one);

(59) Trenbolone (17 β -hydroxyestr-4,9,11-trien-3-one); and

(60) Any salt, ester, or ether of a drug or substance described in this section. Such term does not include an anabolic steroid that is expressly intended for administration through implants to cattle or other nonhuman species and that has been approved by the secretary of the department of health and human services for such administration. If any person prescribes, dispenses, or distributes such steroid for human use, the person shall be considered to have prescribed, dispensed, or distributed an anabolic steroid within the meaning of this section.

The commission may except by rule any compound, mixture, or preparation containing any stimulant or depressant substance listed in subsection (a)(1) and (2) of this section from the application of all or any part of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances having a stimulant or depressant effect on the central nervous system.

The controlled substances listed in this section may be added, rescheduled, or deleted as provided for in RCW 69.50.201. [2013 c 19 § 91; 2010 c 177 § 4; 1993 c 187 § 8; 1986 c 124 § 5; 1980 c 138 § 3; 1971 ex.s. c 308 § 69.50.208.]

Commission may change schedules of controlled substances: RCW 69.50.201.

69.50.209 Schedule IV tests. (a) The commission shall place a substance in Schedule IV upon finding that:

(1) the substance has a low potential for abuse relative to substances in Schedule III;

(2) the substance has currently accepted medical use in treatment in the United States; and

(3) abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances included in Schedule III.

(b) The commission may place a substance in Schedule IV without making the findings required by subsection (a) of this section if the substance is controlled under Schedule IV of the federal Controlled Substances Act by a federal agency as the result of an international treaty, convention, or protocol. [2013 c 19 § 92; 1993 c 187 § 9; 1971 ex.s. c 308 § 69.50.209.]

69.50.210 Schedule IV. Unless specifically excepted by state or federal law or regulation or more specifically included in another schedule, the following controlled substances are listed in Schedule IV:

(a) Any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

(1) Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(2) Dextropropoxyphene (alpha-(+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybutane).

(b) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substances having a depressant effect on the central nervous system, including their salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Alprazolam;
- (2) Barbitol;
- (3) Bromazepam;
- (4) Camazepam;
- (5) Carisoprodol;
- (6) Chloral betaine;
- (7) Chloral hydrate;
- (8) Chlordiazepoxide;
- (9) Clobazam;
- (10) Clonazepam;
- (11) Clorazepate;
- (12) Clotiazepam;
- (13) Cloxazolam;
- (14) Delorazepam;
- (15) Diazepam;
- (16) Dichloralphenazone;
- (17) Estazolam;
- (18) Ethchlorvynol;
- (19) Ethinamate;
- (20) Ethyl loflazepate;
- (21) Fludiazepam;
- (22) Flunitrazepam;
- (23) Flurazepam;
- (24) Halazepam;
- (25) Haloxazolam;
- (26) Ketazolam;
- (27) Loprazolam;
- (28) Lorazepam;
- (29) Lormetazepam;
- (30) Mebutamate;
- (31) Medazepam;
- (32) Meprobamate;
- (33) Methohexital;
- (34) Methylphenobarbital (mephobarbital);
- (35) Midazolam;
- (36) Nimetazepam;
- (37) Nitrazepam;
- (38) Nordiazepam;
- (39) Oxazepam;
- (40) Oxazolam;
- (41) Paraldehyde;
- (42) Petrichloral;
- (43) Phenobarbital;
- (44) Pinazepam;
- (45) Prazepam;
- (46) Quazepam;
- (47) Temazepam;
- (48) Tetrazepam;
- (49) Triazolam;
- (50) Zaleplon;
- (51) Zolpidem; and
- (52) Zopiclone.

(c) Fenfluramine. Any material, compound, mixture, or preparation containing any quantity of the following sub-

stance, including its salts, isomers, and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible: Fenfluramine.

(d) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers, and salts of isomers:

- (1) Cathine((+)norpseudoephedrine);
- (2) Diethylpropion;
- (3) Fencamfamin;
- (4) Fenproporex;
- (5) Mazindol;
- (6) Mefenorex;
- (7) Modafinil;
- (8) Pemoline (including organometallic complexes and chelates thereof);
- (9) Phentermine;
- (10) Pipradrol;
- (11) Sibutramine;
- (12) SPA ((-)-1-dimethylamino-1, 2-dephenylethane).

(e) Other substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substance, including its salts:

- (1) Pentazocine;
- (2) Butorphanol, including its optical isomers.

The commission may except by rule any compound, mixture, or preparation containing any depressant substance listed in subsection (b) of this section from the application of all or any part of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances having a depressant effect on the central nervous system.

The controlled substances listed in this section may be added, rescheduled, or deleted as provided for in RCW 69.50.201. [2013 c 19 § 93; 2010 c 177 § 5; 1993 c 187 § 10; 1986 c 124 § 6; 1981 c 147 § 2; 1980 c 138 § 4; 1971 ex.s. c 308 § 69.50.210.]

Commission may change schedules of controlled substances: RCW 69.50.201.

69.50.211 Schedule V tests. (a) The commission shall place a substance in Schedule V upon finding that:

- (1) the substance has low potential for abuse relative to the controlled substances included in Schedule IV;
- (2) the substance has currently accepted medical use in treatment in the United States; and
- (3) abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances included in Schedule IV.

(b) The commission may place a substance in Schedule V without being required to make the findings required by subsection (a) of this section if the substance is controlled under Schedule V of the federal Controlled Substances Act by a federal agency as the result of an international treaty, convention, or protocol. [2013 c 19 § 94; 1993 c 187 § 11; 1971 ex.s. c 308 § 69.50.211.]

69.50.213 Republishing of schedules. The commission shall publish updated schedules annually. Failure to publish updated schedules is not a defense in any administrative or judicial proceeding under this chapter. [2013 c 19 § 95; 1993 c 187 § 13; 1971 ex.s. c 308 § 69.50.213.]

69.50.214 Controlled substance analog. A controlled substance analog, to the extent intended for human consumption, shall be treated, for the purposes of this chapter, as a substance included in Schedule I. Within thirty days after the initiation of prosecution with respect to a controlled substance analog by indictment or information, the prosecuting attorney shall notify the commission of information relevant to emergency scheduling as provided for in RCW 69.50.201(e). After final determination that the controlled substance analog should not be scheduled, no prosecution relating to that substance as a controlled substance analog may continue or take place. [2013 c 19 § 96; 1993 c 187 § 14.]

69.50.301 Rules—Fees. The commission may adopt rules and the department may charge reasonable fees, relating to the registration and control of the manufacture, distribution, and dispensing of controlled substances within this state. [2013 c 19 § 97; 1993 c 187 § 15; 1991 c 229 § 9; 1989 1st ex.s. c 9 § 431; 1971 ex.s. c 308 § 69.50.301.]

Additional notes found at www.leg.wa.gov

69.50.302 Registration requirements. (a) Every person who manufactures, distributes, or dispenses any controlled substance within this state or who proposes to engage in the manufacture, distribution, or dispensing of any controlled substance within this state, shall obtain annually a registration issued by the department in accordance with the commission's rules.

(b) A person registered by the department under this chapter to manufacture, distribute, dispense, or conduct research with controlled substances may possess, manufacture, distribute, dispense, or conduct research with those substances to the extent authorized by the registration and in conformity with this Article.

(c) The following persons need not register and may lawfully possess controlled substances under this chapter:

- (1) An agent or employee of any registered manufacturer, distributor, or dispenser of any controlled substance if the agent or employee is acting in the usual course of business or employment. This exemption shall not include any agent or employee distributing sample controlled substances to practitioners without an order;
- (2) A common or contract carrier or warehouse operator, or an employee thereof, whose possession of any controlled substance is in the usual course of business or employment;
- (3) An ultimate user or a person in possession of any controlled substance pursuant to a lawful order of a practitioner or in lawful possession of a substance included in Schedule V.

(d) The commission may waive by rule the requirement for registration of certain manufacturers, distributors, or dispensers upon finding it consistent with the public health and safety. Personal practitioners licensed or registered in the state of Washington under the respective professional licens-

ing acts shall not be required to be registered under this chapter unless the specific exemption is denied pursuant to RCW 69.50.305 for violation of any provisions of this chapter.

(e) A separate registration is required at each principal place of business or professional practice where the applicant manufactures, distributes, or dispenses controlled substances.

(f) The department may inspect the establishment of a registrant or applicant for registration in accordance with rules adopted by the commission. [2013 c 19 § 98; 2011 c 336 § 839; 1993 c 187 § 16; 1989 1st ex.s. c 9 § 432; 1971 ex.s. c 308 § 69.50.302.]

Additional notes found at www.leg.wa.gov

69.50.303 Registration. (a) The department shall register an applicant to manufacture or distribute controlled substances included in RCW 69.50.204, 69.50.206, 69.50.208, 69.50.210, and 69.50.212 unless the commission determines that the issuance of that registration would be inconsistent with the public interest. In determining the public interest, the commission shall consider the following factors:

(1) maintenance of effective controls against diversion of controlled substances into other than legitimate medical, scientific, research, or industrial channels;

(2) compliance with applicable state and local law;

(3) promotion of technical advances in the art of manufacturing controlled substances and the development of new substances;

(4) any convictions of the applicant under any laws of another country or federal or state laws relating to any controlled substance;

(5) past experience in the manufacture or distribution of controlled substances, and the existence in the applicant's establishment of effective controls against diversion of controlled substances into other than legitimate medical, scientific, research, or industrial channels;

(6) furnishing by the applicant of false or fraudulent material in any application filed under this chapter;

(7) suspension or revocation of the applicant's federal registration to manufacture, distribute, or dispense controlled substances as authorized by federal law; and

(8) any other factors relevant to and consistent with the public health and safety.

(b) Registration under subsection (a) of this section does not entitle a registrant to manufacture or distribute controlled substances included in Schedule I or II other than those specified in the registration.

(c) Practitioners must be registered, or exempted under RCW 69.50.302(d), to dispense any controlled substances or to conduct research with controlled substances included in Schedules II through V if they are authorized to dispense or conduct research under the law of this state. The commission need not require separate registration under this Article for practitioners engaging in research with nonnarcotic substances included in Schedules II through V where the registrant is already registered under this Article in another capacity. Practitioners registered under federal law to conduct research with substances included in Schedule I may conduct research with substances included in Schedule I within this state upon furnishing the commission evidence of that federal registration.

(d) A manufacturer or distributor registered under the federal Controlled Substances Act, 21 U.S.C. Sec. 801 et seq., may submit a copy of the federal application as an application for registration as a manufacturer or distributor under this section. The commission may require a manufacturer or distributor to submit information in addition to the application for registration under the federal act. [2013 c 19 § 99; 1993 c 187 § 17; 1989 1st ex.s. c 9 § 433; 1971 ex.s. c 308 § 69.50.303.]

Additional notes found at www.leg.wa.gov

69.50.304 Revocation and suspension of registration—Seizure or placement under seal of controlled substances. (a) A registration, or exemption from registration, under RCW 69.50.303 to manufacture, distribute, or dispense a controlled substance may be suspended or revoked by the commission upon finding that the registrant has:

(1) furnished false or fraudulent material information in any application filed under this chapter;

(2) been convicted of a felony under any state or federal law relating to any controlled substance;

(3) had the registrant's federal registration suspended or revoked and is no longer authorized by federal law to manufacture, distribute, or dispense controlled substances; or

(4) committed acts that would render registration under RCW 69.50.303 inconsistent with the public interest as determined under that section.

(b) The commission may limit revocation or suspension of a registration to the particular controlled substance or schedule of controlled substances, with respect to which grounds for revocation or suspension exist.

(c) If the commission suspends or revokes a registration, all controlled substances owned or possessed by the registrant at the time of suspension or the effective date of the revocation order may be placed under seal. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application, orders the sale of perishable substances and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all controlled substances may be forfeited to the state.

(d) The department may seize or place under seal any controlled substance owned or possessed by a registrant whose registration has expired or who has ceased to practice or do business in the manner contemplated by the registration. The controlled substance must be held for the benefit of the registrant or the registrant's successor in interest. The department shall notify a registrant, or the registrant's successor in interest, who has any controlled substance seized or placed under seal, of the procedures to be followed to secure the return of the controlled substance and the conditions under which it will be returned. The department may not dispose of any controlled substance seized or placed under seal under this subsection until the expiration of one hundred eighty days after the controlled substance was seized or placed under seal. The costs incurred by the department in seizing, placing under seal, maintaining custody, and disposing of any controlled substance under this subsection may be recovered from the registrant, any proceeds obtained from the disposition of the controlled substance, or from both. Any balance remaining after the costs have been recovered from

the proceeds of any disposition must be delivered to the registrant or the registrant's successor in interest.

(e) The department shall promptly notify the drug enforcement administration of all orders restricting, suspending, or revoking registration and all forfeitures of controlled substances. [2013 c 19 § 100; 1993 c 187 § 18; 1989 1st ex.s. c 9 § 434; 1986 c 124 § 8; 1971 ex.s. c 308 § 69.50.304.]

Additional notes found at www.leg.wa.gov

69.50.305 Procedure for denial, suspension, or revocation of registration. (a) Any registration, or exemption from registration, issued pursuant to the provisions of this chapter shall not be denied, suspended, or revoked unless the commission denies, suspends, or revokes such registration, or exemption from registration, by proceedings consistent with the administrative procedure act, chapter 34.05 RCW.

(b) The commission may suspend any registration simultaneously with the institution of proceedings under RCW 69.50.304, or where renewal of registration is refused, if it finds that there is an imminent danger to the public health or safety which warrants this action. The suspension shall continue in effect until the conclusion of the proceedings, including judicial review thereof, unless sooner withdrawn by the commission or dissolved by a court of competent jurisdiction. [2013 c 19 § 101; 1971 ex.s. c 308 § 69.50.305.]

69.50.306 Records of registrants. Persons registered, or exempted from registration under RCW 69.50.302(d), to manufacture, distribute, dispense, or administer controlled substances under this chapter shall keep records and maintain inventories in conformance with the recordkeeping and inventory requirements of federal law and with any additional rules the commission issues. [2013 c 19 § 102; 1971 ex.s. c 308 § 69.50.306.]

69.50.308 Prescriptions. (a) A controlled substance may be dispensed only as provided in this section. Prescriptions electronically communicated must also meet the requirements under RCW 69.50.312.

(b) Except when dispensed directly by a practitioner authorized to prescribe or administer a controlled substance, other than a pharmacy, to an ultimate user, a substance included in Schedule II may not be dispensed without the written or electronically communicated prescription of a practitioner.

(1) Schedule II narcotic substances may be dispensed by a pharmacy pursuant to a facsimile prescription under the following circumstances:

(i) The facsimile prescription is transmitted by a practitioner to the pharmacy; and

(ii) The facsimile prescription is for a patient in a long-term care facility or a hospice program certified or paid by medicare under Title XVIII of the federal social security act. "Long-term care facility" means nursing homes licensed under chapter 18.51 RCW, assisted living facilities licensed under chapter 18.20 RCW, and adult family homes licensed under chapter 70.128 RCW; or

(iii) The facsimile prescription is for a patient of a hospice program licensed by the state; and

(iv) The practitioner or the practitioner's agent notes on the facsimile prescription that the patient is a long-term care or hospice patient.

(2) Injectable Schedule II narcotic substances that are to be compounded for patient use may be dispensed by a pharmacy pursuant to a facsimile prescription if the facsimile prescription is transmitted by a practitioner to the pharmacy.

(3) Under (1) and (2) of this subsection the facsimile prescription shall serve as the original prescription and shall be maintained as other Schedule II narcotic substances prescriptions.

(c) In emergency situations, as defined by rule of the commission, a substance included in Schedule II may be dispensed upon oral prescription of a practitioner, reduced promptly to writing and filed by the pharmacy. Prescriptions shall be retained in conformity with the requirements of RCW 69.50.306.

(d) A prescription for a substance included in Schedule II may not be refilled. A prescription for a substance included in Schedule II may not be filled more than six months after the date the prescription was issued.

(e) Except when dispensed directly by a practitioner authorized to prescribe or administer a controlled substance, other than a pharmacy, to an ultimate user, a substance included in Schedule III, IV, or V, which is a prescription drug as determined under RCW 69.04.560, may not be dispensed without a written, oral, or electronically communicated prescription of a practitioner. Any oral prescription must be promptly reduced to writing.

(f) The prescription for a substance included in Schedule III, IV, or V may not be filled or refilled more than six months after the date issued by the practitioner or be refilled more than five times, unless renewed by the practitioner.

(g) A valid prescription or lawful order of a practitioner, in order to be effective in legalizing the possession of controlled substances, must be issued in good faith for a legitimate medical purpose by one authorized to prescribe the use of such controlled substance. An order purporting to be a prescription not in the course of professional treatment is not a valid prescription or lawful order of a practitioner within the meaning and intent of this chapter; and the person who knows or should know that the person is filling such an order, as well as the person issuing it, can be charged with a violation of this chapter.

(h) A substance included in Schedule V must be distributed or dispensed only for a medical purpose.

(i) A practitioner may dispense or deliver a controlled substance to or for an individual or animal only for medical treatment or authorized research in the ordinary course of that practitioner's profession. Medical treatment includes dispensing or administering a narcotic drug for pain, including intractable pain.

(j) No administrative sanction, or civil or criminal liability, authorized or created by this chapter may be imposed on a pharmacist for action taken in reliance on a reasonable belief that an order purporting to be a prescription was issued by a practitioner in the usual course of professional treatment or in authorized research.

(k) An individual practitioner may not dispense a substance included in Schedule II, III, or IV for that individual practitioner's personal use. [2013 c 276 § 3; 2013 c 19 § 103;

2012 c 10 § 46; 2001 c 248 § 1; 1993 c 187 § 19; 1971 ex.s. c 308 § 69.50.308.]

Reviser's note: This section was amended by 2013 c 19 § 103 and by 2013 c 276 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Application—2012 c 10: See note following RCW 18.20.010.

69.50.310 Sodium pentobarbital—Registration of humane societies and animal control agencies for use in animal control. On and after September 21, 1977, a humane society and animal control agency may apply to the department for registration pursuant to the applicable provisions of this chapter for the sole purpose of being authorized to purchase, possess, and administer sodium pentobarbital to euthanize injured, sick, homeless, or unwanted domestic pets and animals. Any agency so registered shall not permit a person to administer sodium pentobarbital unless such person has demonstrated adequate knowledge of the potential hazards and proper techniques to be used in administering this drug.

The department may issue a limited registration to carry out the provisions of this section. The commission shall promulgate such rules as it deems necessary to insure strict compliance with the provisions of this section. The commission may suspend or revoke registration upon determination that the person administering sodium pentobarbital has not demonstrated adequate knowledge as herein provided. This authority is granted in addition to any other power to suspend or revoke registration as provided by law. [2013 c 19 § 104; 1989 1st ex.s. c 9 § 435; 1977 ex.s. c 197 § 1.]

Additional notes found at www.leg.wa.gov

69.50.312 Electronic communication of prescription information—Commission may adopt rules. (1) Information concerning a prescription for a controlled substance included in Schedules II through V, or information concerning a refill authorization for a controlled substance included in Schedules III through V[,] may be electronically communicated to a pharmacy of the patient's choice pursuant to the provisions of this chapter if the electronically communicated prescription information complies with the following:

(a) Electronically communicated prescription information must comply with all applicable statutes and rules regarding the form, content, recordkeeping, and processing of a prescription for a legend drug;

(b) The system used for transmitting electronically communicated prescription information must be approved by the commission and in accordance with federal rules for electronically communicated prescriptions for controlled substance[s] included in Schedules II through V, as set forth in Title 21 C.F.R. Parts 1300, 1304, 1306, and 1311. This subsection does not apply to currently used facsimile equipment transmitting an exact visual image of the prescription. The commission shall maintain and provide, upon request, a list of systems used for electronically communicating prescription information currently approved by the commission;

(c) An explicit opportunity for practitioners must be made to indicate their preference on whether a therapeutically equivalent generic drug may be substituted;

(d) Prescription drug orders are confidential health information, and may be released only to the patient or the

patient's authorized representative, the prescriber or other authorized practitioner then caring for the patient, or other persons specifically authorized by law to receive such information;

(e) To maintain confidentiality of prescription records, the electronic system shall have adequate security and systems safeguards designed to prevent and detect unauthorized access, modification, or manipulation of these records. The pharmacist in charge shall establish or verify the existence of policies and procedures which ensure the integrity and confidentiality of prescription information transmitted to the pharmacy by electronic means. All managers, employees, and agents of the pharmacy are required to read, sign, and comply with the established policies and procedures; and

(f) The pharmacist shall exercise professional judgment regarding the accuracy, validity, and authenticity of the prescription drug order received by way of electronic transmission, consistent with federal and state laws and rules and guidelines of the commission.

(2) The commission may adopt rules implementing this section. [2013 c 276 § 4; 2013 c 19 § 105; 1998 c 222 § 4.]

Reviser's note: This section was amended by 2013 c 19 § 105 and by 2013 c 276 § 4, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

69.50.320 Registration of department of fish and wildlife for use in chemical capture programs—Rules.

The department of fish and wildlife may apply to the department of health for registration pursuant to the applicable provisions of this chapter to purchase, possess, and administer controlled substances for use in chemical capture programs. The department of fish and wildlife must not permit a person to administer controlled substances unless the person has demonstrated adequate knowledge of the potential hazards and proper techniques to be used in administering controlled substances.

The department of health may issue a limited registration to carry out the provisions of this section. The commission may adopt rules to ensure strict compliance with the provisions of this section. The commission, in consultation with the department of fish and wildlife, must by rule add or remove additional controlled substances for use in chemical capture programs. The commission shall suspend or revoke registration upon determination that the person administering controlled substances has not demonstrated adequate knowledge as required by this section. This authority is granted in addition to any other power to suspend or revoke registration as provided by law. [2013 c 19 § 106; 2003 c 175 § 2.]

Findings—2003 c 175: "The legislature finds that the department of fish and wildlife is responsible for the proper management of the state's diverse wildlife resources. Wildlife management often requires the department of fish and wildlife to immobilize individual animals in order for the animals to be moved, treated, examined, or for other legitimate purposes. The legislature finds that it is often necessary for the department to use certain controlled substances to accomplish these purposes. Therefore, the legislature finds that the department of fish and wildlife, in coordination with the board of pharmacy, must be enabled to use approved controlled substances in order to accomplish its legitimate wildlife management goals." [2003 c 175 § 1.]

69.50.402 Prohibited acts: B—Penalties. (1) It is unlawful for any person:

(a) Who is subject to Article III to distribute or dispense a controlled substance in violation of RCW 69.50.308;

(b) Who is a registrant, to manufacture a controlled substance not authorized by his or her registration, or to distribute or dispense a controlled substance not authorized by his or her registration to another registrant or other authorized person;

(c) Who is a practitioner, to prescribe, order, dispense, administer, supply, or give to any person:

(i) Any amphetamine, including its salts, optical isomers, and salts of optical isomers classified as a schedule II controlled substance by the commission pursuant to chapter 34.05 RCW; or

(ii) Any nonnarcotic stimulant classified as a schedule II controlled substance and designated as a nonnarcotic stimulant by the commission pursuant to chapter 34.05 RCW;

except for the treatment of narcolepsy or for the treatment of hyperkinesia, or for the treatment of drug-induced brain dysfunction, or for the treatment of epilepsy, or for the differential diagnostic psychiatric evaluation of depression, or for the treatment of depression shown to be refractory to other therapeutic modalities, or for the treatment of multiple sclerosis, or for the clinical investigation of the effects of such drugs or compounds, in which case an investigative protocol therefor shall have been submitted to and reviewed and approved by the commission before the investigation has been begun: PROVIDED, That the commission, in consultation with the medical quality assurance commission and the osteopathic disciplinary board, may establish by rule, pursuant to chapter 34.05 RCW, disease states or conditions in addition to those listed in this subsection for the treatment of which Schedule II nonnarcotic stimulants may be prescribed, ordered, dispensed, administered, supplied, or given to patients by practitioners: AND PROVIDED, FURTHER, That investigations by the commission of abuse of prescriptive authority by physicians, licensed pursuant to chapter 18.71 RCW, pursuant to subsection (1)(c) of this section shall be done in consultation with the medical quality assurance commission;

(d) To refuse or fail to make, keep or furnish any record, notification, order form, statement, invoice, or information required under this chapter;

(e) To refuse an entry into any premises for any inspection authorized by this chapter; or

(f) Knowingly to keep or maintain any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft, or other structure or place, which is resorted to by persons using controlled substances in violation of this chapter for the purpose of using these substances, or which is used for keeping or selling them in violation of this chapter.

(2) Any person who violates this section is guilty of a class C felony and upon conviction may be imprisoned for not more than two years, fined not more than two thousand dollars, or both. [2013 c 19 § 107; 2010 c 177 § 7; 2003 c 53 § 338; 1994 sp.s. c 9 § 740; 1980 c 138 § 6; 1979 ex.s. c 119 § 1; 1971 ex.s. c 308 § 69.50.402.]

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

Additional notes found at www.leg.wa.gov

69.50.501 Administrative inspections. The commission may make administrative inspections of controlled premises in accordance with the following provisions:

(1) For purposes of this section only, "controlled premises" means:

(a) places where persons registered or exempted from registration requirements under this chapter are required to keep records; and

(b) places including factories, warehouses, establishments, and conveyances in which persons registered or exempted from registration requirements under this chapter are permitted to hold, manufacture, compound, process, sell, deliver, or otherwise dispose of any controlled substance.

(2) When authorized by an administrative inspection warrant issued pursuant to RCW 69.50.502 an officer or employee designated by the commission, upon presenting the warrant and appropriate credentials to the owner, operator, or agent in charge, may enter controlled premises for the purpose of conducting an administrative inspection.

(3) When authorized by an administrative inspection warrant, an officer or employee designated by the commission may:

(a) inspect and copy records required by this chapter to be kept;

(b) inspect, within reasonable limits and in a reasonable manner, controlled premises and all pertinent equipment, finished and unfinished material, containers and labeling found therein, and, except as provided in subsection (5) of this section, all other things therein, including records, files, papers, processes, controls, and facilities bearing on violation of this chapter; and

(c) inventory any stock of any controlled substance therein and obtain samples thereof.

(4) This section does not prevent the inspection without a warrant of books and records pursuant to an administrative subpoena issued in accordance with chapter 34.05 RCW, nor does it prevent entries and administrative inspections, including seizures of property, without a warrant:

(a) if the owner, operator, or agent in charge of the controlled premises consents;

(b) in situations presenting imminent danger to health or safety;

(c) in situations involving inspection of conveyances if there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain a warrant;

(d) in any other exceptional or emergency circumstance where time or opportunity to apply for a warrant is lacking; or,

(e) in all other situations in which a warrant is not constitutionally required.

(5) An inspection authorized by this section shall not extend to financial data, sales data, other than shipment data, or pricing data unless the owner, operator, or agent in charge of the controlled premises consents in writing. [2013 c 19 § 108; 1971 ex.s. c 308 § 69.50.501.]

69.50.504 Cooperative arrangements. The commission shall cooperate with federal and other state agencies in discharging its responsibilities concerning traffic in controlled substances and in suppressing the abuse of controlled substances. [2013 c 19 § 109; 1971 ex.s. c 308 § 69.50.504.]

69.50.507 Judicial review. All final determinations, findings, and conclusions of the commission under this chapter are final and conclusive decisions of the matters involved. Any person aggrieved by the decision may obtain review of the decision in the superior court wherein he or she resides or in the superior court of Thurston county, such review to be in conformity with the administrative procedure act, chapter 34.05 RCW. [2013 c 19 § 110; 2012 c 117 § 371; 1971 ex.s. c 308 § 69.50.507.]

69.50.508 Education and research. (a) The commission may carry out educational programs designed to prevent and deter misuse and abuse of controlled substances. In connection with these programs it may:

(1) promote better recognition of the problems of misuse and abuse of controlled substances within the regulated industry and among interested groups and organizations;

(2) assist the regulated industry and interested groups and organizations in contributing to the reduction of misuse and abuse of controlled substances;

(3) consult with interested groups and organizations to aid them in solving administrative and organizational problems;

(4) evaluate procedures, projects, techniques, and controls conducted or proposed as part of educational programs on misuse and abuse of controlled substances;

(5) disseminate the results of research on misuse and abuse of controlled substances to promote a better public understanding of what problems exist and what can be done to combat them; and

(6) assist in the education and training of state and local law enforcement officials in their efforts to control misuse and abuse of controlled substances.

(b) The commission may encourage research on misuse and abuse of controlled substances. In connection with the research, and in furtherance of the enforcement of this chapter, it may:

(1) establish methods to assess accurately the effects of controlled substances and identify and characterize those with potential for abuse;

(2) make studies and undertake programs of research to:

(i) develop new or improved approaches, techniques, systems, equipment and devices to strengthen the enforcement of this chapter;

(ii) determine patterns of misuse and abuse of controlled substances and the social effects thereof; and,

(iii) improve methods for preventing, predicting, understanding and dealing with the misuse and abuse of controlled substances; and,

(3) enter into contracts with public agencies, institutions of higher education, and private organizations or individuals for the purpose of conducting research, demonstrations, or special projects which bear directly on misuse and abuse of controlled substances.

(c) The commission may enter into contracts for educational and research activities without performance bonds.

(d) The commission may authorize persons engaged in research on the use and effects of controlled substances to withhold the names and other identifying characteristics of individuals who are the subjects of the research. Persons who obtain this authorization are not compelled in any civil, crim-

inal, administrative, legislative, or other proceeding to identify the individuals who are the subjects of research for which the authorization was obtained.

(e) The commission may authorize the possession and distribution of controlled substances by persons engaged in research. Persons who obtain this authorization are exempt from state prosecution for possession and distribution of controlled substances to the extent of the authorization. [2013 c 19 § 111; 1971 ex.s. c 308 § 69.50.508.]

69.50.515 Pharmacies—Marijuana—Notification and disposal. (1) Upon finding one ounce or less of marijuana inadvertently left at a retail store holding a pharmacy license, the store manager or employee must promptly notify the local law enforcement agency. After notification to the local law enforcement agency, the store manager or employee must properly dispose of the marijuana.

(2) For the purposes of this section, "properly dispose" means ensuring that the product is destroyed or rendered incapable of use by another person. [2013 c 133 § 1.]

69.50.601 Pending proceedings. (a) Prosecution for any violation of law occurring prior to May 21, 1971 is not affected or abated by this chapter. If the offense being prosecuted is similar to one set out in Article IV of this chapter, then the penalties under Article IV apply if they are less than those under prior law.

(b) Civil seizures or forfeitures and injunctive proceedings commenced prior to May 21, 1971 are not affected by this chapter.

(c) All administrative proceedings pending under prior laws which are superseded by this chapter shall be continued and brought to a final determination in accord with the laws and rules in effect prior to May 21, 1971. Any substance controlled under prior law which is not listed within Schedules I through V, is automatically controlled without further proceedings and shall be listed in the appropriate schedule.

(d) The commission shall initially permit persons to register who own or operate any establishment engaged in the manufacture, distribution, or dispensing of any controlled substance prior to May 21, 1971 and who are registered or licensed by the state.

(e) This chapter applies to violations of law, seizures and forfeiture, injunctive proceedings, administrative proceedings and investigations which occur following May 21, 1971. [2013 c 19 § 112; 1971 ex.s. c 308 § 69.50.601.]

Chapter 69.51 RCW

CONTROLLED SUBSTANCES THERAPEUTIC RESEARCH ACT

Sections

69.51.030	Definitions.
69.51.040	Controlled substances therapeutic research program.
69.51.050	Patient qualification review committee.
69.51.060	Sources and distribution of marijuana.

69.51.030 Definitions. As used in this chapter:

(1) "Commission" means the pharmacy quality assurance commission;

(2) "Department" means the department of health;

(3) "Marijuana" means all parts of the plant of the genus *Cannabis L.*, whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin; and

(4) "Practitioner" means a physician licensed pursuant to chapter 18.71 or 18.57 RCW. [2013 c 19 § 113; 1989 1st ex.s. c 9 § 438; 1979 c 136 § 3.]

Additional notes found at www.leg.wa.gov

69.51.040 Controlled substances therapeutic research program. (1) There is established in the commission the controlled substances therapeutic research program. The program shall be administered by the department. The commission shall promulgate rules necessary for the proper administration of the Controlled Substances Therapeutic Research Act. In such promulgation, the commission shall take into consideration those pertinent rules promulgated by the United States drug enforcement agency, the food and drug administration, and the national institute on drug abuse.

(2) Except as provided in RCW 69.51.050(4), the controlled substances therapeutic research program shall be limited to cancer chemotherapy and radiology patients and glaucoma patients, who are certified to the patient qualification review committee by a practitioner as being involved in a life-threatening or sense-threatening situation. No patient may be admitted to the controlled substances therapeutic research program without full disclosure by the practitioner of the experimental nature of this program and of the possible risks and side effects of the proposed treatment in accordance with the informed consent provisions of chapter 7.70 RCW.

(3) The commission shall provide by rule for a program of registration with the department of bona fide controlled substance therapeutic research projects. [2013 c 19 § 114; 1989 1st ex.s. c 9 § 439; 1979 c 136 § 4.]

Additional notes found at www.leg.wa.gov

69.51.050 Patient qualification review committee. (1) The commission shall appoint a patient qualification review committee to serve at its pleasure. The patient qualification review committee shall be comprised of:

(a) A physician licensed to practice medicine in Washington state and specializing in the practice of ophthalmology;

(b) A physician licensed to practice medicine in Washington state and specializing in the subspecialty of medical oncology;

(c) A physician licensed to practice medicine in Washington state and specializing in the practice of psychiatry; and

(d) A physician licensed to practice medicine in Washington state and specializing in the practice of radiology.

Members of the committee shall be compensated at the rate of fifty dollars per day for each day spent in the performance of their official duties, and shall receive reimbursement for their travel expenses as provided in RCW 43.03.050 and 43.03.060.

(2) The patient qualification review committee shall review all applicants for the controlled substance therapeutic research program and their licensed practitioners and certify their participation in the program.

(3) The patient qualification review committee and the commission shall insure that the privacy of individuals who participate in the controlled substance therapeutic research program is protected by withholding from all persons not connected with the conduct of the research the names and other identifying characteristics of such individuals. Persons authorized to engage in research under the controlled substance therapeutic research program may not be compelled in any civil, criminal, administrative, legislative, or other proceeding to identify the individuals who are the subjects of research for which the authorization was granted, except to the extent necessary to permit the commission to determine whether the research is being conducted in accordance with the authorization.

(4) The patient qualification review committee may include other disease groups for participation in the controlled substances therapeutic research program after pertinent medical data have been presented by a practitioner to both the committee and the commission, and after approval for such participation has been granted pursuant to pertinent rules promulgated by the United States drug enforcement agency, the food and drug administration, and the national institute on drug abuse. [2013 c 19 § 115; 1979 c 136 § 5.]

69.51.060 Sources and distribution of marijuana. (1) The commission shall obtain marijuana through whatever means it deems most appropriate and consistent with regulations promulgated by the United States food and drug administration, the drug enforcement agency, and the national institute on drug abuse, and pursuant to the provisions of this chapter.

(2) The commission may use marijuana which has been confiscated by local or state law enforcement agencies and has been determined to be free from contamination.

(3) The commission shall distribute the analyzed marijuana to approved practitioners and/or institutions in accordance with rules promulgated by the commission. [2013 c 19 § 116; 1979 c 136 § 6.]

Chapter 69.60 RCW

OVER-THE-COUNTER MEDICATIONS

Sections

69.60.020	Definitions.
69.60.040	Imprint information—Publication—Availability.
69.60.060	Rules.
69.60.080	Exemptions—Application by manufacturer.
69.60.090	Implementation of federal system—Termination of state system.

69.60.020 Definitions. The terms defined in this section shall have the meanings indicated when used in this chapter.

(1) "Commission" means the pharmacy quality assurance commission.

(2) "Over-the-counter medication" means a drug that can be obtained without a prescription and is not restricted to use by prescribing practitioners. For purposes of this chapter, over-the-counter medication does not include vitamins.

(3) "Purveyor" means any corporation, person, or other entity that offers over-the-counter medications for wholesale, retail, or other type of sale.

(4) "Solid dosage form" means capsules or tablets or similar over-the-counter medication products intended for administration and which could be ingested orally. [2013 c 19 § 117; 1989 c 247 § 3.]

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

69.60.040 Imprint information—Publication—Availability. Each manufacturer shall publish and provide to the commission printed material which will identify each current imprint used by the manufacturer and the commission shall be notified of any change. This information shall be provided by the commission to all pharmacies licensed in the state of Washington, poison control centers, and hospital emergency rooms. [2013 c 19 § 118; 1989 c 247 § 4.]

69.60.060 Rules. The commission shall have authority to promulgate rules for the enforcement and implementation of this chapter. [2013 c 19 § 119; 1989 c 247 § 6.]

69.60.080 Exemptions—Application by manufacturer. The commission, upon application of a manufacturer, may exempt an over-the-counter drug from the requirements of chapter 69.60 RCW on the grounds that imprinting is infeasible because of size, texture, or other unique characteristics. [2013 c 19 § 120; 1989 c 247 § 8.]

69.60.090 Implementation of federal system—Termination of state system. Before January 1, 1994, the commission will consult with the state toxicologist to determine whether the federal government has established a legally enforceable system that is substantially equivalent to the requirements of this chapter that govern the imprinting of solid dosage form over-the-counter medication. To be substantially equivalent, the effective dates for implementation of the federal system for imprinting solid dosage form over-the-counter medication must be the same or earlier than the dates of implementation set out in the state system for imprinting solid dosage form over-the-counter medication. If the commission determines that the federal system for imprinting solid dosage form over-the-counter medication is substantially equivalent to the state system for imprinting solid dosage form over-the-counter medication, this chapter will cease to exist on January 1, 1994. If the commission determines that the federal system is substantially equivalent, except that the federal dates for implementation are later than the Washington state dates, this chapter will cease to exist when the federal system is implemented. [2013 c 19 § 121; 1993 c 135 § 3; 1989 c 247 § 9.]

Chapter 69.70 RCW

ACCESS TO PRESCRIPTION DRUGS

Sections

69.70.010	Definitions. <i>(Effective July 1, 2014.)</i>
69.70.020	Donations of prescription drugs and supplies—Distribution. <i>(Effective July 1, 2014.)</i>
69.70.030	Immunity—Eligibility. <i>(Effective July 1, 2014.)</i>
69.70.040	Dispensing of donated prescription drugs and supplies—Priority given to individuals who are uninsured and low-income. <i>(Effective July 1, 2014.)</i>

69.70.050	Acceptance and dispensing of prescription drugs or supplies—Requirements—Recalls—Reselling—Reimbursement, related dispensing fees—Manufacturer registration. <i>(Effective July 1, 2014.)</i>
69.70.060	Rules. <i>(Effective July 1, 2014.)</i>
69.70.070	Liability. <i>(Effective July 1, 2014.)</i>
69.70.080	Availability of access. <i>(Effective July 1, 2014.)</i>
69.70.090	Samples. <i>(Effective July 1, 2014.)</i>
69.70.100	Resale of prescription drugs not authorized. <i>(Effective July 1, 2014.)</i>
69.70.900	Effective date.

69.70.010 Definitions. *(Effective July 1, 2014.)* The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

- (1) "Department" means the department of health.
- (2) "Drug manufacturer" means a facility licensed by the board of pharmacy under chapter 18.64 RCW that engages in the manufacture of drugs or devices.
- (3) "Drug wholesaler" means a facility licensed by the board of pharmacy under chapter 18.64 RCW that buys drugs or devices for resale and distribution to corporations, individuals, or entities other than consumers.
- (4) "Medical facility" means a hospital, pharmacy, nursing home, boarding home, adult family home, or medical clinic where the prescription drugs are under the control of a practitioner.
- (5) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.
- (6) "Pharmacist" means a person licensed by the board of pharmacy under chapter 18.64 RCW to practice pharmacy.
- (7) "Pharmacy" means a facility licensed by the board of pharmacy under chapter 18.64 RCW in which the practice of pharmacy is conducted.
- (8) "Practitioner" has the same meaning as in RCW 69.41.010.
- (9) "Prescribing practitioner" means a person authorized to issue orders or prescriptions for legend drugs as listed in RCW 69.41.030.
- (10) "Prescription drugs" has the same meaning as "legend drugs" as defined in RCW 69.41.010. The term includes cancer drugs and antirejection drugs. The term does not include controlled substances.
- (11) "Supplies" means the supplies necessary to administer prescription drugs that are donated under the prescription drug redistribution program. [2013 c 260 § 1.]

69.70.020 Donations of prescription drugs and supplies—Distribution. *(Effective July 1, 2014.)* Any practitioner, pharmacist, medical facility, drug manufacturer, or drug wholesaler may donate prescription drugs and supplies to a pharmacy for redistribution without compensation or the expectation of compensation to individuals who meet the prioritization criteria established in RCW 69.70.040. Donations of prescription drugs and supplies may be made on the premises of a pharmacy that elects to participate in the provisions of this chapter. A pharmacy that receives prescription drugs or supplies may distribute the prescription drugs or supplies to another pharmacy, pharmacist, or prescribing practitioner for use pursuant to the program. [2013 c 260 § 2.]

69.70.030 Immunity—Eligibility. (*Effective July 1, 2014.*) To be eligible for the immunity in RCW 69.70.070, a person distributing donated prescription drugs under this chapter must:

- (1) Meet all requirements in RCW 69.70.050 and any applicable rules related to the return or exchange of prescription drugs or supplies adopted by the board of pharmacy;
- (2) Maintain records of any prescription drugs and supplies donated to the pharmacy and subsequently dispensed by the pharmacy; and
- (3) Identify itself to the public as participating in this chapter. [2013 c 260 § 3.]

69.70.040 Dispensing of donated prescription drugs and supplies—Priority given to individuals who are uninsured and low-income. (*Effective July 1, 2014.*) Pharmacies, pharmacists, and prescribing practitioners that elect to dispense donated prescription drugs and supplies under this chapter shall give priority to individuals who are uninsured and at or below two hundred percent of the federal poverty level. If an uninsured and low-income individual has not been identified as in need of available prescription drugs and supplies, those prescription drugs and supplies may be dispensed to other individuals expressing need. [2013 c 260 § 4.]

69.70.050 Acceptance and dispensing of prescription drugs or supplies—Requirements—Recalls—Reselling—Reimbursement, related dispensing fees—Manufacturer registration. (*Effective July 1, 2014.*) (1) Prescription drugs or supplies may be accepted and dispensed under this chapter if all of the following conditions are met:

- (a) The prescription drug is in:
 - (i) Its original sealed and tamper evident packaging; or
 - (ii) An opened package if it contains single unit doses that remain intact;
- (b) The prescription drug bears an expiration date that is more than six months after the date the prescription drug was donated;
- (c) The prescription drug or supplies are inspected before the prescription drug or supplies are dispensed by a pharmacist employed by or under contract with the pharmacy, and the pharmacist determines that the prescription drug or supplies are not adulterated or misbranded;
- (d) The prescription drug or supplies are prescribed by a practitioner for use by an eligible individual and are dispensed by a pharmacist; and
- (e) Any other safety precautions established by the department have been satisfied.

(2)(a) If a person who donates prescription drugs or supplies to a pharmacy under this chapter receives a notice that the donated prescription drugs or supplies have been recalled, the person shall notify the pharmacy of the recall.

(b) If a pharmacy that receives and distributes donated prescription drugs to another pharmacy, pharmacist, or prescribing practitioner under this chapter receives notice that the donated prescription drugs or supplies have been recalled, the pharmacy shall notify the other pharmacy, pharmacist, or prescribing practitioner of the recall.

(c) If a person collecting or distributing donated prescription drugs or supplies under this chapter receives a recall

notice from the drug manufacturer or the federal food and drug administration for donated prescription drugs or supplies, the person shall immediately remove all recalled medications from stock and comply with the instructions in the recall notice.

(3) Prescription drugs and supplies donated under this chapter may not be resold.

(4) Prescription drugs and supplies dispensed under this chapter shall not be eligible for reimbursement of the prescription drug or any related dispensing fees by any public or private health care payer.

(5) A prescription drug that can only be dispensed to a patient registered with the manufacturer of that drug, in accordance with the requirements established by the federal food and drug administration, may not be accepted or distributed under the program. [2013 c 260 § 5.]

69.70.060 Rules. (*Effective July 1, 2014.*) (1) The department must adopt rules establishing forms and procedures to: Reasonably verify eligibility and prioritize patients seeking to receive donated prescription drugs and supplies; and inform a person receiving prescription drugs donated under this program that the prescription drugs have been donated for the purposes of redistribution. A patient's eligibility may be determined by a form signed by the patient certifying that the patient is uninsured and at or below two hundred percent of the federal poverty level.

(2) The department may establish any other rules necessary to implement this chapter. [2013 c 260 § 6.]

69.70.070 Liability. (*Effective July 1, 2014.*) (1) A drug manufacturer acting in good faith may not, in the absence of a finding of gross negligence, be subject to criminal prosecution or liability in tort or other civil action, for injury, death, or loss to person or property for matters relating to the donation, acceptance, or dispensing of a drug manufactured by the drug manufacturer that is donated by any person under the program including, but not limited to, liability for failure to transfer or communicate product or consumer information or the expiration date of the donated prescription drug.

(2) Any person or entity, other than a drug manufacturer subject to subsection (1) of this section, acting in good faith in donating, accepting, or distributing prescription drugs under this chapter is immune from criminal prosecution, professional discipline, or civil liability of any kind for any injury, death, or loss to any person or property relating to such activities other than acts or omissions constituting gross negligence or willful or wanton misconduct.

(3) The immunity provided under subsection (1) of this section does not absolve a drug manufacturer of a criminal or civil liability that would have existed but for the donation, nor does such donation increase the liability of the drug manufacturer in such an action. [2013 c 260 § 7.]

69.70.080 Availability of access. (*Effective July 1, 2014.*) Access to prescription drugs and supplies under this chapter is subject to availability. Nothing in this chapter establishes an entitlement to receive prescription drugs and supplies through the program. [2013 c 260 § 8.]

69.70.090 Samples. (*Effective July 1, 2014.*) Nothing in this chapter restricts the use of samples by a practitioner during the course of the practitioner's duties at a medical facility or pharmacy. [2013 c 260 § 9.]

69.70.100 Resale of prescription drugs not authorized. (*Effective July 1, 2014.*) Nothing in this chapter authorizes the resale of prescription drugs by any person. [2013 c 260 § 10.]

69.70.900 Effective date. This act takes effect July 1, 2014. [2013 c 260 § 12.]

Title 70

PUBLIC HEALTH AND SAFETY

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Chapter 70.02 RCW

MEDICAL RECORDS—HEALTH CARE INFORMATION ACCESS AND DISCLOSURE

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- 70.02.350 Department of social and health services—Release of information to protect the public. (*Effective July 1, 2014.*)
- 70.02.900 Conflicting laws. (*Effective July 1, 2014.*)

70.02.010 Definitions. (*Effective July 1, 2014.*) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Admission" has the same meaning as in RCW 71.05.020.

(2) "Audit" means an assessment, evaluation, determination, or investigation of a health care provider by a person not employed by or affiliated with the provider to determine compliance with:

(a) Statutory, regulatory, fiscal, medical, or scientific standards;

(b) A private or public program of payments to a health care provider; or

(c) Requirements for licensing, accreditation, or certification.

(3) "Commitment" has the same meaning as in RCW 71.05.020.

(4) "Custody" has the same meaning as in RCW 71.05.020.

(5) "Deidentified" means health information that does not identify an individual and with respect to which there is no reasonable basis to believe that the information can be used to identify an individual.

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

(7) "Designated mental health professional" has the same meaning as in RCW 71.05.020 or 71.34.020, as applicable.

(8) "Detention" or "detain" has the same meaning as in RCW 71.05.020.

(9) "Directory information" means information disclosing the presence, and for the purpose of identification, the name, location within a health care facility, and the general health condition of a particular patient who is a patient in a health care facility or who is currently receiving emergency health care in a health care facility.

(10) "Discharge" has the same meaning as in RCW 71.05.020.

(11) "Evaluation and treatment facility" has the same meaning as in RCW 71.05.020 or 71.34.020, as applicable.

(12) "Federal, state, or local law enforcement authorities" means an officer of any agency or authority in the United States, a state, a tribe, a territory, or a political subdivision of a state, a tribe, or a territory who is empowered by law to: (a) Investigate or conduct an official inquiry into a potential criminal violation of law; or (b) prosecute or otherwise conduct a criminal proceeding arising from an alleged violation of law.

(13) "General health condition" means the patient's health status described in terms of "critical," "poor," "fair," "good," "excellent," or terms denoting similar conditions.

(14) "Health care" means any care, service, or procedure provided by a health care provider:

(a) To diagnose, treat, or maintain a patient's physical or mental condition; or

(b) That affects the structure or any function of the human body.

(15) "Health care facility" means a hospital, clinic, nursing home, laboratory, office, or similar place where a health care provider provides health care to patients.

(16) "Health care information" means any information, whether oral or recorded in any form or medium, that identifies or can readily be associated with the identity of a patient and directly relates to the patient's health care, including a patient's deoxyribonucleic acid and identified sequence of chemical base pairs. The term includes any required accounting of disclosures of health care information.

(17) "Health care operations" means any of the following activities of a health care provider, health care facility, or third-party payor to the extent that the activities are related to functions that make an entity a health care provider, a health care facility, or a third-party payor:

(a) Conducting: Quality assessment and improvement activities, including outcomes evaluation and development of clinical guidelines, if the obtaining of generalizable knowledge is not the primary purpose of any studies resulting from such activities; population-based activities relating to improving health or reducing health care costs, protocol development, case management and care coordination, contacting of health care providers and patients with information about treatment alternatives; and related functions that do not include treatment;

(b) Reviewing the competence or qualifications of health care professionals, evaluating practitioner and provider performance and third-party payor performance, conducting training programs in which students, trainees, or practitioners in areas of health care learn under supervision to practice or improve their skills as health care providers, training of non-health care professionals, accreditation, certification, licensing, or credentialing activities;

(c) Underwriting, premium rating, and other activities relating to the creation, renewal, or replacement of a contract of health insurance or health benefits, and ceding, securing, or placing a contract for reinsurance of risk relating to claims for health care, including stop-loss insurance and excess of loss insurance, if any applicable legal requirements are met;

(d) Conducting or arranging for medical review, legal services, and auditing functions, including fraud and abuse detection and compliance programs;

(e) Business planning and development, such as conducting cost-management and planning-related analyses related to managing and operating the health care facility or third-party payor, including formulary development and administration, development, or improvement of methods of payment or coverage policies; and

(f) Business management and general administrative activities of the health care facility, health care provider, or third-party payor including, but not limited to:

(i) Management activities relating to implementation of and compliance with the requirements of this chapter;

(ii) Customer service, including the provision of data analyses for policy holders, plan sponsors, or other customers, provided that health care information is not disclosed to such policy holder, plan sponsor, or customer;

(iii) Resolution of internal grievances;

(iv) The sale, transfer, merger, or consolidation of all or part of a health care provider, health care facility, or third-party payor with another health care provider, health care facility, or third-party payor or an entity that following such activity will become a health care provider, health care facility, or third-party payor, and due diligence related to such activity; and

(v) Consistent with applicable legal requirements, creating deidentified health care information or a limited dataset for the benefit of the health care provider, health care facility, or third-party payor.

(18) "Health care provider" means a person who is licensed, certified, registered, or otherwise authorized by the law of this state to provide health care in the ordinary course of business or practice of a profession.

(19) "Human immunodeficiency virus" or "HIV" has the same meaning as in RCW 70.24.017.

(20) "Imminent" has the same meaning as in RCW 71.05.020.

(21) "Information and records related to mental health services" means a type of health care information that relates to all information and records, including mental health treatment records, compiled, obtained, or maintained in the course of providing services by a mental health service agency, as defined in this section. This may include documents of legal proceedings under chapter 71.05, 71.34, or 10.77 RCW, or somatic health care information. For health care information maintained by a hospital as defined in RCW 70.41.020 or a health care facility or health care provider that participates with a hospital in an organized health care arrangement defined under federal law, "information and records related to mental health services" is limited to information and records of services provided by a mental health professional or information and records of services created by a hospital-operated community mental health program as defined in RCW 71.24.025(6).

(22) "Information and records related to sexually transmitted diseases" means a type of health care information that relates to the identity of any person upon whom an HIV antibody test or other sexually transmitted infection test is performed, the results of such tests, and any information relating to diagnosis of or treatment for any confirmed sexually transmitted infections.

(23) "Institutional review board" means any board, committee, or other group formally designated by an institution,

or authorized under federal or state law, to review, approve the initiation of, or conduct periodic review of research programs to assure the protection of the rights and welfare of human research subjects.

(24) "Legal counsel" has the same meaning as in RCW 71.05.020.

(25) "Local public health officer" has the same meaning as in RCW 70.24.017.

(26) "Maintain," as related to health care information, means to hold, possess, preserve, retain, store, or control that information.

(27) "Mental health professional" has the same meaning as in RCW 71.05.020.

(28) "Mental health service agency" means a public or private agency that provides services to persons with mental disorders as defined under RCW 71.05.020 or 71.34.020 and receives funding from public sources. This includes evaluation and treatment facilities as defined in RCW 71.34.020, community mental health service delivery systems, or community mental health programs, as defined in RCW 71.24.025, and facilities conducting competency evaluations and restoration under chapter 10.77 RCW.

(29) "Mental health treatment records" include registration records, as defined in RCW 71.05.020, and all other records concerning persons who are receiving or who at any time have received services for mental illness, which are maintained by the department, by regional support networks and their staff, and by treatment facilities. "Mental health treatment records" include mental health information contained in a medical bill including, but not limited to, mental health drugs, a mental health diagnosis, provider name, and dates of service stemming from a medical service. "Mental health treatment records" do not include notes or records maintained for personal use by a person providing treatment services for the department, regional support networks, or a treatment facility if the notes or records are not available to others.

(30) "Minor" has the same meaning as in RCW 71.34.020.

(31) "Parent" has the same meaning as in RCW 71.34.020.

(32) "Patient" means an individual who receives or has received health care. The term includes a deceased individual who has received health care.

(33) "Payment" means:

(a) The activities undertaken by:

(i) A third-party payor to obtain premiums or to determine or fulfill its responsibility for coverage and provision of benefits by the third-party payor; or

(ii) A health care provider, health care facility, or third-party payor, to obtain or provide reimbursement for the provision of health care; and

(b) The activities in (a) of this subsection that relate to the patient to whom health care is provided and that include, but are not limited to:

(i) Determinations of eligibility or coverage, including coordination of benefits or the determination of cost-sharing amounts, and adjudication or subrogation of health benefit claims;

(ii) Risk adjusting amounts due based on enrollee health status and demographic characteristics;

(iii) Billing, claims management, collection activities, obtaining payment under a contract for reinsurance, including stop-loss insurance and excess of loss insurance, and related health care data processing;

(iv) Review of health care services with respect to medical necessity, coverage under a health plan, appropriateness of care, or justification of charges;

(v) Utilization review activities, including precertification and preauthorization of services, and concurrent and retrospective review of services; and

(vi) Disclosure to consumer reporting agencies of any of the following health care information relating to collection of premiums or reimbursement:

(A) Name and address;

(B) Date of birth;

(C) Social security number;

(D) Payment history;

(E) Account number; and

(F) Name and address of the health care provider, health care facility, and/or third-party payor.

(34) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

(35) "Professional person" has the same meaning as in RCW 71.05.020.

(36) "Psychiatric advanced registered nurse practitioner" has the same meaning as in RCW 71.05.020.

(37) "Reasonable fee" means the charges for duplicating or searching the record, but shall not exceed sixty-five cents per page for the first thirty pages and fifty cents per page for all other pages. In addition, a clerical fee for searching and handling may be charged not to exceed fifteen dollars. These amounts shall be adjusted biennially in accordance with changes in the consumer price index, all consumers, for Seattle-Tacoma metropolitan statistical area as determined by the secretary of health. However, where editing of records by a health care provider is required by statute and is done by the provider personally, the fee may be the usual and customary charge for a basic office visit.

(38) "Release" has the same meaning as in RCW 71.05.020.

(39) "Resource management services" has the same meaning as in RCW 71.05.020.

(40) "Serious violent offense" has the same meaning as in RCW 71.05.020.

(41) "Sexually transmitted infection" or "sexually transmitted disease" has the same meaning as "sexually transmitted disease" in RCW 70.24.017.

(42) "Test for a sexually transmitted disease" has the same meaning as in RCW 70.24.017.

(43) "Third-party payor" means an insurer regulated under Title 48 RCW authorized to transact business in this state or other jurisdiction, including a health care service contractor, and health maintenance organization; or an employee welfare benefit plan, excluding fitness or wellness plans; or a state or federal health benefit program.

(44) "Treatment" means the provision, coordination, or management of health care and related services by one or more health care providers or health care facilities, including the coordination or management of health care by a health

care provider or health care facility with a third party; consultation between health care providers or health care facilities relating to a patient; or the referral of a patient for health care from one health care provider or health care facility to another. [2013 c 200 § 1; 2006 c 235 § 2; 2005 c 468 § 1; 2002 c 318 § 1; 1993 c 448 § 1; 1991 c 335 § 102.]

Reviser's note: For charges or fees under subsection (37) of this section as adjusted by the secretary of health, see chapter 246-08 WAC.

Effective date—2013 c 200: "Except for section 5 of this act, this act takes effect July 1, 2014." [2013 c 200 § 35.]

Purpose—Effective date—2006 c 235: See notes following RCW 70.02.050.

Additional notes found at www.leg.wa.gov

70.02.020 Disclosure by health care provider. (Effective July 1, 2014.) (1) Except as authorized elsewhere in this chapter, a health care provider, an individual who assists a health care provider in the delivery of health care, or an agent and employee of a health care provider may not disclose health care information about a patient to any other person without the patient's written authorization. A disclosure made under a patient's written authorization must conform to the authorization.

(2) A patient has a right to receive an accounting of all disclosures of mental health treatment records except disclosures made under RCW 71.05.425.

(3) A patient has a right to receive an accounting of disclosures of health care information, except for mental health treatment records which are addressed in subsection (2) of this section, made by a health care provider or a health care facility in the six years before the date on which the accounting is requested, except for disclosures:

- (a) To carry out treatment, payment, and health care operations;
- (b) To the patient of health care information about him or her;
- (c) Incident to a use or disclosure that is otherwise permitted or required;
- (d) Pursuant to an authorization where the patient authorized the disclosure of health care information about himself or herself;
- (e) Of directory information;
- (f) To persons involved in the patient's care;
- (g) For national security or intelligence purposes if an accounting of disclosures is not permitted by law;
- (h) To correctional institutions or law enforcement officials if an accounting of disclosures is not permitted by law; and

(i) Of a limited data set that excludes direct identifiers of the patient or of relatives, employers, or household members of the patient. [2013 c 200 § 2; 2005 c 468 § 2; 1993 c 448 § 2; 1991 c 335 § 201.]

Effective date—2013 c 200: See note following RCW 70.02.010.

Additional notes found at www.leg.wa.gov

70.02.050 Disclosure without patient's authorization—Need-to-know basis. (Effective July 1, 2014.) (1) A health care provider or health care facility may disclose health care information, except for information and records related to sexually transmitted diseases which are addressed in RCW 70.02.220, about a patient without the patient's

authorization to the extent a recipient needs to know the information, if the disclosure is:

(a) To a person who the provider or facility reasonably believes is providing health care to the patient;

(b) To any other person who requires health care information for health care education, or to provide planning, quality assurance, peer review, or administrative, legal, financial, actuarial services to, or other health care operations for or on behalf of the health care provider or health care facility; or for assisting the health care provider or health care facility in the delivery of health care and the health care provider or health care facility reasonably believes that the person:

(i) Will not use or disclose the health care information for any other purpose; and

(ii) Will take appropriate steps to protect the health care information;

(c) To any person if the health care provider or health care facility reasonably believes that disclosure will avoid or minimize an imminent danger to the health or safety of the patient or any other individual, however there is no obligation under this chapter on the part of the provider or facility to so disclose. The fact of admission to a provider for mental health services and all information and records compiled, obtained, or maintained in the course of providing mental health services to either voluntary or involuntary recipients of services at public or private agencies is not subject to disclosure unless disclosure is permitted in RCW 70.02.230;

(d) To an official of a penal or other custodial institution in which the patient is detained; or

(e) For payment, including information necessary for a recipient to make a claim, or for a claim to be made on behalf of a recipient for aid, insurance, or medical assistance to which he or she may be entitled.

(2) A health care provider shall disclose health care information, except for information and records related to sexually transmitted diseases, unless otherwise authorized in RCW 70.02.220, about a patient without the patient's authorization if the disclosure is:

(a) To federal, state, or local public health authorities, to the extent the health care provider is required by law to report health care information; when needed to determine compliance with state or federal licensure, certification or registration rules or laws, or to investigate unprofessional conduct or ability to practice with reasonable skill and safety under chapter 18.130 RCW. Any health care information obtained under this subsection is exempt from public inspection and copying pursuant to chapter 42.56 RCW; or

(b) When needed to protect the public health. [2013 c 200 § 3; 2007 c 156 § 12; 2006 c 235 § 3; 2005 c 468 § 4; 1998 c 158 § 1; 1993 c 448 § 4; 1991 c 335 § 204.]

Effective date—2013 c 200: See note following RCW 70.02.010.

Purpose—2006 c 235: "The purpose of this act is to aid law enforcement in combating crime through the rapid identification of all persons who require medical treatment as a result of a criminal act and to assist in the rapid identification of human remains." [2006 c 235 § 1.]

Effective date—2006 c 235: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 27, 2006]." [2006 c 235 § 5.]

Additional notes found at www.leg.wa.gov

70.02.200 Disclosure without patient's authorization—Permitted and mandatory disclosures. (*Effective July 1, 2014.*) (1) In addition to the disclosures authorized by RCW 70.02.050 and 70.02.210, a health care provider or health care facility may disclose health care information, except for information and records related to sexually transmitted diseases and information related to mental health services which are addressed by RCW 70.02.220 through 70.02.260, about a patient without the patient's authorization, to:

(a) Any other health care provider or health care facility reasonably believed to have previously provided health care to the patient, to the extent necessary to provide health care to the patient, unless the patient has instructed the health care provider or health care facility in writing not to make the disclosure;

(b) Immediate family members of the patient, including a patient's state registered domestic partner, or any other individual with whom the patient is known to have a close personal relationship, if made in accordance with good medical or other professional practice, unless the patient has instructed the health care provider or health care facility in writing not to make the disclosure;

(c) A health care provider or health care facility who is the successor in interest to the health care provider or health care facility maintaining the health care information;

(d) A person who obtains information for purposes of an audit, if that person agrees in writing to:

(i) Remove or destroy, at the earliest opportunity consistent with the purpose of the audit, information that would enable the patient to be identified; and

(ii) Not to disclose the information further, except to accomplish the audit or report unlawful or improper conduct involving fraud in payment for health care by a health care provider or patient, or other unlawful conduct by the health care provider;

(e) Provide directory information, unless the patient has instructed the health care provider or health care facility not to make the disclosure;

(f) Fire, police, sheriff, or other public authority, that brought, or caused to be brought, the patient to the health care facility or health care provider if the disclosure is limited to the patient's name, residence, sex, age, occupation, condition, diagnosis, estimated or actual discharge date, or extent and location of injuries as determined by a physician, and whether the patient was conscious when admitted;

(g) Federal, state, or local law enforcement authorities and the health care provider, health care facility, or third-party payor believes in good faith that the health care information disclosed constitutes evidence of criminal conduct that occurred on the premises of the health care provider, health care facility, or third-party payor; and

(h) Another health care provider, health care facility, or third-party payor for the health care operations of the health care provider, health care facility, or third-party payor that receives the information, if each entity has or had a relationship with the patient who is the subject of the health care information being requested, the health care information pertains to such relationship, and the disclosure is for the purposes described in RCW 70.02.010(17) (a) and (b).

(2) In addition to the disclosures required by RCW 70.02.050 and 70.02.210, a health care provider shall disclose health care information, except for information related to sexually transmitted diseases and information related to mental health services which are addressed by RCW 70.02.220 through 70.02.260, about a patient without the patient's authorization if the disclosure is:

(a) To federal, state, or local law enforcement authorities to the extent the health care provider is required by law;

(b) To federal, state, or local law enforcement authorities, upon receipt of a written or oral request made to a nursing supervisor, administrator, or designated privacy official, in a case in which the patient is being treated or has been treated for a bullet wound, gunshot wound, powder burn, or other injury arising from or caused by the discharge of a firearm, or an injury caused by a knife, an ice pick, or any other sharp or pointed instrument which federal, state, or local law enforcement authorities reasonably believe to have been intentionally inflicted upon a person, or a blunt force injury that federal, state, or local law enforcement authorities reasonably believe resulted from a criminal act, the following information, if known:

(i) The name of the patient;

(ii) The patient's residence;

(iii) The patient's sex;

(iv) The patient's age;

(v) The patient's condition;

(vi) The patient's diagnosis, or extent and location of injuries as determined by a health care provider;

(vii) Whether the patient was conscious when admitted;

(viii) The name of the health care provider making the determination in (b)(v), (vi), and (vii) of this subsection;

(ix) Whether the patient has been transferred to another facility; and

(x) The patient's discharge time and date;

(c) Pursuant to compulsory process in accordance with RCW 70.02.060. [2013 c 200 § 4.]

Effective date—2013 c 200: See note following RCW 70.02.010.

70.02.210 Disclosure without patient's authorization—Research. (1) A health care provider or health care facility may disclose health care information about a patient without the patient's authorization to the extent a recipient needs to know the information, if the disclosure is for use in a research project that an institutional review board has determined:

(a) Is of sufficient importance to outweigh the intrusion into the privacy of the patient that would result from the disclosure;

(b) Is impracticable without the use or disclosure of the health care information in individually identifiable form;

(c) Contains reasonable safeguards to protect the information from redisclosure;

(d) Contains reasonable safeguards to protect against identifying, directly or indirectly, any patient in any report of the research project; and

(e) Contains procedures to remove or destroy at the earliest opportunity, consistent with the purposes of the project, information that would enable the patient to be identified, unless an institutional review board authorizes retention of

identifying information for purposes of another research project.

(2) In addition to the disclosures required by RCW 70.02.050 and 70.02.200, a health care provider or health care facility shall disclose health care information about a patient without the patient's authorization if:

(a) The disclosure is to county coroners and medical examiners for the investigations of deaths;

(b) The disclosure is to a procurement organization or person to whom a body part passes for the purpose of examination necessary to assure the medical suitability of the body part; or

(c) The disclosure is to a person subject to the jurisdiction of the federal food and drug administration in regards to a food and drug administration-regulated product or activity for which that person has responsibility for quality, safety, or effectiveness of activities. [2013 c 200 § 5.]

Effective date—2013 c 200 § 5: "Section 5 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 10, 2013]." [2013 c 200 § 36.]

70.02.220 Sexually transmitted diseases—Permitted and mandatory disclosures. (Effective July 1, 2014.) (1) No person may disclose or be compelled to disclose the identity of any person who has investigated, considered, or requested a test or treatment for a sexually transmitted disease, except as authorized by this section, RCW 70.02.210, or chapter 70.24 RCW.

(2) No person may disclose or be compelled to disclose information and records related to sexually transmitted diseases, except as authorized by this section, RCW 70.02.210, or chapter 70.24 RCW. A person may disclose information related to sexually transmitted diseases about a patient without the patient's authorization, to the extent a recipient needs to know the information, if the disclosure is to:

(a) The subject of the test or the subject's legal representative for health care decisions in accordance with RCW 7.70.065, with the exception of such a representative of a minor fourteen years of age or over and otherwise competent;

(b) The state public health officer as defined in RCW 70.24.017, a local public health officer, or the centers for disease control of the United States public health service in accordance with reporting requirements for a diagnosed case of a sexually transmitted disease;

(c) A health facility or health care provider that procures, processes, distributes, or uses: (i) A human body part, tissue, or blood from a deceased person with respect to medical information regarding that person; (ii) semen, including that was provided prior to March 23, 1988, for the purpose of artificial insemination; or (iii) blood specimens;

(d) Any state or local public health officer conducting an investigation pursuant to RCW 70.24.024, so long as the record was obtained by means of court-ordered HIV testing pursuant to RCW 70.24.340 or 70.24.024;

(e) A person allowed access to the record by a court order granted after application showing good cause therefor. In assessing good cause, the court shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services. Upon the granting of the order, the court, in

determining the extent to which any disclosure of all or any part of the record of any such test is necessary, shall impose appropriate safeguards against unauthorized disclosure. An order authorizing disclosure must: (i) Limit disclosure to those parts of the patient's record deemed essential to fulfill the objective for which the order was granted; (ii) limit disclosure to those persons whose need for information is the basis for the order; and (iii) include any other appropriate measures to keep disclosure to a minimum for the protection of the patient, the physician-patient relationship, and the treatment services;

(f) Persons who, because of their behavioral interaction with the infected individual, have been placed at risk for acquisition of a sexually transmitted disease, as provided in RCW 70.24.022, if the health officer or authorized representative believes that the exposed person was unaware that a risk of disease exposure existed and that the disclosure of the identity of the infected person is necessary;

(g) A law enforcement officer, firefighter, health care provider, health care facility staff person, department of correction's staff person, jail staff person, or other persons as defined by the board of health in rule pursuant to RCW 70.24.340(4), who has requested a test of a person whose bodily fluids he or she has been substantially exposed to, pursuant to RCW 70.24.340(4), if a state or local public health officer performs the test;

(h) Claims management personnel employed by or associated with an insurer, health care service contractor, health maintenance organization, self-funded health plan, state administered health care claims payer, or any other payer of health care claims where such disclosure is to be used solely for the prompt and accurate evaluation and payment of medical or related claims. Information released under this subsection must be confidential and may not be released or available to persons who are not involved in handling or determining medical claims payment; and

(i) A department of social and health services worker, a child placing agency worker, or a guardian ad litem who is responsible for making or reviewing placement or case-planning decisions or recommendations to the court regarding a child, who is less than fourteen years of age, has a sexually transmitted disease, and is in the custody of the department of social and health services or a licensed child placing agency. This information may also be received by a person responsible for providing residential care for such a child when the department of social and health services or a licensed child placing agency determines that it is necessary for the provision of child care services.

(3) No person to whom the results of a test for a sexually transmitted disease have been disclosed pursuant to subsection (2) of this section may disclose the test results to another person except as authorized by that subsection.

(4) The release of sexually transmitted disease information regarding an offender or detained person, except as provided in subsection (2)(d) of this section, is governed as follows:

(a) The sexually transmitted disease status of a department of corrections offender who has had a mandatory test conducted pursuant to RCW 70.24.340(1), 70.24.360, or 70.24.370 must be made available by department of corrections health care providers and local public health officers to

the department of corrections health care administrator or infection control coordinator of the facility in which the offender is housed. The information made available to the health care administrator or the infection control coordinator under this subsection (4)(a) may be used only for disease prevention or control and for protection of the safety and security of the staff, offenders, and the public. The information may be submitted to transporting officers and receiving facilities, including facilities that are not under the department of corrections' jurisdiction according to the provisions of (d) and (e) of this subsection.

(b) The sexually transmitted disease status of a person detained in a jail who has had a mandatory test conducted pursuant to RCW 70.24.340(1), 70.24.360, or 70.24.370 must be made available by the local public health officer to a jail health care administrator or infection control coordinator. The information made available to a health care administrator under this subsection (4)(b) may be used only for disease prevention or control and for protection of the safety and security of the staff, offenders, detainees, and the public. The information may be submitted to transporting officers and receiving facilities according to the provisions of (d) and (e) of this subsection.

(c) Information regarding the sexually transmitted disease status of an offender or detained person is confidential and may be disclosed by a correctional health care administrator or infection control coordinator or local jail health care administrator or infection control coordinator only as necessary for disease prevention or control and for protection of the safety and security of the staff, offenders, and the public. Unauthorized disclosure of this information to any person may result in disciplinary action, in addition to the penalties prescribed in RCW 70.24.080 or any other penalties as may be prescribed by law.

(d) Notwithstanding the limitations on disclosure contained in (a), (b), and (c) of this subsection, whenever any member of a jail staff or department of corrections staff has been substantially exposed to the bodily fluids of an offender or detained person, then the results of any tests conducted pursuant to RCW 70.24.340(1), 70.24.360, or 70.24.370, must be immediately disclosed to the staff person in accordance with the Washington Administrative Code rules governing employees' occupational exposure to bloodborne pathogens. Disclosure must be accompanied by appropriate counseling for the staff member, including information regarding follow-up testing and treatment. Disclosure must also include notice that subsequent disclosure of the information in violation of this chapter or use of the information to harass or discriminate against the offender or detainee may result in disciplinary action, in addition to the penalties prescribed in RCW 70.24.080, and imposition of other penalties prescribed by law.

(e) The staff member must also be informed whether the offender or detained person had any other communicable disease, as defined in RCW 72.09.251(3), when the staff person was substantially exposed to the offender's or detainee's bodily fluids.

(f) The test results of voluntary and anonymous HIV testing or HIV-related condition, as defined in RCW 70.24.017, may not be disclosed to a staff person except as provided in this section and RCW 70.02.050(1)(e) and

70.24.340(4). A health care administrator or infection control coordinator may provide the staff member with information about how to obtain the offender's or detainee's test results under this section and RCW 70.02.050(1)(e) and 70.24.340(4).

(5) The requirements of this section do not apply to the customary methods utilized for the exchange of medical information among health care providers in order to provide health care services to the patient, nor do they apply within health care facilities where there is a need for access to confidential medical information to fulfill professional duties.

(6) Upon request of the victim, disclosure of test results under this section to victims of sexual offenses under chapter 9A.44 RCW must be made if the result is negative or positive. The county prosecuting attorney shall notify the victim of the right to such disclosure. The disclosure must be accompanied by appropriate counseling, including information regarding follow-up testing.

(7) A person, including a health care facility or health care provider, shall disclose the identity of any person who has investigated, considered, or requested a test or treatment for a sexually transmitted disease and information and records related to sexually transmitted diseases to federal, state, or local public health authorities, to the extent the health care provider is required by law to report health care information; when needed to determine compliance with state or federal certification or registration rules or laws; or when needed to protect the public health. Any health care information obtained under this subsection is exempt from public inspection and copying pursuant to chapter 42.56 RCW. [2013 c 200 § 6.]

Effective date—2013 c 200: See note following RCW 70.02.010.

70.02.230 Mental health services, confidentiality of records—Permitted disclosures. (Effective July 1, 2014.)

(1) Except as provided in this section, RCW 70.02.050, 71.05.445, 70.96A.150, 74.09.295, 70.02.210, 70.02.240, 70.02.250, and 70.02.260, or pursuant to a valid authorization under RCW 70.02.030, the fact of admission to a provider for mental health services and all information and records compiled, obtained, or maintained in the course of providing mental health services to either voluntary or involuntary recipients of services at public or private agencies must be confidential.

(2) Information and records related to mental health services, other than those obtained through treatment under chapter 71.34 RCW, may be disclosed only:

(a) In communications between qualified professional persons to meet the requirements of chapter 71.05 RCW, in the provision of services or appropriate referrals, or in the course of guardianship proceedings if provided to a professional person:

- (i) Employed by the facility;
- (ii) Who has medical responsibility for the patient's care;
- (iii) Who is a designated mental health professional;
- (iv) Who is providing services under chapter 71.24 RCW;
- (v) Who is employed by a state or local correctional facility where the person is confined or supervised; or
- (vi) Who is providing evaluation, treatment, or follow-up services under chapter 10.77 RCW;

(b) When the communications regard the special needs of a patient and the necessary circumstances giving rise to such needs and the disclosure is made by a facility providing services to the operator of a facility in which the patient resides or will reside;

(c)(i) When the person receiving services, or his or her guardian, designates persons to whom information or records may be released, or if the person is a minor, when his or her parents make such a designation;

(ii) A public or private agency shall release to a person's next of kin, attorney, personal representative, guardian, or conservator, if any:

(A) The information that the person is presently a patient in the facility or that the person is seriously physically ill;

(B) A statement evaluating the mental and physical condition of the patient, and a statement of the probable duration of the patient's confinement, if such information is requested by the next of kin, attorney, personal representative, guardian, or conservator; and

(iii) Other information requested by the next of kin or attorney as may be necessary to decide whether or not proceedings should be instituted to appoint a guardian or conservator;

(d)(i) To the courts as necessary to the administration of chapter 71.05 RCW or to a court ordering an evaluation or treatment under chapter 10.77 RCW solely for the purpose of preventing the entry of any evaluation or treatment order that is inconsistent with any order entered under chapter 71.05 RCW.

(ii) To a court or its designee in which a motion under chapter 10.77 RCW has been made for involuntary medication of a defendant for the purpose of competency restoration.

(iii) Disclosure under this subsection is mandatory for the purpose of the federal health insurance portability and accountability act;

(e)(i) When a mental health professional is requested by a representative of a law enforcement or corrections agency, including a police officer, sheriff, community corrections officer, a municipal attorney, or prosecuting attorney to undertake an investigation or provide treatment under RCW 71.05.150, 10.31.110, or 71.05.153, the mental health professional shall, if requested to do so, advise the representative in writing of the results of the investigation including a statement of reasons for the decision to detain or release the person investigated. The written report must be submitted within seventy-two hours of the completion of the investigation or the request from the law enforcement or corrections representative, whichever occurs later.

(ii) Disclosure under this subsection is mandatory for the purposes of the federal health insurance portability and accountability act;

(f) To the attorney of the detained person;

(g) To the prosecuting attorney as necessary to carry out the responsibilities of the office under RCW 71.05.330(2), 71.05.340(1)(b), and 71.05.335. The prosecutor must be provided access to records regarding the committed person's treatment and prognosis, medication, behavior problems, and other records relevant to the issue of whether treatment less restrictive than inpatient treatment is in the best interest of the committed person or others. Information must be disclosed

only after giving notice to the committed person and the person's counsel;

(h)(i) To appropriate law enforcement agencies and to a person, when the identity of the person is known to the public or private agency, whose health and safety has been threatened, or who is known to have been repeatedly harassed, by the patient. The person may designate a representative to receive the disclosure. The disclosure must be made by the professional person in charge of the public or private agency or his or her designee and must include the dates of commitment, admission, discharge, or release, authorized or unauthorized absence from the agency's facility, and only any other information that is pertinent to the threat or harassment. The agency or its employees are not civilly liable for the decision to disclose or not, so long as the decision was reached in good faith and without gross negligence.

(ii) Disclosure under this subsection is mandatory for the purposes of the federal health insurance portability and accountability act;

(i)(i) To appropriate corrections and law enforcement agencies all necessary and relevant information in the event of a crisis or emergent situation that poses a significant and imminent risk to the public. The mental health service agency or its employees are not civilly liable for the decision to disclose or not so long as the decision was reached in good faith and without gross negligence.

(ii) Disclosure under this subsection is mandatory for the purposes of the health insurance portability and accountability act;

(j) To the persons designated in RCW 71.05.425 for the purposes described in those sections;

(k) Upon the death of a person. The person's next of kin, personal representative, guardian, or conservator, if any, must be notified. Next of kin who are of legal age and competent must be notified under this section in the following order: Spouse, parents, children, brothers and sisters, and other relatives according to the degree of relation. Access to all records and information compiled, obtained, or maintained in the course of providing services to a deceased patient are governed by RCW 70.02.140;

(l) To mark headstones or otherwise memorialize patients interred at state hospital cemeteries. The department of social and health services shall make available the name, date of birth, and date of death of patients buried in state hospital cemeteries fifty years after the death of a patient;

(m) To law enforcement officers and to prosecuting attorneys as are necessary to enforce RCW 9.41.040(2)(a)(ii). The extent of information that may be released is limited as follows:

(i) Only the fact, place, and date of involuntary commitment, an official copy of any order or orders of commitment, and an official copy of any written or oral notice of ineligibility to possess a firearm that was provided to the person pursuant to RCW 9.41.047(1), must be disclosed upon request;

(ii) The law enforcement and prosecuting attorneys may only release the information obtained to the person's attorney as required by court rule and to a jury or judge, if a jury is waived, that presides over any trial at which the person is charged with violating RCW 9.41.040(2)(a)(ii);

(iii) Disclosure under this subsection is mandatory for the purposes of the federal health insurance portability and accountability act;

(n) When a patient would otherwise be subject to the provisions of this section and disclosure is necessary for the protection of the patient or others due to his or her unauthorized disappearance from the facility, and his or her whereabouts is unknown, notice of the disappearance, along with relevant information, may be made to relatives, the department of corrections when the person is under the supervision of the department, and governmental law enforcement agencies designated by the physician or psychiatric advanced registered nurse practitioner in charge of the patient or the professional person in charge of the facility, or his or her professional designee;

(o) Pursuant to lawful order of a court;

(p) To qualified staff members of the department, to the director of regional support networks, to resource management services responsible for serving a patient, or to service providers designated by resource management services as necessary to determine the progress and adequacy of treatment and to determine whether the person should be transferred to a less restrictive or more appropriate treatment modality or facility;

(q) Within the treatment facility where the patient is receiving treatment, confidential information may be disclosed to persons employed, serving in bona fide training programs, or participating in supervised volunteer programs, at the facility when it is necessary to perform their duties;

(r) Within the department as necessary to coordinate treatment for mental illness, developmental disabilities, alcoholism, or drug abuse of persons who are under the supervision of the department;

(s) To a licensed physician or psychiatric advanced registered nurse practitioner who has determined that the life or health of the person is in danger and that treatment without the information contained in the mental health treatment records could be injurious to the patient's health. Disclosure must be limited to the portions of the records necessary to meet the medical emergency;

(t) Consistent with the requirements of the federal health information portability and accountability act, to a licensed mental health professional or a health care professional licensed under chapter 18.71, 18.71A, 18.57, 18.57A, 18.79, or 18.36A RCW who is providing care to a person, or to whom a person has been referred for evaluation or treatment, to assure coordinated care and treatment of that person. Psychotherapy notes, as defined in 45 C.F.R. Sec. 164.501, may not be released without authorization of the person who is the subject of the request for release of information;

(u) To administrative and office support staff designated to obtain medical records for those licensed professionals listed in (t) of this subsection;

(v) To a facility that is to receive a person who is involuntarily committed under chapter 71.05 RCW, or upon transfer of the person from one treatment facility to another. The release of records under this subsection is limited to the mental health treatment records required by law, a record or summary of all somatic treatments, and a discharge summary. The discharge summary may include a statement of the patient's problem, the treatment goals, the type of treatment

which has been provided, and recommendation for future treatment, but may not include the patient's complete treatment record;

(w) To the person's counsel or guardian ad litem, without modification, at any time in order to prepare for involuntary commitment or recommitment proceedings, reexaminations, appeals, or other actions relating to detention, admission, commitment, or patient's rights under chapter 71.05 RCW;

(x) To staff members of the protection and advocacy agency or to staff members of a private, nonprofit corporation for the purpose of protecting and advocating the rights of persons with mental disorders or developmental disabilities. Resource management services may limit the release of information to the name, birthdate, and county of residence of the patient, information regarding whether the patient was voluntarily admitted, or involuntarily committed, the date and place of admission, placement, or commitment, the name and address of a guardian of the patient, and the date and place of the guardian's appointment. Any staff member who wishes to obtain additional information must notify the patient's resource management services in writing of the request and of the resource management services' right to object. The staff member shall send the notice by mail to the guardian's address. If the guardian does not object in writing within fifteen days after the notice is mailed, the staff member may obtain the additional information. If the guardian objects in writing within fifteen days after the notice is mailed, the staff member may not obtain the additional information;

(y) To all current treating providers of the patient with prescriptive authority who have written a prescription for the patient within the last twelve months. For purposes of coordinating health care, the department may release without written authorization of the patient, information acquired for billing and collection purposes as described in RCW 70.02.050(1)(e). The department shall notify the patient that billing and collection information has been released to named providers, and provide the substance of the information released and the dates of such release. The department may not release counseling, inpatient psychiatric hospitalization, or drug and alcohol treatment information without a signed written release from the client;

(z)(i) To the secretary of social and health services for either program evaluation or research, or both so long as the secretary adopts rules for the conduct of the evaluation or research, or both. Such rules must include, but need not be limited to, the requirement that all evaluators and researchers sign an oath of confidentiality substantially as follows:

"As a condition of conducting evaluation or research concerning persons who have received services from (fill in the facility, agency, or person) I,, agree not to divulge, publish, or otherwise make known to unauthorized persons or the public any information obtained in the course of such evaluation or research regarding persons who have received services such that the person who received such services is identifiable.

I recognize that unauthorized release of confidential information may subject me to civil liability under the provisions of state law.

/s/"

(ii) Nothing in this chapter may be construed to prohibit the compilation and publication of statistical data for use by government or researchers under standards, including standards to assure maintenance of confidentiality, set forth by the secretary.

(3) Whenever federal law or federal regulations restrict the release of information contained in the treatment records of any patient who receives treatment for chemical dependency, the department may restrict the release of the information as necessary to comply with federal law and regulations.

(4) Civil liability and immunity for the release of information about a particular person who is committed to the department of social and health services under RCW *71.05.280(3) and **71.05.320(3)(c) after dismissal of a sex offense as defined in RCW 9.94A.030, is governed by RCW 4.24.550.

(5) The fact of admission to a provider of mental health services, as well as all records, files, evidence, findings, or orders made, prepared, collected, or maintained pursuant to chapter 71.05 RCW are not admissible as evidence in any legal proceeding outside that chapter without the written authorization of the person who was the subject of the proceeding except as provided in RCW 70.02.260, in a subsequent criminal prosecution of a person committed pursuant to RCW *71.05.280(3) or **71.05.320(3)(c) on charges that were dismissed pursuant to chapter 10.77 RCW due to incompetency to stand trial, in a civil commitment proceeding pursuant to chapter 71.09 RCW, or, in the case of a minor, a guardianship or dependency proceeding. The records and files maintained in any court proceeding pursuant to chapter 71.05 RCW must be confidential and available subsequent to such proceedings only to the person who was the subject of the proceeding or his or her attorney. In addition, the court may order the subsequent release or use of such records or files only upon good cause shown if the court finds that appropriate safeguards for strict confidentiality are and will be maintained.

(6)(a) Except as provided in RCW 4.24.550, any person may bring an action against an individual who has willfully released confidential information or records concerning him or her in violation of the provisions of this section, for the greater of the following amounts:

- (i) One thousand dollars; or
- (ii) Three times the amount of actual damages sustained, if any.

(b) It is not a prerequisite to recovery under this subsection that the plaintiff suffered or was threatened with special, as contrasted with general, damages.

(c) Any person may bring an action to enjoin the release of confidential information or records concerning him or her or his or her ward, in violation of the provisions of this section, and may in the same action seek damages as provided in this subsection.

(d) The court may award to the plaintiff, should he or she prevail in any action authorized by this subsection, reason-

able attorney fees in addition to those otherwise provided by law.

(e) If an action is brought under this subsection, no action may be brought under RCW 70.02.170. [2013 c 200 § 7.]

Reviser's note: *(1) RCW 71.05.280 was amended by 2013 c 289 § 4, substantially modifying the provisions of subsection (3).

***(2) RCW 71.05.320 was amended by 2013 c 289 § 5, substantially modifying the provisions of subsection (3)(c).

Effective date—2013 c 200: See note following RCW 70.02.010.

70.02.240 Mental health services—Minors—Permitted disclosures. (Effective July 1, 2014.) The fact of admission and all information and records related to mental health services obtained through treatment under chapter 71.34 RCW is confidential, except as authorized in RCW 70.02.050, 70.02.210, 70.02.230, 70.02.250, and 70.02.260. Such confidential information may be disclosed only:

(1) In communications between mental health professionals to meet the requirements of chapter 71.34 RCW, in the provision of services to the minor, or in making appropriate referrals;

(2) In the course of guardianship or dependency proceedings;

(3) To the minor, the minor's parent, and the minor's attorney, subject to RCW 13.50.100;

(4) To the courts as necessary to administer chapter 71.34 RCW;

(5) To law enforcement officers or public health officers as necessary to carry out the responsibilities of their office. However, only the fact and date of admission, and the date of discharge, the name and address of the treatment provider, if any, and the last known address must be disclosed upon request;

(6) To law enforcement officers, public health officers, relatives, and other governmental law enforcement agencies, if a minor has escaped from custody, disappeared from an evaluation and treatment facility, violated conditions of a less restrictive treatment order, or failed to return from an authorized leave, and then only such information as may be necessary to provide for public safety or to assist in the apprehension of the minor. The officers are obligated to keep the information confidential in accordance with this chapter;

(7) To the secretary of social and health services for assistance in data collection and program evaluation or research so long as the secretary adopts rules for the conduct of such evaluation and research. The rules must include, but need not be limited to, the requirement that all evaluators and researchers sign an oath of confidentiality substantially as follows:

"As a condition of conducting evaluation or research concerning persons who have received services from (fill in the facility, agency, or person) I,, agree not to divulge, publish, or otherwise make known to unauthorized persons or the public any information obtained in the course of such evaluation or research regarding minors who have received services in a manner such that the minor is identifiable.

I recognize that unauthorized release of confidential information may subject me to civil liability under state law.

/s/";

(8) To appropriate law enforcement agencies, upon request, all necessary and relevant information in the event of a crisis or emergent situation that poses a significant and imminent risk to the public. The mental health service agency or its employees are not civilly liable for the decision to disclose or not, so long as the decision was reached in good faith and without gross negligence;

(9) To appropriate law enforcement agencies and to a person, when the identity of the person is known to the public or private agency, whose health and safety has been threatened, or who is known to have been repeatedly harassed, by the patient. The person may designate a representative to receive the disclosure. The disclosure must be made by the professional person in charge of the public or private agency or his or her designee and must include the dates of admission, discharge, authorized or unauthorized absence from the agency's facility, and only any other information that is pertinent to the threat or harassment. The agency or its employees are not civilly liable for the decision to disclose or not, so long as the decision was reached in good faith and without gross negligence;

(10) To a minor's next of kin, attorney, guardian, or conservator, if any, the information that the minor is presently in the facility or that the minor is seriously physically ill and a statement evaluating the mental and physical condition of the minor as well as a statement of the probable duration of the minor's confinement;

(11) Upon the death of a minor, to the minor's next of kin;

(12) To a facility in which the minor resides or will reside;

(13) To law enforcement officers and to prosecuting attorneys as are necessary to enforce RCW 9.41.040(2)(a)(ii). The extent of information that may be released is limited as follows:

(a) Only the fact, place, and date of involuntary commitment, an official copy of any order or orders of commitment, and an official copy of any written or oral notice of ineligibility to possess a firearm that was provided to the person pursuant to RCW 9.41.047(1), must be disclosed upon request;

(b) The law enforcement and prosecuting attorneys may only release the information obtained to the person's attorney as required by court rule and to a jury or judge, if a jury is waived, that presides over any trial at which the person is charged with violating RCW 9.41.040(2)(a)(ii);

(c) Disclosure under this subsection is mandatory for the purposes of the federal health insurance portability and accountability act;

(14) This section may not be construed to prohibit the compilation and publication of statistical data for use by government or researchers under standards, including standards to assure maintenance of confidentiality, set forth by the secretary of the department of social and health services. The fact of admission and all information obtained pursuant to chapter 71.34 RCW are not admissible as evidence in any legal proceeding outside chapter 71.34 RCW, except guardianship or dependency, without the written consent of the minor or the minor's parent;

(15) For the purpose of a correctional facility participating in the postinstitutional medical assistance system sup-

porting the expedited medical determinations and medical suspensions as provided in RCW 74.09.555 and 74.09.295;

(16) Pursuant to a lawful order of a court. [2013 c 200 § 8.]

Effective date—2013 c 200: See note following RCW 70.02.010.

70.02.250 Mental health services—Department of corrections. (*Effective July 1, 2014.*) (1) Information and records related to mental health services delivered to a person subject to chapter 9.94A or 9.95 RCW must be released, upon request, by a mental health service agency to department of corrections personnel for whom the information is necessary to carry out the responsibilities of their office. The information must be provided only for the purpose of completing presentence investigations, supervision of an incarcerated person, planning for and provision of supervision of a person, or assessment of a person's risk to the community. The request must be in writing and may not require the consent of the subject of the records.

(2) The information to be released to the department of corrections must include all relevant records and reports, as defined by rule, necessary for the department of corrections to carry out its duties, including those records and reports identified in subsection (1) of this section.

(3) The department shall, subject to available resources, electronically, or by the most cost-effective means available, provide the department of corrections with the names, last dates of services, and addresses of specific regional support networks and mental health service agencies that delivered mental health services to a person subject to chapter 9.94A or 9.95 RCW pursuant to an agreement between the departments.

(4) The department and the department of corrections, in consultation with regional support networks, mental health service agencies as defined in RCW 70.02.010, mental health consumers, and advocates for persons with mental illness, shall adopt rules to implement the provisions of this section related to the type and scope of information to be released. These rules must:

(a) Enhance and facilitate the ability of the department of corrections to carry out its responsibility of planning and ensuring community protection with respect to persons subject to sentencing under chapter 9.94A or 9.95 RCW, including accessing and releasing or disclosing information of persons who received mental health services as a minor; and

(b) Establish requirements for the notification of persons under the supervision of the department of corrections regarding the provisions of this section.

(5) The information received by the department of corrections under this section must remain confidential and subject to the limitations on disclosure outlined in chapter 71.34 RCW, except as provided in RCW 72.09.585.

(6) No mental health service agency or individual employed by a mental health service agency may be held responsible for information released to or used by the department of corrections under the provisions of this section or rules adopted under this section.

(7) Whenever federal law or federal regulations restrict the release of information contained in the treatment records of any patient who receives treatment for alcoholism or drug

dependency, the release of the information may be restricted as necessary to comply with federal law and regulations.

(8) This section does not modify the terms and conditions of disclosure of information related to sexually transmitted diseases under this chapter. [2013 c 200 § 9.]

Effective date—2013 c 200: See note following RCW 70.02.010.

70.02.260 Mental health services—Requests for information and records. (Effective July 1, 2014.) (1)(a) A mental health service agency shall release to the persons authorized under subsection (2) of this section, upon request:

(i) The fact, place, and date of an involuntary commitment, the fact and date of discharge or release, and the last known address of a person who has been committed under chapter 71.05 RCW.

(ii) Information and records related to mental health services, in the format determined under subsection (9) of this section, concerning a person who:

(A) Is currently committed to the custody or supervision of the department of corrections or the indeterminate sentence review board under chapter 9.94A or 9.95 RCW;

(B) Has been convicted or found not guilty by reason of insanity of a serious violent offense; or

(C) Was charged with a serious violent offense and the charges were dismissed under RCW 10.77.086.

(b) Legal counsel may release such information to the persons authorized under subsection (2) of this section on behalf of the mental health service agency, so long as nothing in this subsection requires the disclosure of attorney work product or attorney-client privileged information.

(2) The information subject to release under subsection (1) of this section must be released to law enforcement officers, personnel of a county or city jail, designated mental health professionals, public health officers, therapeutic court personnel as defined in RCW 71.05.020, or personnel of the department of corrections, including the indeterminate sentence review board and personnel assigned to perform board-related duties, when such information is requested during the course of business and for the purpose of carrying out the responsibilities of the requesting person's office. No mental health service agency or person employed by a mental health service agency, or its legal counsel, may be liable for information released to or used under the provisions of this section or rules adopted under this section except under RCW 71.05.680.

(3) A person who requests information under subsection (1)(a)(ii) of this section must comply with the following restrictions:

(a) Information must be requested only for the purposes permitted by this subsection and for the purpose of carrying out the responsibilities of the requesting person's office. Appropriate purposes for requesting information under this section include:

(i) Completing presentence investigations or risk assessment reports;

(ii) Assessing a person's risk to the community;

(iii) Assessing a person's risk of harm to self or others when confined in a city or county jail;

(iv) Planning for and provision of supervision of an offender, including decisions related to sanctions for violations of conditions of community supervision; and

(v) Responding to an offender's failure to report for department of corrections supervision;

(b) Information may not be requested under this section unless the requesting person has reasonable suspicion that the individual who is the subject of the information:

(i) Has engaged in activity indicating that a crime or a violation of community custody or parole has been committed or, based upon his or her current or recent past behavior, is likely to be committed in the near future; or

(ii) Is exhibiting signs of a deterioration in mental functioning which may make the individual appropriate for civil commitment under chapter 71.05 RCW; and

(c) Any information received under this section must be held confidential and subject to the limitations on disclosure outlined in this chapter, except:

(i) The information may be shared with other persons who have the right to request similar information under subsection (2) of this section, solely for the purpose of coordinating activities related to the individual who is the subject of the information in a manner consistent with the official responsibilities of the persons involved;

(ii) The information may be shared with a prosecuting attorney acting in an advisory capacity for a person who receives information under this section. A prosecuting attorney under this subsection is subject to the same restrictions and confidentiality limitations as the person who requested the information; and

(iii) As provided in RCW 72.09.585.

(4) A request for information and records related to mental health services under this section does not require the consent of the subject of the records. The request must be provided in writing, except to the extent authorized in subsection (5) of this section. A written request may include requests made by e-mail or facsimile so long as the requesting person is clearly identified. The request must specify the information being requested.

(5) In the event of an emergency situation that poses a significant risk to the public or the offender, a mental health service agency, or its legal counsel, shall release information related to mental health services delivered to the offender and, if known, information regarding where the offender is likely to be found to the department of corrections or law enforcement upon request. The initial request may be written or oral. All oral requests must be subsequently confirmed in writing. Information released in response to an oral request is limited to a statement as to whether the offender is or is not being treated by the mental health service agency and the address or information about the location or whereabouts of the offender.

(6) Disclosure under this section to state or local law enforcement authorities is mandatory for the purposes of the federal health insurance portability and accountability act.

(7) Whenever federal law or federal regulations restrict the release of information contained in the treatment records of any patient who receives treatment for alcoholism or drug dependency, the release of the information may be restricted as necessary to comply with federal law and regulations.

(8) This section does not modify the terms and conditions of disclosure of information related to sexually transmitted diseases under this chapter.

(9) In collaboration with interested organizations, the department shall develop a standard form for requests for information related to mental health services made under this section and a standard format for information provided in response to the requests. Consistent with the goals of the health information privacy provisions of the federal health insurance portability and accountability act, in developing the standard form for responsive information, the department shall design the form in such a way that the information disclosed is limited to the minimum necessary to serve the purpose for which the information is requested. [2013 c 200 § 10.]

Effective date—2013 c 200: See note following RCW 70.02.010.

70.02.270 Health care information—Use or disclosure prohibited. (Effective July 1, 2014.) (1) No person who receives health care information for health care education, or to provide planning, quality assurance, peer review, or administrative, legal, financial, or actuarial services, or other health care operations for or on behalf of a health care provider or health care facility, may use or disclose any health care information received from the health care provider or health care facility in any manner that is inconsistent with the duties of the health care provider or health care facility under this chapter.

(2) A health care provider or health care facility that has a contractual relationship with a person to provide services described under subsection (1) of this section must terminate the contractual relationship with the person if the health care provider or health care facility learns that the person has engaged in a pattern of activity that violates the person's duties under subsection (1) of this section, unless the person took reasonable steps to correct the breach of confidentiality or has discontinued the violating activity. [2013 c 200 § 11.]

Effective date—2013 c 200: See note following RCW 70.02.010.

70.02.280 Health care providers and facilities—Prohibited actions. (Effective July 1, 2014.) A health care provider, health care facility, and their assistants, employees, agents, and contractors may not:

- (1) Use or disclose health care information for marketing or fund-raising purposes, unless permitted by federal law;
- (2) Sell health care information to a third party, except in a form that is deidentified and aggregated; or
- (3) Sell health care information to a third party, except for the following purposes:
 - (a) Treatment or payment;
 - (b) Sale, transfer, merger, or consolidation of a business;
 - (c) Remuneration to a third party for services;
 - (d) Disclosures required by law;
 - (e) Providing access to or accounting of disclosures to an individual;
 - (f) Public health purposes;
 - (g) Research;
 - (h) With an individual's authorization;
 - (i) Where a reasonable cost-based fee is paid to prepare and transmit health information, where authority to disclose the information is provided in this chapter. [2013 c 200 § 12.]

Effective date—2013 c 200: See note following RCW 70.02.010.

70.02.290 Agency rule-making requirements. (Effective July 1, 2014.) All state or local agencies obtaining patient health care information pursuant to RCW 70.02.050 and 70.02.200 through 70.02.240 that are not health care facilities or providers shall adopt rules establishing their record acquisition, retention, and security policies that are consistent with this chapter. [2013 c 200 § 13.]

Effective date—2013 c 200: See note following RCW 70.02.010.

70.02.300 Sexually transmitted diseases—Required statement upon disclosure. (Effective July 1, 2014.) Whenever disclosure is made of information and records related to sexually transmitted diseases pursuant to this chapter, except for RCW 70.02.050(1)(a) and 70.02.220 (2) (a) and (b) and (7), it must be accompanied by a statement in writing which includes the following or substantially similar language: "This information has been disclosed to you from records whose confidentiality is protected by state law. State law prohibits you from making any further disclosure of it without the specific written authorization of the person to whom it pertains, or as otherwise permitted by state law. A general authorization for the release of medical or other information is NOT sufficient for this purpose." An oral disclosure must be accompanied or followed by such a notice within ten days. [2013 c 200 § 14.]

Effective date—2013 c 200: See note following RCW 70.02.010.

70.02.310 Mental health services—Records. (Effective July 1, 2014.) (1) Resource management services shall establish procedures to provide reasonable and timely access to individual mental health treatment records. However, access may not be denied at any time to records of all medications and somatic treatments received by the person.

(2) Following discharge, a person who has received mental health services has a right to a complete record of all medications and somatic treatments prescribed during evaluation, admission, or commitment and to a copy of the discharge summary prepared at the time of his or her discharge. A reasonable and uniform charge for reproduction may be assessed.

(3) Mental health treatment records may be modified prior to inspection to protect the confidentiality of other patients or the names of any other persons referred to in the record who gave information on the condition that his or her identity remain confidential. Entire documents may not be withheld to protect such confidentiality.

(4) At the time of discharge resource management services shall inform all persons who have received mental health services of their rights as provided in this chapter and RCW 71.05.620. [2013 c 200 § 15.]

Effective date—2013 c 200: See note following RCW 70.02.010.

70.02.320 Mental health services--Minors--Prompt entry in record upon disclosure. (Effective July 1, 2014.) When disclosure of information and records related to mental services pertaining to a minor, as defined in RCW 71.34.020, is made, the date and circumstances under which the disclosure was made, the name or names of the persons or agencies to whom such disclosure was made and their relationship if any, to the minor, and the information disclosed must be

entered promptly in the minor's clinical record. [2013 c 200 § 16.]

Effective date—2013 c 200: See note following RCW 70.02.010.

70.02.330 Obtaining confidential records under false pretenses—Penalty. (*Effective July 1, 2014.*) Any person who requests or obtains confidential information and records related to mental health services pursuant to this chapter under false pretenses is guilty of a gross misdemeanor. [2013 c 200 § 17.]

Effective date—2013 c 200: See note following RCW 70.02.010.

70.02.340 Mental health treatment records—Agency rule-making authority. (*Effective July 1, 2014.*) The department of social and health services shall adopt rules related to the disclosure of mental health treatment records in this chapter. [2013 c 200 § 18.]

Effective date—2013 c 200: See note following RCW 70.02.010.

70.02.350 Department of social and health services—Release of information to protect the public. (*Effective July 1, 2014.*) In addition to any other information required to be released under this chapter, the department of social and health services is authorized, pursuant to RCW 4.24.550, to release relevant information that is necessary to protect the public, concerning a specific person committed under RCW *71.05.280(3) or **71.05.320(3)(c) following dismissal of a sex offense as defined in RCW 9.94A.030. [2013 c 200 § 19.]

Reviser's note: *(1) RCW 71.05.280 was amended by 2013 c 289 § 4, substantially modifying the provisions of subsection (3).

** (2) RCW 71.05.320 was amended by 2013 c 289 § 5, substantially modifying the provisions of subsection (3)(c).

Effective date—2013 c 200: See note following RCW 70.02.010.

70.02.900 Conflicting laws. (*Effective July 1, 2014.*)

(1) This chapter does not restrict a health care provider, a third-party payor, or an insurer regulated under Title 48 RCW from complying with obligations imposed by federal or state health care payment programs or federal or state law.

(2) This chapter does not modify the terms and conditions of disclosure under Title 51 RCW and chapters 13.50, 26.09, 70.24, 70.96A, and 74.09 RCW and rules adopted under these provisions. [2013 c 200 § 20; 2011 c 305 § 10; 2000 c 5 § 4; 1991 c 335 § 901.]

Effective date—2013 c 200: See note following RCW 70.02.010.

Findings—2011 c 305: See note following RCW 74.09.295.

Intent—Purpose—2000 c 5: See RCW 48.43.500.

Additional notes found at www.leg.wa.gov

Chapter 70.05 RCW

LOCAL HEALTH DEPARTMENTS, BOARDS, OFFICERS—REGULATIONS

Sections

70.05.070 Local health officer—Powers and duties. (*Effective July 1, 2014.*)

70.05.070 Local health officer—Powers and duties. (*Effective July 1, 2014.*) The local health officer, acting under the direction of the local board of health or under direc-

tion of the administrative officer appointed under RCW 70.05.040 or 70.05.035, if any, shall:

(1) Enforce the public health statutes of the state, rules of the state board of health and the secretary of health, and all local health rules, regulations and ordinances within his or her jurisdiction including imposition of penalties authorized under RCW 70.119A.030 and 70.118.130, the confidentiality provisions in RCW 70.02.220 and rules adopted to implement those provisions, and filing of actions authorized by RCW 43.70.190;

(2) Take such action as is necessary to maintain health and sanitation supervision over the territory within his or her jurisdiction;

(3) Control and prevent the spread of any dangerous, contagious or infectious diseases that may occur within his or her jurisdiction;

(4) Inform the public as to the causes, nature, and prevention of disease and disability and the preservation, promotion and improvement of health within his or her jurisdiction;

(5) Prevent, control or abate nuisances which are detrimental to the public health;

(6) Attend all conferences called by the secretary of health or his or her authorized representative;

(7) Collect such fees as are established by the state board of health or the local board of health for the issuance or renewal of licenses or permits or such other fees as may be authorized by law or by the rules of the state board of health;

(8) Inspect, as necessary, expansion or modification of existing public water systems, and the construction of new public water systems, to assure that the expansion, modification, or construction conforms to system design and plans;

(9) Take such measures as he or she deems necessary in order to promote the public health, to participate in the establishment of health educational or training activities, and to authorize the attendance of employees of the local health department or individuals engaged in community health programs related to or part of the programs of the local health department. [2013 c 200 § 26; 2007 c 343 § 10; 1999 c 391 § 5; 1993 c 492 § 239; 1991 c 3 § 309; 1990 c 133 § 10; 1984 c 25 § 7; 1979 c 141 § 80; 1967 ex.s. c 51 § 12.]

Effective date—2013 c 200: See note following RCW 70.02.010.

Captions and part headings not law—2007 c 343: See RCW 70.118B.900.

Findings—Purpose—1999 c 391: See note following RCW 70.05.180.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Findings—Severability—1990 c 133: See notes following RCW 36.94.140.

Additional notes found at www.leg.wa.gov

Chapter 70.24 RCW

CONTROL AND TREATMENT OF SEXUALLY TRANSMITTED DISEASES

(Formerly: Control and treatment of venereal diseases)

Sections

70.24.105 Repealed. (*Effective July 1, 2014.*)

70.24.280 Pharmacy quality assurance commission—Rules for AIDS education and training.

70.24.450 Confidentiality—Reports—Unauthorized disclosures. (*Effective July 1, 2014.*)

70.24.105 Repealed. (*Effective July 1, 2014.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

70.24.280 Pharmacy quality assurance commission—Rules for AIDS education and training. The pharmacy quality assurance commission shall adopt rules that require appropriate education and training for licensees on the prevention, transmission, and treatment of AIDS. The commission shall work with the office on AIDS under RCW 70.24.250 to develop the training and educational material necessary for health professionals. [2013 c 19 § 122; 1988 c 206 § 605.]

70.24.450 Confidentiality—Reports—Unauthorized disclosures. (*Effective July 1, 2014.*) (1) In order to assure compliance with the protections under this chapter and the rules of the board, and to assure public confidence in the confidentiality of reported information, the department shall:

(a) Report annually to the board any incidents of unauthorized disclosure by the department, local health departments, or their employees of information protected under RCW 70.02.220. The report shall include recommendations for preventing future unauthorized disclosures and improving the system of confidentiality for reported information; and

(b) Assist health care providers, facilities that conduct tests, local health departments, and other persons involved in disease reporting to understand, implement, and comply with this chapter and the rules of the board related to disease reporting.

(2) This section is exempt from RCW 70.24.084, 70.05.070, and 70.05.120. [2013 c 200 § 27; 1999 c 391 § 3.]

Effective date—2013 c 200: See note following RCW 70.02.010.

Findings—Purpose—1999 c 391: See note following RCW 70.05.180.

Chapter 70.41 RCW

HOSPITAL LICENSING AND REGULATION

Sections

70.41.200	Quality improvement and medical malpractice prevention program—Quality improvement committee—Sanction and grievance procedures—Information collection, reporting, and sharing.
70.41.230	Duty of hospital to request information on physicians granted privileges.
70.41.440	Duty to report violent injuries—Preservation of evidence—Immunity—Privilege.

70.41.200 Quality improvement and medical malpractice prevention program—Quality improvement committee—Sanction and grievance procedures—Information collection, reporting, and sharing. (1) Every hospital shall maintain a coordinated quality improvement program for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice. The program shall include at least the following:

(a) The establishment of one or more quality improvement committees with the responsibility to review the services rendered in the hospital, both retrospectively and prospectively, in order to improve the quality of medical care of patients and to prevent medical malpractice. Different qual-

ity improvement committees may be established as a part of a quality improvement program to review different health care services. Such committees shall oversee and coordinate the quality improvement and medical malpractice prevention program and shall ensure that information gathered pursuant to the program is used to review and to revise hospital policies and procedures;

(b) A process, including a medical staff privileges sanction procedure which must be conducted substantially in accordance with medical staff bylaws and applicable rules, regulations, or policies of the medical staff through which credentials, physical and mental capacity, professional conduct, and competence in delivering health care services are periodically reviewed as part of an evaluation of staff privileges;

(c) A process for the periodic review of the credentials, physical and mental capacity, professional conduct, and competence in delivering health care services of all other health care providers who are employed or associated with the hospital;

(d) A procedure for the prompt resolution of grievances by patients or their representatives related to accidents, injuries, treatment, and other events that may result in claims of medical malpractice;

(e) The maintenance and continuous collection of information concerning the hospital’s experience with negative health care outcomes and incidents injurious to patients including health care-associated infections as defined in RCW 43.70.056, patient grievances, professional liability premiums, settlements, awards, costs incurred by the hospital for patient injury prevention, and safety improvement activities;

(f) The maintenance of relevant and appropriate information gathered pursuant to (a) through (e) of this subsection concerning individual physicians within the physician’s personnel or credential file maintained by the hospital;

(g) Education programs dealing with quality improvement, patient safety, medication errors, injury prevention, infection control, staff responsibility to report professional misconduct, the legal aspects of patient care, improved communication with patients, and causes of malpractice claims for staff personnel engaged in patient care activities; and

(h) Policies to ensure compliance with the reporting requirements of this section.

(2) Any person who, in substantial good faith, provides information to further the purposes of the quality improvement and medical malpractice prevention program or who, in substantial good faith, participates on the quality improvement committee shall not be subject to an action for civil damages or other relief as a result of such activity. Any person or entity participating in a coordinated quality improvement program that, in substantial good faith, shares information or documents with one or more other programs, committees, or boards under subsection (8) of this section is not subject to an action for civil damages or other relief as a result of the activity. For the purposes of this section, sharing information is presumed to be in substantial good faith. However, the presumption may be rebutted upon a showing of clear, cogent, and convincing evidence that the information shared was knowingly false or deliberately misleading.

(3) Information and documents, including complaints and incident reports, created specifically for, and collected and maintained by, a quality improvement committee are not subject to review or disclosure, except as provided in this section, or discovery or introduction into evidence in any civil action, and no person who was in attendance at a meeting of such committee or who participated in the creation, collection, or maintenance of information or documents specifically for the committee shall be permitted or required to testify in any civil action as to the content of such proceedings or the documents and information prepared specifically for the committee. This subsection does not preclude: (a) In any civil action, the discovery of the identity of persons involved in the medical care that is the basis of the civil action whose involvement was independent of any quality improvement activity; (b) in any civil action, the testimony of any person concerning the facts which form the basis for the institution of such proceedings of which the person had personal knowledge acquired independently of such proceedings; (c) in any civil action by a health care provider regarding the restriction or revocation of that individual's clinical or staff privileges, introduction into evidence information collected and maintained by quality improvement committees regarding such health care provider; (d) in any civil action, disclosure of the fact that staff privileges were terminated or restricted, including the specific restrictions imposed, if any and the reasons for the restrictions; or (e) in any civil action, discovery and introduction into evidence of the patient's medical records required by regulation of the department of health to be made regarding the care and treatment received.

(4) Each quality improvement committee shall, on at least a semiannual basis, report to the governing board of the hospital in which the committee is located. The report shall review the quality improvement activities conducted by the committee, and any actions taken as a result of those activities.

(5) The department of health shall adopt such rules as are deemed appropriate to effectuate the purposes of this section.

(6) The medical quality assurance commission or the board of osteopathic medicine and surgery, as appropriate, may review and audit the records of committee decisions in which a physician's privileges are terminated or restricted. Each hospital shall produce and make accessible to the commission or board the appropriate records and otherwise facilitate the review and audit. Information so gained shall not be subject to the discovery process and confidentiality shall be respected as required by subsection (3) of this section. Failure of a hospital to comply with this subsection is punishable by a civil penalty not to exceed two hundred fifty dollars.

(7) The department, the joint commission on accreditation of health care organizations, and any other accrediting organization may review and audit the records of a quality improvement committee or peer review committee in connection with their inspection and review of hospitals. Information so obtained shall not be subject to the discovery process, and confidentiality shall be respected as required by subsection (3) of this section. Each hospital shall produce and make accessible to the department the appropriate records and otherwise facilitate the review and audit.

(8) A coordinated quality improvement program may share information and documents, including complaints and

incident reports, created specifically for, and collected and maintained by, a quality improvement committee or a peer review committee under RCW 4.24.250 with one or more other coordinated quality improvement programs maintained in accordance with this section or RCW 43.70.510, a coordinated quality improvement committee maintained by an ambulatory surgical facility under RCW 70.230.070, a quality assurance committee maintained in accordance with RCW 18.20.390 or 74.42.640, or a peer review committee under RCW 4.24.250, for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice. The privacy protections of chapter 70.02 RCW and the federal health insurance portability and accountability act of 1996 and its implementing regulations apply to the sharing of individually identifiable patient information held by a coordinated quality improvement program. Any rules necessary to implement this section shall meet the requirements of applicable federal and state privacy laws. Information and documents disclosed by one coordinated quality improvement program to another coordinated quality improvement program or a peer review committee under RCW 4.24.250 and any information and documents created or maintained as a result of the sharing of information and documents shall not be subject to the discovery process and confidentiality shall be respected as required by subsection (3) of this section, RCW 18.20.390 (6) and (8), 74.42.640 (7) and (9), and 4.24.250.

(9) A hospital that operates a nursing home as defined in RCW 18.51.010 may conduct quality improvement activities for both the hospital and the nursing home through a quality improvement committee under this section, and such activities shall be subject to the provisions of subsections (2) through (8) of this section.

(10) Violation of this section shall not be considered negligence per se. [2013 c 301 § 2. Prior: 2007 c 273 § 22; 2007 c 261 § 3; prior: 2005 c 291 § 3; 2005 c 33 § 7; 2004 c 145 § 3; 2000 c 6 § 3; 1994 sp.s. c 9 § 742; 1993 c 492 § 415; 1991 c 3 § 336; 1987 c 269 § 5; 1986 c 300 § 4.]

Effective date—Implementation—2007 c 273: See RCW 70.230.900 and 70.230.901.

Finding—2007 c 261: See note following RCW 43.70.056.

Findings—2005 c 33: See note following RCW 18.20.390.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Legislative findings—Severability—1986 c 300: See notes following RCW 18.57.245.

Board of osteopathic medicine and surgery: Chapter 18.57 RCW.

Medical quality assurance commission: Chapter 18.71 RCW.

Additional notes found at www.leg.wa.gov

70.41.230 Duty of hospital to request information on physicians granted privileges. (1) Prior to granting or renewing clinical privileges or association of any physician or hiring a physician, a hospital or facility approved pursuant to this chapter shall request from the physician and the physician shall provide the following information:

(a) The name of any hospital or facility with or at which the physician had or has any association, employment, privileges, or practice during the prior five years: PROVIDED, That the hospital may request additional information going back further than five years, and the physician shall use his or

her best efforts to comply with such a request for additional information;

(b) Whether the physician has ever been or is in the process of being denied, revoked, terminated, suspended, restricted, reduced, limited, sanctioned, placed on probation, monitored, or not renewed for any professional activity listed in (b)(i) through (x) of this subsection, or has ever voluntarily or involuntarily relinquished, withdrawn, or failed to proceed with an application for any professional activity listed in (b)(i) through (x) of this subsection in order to avoid an adverse action or to preclude an investigation or while under investigation relating to professional competence or conduct:

- (i) License to practice any profession in any jurisdiction;
- (ii) Other professional registration or certification in any jurisdiction;
- (iii) Specialty or subspecialty board certification;
- (iv) Membership on any hospital medical staff;
- (v) Clinical privileges at any facility, including hospitals, ambulatory surgical centers, or skilled nursing facilities;
- (vi) Medicare, medicaid, the food and drug administration, the national institute of health (office of human research protection), governmental, national, or international regulatory agency, or any public program;
- (vii) Professional society membership or fellowship;
- (viii) Participation or membership in a health maintenance organization, preferred provider organization, independent practice association, physician-hospital organization, or other entity;
- (ix) Academic appointment;
- (x) Authority to prescribe controlled substances (drug enforcement agency or other authority);

(c) Any pending professional medical misconduct proceedings or any pending medical malpractice actions in this state or another state, the substance of the allegations in the proceedings or actions, and any additional information concerning the proceedings or actions as the physician deems appropriate;

(d) The substance of the findings in the actions or proceedings and any additional information concerning the actions or proceedings as the physician deems appropriate;

(e) A waiver by the physician of any confidentiality provisions concerning the information required to be provided to hospitals pursuant to this subsection; and

(f) A verification by the physician that the information provided by the physician is accurate and complete.

(2) Prior to granting privileges or association to any physician or hiring a physician, a hospital or facility approved pursuant to this chapter shall request from any hospital with or at which the physician had or has privileges, was associated, or was employed, during the preceding five years, the following information concerning the physician:

(a) Any pending professional medical misconduct proceedings or any pending medical malpractice actions, in this state or another state;

(b) Any judgment or settlement of a medical malpractice action and any finding of professional misconduct in this state or another state by a licensing or disciplinary board; and

(c) Any information required to be reported by hospitals pursuant to RCW 18.71.0195.

(3) The medical quality assurance commission shall be advised within thirty days of the name of any physician

denied staff privileges, association, or employment on the basis of adverse findings under subsection (1) of this section.

(4) A hospital or facility that receives a request for information from another hospital or facility pursuant to subsections (1) and (2) of this section shall provide such information concerning the physician in question to the extent such information is known to the hospital or facility receiving such a request, including the reasons for suspension, termination, or curtailment of employment or privileges at the hospital or facility. A hospital, facility, or other person providing such information in good faith is not liable in any civil action for the release of such information.

(5) Information and documents, including complaints and incident reports, created specifically for, and collected, and maintained by a quality improvement committee are not subject to discovery or introduction into evidence in any civil action, and no person who was in attendance at a meeting of such committee or who participated in the creation, collection, or maintenance of information or documents specifically for the committee shall be permitted or required to testify in any civil action as to the content of such proceedings or the documents and information prepared specifically for the committee. This subsection does not preclude: (a) In any civil action, the discovery of the identity of persons involved in the medical care that is the basis of the civil action whose involvement was independent of any quality improvement activity; (b) in any civil action, the testimony of any person concerning the facts which form the basis for the institution of such proceedings of which the person had personal knowledge acquired independently of such proceedings; (c) in any civil action by a health care provider regarding the restriction or revocation of that individual's clinical or staff privileges, introduction into evidence information collected and maintained by quality improvement committees regarding such health care provider; (d) in any civil action, disclosure of the fact that staff privileges were terminated or restricted, including the specific restrictions imposed, if any and the reasons for the restrictions; or (e) in any civil action, discovery and introduction into evidence of the patient's medical records required by regulation of the department of health to be made regarding the care and treatment received.

(6) Hospitals shall be granted access to information held by the medical quality assurance commission and the board of osteopathic medicine and surgery pertinent to decisions of the hospital regarding credentialing and recredentialing of practitioners.

(7) Violation of this section shall not be considered negligence per se. [2013 c 301 § 3; 1994 sp.s. c 9 § 744; 1993 c 492 § 416; 1991 c 3 § 337; 1987 c 269 § 6; 1986 c 300 § 11.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Legislative findings—Severability—1986 c 300: See notes following RCW 18.57.245.

Medical quality assurance commission: Chapter 18.71 RCW.

Additional notes found at www.leg.wa.gov

70.41.440 Duty to report violent injuries—Preservation of evidence—Immunity—Privilege. (1) A hospital shall report to a local law enforcement authority as soon as reasonably possible, taking into consideration a patient's emergency care needs, when the hospital provides treatment for a bullet wound, gunshot wound, or stab wound to a

patient. A hospital shall establish a written policy to identify the person or persons responsible for making the report.

(2) The report required under subsection (1) of this section must include the following information, if known:

(a) The name, residence, sex, and age of the patient;

(b) Whether the patient has received a bullet wound, gunshot wound, or stab wound; and

(c) The name of the health care provider providing treatment for the bullet wound, gunshot wound, or stab wound.

(3) Nothing in this section shall limit a person's duty to report under RCW 26.44.030 or 74.34.035.

(4) Any bullets, clothing, or other foreign objects that are removed from a patient for whom a hospital is required to make a report pursuant to subsection (1) of this section shall be preserved and kept in custody in such a way that the identity and integrity thereof are reasonably maintained until the bullets, clothing, or other foreign objects are taken into possession by a law enforcement authority or the hospital's normal period for retention of such items expires, whichever occurs first.

(5) Any hospital or person who in good faith, and without gross negligence or willful or wanton misconduct, makes a report required by this section, cooperates in an investigation or criminal or judicial proceeding related to such report, or maintains bullets, clothing, or other foreign objects, or provides such items to a law enforcement authority as described in subsection (4) of this section, is immune from civil or criminal liability or professional licensure action arising out of or related to the report and its contents or the absence of information in the report, cooperation in an investigation or criminal or judicial proceeding, and the maintenance or provision to a law enforcement authority of bullets, clothing, or other foreign objects under subsection (4) of this section.

(6) The physician-patient privilege described in RCW 5.60.060(4), the registered nurse-patient privilege described in RCW 5.62.020, and any other health care provider-patient privilege created or recognized by law are not a basis for excluding as evidence in any criminal proceeding any report, or information contained in a report made under this section.

(7) All reporting, preservation, or other requirements of this section are secondary to patient care needs and may be delayed or compromised without penalty to the hospital or person required to fulfill the requirements of this section.

(8) If the patient states his or her injury is the result of domestic violence, the hospital shall follow its established processes to inform the patient of resources to assure the safety of the patient and his or her family. [2013 c 252 § 1; 2009 c 359 § 2.]

**Chapter 70.42 RCW
MEDICAL TEST SITES**

Sections

70.42.090 Fees—Account.

70.42.090 Fees—Account. (1) The department shall establish a schedule of fees for license applications, renewals, amendments, and waivers. In fixing said fees, the department shall set the fees at a sufficient level to defray the cost of administering the licensure program. All such fees shall be fixed by rule adopted in accordance with the provisions of the

administrative procedure act, chapter 34.05 RCW. In determining the fee schedule, the department shall consider the following: (a) Complexity of the license required; (b) number and type of tests performed at the test site; (c) degree of supervision required from the department staff; (d) whether the license is granted under RCW 70.42.040; and (e) general administrative costs of the test site licensing program established under this chapter. For each category of license, fees charged shall be related to program costs.

(2) The medical test site licensure account is created in the state treasury. The state treasurer shall transfer into the medical test site licensure account all revenue received from medical test site license fees. Funds for this account may only be appropriated for the support of the activities defined under this chapter. For the 2013-2015 fiscal biennium, moneys in the account may be spent for laboratory services in the department of health.

(3) The department may establish separate fees for repeat inspections and repeat audits it performs under RCW 70.42.170. [2013 2nd sp.s. c 4 § 988; 1989 c 386 § 10.]

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

**Chapter 70.47 RCW
BASIC HEALTH PLAN—
HEALTH CARE ACCESS ACT**

Sections

70.47.100 Participation by a managed health care system—Expiration of subsections.

70.47.100 Participation by a managed health care system—Expiration of subsections. (1) A managed health care system participating in the plan shall do so by contract with the director and shall provide, directly or by contract with other health care providers, covered basic health care services to each enrollee covered by its contract with the director as long as payments from the director on behalf of the enrollee are current. A participating managed health care system may offer, without additional cost, health care benefits or services not included in the schedule of covered services under the plan. A participating managed health care system shall not give preference in enrollment to enrollees who accept such additional health care benefits or services. Managed health care systems participating in the plan shall not discriminate against any potential or current enrollee based upon health status, sex, race, ethnicity, or religion. The director may receive and act upon complaints from enrollees regarding failure to provide covered services or efforts to obtain payment, other than authorized copayments, for covered services directly from enrollees, but nothing in this chapter empowers the director to impose any sanctions under Title 18 RCW or any other professional or facility licensing statute.

(2) A managed health care system shall pay a nonparticipating provider that provides a service covered under this chapter to the system's enrollee no more than the lowest amount paid for that service under the managed health care system's contracts with similar providers in the state.

(3) Pursuant to federal managed care access standards, 42 C.F.R. Sec. 438, managed health care systems must main-

tain a network of appropriate providers that is supported by written agreements sufficient to provide adequate access to all services covered under the contract with the authority, including hospital-based physician services. The authority will monitor and periodically report on the proportion of services provided by contracted providers and nonparticipating providers, by county, for each managed health care system to ensure that managed health care systems are meeting network adequacy requirements. No later than January 1st of each year, the authority will review and report its findings to the appropriate policy and fiscal committees of the legislature for the preceding state fiscal year.

(4) The plan shall allow, at least annually, an opportunity for enrollees to transfer their enrollments among participating managed health care systems serving their respective areas. The director shall establish a period of at least twenty days in a given year when this opportunity is afforded enrollees, and in those areas served by more than one participating managed health care system the director shall endeavor to establish a uniform period for such opportunity. The plan shall allow enrollees to transfer their enrollment to another participating managed health care system at any time upon a showing of good cause for the transfer.

(5) Prior to negotiating with any managed health care system, the director shall determine, on an actuarially sound basis, the reasonable cost of providing the schedule of basic health care services, expressed in terms of upper and lower limits, and recognizing variations in the cost of providing the services through the various systems and in different areas of the state.

(6) In negotiating with managed health care systems for participation in the plan, the director shall adopt a uniform procedure that includes at least the following:

(a) The director shall issue a request for proposals, including standards regarding the quality of services to be provided; financial integrity of the responding systems; and responsiveness to the unmet health care needs of the local communities or populations that may be served;

(b) The director shall then review responsive proposals and may negotiate with respondents to the extent necessary to refine any proposals;

(c) The director may then select one or more systems to provide the covered services within a local area; and

(d) The director may adopt a policy that gives preference to respondents, such as nonprofit community health clinics, that have a history of providing quality health care services to low-income persons.

(7)(a) The director may contract with a managed health care system to provide covered basic health care services to subsidized enrollees, nonsubsidized enrollees, health coverage tax credit eligible enrollees, or any combination thereof. At a minimum, such contracts issued on or after January 1, 2012, must include:

(i) Provider reimbursement methods that incentivize chronic care management within health homes;

(ii) Provider reimbursement methods that reward health homes that, by using chronic care management, reduce emergency department and inpatient use; and

(iii) Promoting provider participation in the program of training and technical assistance regarding care of people with chronic conditions described in RCW 43.70.533, includ-

ing allocation of funds to support provider participation in the training unless the managed care system is an integrated health delivery system that has programs in place for chronic care management.

(b) Health home services contracted for under this subsection may be prioritized to enrollees with complex, high cost, or multiple chronic conditions.

(c) For the purposes of this subsection, "chronic care management," "chronic condition," and "health home" have the same meaning as in RCW 74.09.010.

(d) Contracts that include the items in (a)(i) through (iii) of this subsection must not exceed the rates that would be paid in the absence of these provisions.

(8) The director may establish procedures and policies to further negotiate and contract with managed health care systems following completion of the request for proposal process in subsection (6) of this section, upon a determination by the director that it is necessary to provide access, as defined in the request for proposal documents, to covered basic health care services for enrollees.

(9) Subsections (2) and (3) of this section expire July 1, 2016. [2013 c 251 § 7. Prior: 2011 1st sp.s. c 9 § 4; 2011 c 316 § 5; 2009 c 568 § 5; 2004 c 192 § 4; 2000 c 79 § 35; 1987 1st ex.s. c 5 § 12.]

Residual balance of funds—Effective date—2013 c 251: See notes following RCW 41.06.280.

Findings—Intent—2011 1st sp.s. c 9: See note following RCW 70.47.020.

Effective date—2004 c 192: See note following RCW 70.47.020.

Additional notes found at www.leg.wa.gov

Chapter 70.54 RCW

MISCELLANEOUS HEALTH AND SAFETY PROVISIONS

Sections

70.54.140 Laetrile—Interference with physician/patient relationship by health facility—Pharmacy quality assurance commission, duties.

70.54.140 Laetrile—Interference with physician/patient relationship by health facility—Pharmacy quality assurance commission, duties. No hospital or health facility may interfere with the physician/patient relationship by restricting or forbidding the use of amygdalin (Laetrile) when prescribed or administered by a physician licensed pursuant to chapter 18.57 or 18.71 RCW and requested by a patient under his/her care who has requested the substance after having been given sufficient information in writing to make an informed decision.

For the purposes of RCW 70.54.130 through 70.54.150, the pharmacy quality assurance commission shall provide for the certification as to the identity of amygdalin (Laetrile) by random sample testing or other testing procedures, and shall promulgate rules and regulations necessary to implement and enforce its authority under this section. [2013 c 19 § 123; 1977 ex.s. c 122 § 2.]

Chapter 70.74 RCW

WASHINGTON STATE EXPLOSIVES ACT

Sections

70.74.191 Exemptions.

70.74.191 Exemptions. The laws contained in this chapter and regulations prescribed by the department of labor and industries pursuant to this chapter shall not apply to:

(1) Explosives or blasting agents in the course of transportation by way of railroad, water, highway, or air under the jurisdiction of, and in conformity with, regulations adopted by the federal department of transportation, the Washington state utilities and transportation commission, and the Washington state patrol;

(2) The laboratories of schools, colleges, and similar institutions if confined to the purpose of instruction or research and if not exceeding the quantity of one pound;

(3) Explosives in the forms prescribed by the official United States Pharmacopoeia;

(4) The transportation, storage, and use of explosives or blasting agents in the normal and emergency operations of United States agencies and departments including the regular United States military departments on military reservations; arsenals, navy yards, depots, or other establishments owned by, operated by, or on behalf of, the United States; or the duly authorized militia of any state; or to emergency operations of any state department or agency, any police, or any municipality or county;

(5) A hazardous devices technician when carrying out normal and emergency operations, handling evidence, and operating and maintaining a specially designed emergency response vehicle that carries no more than ten pounds of explosive material or when conducting training and whose employer possesses the minimum safety equipment prescribed by the federal bureau of investigation for hazardous devices work. For purposes of this section, a hazardous devices technician is a person who is a graduate of the federal bureau of investigation hazardous devices school and who is employed by a state, county, or municipality;

(6) The importation, sale, possession, and use of fireworks as defined in chapter 70.77 RCW, signaling devices, flares, fuses, and torpedoes;

(7) The transportation, storage, and use of explosives or blasting agents in the normal and emergency avalanche control procedures as conducted by trained and licensed ski area operator personnel. However, the storage, transportation, and use of explosives and blasting agents for such use shall meet the requirements of regulations adopted by the director of labor and industries;

(8) The storage of consumer fireworks as defined in chapter 70.77 RCW pursuant to a forfeiture or seizure under chapter 70.77 RCW by the chief of the Washington state patrol, through the director of fire protection, or his or her deputy, or by state agencies or local governments having general law enforcement authority;

(9) The transportation and storage of explosive actuated tactical devices, including noise and flash diversionary devices, by local law enforcement tactical response teams and officers in law enforcement department-issued vehicles designated for use by tactical response teams and officers,

provided the explosive devices are stored and secured in compliance with regulations and rulings adopted by the federal bureau of alcohol, tobacco, firearms and explosives; and

(10) Any violation under this chapter if any existing ordinance of any city, municipality, or county is more stringent than this chapter. [2013 c 140 § 1; 2002 c 370 § 2; 1998 c 40 § 1; 1993 c 293 § 5; 1985 c 191 § 2; 1969 ex.s. c 137 § 5.]

Purpose—1985 c 191: "It is the purpose of this 1985 act to protect the public by enabling ski area operators to exercise appropriate avalanche control measures. The legislature finds that avalanche control is of vital importance to safety in ski areas and that the provisions of the Washington state explosives act contain restrictions which do not reflect special needs for the use of explosives as a means of clearing an area of serious avalanche risks. This 1985 act recognizes these needs while providing for a system of regulations designed to ensure that the use of explosives for avalanche control conforms to fundamental safety requirements." [1985 c 191 § 1.]

Additional notes found at www.leg.wa.gov

Chapter 70.93 RCW

WASTE REDUCTION, RECYCLING, AND MODEL LITTER CONTROL ACT

(Formerly: Model litter control and recycling act)

Sections

70.93.180 Waste reduction, recycling, and litter control account—Distribution. (*Effective until June 30, 2017.*)

70.93.180 Waste reduction, recycling, and litter control account—Distribution. (*Effective June 30, 2017.*)

70.93.180 Waste reduction, recycling, and litter control account—Distribution. (*Effective until June 30, 2017.*) (1) There is hereby created an account within the state treasury to be known as the waste reduction, recycling, and litter control account. Moneys in the account may be spent only after appropriation. Expenditures from the waste reduction, recycling, and litter control account shall be used as follows:

(a) Fifty percent to the department of ecology, for use by the departments of ecology, natural resources, revenue, transportation, and corrections, and the parks and recreation commission, for use in litter collection programs, to be distributed under RCW 70.93.220. The amount to the department of ecology shall also be used for a central coordination function for litter control efforts statewide; for the biennial litter survey under RCW 70.93.200(8); for statewide public awareness programs under RCW 70.93.200(7); and during the 2013-2015 biennium, to support employment of youth in litter clean up as intended in RCW 70.93.020, and for litter pick up using other authorized agencies. The amount to the department shall also be used to defray the costs of administering the funding, coordination, and oversight of local government programs for waste reduction, litter control, and recycling, so that local governments can apply one hundred percent of their funding to achieving program goals. The amount to the department of revenue shall be used to enforce compliance with the litter tax imposed in chapter 82.19 RCW;

(b) Twenty percent to the department: (i) For local government funding programs for waste reduction, litter control, and recycling activities by cities and counties under RCW 70.93.250, to be administered by the department of ecology; and (ii) during the 2013-2015 biennium, to create a matching fund competitive grant program to be used by local govern-

ments and nonprofit organizations for local or statewide education programs designed to help the public with litter reduction, and recycling of primarily the products taxed under chapter 82.19 RCW. Unspent funds from (a) and (c) of this subsection may be applied to the competitive grant program; and

(c) Thirty percent to the department of ecology for waste reduction and recycling efforts. During the 2013-2015 biennium, these funds are to be used to: (i) Implement activities under RCW 70.93.200 for waste reduction, recycling efforts; (ii) provide technical assistance to local governments for commercial business and residential recycling programs primarily for the products taxed under chapter 82.19 RCW designed to educate citizens about waste and litter reduction and recyclable products and programs; and (iii) increase access to recycling programs, particularly for food packaging and plastic bags and appropriate techniques of discarding products.

(2) All moneys directed to the waste reduction, recycling, and litter control account under RCW 82.19.040 and fines and bail forfeitures collected or received pursuant to this chapter shall be deposited in the account and used for the programs under subsection (1) of this section.

(3) Not less than five percent and no more than ten percent of the amount appropriated into the waste reduction, recycling, and litter control account every biennium shall be reserved for capital needs, including the purchase of vehicles for transporting crews and for collecting litter and solid waste. Capital funds shall be distributed among state agencies and local governments according to the same criteria provided in RCW 70.93.220 for the remainder of the funds, so that the most effective waste reduction, litter control, and recycling programs receive the most funding. The intent of this subsection is to provide funds for the purchase of equipment that will enable the department to account for the greatest return on investment in terms of reaching a zero litter goal.

(5) [(4)] During the 2013-2015 biennium, funds in the waste reduction, recycling, and litter control account, collected under chapter 82.19 RCW, must be prioritized for the products identified under RCW 82.19.020 solely for the purposes of recycling and litter collection, reduction, and control programs.

(6) [(5)] During the 2013-2015 biennium, the legislature may appropriate funds from the waste reduction, recycling, and litter control account to the state parks and recreation commission for parks operation and maintenance. [2013 2nd sp.s. c 15 § 6; 2013 2nd sp.s. c 4 § 989; 2011 1st sp.s. c 50 § 963; 2010 1st sp.s. c 37 § 945; 2009 c 564 § 950; 2005 c 518 § 939; 1998 c 257 § 5; 1992 c 175 § 8; 1991 sp.s. c 13 § 40; 1985 c 57 § 68; 1983 c 277 § 3; 1971 ex.s. c 307 § 18.]

Reviser's note: This section was amended by 2013 2nd sp.s. c 4 § 989 and by 2013 2nd sp.s. c 15 § 6, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—Expiration date—2013 2nd sp.s. c 15 §§ 5-7: See notes following RCW 82.19.040.

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

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

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Effective date—2010 1st sp.s. c 37: See note following RCW 13.06.050.

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

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

Additional notes found at www.leg.wa.gov

70.93.180 Waste reduction, recycling, and litter control account—Distribution. (Effective June 30, 2017.) (1) There is hereby created an account within the state treasury to be known as the waste reduction, recycling, and litter control account. Moneys in the account may be spent only after appropriation. Expenditures from the waste reduction, recycling, and litter control account shall be used as follows:

(a) Fifty percent to the department of ecology, for use by the departments of ecology, natural resources, revenue, transportation, and corrections, and the parks and recreation commission, for use in litter collection programs, to be distributed under RCW 70.93.220. The amount to the department of ecology shall also be used for a central coordination function for litter control efforts statewide; for the biennial litter survey under RCW 70.93.200(8); for statewide public awareness programs under RCW 70.93.200(7); and during the 2013-2015 biennium, to support employment of youth in litter clean up as intended in RCW 70.93.020, and for litter pick up using other authorized agencies. The amount to the department shall also be used to defray the costs of administering the funding, coordination, and oversight of local government programs for waste reduction, litter control, and recycling, so that local governments can apply one hundred percent of their funding to achieving program goals. The amount to the department of revenue shall be used to enforce compliance with the litter tax imposed in chapter 82.19 RCW;

(b) Twenty percent to the department: (i) For local government funding programs for waste reduction, litter control, and recycling activities by cities and counties under RCW 70.93.250, to be administered by the department of ecology; and (ii) during the 2013-2015 biennium, to create a matching fund competitive grant program to be used by local governments and nonprofit organizations for local or statewide education programs designed to help the public with litter reduction, and recycling of primarily the products taxed under chapter 82.19 RCW. Unspent funds from (a) and (c) of this subsection may be applied to the competitive grant program; and

(c) Thirty percent to the department of ecology for waste reduction and recycling efforts. During the 2013-2015 biennium, these funds are to be used to: (i) Implement activities under RCW 70.93.200 for waste reduction, recycling efforts; (ii) provide technical assistance to local governments for commercial business and residential recycling programs primarily for the products taxed under chapter 82.19 RCW designed to educate citizens about waste and litter reduction and recyclable products and programs; and (iii) increase access to recycling programs, particularly for food packaging and plastic bags and appropriate techniques of discarding products.

(2) All taxes imposed in RCW 82.19.010 and fines and bail forfeitures collected or received pursuant to this chapter shall be deposited in the waste reduction, recycling, and litter

control account and used for the programs under subsection (1) of this section.

(3) Not less than five percent and no more than ten percent of the amount appropriated into the waste reduction, recycling, and litter control account every biennium shall be reserved for capital needs, including the purchase of vehicles for transporting crews and for collecting litter and solid waste. Capital funds shall be distributed among state agencies and local governments according to the same criteria provided in RCW 70.93.220 for the remainder of the funds, so that the most effective waste reduction, litter control, and recycling programs receive the most funding. The intent of this subsection is to provide funds for the purchase of equipment that will enable the department to account for the greatest return on investment in terms of reaching a zero litter goal.

(4) During the 2011-2013 fiscal biennium, the legislature may transfer from the waste reduction, recycling, and litter control account to the state general fund such amounts as reflect the excess fund balance of the account. Additionally, during the 2011-2013 fiscal biennium, subsection (1)(a), (b), and (c) of this section is suspended.

(5) During the 2013-2015 biennium, funds in the waste reduction, recycling, and litter control account, collected under chapter 82.19 RCW, must be prioritized for the products identified under RCW 82.19.020 solely for the purposes of recycling and litter collection, reduction, and control programs.

(6) During the 2013-2015 biennium, the legislature may appropriate funds from the waste reduction, recycling, and litter control account to the state parks and recreation commission for parks operation and maintenance. [2013 2nd sp.s. c 4 § 989; 2011 1st sp.s. c 50 § 963; 2010 1st sp.s. c 37 § 945; 2009 c 564 § 950; 2005 c 518 § 939; 1998 c 257 § 5; 1992 c 175 § 8; 1991 sp.s. c 13 § 40; 1985 c 57 § 68; 1983 c 277 § 3; 1971 ex.s. c 307 § 18.]

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

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

Effective date—2010 1st sp.s. c 37: See note following RCW 13.06.050.

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

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

Additional notes found at www.leg.wa.gov

Chapter 70.94 RCW

WASHINGTON CLEAN AIR ACT

Sections

70.94.431	Civil penalties—Excusable excess emissions.
70.94.531	Transportation demand management—Requirements for employers.

70.94.431 Civil penalties—Excusable excess emissions. (1) Except as provided in RCW 43.05.060 through 43.05.080 and 43.05.150, and in addition to or as an alternate to any other penalty provided by law, any person who violates any of the provisions of this chapter, chapter 70.120 RCW, chapter 70.310 RCW, or any of the rules in force under

such chapters may incur a civil penalty in an amount not to exceed ten thousand dollars per day for each violation. Each such violation shall be a separate and distinct offense, and in case of a continuing violation, each day's continuance shall be a separate and distinct violation.

Any person who fails to take action as specified by an order issued pursuant to this chapter shall be liable for a civil penalty of not more than ten thousand dollars for each day of continued noncompliance.

(2) Penalties incurred but not paid shall accrue interest, beginning on the ninety-first day following the date that the penalty becomes due and payable, at the highest rate allowed by RCW 19.52.020 on the date that the penalty becomes due and payable. If violations or penalties are appealed, interest shall not begin to accrue until the thirty-first day following final resolution of the appeal.

The maximum penalty amounts established in this section may be increased annually to account for inflation as determined by the state office of the economic and revenue forecast council.

(3) Each act of commission or omission which procures, aids or abets in the violation shall be considered a violation under the provisions of this section and subject to the same penalty. The penalties provided in this section shall be imposed pursuant to RCW 43.21B.300.

(4) All penalties recovered under this section by the department shall be paid into the state treasury and credited to the air pollution control account established in RCW 70.94.015 or, if recovered by the authority, shall be paid into the treasury of the authority and credited to its funds. If a prior penalty for the same violation has been paid to a local authority, the penalty imposed by the department under subsection (1) of this section shall be reduced by the amount of the payment.

(5) To secure the penalty incurred under this section, the state or the authority shall have a lien on any vessel used or operated in violation of this chapter which shall be enforced as provided in RCW 60.36.050.

(6) Public or private entities that are recipients or potential recipients of department grants, whether for air quality related activities or not, may have such grants rescinded or withheld by the department for failure to comply with provisions of this chapter.

(7) In addition to other penalties provided by this chapter, persons knowingly under-reporting emissions or other information used to set fees, or persons required to pay emission or permit fees who are more than ninety days late with such payments may be subject to a penalty equal to three times the amount of the original fee owed.

(8) By January 1, 1992, the department shall develop rules for excusing excess emissions from enforcement action if such excess emissions are unavoidable. The rules shall specify the criteria and procedures for the department and local air authorities to determine whether a period of excess emissions is excusable in accordance with the state implementation plan. [2013 c 51 § 6; 1995 c 403 § 630; 1991 c 199 § 311; 1990 c 157 § 1; 1987 c 109 § 19; 1984 c 255 § 2; 1973 1st ex.s. c 176 § 2; 1969 ex.s. c 168 § 53.]

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Finding—1991 c 199: See note following RCW 70.94.011.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

Additional notes found at www.leg.wa.gov

70.94.531 Transportation demand management—Requirements for employers. (1) State agency worksites are subject to the same requirements under this section and RCW 70.94.534 as private employers.

(2) Not more than ninety days after the adoption of a jurisdiction's commute trip reduction plan, each major employer in that jurisdiction shall perform a baseline measurement consistent with the rules established by the department of transportation under RCW 70.94.537. Not more than ninety days after receiving the results of the baseline measurement, each major employer shall develop a commute trip reduction program and shall submit a description of that program to the jurisdiction for review. The program shall be implemented not more than ninety days after approval by the jurisdiction.

(3) A commute trip reduction program of a major employer shall consist of, at a minimum (a) designation of a transportation coordinator and the display of the name, location, and telephone number of the coordinator in a prominent manner at each affected worksite; (b) regular distribution of information to employees regarding alternatives to single-occupant vehicle commuting; (c) a regular review of employee commuting and reporting of progress toward meeting the single-occupant vehicle reduction goals to the county, city, or town consistent with the method established in the commute trip reduction plan and the rules established by the department of transportation under RCW 70.94.537; and (d) implementation of a set of measures designed to achieve the applicable commute trip reduction goals adopted by the jurisdiction. Such measures may include but are not limited to:

(i) Provision of preferential parking or reduced parking charges, or both, for high occupancy vehicles and motorcycles;

(ii) Instituting or increasing parking charges for single-occupant vehicles;

(iii) Provision of commuter ride matching services to facilitate employee ridesharing for commute trips;

(iv) Provision of subsidies for transit fares;

(v) Provision of vans for van pools;

(vi) Provision of subsidies for car pooling or van pooling;

(vii) Permitting the use of the employer's vehicles for car pooling or van pooling;

(viii) Permitting flexible work schedules to facilitate employees' use of transit, car pools, or van pools;

(ix) Cooperation with transportation providers to provide additional regular or express service to the worksite;

(x) Construction of special loading and unloading facilities for transit, car pool, and van pool users;

(xi) Provision of bicycle parking facilities, lockers, changing areas, and showers for employees who bicycle or walk to work;

(xii) Provision of a program of parking incentives such as a rebate for employees who do not use the parking facility;

(xiii) Establishment of a program to permit employees to work part or full time at home or at an alternative worksite closer to their homes;

(xiv) Establishment of a program of alternative work schedules such as compressed work week schedules which reduce commuting; and

(xv) Implementation of other measures designed to facilitate the use of high occupancy vehicles such as on-site day care facilities and emergency taxi services.

(4) Employers or owners of worksites may form or utilize existing transportation management associations or other transportation-related associations authorized by RCW 35.87A.010 to assist members in developing and implementing commute trip reduction programs.

(5) Employers shall make a good faith effort towards achievement of the goals identified in RCW 70.94.527(4)(d). [2013 c 26 § 1; 2006 c 329 § 5; 1997 c 250 § 3; (1995 2nd sp.s. c 14 § 530 expired June 30, 1997); 1991 c 202 § 13.]

Additional notes found at www.leg.wa.gov

Chapter 70.95N RCW

ELECTRONIC PRODUCT RECYCLING

Sections

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70.95N.020 Definitions. (*Effective January 1, 2014.*)

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

(1) "Authority" means the Washington materials management and financing authority created under RCW 70.95N.280.

(2) "Authorized party" means a manufacturer who submits an individual independent plan or the entity authorized to submit an independent plan for more than one manufacturer.

(3) "Board" means the board of directors of the Washington materials management and financing authority created under RCW 70.95N.290.

(4) "Collector" means an entity licensed to do business in the state that gathers unwanted covered electronic products from households, small businesses, school districts, small governments, and charities for the purpose of recycling and meets minimum standards that may be developed by the department.

(5) "Contract for services" means an instrument executed by the authority and one or more persons or entities that delineates collection, transportation, and recycling services,

in whole or in part, that will be provided to the citizens of the state within service areas as described in the approved standard plan.

(6) "Covered electronic product" includes a cathode ray tube or flat panel computer monitor having a viewable area greater than four inches when measured diagonally, a desktop computer, a laptop or a portable computer, or a cathode ray tube or flat panel television having a viewable area greater than four inches when measured diagonally that has been used in the state by any covered entity regardless of original point of purchase. "Covered electronic product" does not include: (a) A motor vehicle or replacement parts for use in motor vehicles or aircraft, or any computer, computer monitor, or television that is contained within, and is not separate from, the motor vehicle or aircraft; (b) monitoring and control instruments or systems; (c) medical devices; (d) products including materials intended for use as ingredients in those products as defined in the federal food, drug, and cosmetic act (21 U.S.C. Sec. 301 et seq.) or the virus-serum-toxin act of 1913 (21 U.S.C. Sec. 151 et seq.), and regulations issued under those acts; (e) equipment used in the delivery of patient care in a health care setting; (f) a computer, computer monitor, or television that is contained within a clothes washer, clothes dryer, refrigerator, refrigerator and freezer, microwave oven, conventional oven or range, dishwasher, room air conditioner, dehumidifier, or air purifier; or (g) hand-held portable voice or data devices used for commercial mobile services as defined in 47 U.S.C. Sec. 332 (d)(1).

(7) "Covered entity" means any household, charity, school district, small business, or small government located in Washington state.

(8) "Curbside service" means a collection service providing regularly scheduled pickup of covered electronic products from households or other covered entities in quantities generated from households.

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

(10) "Electronic product" includes a cathode ray tube or flat panel computer monitor having a viewable area greater than four inches when measured diagonally; a desktop computer; a laptop or a portable computer; or a cathode ray tube or flat screen television having a viewable area greater than four inches when measured diagonally.

(11) "Equivalent share" means the weight in pounds of covered electronic products identified for an individual manufacturer under this chapter as determined by the department under RCW 70.95N.200.

(12) "Household" means a single detached dwelling unit or a single unit of a multiple dwelling unit and appurtenant structures.

(13) "Independent plan" means a plan for the collection, transportation, and recycling of unwanted covered electronic products that is developed, implemented, and financed by an individual manufacturer or by an authorized party.

(14) "Manufacturer" means any person, in business or no longer in business but having a successor in interest, who, irrespective of the selling technique used, including by means of distance or remote sale:

(a) Manufactures or has manufactured a covered electronic product under its own brand names for sale in or into this state;

(b) Assembles or has assembled a covered electronic product that uses parts manufactured by others for sale in or into this state under the assembler's brand names;

(c) Resells or has resold in or into this state under its own brand names a covered electronic product produced by other suppliers, including retail establishments that sell covered electronic products under their own brand names;

(d) Manufactures or manufactured a cobranded product for sale in or into this state that carries the name of both the manufacturer and a retailer;

(e) Imports or has imported a covered electronic product into the United States that is sold in or into this state. However, if the imported covered electronic product is manufactured by any person with a presence in the United States meeting the criteria of manufacturer under (a) through (d) of this subsection, that person is the manufacturer. For purposes of this subsection, "presence" means any person that performs activities conducted under the standards established for interstate commerce under the commerce clause of the United States Constitution;

(f) Sells at retail a covered electronic product acquired from an importer that is the manufacturer as described in (e) of this subsection, and elects to register in lieu of the importer as the manufacturer for those products; or

(g) Beginning in program year 2016, elects to assume the responsibility and register in lieu of a manufacturer as defined under this section. In the event the entity who assumes responsibility fails to comply, the manufacturer as defined under (a) through (f) of this subsection remains fully responsible.

(15) "Market share" means the percentage of covered electronic products by weight identified for an individual manufacturer, as determined by the department under RCW 70.95N.190.

(16) "New entrant" means: (a) A manufacturer of televisions that have been sold in the state for less than ten years; or (b) a manufacturer of desktop computers, laptop and portable computers, or computer monitors that have been sold in the state for less than five years. However, a manufacturer of both televisions and computers or a manufacturer of both televisions and computer monitors that is deemed a new entrant under either only (a) or (b) of this subsection is not considered a new entrant for purposes of this chapter.

(17) "Orphan product" means a covered electronic product that lacks a manufacturer's brand or for which the manufacturer is no longer in business and has no successor in interest.

(18) "Plan's equivalent share" means the weight in pounds of covered electronic products for which a plan is responsible. A plan's equivalent share is equal to the sum of the equivalent shares of each manufacturer participating in that plan.

(19) "Plan's market share" means the sum of the market shares of each manufacturer participating in that plan.

(20) "Plan's return share" means the sum of the return shares of each manufacturer participating in that plan.

(21) "Premium service" means services such as at-location system upgrade services provided to covered entities and at-home pickup services offered to households. "Premium service" does not include curbside service.

(22) "Processor" means an entity engaged in disassembling, dismantling, or shredding electronic products to recover materials contained in the electronic products and prepare those materials for reclaiming or reuse in new products in accordance with processing standards established by this chapter and by the department. A processor may also salvage parts to be used in new products.

(23) "Product type" means one of the following categories: Computer monitors; desktop computers; laptop and portable computers; and televisions.

(24) "Program" means the collection, transportation, and recycling activities conducted to implement an independent plan or the standard plan.

(25) "Program year" means each full calendar year after the program has been initiated.

(26) "Recycling" means transforming or remanufacturing unwanted electronic products, components, and by-products into usable or marketable materials for use other than landfill disposal or incineration. "Recycling" does not include energy recovery or energy generation by means of combusting unwanted electronic products, components, and by-products with or without other waste. Smelting of electronic materials to recover metals for reuse in conformance with all applicable laws and regulations is not considered disposal or energy recovery.

(27) "Retailer" means a person who offers covered electronic products for sale at retail through any means including, but not limited to, remote offerings such as sales outlets, catalogs, or the internet, but does not include a sale that is a wholesale transaction with a distributor or a retailer.

(28) "Return share" means the percentage of covered electronic products by weight identified for an individual manufacturer, as determined by the department under RCW 70.95N.190.

(29) "Reuse" means any operation by which an electronic product or a component of a covered electronic product changes ownership and is used for the same purpose for which it was originally purchased.

(30) "Small business" means a business employing less than fifty people.

(31) "Small government" means a city in the state with a population less than fifty thousand, a county in the state with a population less than one hundred twenty-five thousand, and special purpose districts in the state.

(32) "Standard plan" means the plan for the collection, transportation, and recycling of unwanted covered electronic products developed, implemented, and financed by the authority on behalf of manufacturers participating in the authority.

(33) "Transporter" means an entity that transports covered electronic products from collection sites or services to processors or other locations for the purpose of recycling, but does not include any entity or person that hauls their own unwanted electronic products.

(34) "Unwanted electronic product" means a covered electronic product that has been discarded or is intended to be discarded by its owner.

(35) "White box manufacturer" means a person who manufactured unbranded covered electronic products offered for sale in the state within ten years prior to a program year for televisions or within five years prior to a program year for

desktop computers, laptop or portable computers, or computer monitors. [2013 c 305 § 1; 2006 c 183 § 2.]

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

Effective date—2013 c 305: "This act takes effect January 1, 2014." [2013 c 305 § 15.]

70.95N.040 Manufacturer registration. (Effective January 1, 2014.) (1) By January 1, 2007, and annually thereafter, each manufacturer must register with the department.

(2) A manufacturer must submit to the department with each registration or annual renewal a fee to cover the administrative costs of this chapter as determined by the department under RCW 70.95N.230.

(3) The department shall review the registration or renewal application and notify the manufacturer if their registration does not meet the requirements of this section. Within thirty days of receipt of such a notification from the department, the manufacturer must file with the department a revised registration addressing the requirements noted by the department.

(4) The registration must include the following information:

(a) The name and contact information of the manufacturer submitting the registration;

(b) The manufacturer's brand names of covered electronic products, including all brand names sold in the state in the past, all brand names currently being sold in the state, and all brand names for which the manufacturer has legal responsibility under RCW 70.95N.100;

(c) The method or methods of sale used in the state; and

(d) Whether the registrant will be participating in the standard plan or submitting an independent plan to the department for approval.

(5) The registrant shall submit any changes to the information provided in the registration to the department within fourteen days of such change.

(6) The department shall identify, using all reasonable means, manufacturers that are in business or that are no longer in business but that have a successor in interest by examining best available return share data, product advertisements, and other pertinent data. The department shall notify manufacturers that have been identified and for whom an address has been found of the requirements of this chapter, including registration and plan requirements under this section and RCW 70.95N.050. [2013 c 305 § 2; 2006 c 183 § 4.]

Effective date—2013 c 305: See note following RCW 70.95N.020.

70.95N.050 Independent plan requirements. (Effective January 1, 2014.) (1) A manufacturer must participate in the standard plan administered by the authority, unless the manufacturer obtains department approval for an independent plan for the collection, transportation, and recycling of unwanted electronic products.

(2) An independent plan may be submitted by an individual manufacturer or by a group of manufacturers, provided that:

(a) For program years 2009 through 2015, each independent plan represents at least a five percent return share of covered electronic products. For program year 2016 and all sub-

sequent program years, each independent plan represents at least a five percent market share of covered electronic products; and

(b) No manufacturer may participate in an independent plan if it is a new entrant or a white box manufacturer.

(3) An individual manufacturer submitting an independent plan to the department is responsible for collecting, transporting, and recycling its equivalent share of covered electronic products.

(4)(a) Manufacturers collectively submitting an independent plan are responsible for collecting, transporting, and recycling the sum of the equivalent shares of each participating manufacturer.

(b) Each group of manufacturers submitting an independent plan must designate a party authorized to file the plan with the department on their behalf. A letter of certification from each of the manufacturers designating the authorized party must be submitted to the department together with the plan.

(5) Each manufacturer in the standard plan or in an independent plan retains responsibility and liability under this chapter in the event that the plan fails to meet the manufacturer's obligations under this chapter. [2013 c 305 § 3; 2006 c 183 § 5.]

Effective date—2013 c 305: See note following RCW 70.95N.020.

70.95N.090 Collection services. (Effective January 1, 2014.) (1) A program must provide collection services for covered electronic products of all product types and produced by any manufacturer that are reasonably convenient and available to all citizens of the state residing within its geographic boundaries, including both rural and urban areas. Each program must provide collection service in every county of the state. A program may provide collection services jointly with another plan or plans.

(a) For any city or town with a population of greater than ten thousand, each program shall provide a minimum of one collection site or alternate collection service described in subsection (3) of this section or a combination of sites and alternate service that together provide at least one collection opportunity for all product types. A collection site for a county may be the same as a collection site for a city or town in the county.

(b) Collection sites may include electronics recyclers and repair shops, recyclers of other commodities, reuse organizations, charities, retailers, government recycling sites, or other suitable locations.

(c) Collection sites must be staffed, open to the public at a frequency adequate to meet the needs of the area being served, and on an on-going basis.

(2) A program may limit the number of covered electronic products or covered electronic products by product type accepted per customer per day or per delivery at a collection site or service. All covered entities may use a collection site as long as the covered entities adhere to any restrictions established in the plans.

(3) A program may provide collection services in forms different than collection sites, such as curbside services, if those alternate services provide equal or better convenience to citizens and equal or increased recovery of unwanted covered electronic products.

(4) For rural areas without commercial centers or areas with widely dispersed population, a program may provide collection at the nearest commercial centers or solid waste sites, collection events, mail-back systems, or a combination of these options.

(5) For small businesses, small governments, charities, and school districts that may have large quantities of covered electronic products that cannot be handled at collection sites or curbside services, a program may provide alternate services. At a minimum, a program must provide for processing of these large quantities of covered electronic products at no charge to the small businesses, small governments, charities, and school districts. [2013 c 305 § 4; 2006 c 183 § 9.]

Effective date—2013 c 305: See note following RCW 70.95N.020.

70.95N.110 Covered electronic sampling. (Effective January 1, 2014.) (1) For program years 2009 through 2014, an independent plan and the standard plan must implement and finance an auditable, statistically significant sampling of covered electronic products entering its program every program year. The information collected must include a list of the brand names of covered electronic products by product type, the number of covered electronic products by product type, the weight of covered electronic products that are identified for each brand name or that lack a manufacturer's brand, the total weight of the sample by product type, and any additional information needed to assign return share.

(2) For program years 2009 through 2014, the sampling must be conducted in the presence of the department or a third-party organization approved by the department. The department may, at its discretion, audit the methodology and the results.

(3) After the fifth program year through the 2014 program year, the department may reassess the sampling required in this section. The department may adjust the frequency at which manufacturers must implement the sampling or may adjust the frequency at which manufacturers must provide certain information from the sampling. Prior to making any changes, the department shall notify the public, including all registered manufacturers, and provide a comment period. The department shall notify all registered manufacturers of any such changes. [2013 c 305 § 5; 2006 c 183 § 11.]

Effective date—2013 c 305: See note following RCW 70.95N.020.

70.95N.140 Annual reports. (Effective until January 1, 2014.) (1) By March 1st of the second program year and each program year thereafter, the authority and each authorized party shall file with the department an annual report for the preceding program year.

(2) The annual report must include the following information:

(a) The total weight in pounds of each type of covered electronic products collected and recycled, by county, during the preceding program year including documentation verifying collection and processing of that material. The total weight in pounds includes orphan products. The report must also indicate and document the weight in pounds received from each nonprofit charitable organization primarily engaged in the business of reuse and resale used by the plan. The report must document the weight in pounds that were

received in large quantities from small businesses, small governments, charities and school districts as described in RCW 70.95N.090(5);

(b) The collection services provided in each county and for each city with a population over ten thousand including a list of all collection sites and services operating in the state in the prior program year and the parties who operated them;

(c)(i) A list of processors used, the weight of covered electronic products processed by each direct processor, and a description of the processes and methods used to recycle the covered electronic products including a description of the processing and facility locations. The report must also include a list of subcontractors who further processed or recycled unwanted covered electronic products or electronic components, including facility locations.

(ii) An estimate of the weight of each type of material recovered as a result of the processing of recycled covered electronic products. Recovered materials catalogued under this subsection must include, at a minimum: Cathode ray tube glass, circuit boards, batteries, mercury-containing devices, plastics, and metals.

(iii) An estimate of the percentage, by weight, of all collected products that ultimately are reused, recycled, or end up as residual waste that is disposed of in another manner;

(d) Educational and promotional efforts that were undertaken;

(e) The results of sampling and sorting as required in RCW 70.95N.110, including a list of the brand names of covered electronic products by product type, the number of covered electronic products by product type, the weight of covered electronic products that are identified for each brand name or that lack a manufacturer's brand, and the total weight of the sample by product type;

(f) The list of manufacturers that are participating in the standard plan;

(g) A description of program revenues and costs, including: (i) The total cost of the program; and (ii) the average cost of the program per pound of covered electronic product collected;

(h) A detailed accounting of the following costs of the program: (i) Program delivery, including: (A) Education and promotional efforts; (B) collection; (C) transportation; and (D) processing and labor; and (ii) program administration;

(i) A description of the methods used by the program to collect, transport, recycle, and process covered electronic products; and

(j) Any other information deemed necessary by the department.

(3) The department shall review each report within ninety days of its submission and shall notify the authority or authorized party of any need for additional information or documentation, or any deficiency in its program.

(4) All reports submitted to the department must be available to the general public through the internet. Proprietary information submitted to the department under this chapter is exempt from public disclosure under RCW 42.56.270. [2013 c 292 § 1; 2006 c 183 § 14.]

70.95N.140 Annual reports. (Effective January 1, 2014.) (1) By March 1st of the second program year and each program year thereafter, the authority and each authorized

party shall file with the department an annual report for the preceding program year.

(2) The annual report must include the following information:

(a) The total weight in pounds of each type of covered electronic products collected and recycled, by county, during the preceding program year including documentation verifying collection and processing of that material. The total weight in pounds includes orphan products. The report must also indicate and document the weight in pounds received from each nonprofit charitable organization primarily engaged in the business of reuse and resale used by the plan. The report must document the weight in pounds that were received in large quantities from small businesses, small governments, charities and school districts as described in RCW 70.95N.090(5);

(b) The collection services provided in each county and for each city with a population over ten thousand including a list of all collection sites and services operating in the state in the prior program year and the parties who operated them;

(c)(i) A list of processors used, the weight of covered electronic products processed by each direct processor, and a description of the processes and methods used to recycle the covered electronic products including a description of the processing and facility locations. The report must also include a list of subcontractors who further processed or recycled unwanted covered electronic products or electronic components, including facility locations.

(ii) An estimate of the weight of each type of material recovered as a result of the processing of recycled covered electronic products. Recovered materials catalogued under this subsection must include, at a minimum: Cathode ray tube glass, circuit boards, batteries, mercury-containing devices, plastics, and metals.

(iii) An estimate of the percentage, by weight, of all collected products that ultimately are reused, recycled, or end up as residual waste that is disposed of in another manner;

(d) Educational and promotional efforts that were undertaken;

(e) For program years 2009 through 2014, the results of sampling and sorting as required in RCW 70.95N.110, including a list of the brand names of covered electronic products by product type, the number of covered electronic products by product type, the weight of covered electronic products that are identified for each brand name or that lack a manufacturer's brand, and the total weight of the sample by product type;

(f) The list of manufacturers that are participating in the standard plan;

(g) A description of program revenues and costs, including: (i) The total cost of the program; and (ii) the average cost of the program per pound of covered electronic product collected;

(h) A detailed accounting of the following costs of the program: (i) Program delivery, including: (A) Education and promotional efforts; (B) collection; (C) transportation; and (D) processing and labor; and (ii) program administration;

(i) A description of the methods used by the program to collect, transport, recycle, and process covered electronic products; and

(j) Any other information deemed necessary by the department.

(3) The department shall review each report within ninety days of its submission and shall notify the authority or authorized party of any need for additional information or documentation, or any deficiency in its program.

(4) All reports submitted to the department must be available to the general public through the internet. Proprietary information submitted to the department under this chapter is exempt from public disclosure under RCW 42.56.270. [2013 c 305 § 6; 2013 c 292 § 1; 2006 c 183 § 14.]

Reviser's note: This section was amended by 2013 c 292 § 1 and by 2013 c 305 § 6, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2013 c 305: See note following RCW 70.95N.020.

70.95N.180 Department web site. (Effective January 1, 2014.) (1) The department shall maintain on its web site the following information:

(a) The names of the manufacturers and the manufacturer's brands that are registered with the department under RCW 70.95N.040;

(b) The names of the manufacturers and the manufacturer's brands that are participating in an approved plan under RCW 70.95N.050;

(c) The names and addresses of the collectors and transporters that are listed in registrations filed with the department under RCW 70.95N.240;

(d) The names and addresses of the processors used to fulfill the requirements of the plans;

(e) For program years 2009 through 2015, return and equivalent shares for all manufacturers.

(2) The department shall update this web site information promptly upon receipt of a registration or a report. [2013 c 305 § 7; 2006 c 183 § 18.]

Effective date—2013 c 305: See note following RCW 70.95N.020.

70.95N.190 Return share calculation. (Effective January 1, 2014.) (1) For program years 2009 through 2015, the department shall determine the return share for each manufacturer in the standard plan or an independent plan by dividing the weight of covered electronic products identified for each manufacturer by the total weight of covered electronic products identified for all manufacturers in the standard plan or an independent plan, then multiplying the quotient by one hundred.

(2) For the first program year, the department shall determine the return share for such manufacturers using all reasonable means and based on best available information regarding return share data from other states and other pertinent data.

(3) For 2014, the department shall determine the return share for such manufacturers using all reasonable means and based on the most recent sampling of covered electronic products conducted in the state under RCW 70.95N.110.

(4)(a) For program year 2016 and all subsequent program years, the department shall determine market share by weight for all manufacturers using any combination of the following data:

(i) Generally available market research data;

(ii) Sales data supplied by manufacturers for brands they manufacture or sell; or

(iii) Sales data provided by retailers for brands they sell.

(b) The department shall determine each manufacturer's percentage of market share by dividing each manufacturer's total pounds of covered electronic products sold in Washington by the sum total of all pounds of covered electronic products sold in Washington by all manufacturers.

(5) Data reported by manufacturers under subsection (4) of this section is exempt from public disclosure under chapter 42.56 RCW. [2013 c 305 § 8; 2006 c 183 § 19.]

Effective date—2013 c 305: See note following RCW 70.95N.020.

70.95N.200 Equivalent share calculation—Notice to manufacturers—Billing parties that do not meet their plan's equivalent share—Payments to parties that exceed their plan's equivalent share—Nonprofit charitable organizations. (Effective January 1, 2014.) (1) For program years 2009 through 2015, the department shall determine the total equivalent share for each manufacturer in the standard plan or an independent plan by dividing the return share percentage for each manufacturer by one hundred, then multiplying the quotient by the total weight in pounds of covered electronic products collected for that program year, allowing as needed for the additional credit authorized in subsection (3) of this section. For program year 2016 and all subsequent program years, the department shall determine the total equivalent share for each manufacturer in the standard plan or an independent plan by dividing the market share percentage for each manufacturer by one hundred, then multiplying the quotient by the total weight in pounds of covered electronic products collected for that program year, allowing as needed for the additional credit authorized in subsection (3) of this section.

(2)(a) By June 1st of each program year, the department shall notify each manufacturer of the manufacturer's equivalent share of covered electronic products to be applied to the previous program year. The department shall also notify each manufacturer of how its equivalent share was determined.

(b) By June 1st of each program year, the department shall bill any authorized party or authority that has not attained its plan's equivalent share as determined under RCW 70.95N.220. The authorized party or authority shall remit payment to the department within sixty days from the billing date.

(c) By September 1st of each program year, the department shall pay any authorized party or authority that exceeded its plan's equivalent share.

(3) Plans that utilize the collection services of nonprofit charitable organizations that qualify for a taxation exemption under section 501(c)(3) of the internal revenue code of 1986 (26 U.S.C. Sec. 501(c)(3)) that are primarily engaged in the business of reuse and resale must be given an additional five percent credit to be applied toward a plan's equivalent share for pounds that are received for recycling from those organizations. The department may adjust the percentage of credit annually. [2013 c 305 § 9; 2006 c 183 § 20.]

Effective date—2013 c 305: See note following RCW 70.95N.020.

70.95N.210 Preliminary return share—Notice—Challenges—Final return share. (*Effective January 1, 2014.*) (1) By June 1, 2007, the department shall notify each manufacturer of its preliminary return share of covered electronic products for the first program year.

(2) For program years 2009 through 2014, preliminary return share of covered electronic products must be announced annually by June 1st of each program year for the next program year. For the 2015 program year and all subsequent program years, preliminary market share of covered electronic products must be sent out to each individual manufacturer annually by June 1st of each program year for the next program year.

(3) Manufacturers may challenge the preliminary return or market share by written petition to the department. The petition must be received by the department within thirty days of the date of publication of the preliminary return or market shares.

(4) The petition must contain a detailed explanation of the grounds for the challenge, an alternative calculation, and the basis for such a calculation, documentary evidence supporting the challenge, and complete contact information for requests for additional information or clarification.

(5) Sixty days after the publication of the preliminary return or market share, the department shall make a final decision on return or market share, having fully taken into consideration any and all challenges to its preliminary calculations.

(6) A written record of challenges received and a summary of the bases for the challenges, as well as the department's response, must be published at the same time as the publication of the final return share.

(7) By August 1, 2007, the department shall publish the final return shares for the first program year. For program years 2009 through 2014, by August 1st of each program year, the department shall publish the final return shares for use in the coming program year. For the 2015 program year and all subsequent program years, by August 1st of each program year, the department shall notify each manufacturer of its final market shares for use in the coming program year. [2013 c 305 § 10; 2006 c 183 § 21.]

Effective date—2013 c 305: See note following RCW 70.95N.020.

70.95N.230 Rules—Fees—Reports. (*Effective January 1, 2014.*) (1) The department shall adopt rules to determine the process for manufacturers to change plans under RCW 70.95N.080.

(2) The department shall establish annual registration and plan review fees for administering this chapter. An initial fee schedule must be established by rule and be adjusted no more often than once every two years. All fees charged must be based on factors relating to administering this chapter and be based on a sliding scale that is representative of annual sales of covered electronic products in the state, either by weight or unit, or by representative market share. Fees must be established in amounts to fully recover and not to exceed expenses incurred by the department to implement this chapter.

(3) The department shall establish an annual process for local governments and local communities to report their satisfaction with the services provided by plans under this chap-

ter. This information must be used by the department in reviewing plan updates and revisions.

(4) The department may adopt rules as necessary for the purpose of implementing, administering, and enforcing this chapter. [2013 c 305 § 11; 2006 c 183 § 23.]

Effective date—2013 c 305: See note following RCW 70.95N.020.

70.95N.290 Board of directors of the authority. (*Effective January 1, 2014.*) (1)(a) The authority is governed by a board of directors. The board of directors is comprised of eleven participating manufacturers, appointed by the director of the department. For program years 2009 through 2015, five board positions are reserved for representatives of the top ten brand owners by return share of covered electronic products, and six board positions are reserved for representatives of other brands, including at least one board position reserved for a manufacturer who is also a retailer selling their own private label. The return share of covered electronic products used to determine the top ten brand owners for purposes of electing the board must be determined by the department by January 1, 2007. For program years 2016 and beyond, five board positions are reserved for representatives of the top ten brand owners by market share of covered electronic products, and six board positions are reserved for representatives of other brands, including at least one board position reserved for a manufacturer who is also a retailer selling its own private label. The market share of covered electronic products used to determine the top ten brand owners for purposes of electing the board must be determined by the department by October 1, 2015.

(b) The board must have representation from both television and computer manufacturers.

(2) The board shall select from its membership the chair of the board and such other officers as it deems appropriate.

(3) A majority of the board constitutes a quorum.

(4) The directors of the department of commerce and the department of ecology serve as ex officio members. The state agency directors serving in ex officio capacity may each designate an employee of their respective departments to act on their behalf in all respects with regard to any matter to come before the authority. Ex officio designations must be made in writing and communicated to the authority director.

(5) The board shall create its own bylaws in accordance with the laws of the state of Washington.

(6) Any member of the board may be removed for misfeasance, malfeasance, or willful neglect of duty after notice and a public hearing, unless the notice and hearing are expressly waived in writing by the affected member.

(7) The members of the board serve without compensation but are entitled to reimbursement, solely from the funds of the authority, for expenses incurred in the discharge of their duties under this chapter. [2013 c 305 § 12; 2008 c 79 § 1; 2006 c 183 § 30.]

Effective date—2013 c 305: See note following RCW 70.95N.020.

70.95N.300 Manufacturers to pay their apportioned share of administrative and operational costs—Performance bonds—Dispute arbitration. (*Effective January 1, 2014.*) (1) Manufacturers participating in the standard plan shall pay the authority to cover all administrative and operational costs associated with the collection, transportation, and

recycling of covered electronic products within the state of Washington incurred by the standard program operated by the authority to meet the standard plan's equivalent share obligation as described in RCW 70.95N.280(5).

(2) The authority shall assess charges on each manufacturer participating in the standard plan and collect funds from each participating manufacturer for the manufacturer's portion of the costs in subsection (1) of this section. For program years 2009 through 2015, such apportionment must be based on return share, market share, any combination of return share and market share, or any other equitable method. For the 2016 program year and all subsequent program years, such apportionment must be based on market share. The authority's apportionment of costs to manufacturers participating in the standard plan may not include nor be based on electronic products imported through the state and subsequently exported outside the state. Charges assessed under this section must not be formulated in such a way as to create incentives to divert imported electronic products to ports or distribution centers in other states. The authority shall adjust the charges to manufacturers participating in the standard plan as necessary in order to ensure that all costs associated with the identified activities are covered.

(3) The authority may require financial assurances or performance bonds for manufacturers participating in the standard plan, including but not limited to new entrants and white box manufacturers, when determining equitable methods for apportioning costs to ensure that the long-term costs for collecting, transporting, and recycling of a covered electronic product are borne by the appropriate manufacturer in the event that the manufacturer ceases to participate in the program.

(4) Nothing in this section authorizes the authority to assess fees or levy taxes directly on the sale or possession of electronic products.

(5) If a manufacturer has not met its financial obligations as determined by the authority under this section, the authority shall notify the department that the manufacturer is no longer participating in the standard plan.

(6) For program years 2009 through 2015, the authority shall submit its plan for assessing charges and apportioning cost on manufacturers participating in the standard plan to the department for review and approval along with the standard plan as provided in RCW 70.95N.060.

(7)(a) Any manufacturer participating in the standard plan may appeal an assessment of charges or apportionment of costs levied by the authority under this section by written petition to the director of the department. The director of the department or the director's designee shall review all appeals within timelines established by the department and shall reverse any assessments of charges or apportionment of costs if the director finds that the authority's assessments or apportionment of costs was an arbitrary administrative decision, an abuse of administrative discretion, or is not an equitable assessment or apportionment of costs. The director shall make a fair and impartial decision based on sound data. If the director of the department reverses an assessment of charges, the authority must redetermine the assessment or apportionment of costs.

(b) Disputes regarding a final decision made by the director or director's designee may be challenged through

arbitration. The director shall appoint one member to serve on the arbitration panel and the challenging party shall appoint one other. These two persons shall choose a third person to serve. If the two persons cannot agree on a third person, the presiding judge of the Thurston county superior court shall choose a third person. The decision of the arbitration panel shall be final and binding, subject to review by the superior court solely upon the question of whether the decision of the panel was arbitrary or capricious. [2013 c 305 § 13; 2006 c 183 § 31.]

Effective date—2013 c 305: See note following RCW 70.95N.020.

Chapter 70.96A RCW

TREATMENT FOR ALCOHOLISM, INTOXICATION, AND DRUG ADDICTION

(Formerly: Uniform alcoholism and intoxication treatment)

Sections

70.96A.320 Alcoholism and other drug addiction program—Generally.
70.96A.350 Criminal justice treatment account.

70.96A.320 Alcoholism and other drug addiction program—Generally.

(1) A county legislative authority, or two or more counties acting jointly, may establish an alcoholism and other drug addiction program. If two or more counties jointly establish the program, they shall designate one county to provide administrative and financial services.

(2) To be eligible for funds from the department for the support of the county alcoholism and other drug addiction program, the county legislative authority shall establish a county alcoholism and other drug addiction board under RCW 70.96A.300 and appoint a county alcoholism and other drug addiction program coordinator under RCW 70.96A.310.

(3) The county legislative authority may apply to the department for financial support for the county program of alcoholism and other drug addiction. To receive financial support, the county legislative authority shall submit a plan that meets the following conditions:

(a) It shall describe the services and activities to be provided;

(b) It shall include anticipated expenditures and revenues;

(c) It shall be prepared by the county alcoholism and other drug addiction program board and be adopted by the county legislative authority;

(d) It shall reflect maximum effective use of existing services and programs; and

(e) It shall meet other conditions that the secretary may require.

(4) The county may accept and spend gifts, grants, and fees, from public and private sources, to implement its program of alcoholism and other drug addiction.

(5) The department shall require that any agreement to provide financial support to a county that performs the activities of a service coordination organization for alcoholism and other drug addiction services must incorporate the expected outcomes and criteria to measure the performance of service coordination organizations as provided in chapter 70.320 RCW.

(6) The county may subcontract for detoxification, residential treatment, or outpatient treatment with treatment pro-

grams that are approved treatment programs. The county may subcontract for other services with individuals or organizations approved by the department.

(7) To continue to be eligible for financial support from the department for the county alcoholism and other drug addiction program, an increase in state financial support shall not be used to supplant local funds from a source that was used to support the county alcoholism and other drug addiction program before the effective date of the increase. [2013 c 320 § 8; 1990 c 151 § 9; 1989 c 270 § 17.]

70.96A.350 Criminal justice treatment account. (1) The criminal justice treatment account is created in the state treasury. Moneys in the account may be expended solely for: (a) Substance abuse treatment and treatment support services for offenders with an addiction or a substance abuse problem that, if not treated, would result in addiction, against whom charges are filed by a prosecuting attorney in Washington state; (b) the provision of drug and alcohol treatment services and treatment support services for nonviolent offenders within a drug court program; (c) the administrative and overhead costs associated with the operation of a drug court; and (d) during the 2011-2013 biennium, the legislature may appropriate up to three million dollars from the account in order to offset reductions in the state general fund for treatment services provided by counties. This amount is not subject to the requirements of subsections (5) through (9) of this section. During the 2013-2015 fiscal biennium, the legislature may transfer from the criminal justice treatment account to the state general fund amounts as reflect the state savings associated with the implementation of the medicaid expansion of the federal affordable care act. Moneys in the account may be spent only after appropriation.

(2) For purposes of this section:

(a) "Treatment" means services that are critical to a participant's successful completion of his or her substance abuse treatment program, but does not include the following services: Housing other than that provided as part of an inpatient substance abuse treatment program, vocational training, and mental health counseling; and

(b) "Treatment support" means transportation to or from inpatient or outpatient treatment services when no viable alternative exists, and child care services that are necessary to ensure a participant's ability to attend outpatient treatment sessions.

(3) Revenues to the criminal justice treatment account consist of: (a) Funds transferred to the account pursuant to this section; and (b) any other revenues appropriated to or deposited in the account.

(4)(a) For the fiscal biennium beginning July 1, 2003, the state treasurer shall transfer eight million nine hundred fifty thousand dollars from the general fund into the criminal justice treatment account, divided into eight equal quarterly payments. For the fiscal year beginning July 1, 2005, and each subsequent fiscal year, the state treasurer shall transfer eight million two hundred fifty thousand dollars from the general fund to the criminal justice treatment account, divided into four equal quarterly payments. For the fiscal year beginning July 1, 2006, and each subsequent fiscal year, the amount transferred shall be increased on an annual basis by the

implicit price deflator as published by the federal bureau of labor statistics.

(b) In each odd-numbered year, the legislature shall appropriate the amount transferred to the criminal justice treatment account in (a) of this subsection to the division of alcohol and substance abuse for the purposes of subsection (5) of this section.

(5) Moneys appropriated to the division of alcohol and substance abuse from the criminal justice treatment account shall be distributed as specified in this subsection. The department shall serve as the fiscal agent for purposes of distribution. Until July 1, 2004, the department may not use moneys appropriated from the criminal justice treatment account for administrative expenses and shall distribute all amounts appropriated under subsection (4)(b) of this section in accordance with this subsection. Beginning in July 1, 2004, the department may retain up to three percent of the amount appropriated under subsection (4)(b) of this section for its administrative costs.

(a) Seventy percent of amounts appropriated to the division from the account shall be distributed to counties pursuant to the distribution formula adopted under this section. The division of alcohol and substance abuse, in consultation with the department of corrections, the Washington state association of counties, the Washington state association of drug court professionals, the superior court judges' association, the Washington association of prosecuting attorneys, representatives of the criminal defense bar, representatives of substance abuse treatment providers, and any other person deemed by the division to be necessary, shall establish a fair and reasonable methodology for distribution to counties of moneys in the criminal justice treatment account. County or regional plans submitted for the expenditure of formula funds must be approved by the panel established in (b) of this subsection.

(b) Thirty percent of the amounts appropriated to the division from the account shall be distributed as grants for purposes of treating offenders against whom charges are filed by a county prosecuting attorney. The division shall appoint a panel of representatives from the Washington association of prosecuting attorneys, the Washington association of sheriffs and police chiefs, the superior court judges' association, the Washington state association of counties, the Washington defender's association or the Washington association of criminal defense lawyers, the department of corrections, the Washington state association of drug court professionals, substance abuse treatment providers, and the division. The panel shall review county or regional plans for funding under (a) of this subsection and grants approved under this subsection. The panel shall attempt to ensure that treatment as funded by the grants is available to offenders statewide.

(6) The county alcohol and drug coordinator, county prosecutor, county sheriff, county superior court, a substance abuse treatment provider appointed by the county legislative authority, a member of the criminal defense bar appointed by the county legislative authority, and, in counties with a drug court, a representative of the drug court shall jointly submit a plan, approved by the county legislative authority or authorities, to the panel established in subsection (5)(b) of this section, for disposition of all the funds provided from the criminal justice treatment account within that county. The funds

shall be used solely to provide approved alcohol and substance abuse treatment pursuant to RCW 70.96A.090, treatment support services, and for the administrative and overhead costs associated with the operation of a drug court.

(a) No more than ten percent of the total moneys received under subsections (4) and (5) of this section by a county or group of counties participating in a regional agreement shall be spent on the administrative and overhead costs associated with the operation of a drug court.

(b) No more than ten percent of the total moneys received under subsections (4) and (5) of this section by a county or group of counties participating in a regional agreement shall be spent for treatment support services.

(7) Counties are encouraged to consider regional agreements and submit regional plans for the efficient delivery of treatment under this section.

(8) Moneys allocated under this section shall be used to supplement, not supplant, other federal, state, and local funds used for substance abuse treatment.

(9) Counties must meet the criteria established in RCW 2.28.170(3)(b).

(10) The authority under this section to use funds from the criminal justice treatment account for the administrative and overhead costs associated with the operation of a drug court expires June 30, 2015. [2013 2nd sp.s. c 4 § 990; 2011 2nd sp.s. c 9 § 910; 2011 1st sp.s. c 40 § 34. Prior: 2009 c 479 § 50; 2009 c 445 § 1; 2008 c 329 § 918; 2003 c 379 § 11; 2002 c 290 § 4.]

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

Effective dates—2011 2nd sp.s. c 9: See note following RCW 28B.50.837.

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Effective date—2009 c 479: See note following RCW 2.56.030.

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

Severability—Effective dates—2003 c 379: See notes following RCW 9.94A.728.

Intent—2002 c 290: See note following RCW 9.94A.517.

Additional notes found at www.leg.wa.gov

Chapter 70.97 RCW

ENHANCED SERVICES FACILITIES

Sections

70.97.040	Rights of residents.
70.97.100	Licensing requirements—Information available to public, residents, families.
70.97.800	Request for proposal.

70.97.040 Rights of residents. (1)(a) Every person who is a resident of an enhanced services facility shall be entitled to all the rights set forth in this chapter, and chapters 71.05 and 70.96A RCW, and shall retain all rights not denied him or her under these chapters.

(b) No person shall be presumed incompetent as a consequence of receiving an evaluation or voluntary or involuntary treatment for a mental disorder, chemical dependency disorder, or both, under this chapter, or chapter 71.05 or 70.96A RCW, or any prior laws of this state dealing with mental ill-

ness. Competency shall not be determined or withdrawn except under the provisions of chapter 10.77 or 11.88 RCW.

(c) At the time of his or her treatment planning meeting, every resident of an enhanced services facility shall be given a written statement setting forth the substance of this section. The department shall by rule develop a statement and process for informing residents of their rights in a manner that is likely to be understood by the resident.

(2) Every resident of an enhanced services facility shall have the right to adequate care and individualized treatment.

(3) The provisions of this chapter shall not be construed to deny to any person treatment by spiritual means through prayer in accordance with the tenets and practices of a church or religious denomination.

(4) Persons receiving evaluation or treatment under this chapter shall be given a reasonable choice of an available physician or other professional person qualified to provide such services.

(5) The physician-patient privilege or the psychologist-client privilege shall be deemed waived in proceedings under this chapter relating to the administration of antipsychotic medications. As to other proceedings under chapter 10.77, 70.96A, or 71.05 RCW, the privileges shall be waived when a court of competent jurisdiction in its discretion determines that such waiver is necessary to protect either the detained person or the public.

(6) Insofar as danger to the person or others is not created, each resident of an enhanced services facility shall have, in addition to other rights not specifically withheld by law, the following rights, a list of which shall be prominently posted in all facilities, institutions, and hospitals providing such services:

(a) To wear his or her own clothes and to keep and use his or her own personal possessions, except when deprivation of same is essential to protect the safety of the resident or other persons;

(b) To keep and be allowed to spend a reasonable sum of his or her own money for canteen expenses and small purchases;

(c) To have access to individual storage space for his or her private use;

(d) To have visitors at reasonable times;

(e) To have reasonable access to a telephone, both to make and receive confidential calls, consistent with an effective treatment program;

(f) To have ready access to letter writing materials, including stamps, and to send and receive uncensored correspondence through the mails;

(g) Not to consent to the administration of antipsychotic medications beyond the hearing conducted pursuant to RCW 71.05.215 or 71.05.217, or the performance of electroconvulsant therapy, or surgery, except emergency life-saving surgery, unless ordered by a court under RCW 71.05.217;

(h) To discuss and actively participate in treatment plans and decisions with professional persons;

(i) Not to have psychosurgery performed on him or her under any circumstances;

(j) To dispose of property and sign contracts unless such person has been adjudicated an incompetent in a court proceeding directed to that particular issue; and

(k) To complain about rights violations or conditions and request the assistance of a mental health ombuds or representative of Washington protection and advocacy. The facility may not prohibit or interfere with a resident's decision to consult with an advocate of his or her choice.

(7) Nothing contained in this chapter shall prohibit a resident from petitioning by writ of habeas corpus for release.

(8) Nothing in this section permits any person to knowingly violate a no-contact order or a condition of an active judgment and sentence or active supervision by the department of corrections.

(9) A person has a right to refuse placement, except where subject to commitment, in an enhanced services facility. No person shall be denied other department services solely on the grounds that he or she has made such a refusal.

(10) A person has a right to appeal the decision of the department that he or she is eligible for placement at an enhanced services facility, and shall be given notice of the right to appeal in a format that is accessible to the person with instructions regarding what to do if the person wants to appeal. [2013 c 23 § 179; 2005 c 504 § 406.]

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

70.97.100 Licensing requirements—Information available to public, residents, families. (1) The department shall establish licensing rules for enhanced services facilities to serve the populations defined in this chapter.

(2) No person or public or private agency may operate or maintain an enhanced services facility without a license, which must be renewed annually.

(3) A licensee shall have the following readily accessible and available for review by the department, residents, families of residents, and the public:

(a) Its license to operate and a copy of the department's most recent inspection report and any recent complaint investigation reports issued by the department;

(b) Its written policies and procedures for all treatment, care, and services provided directly or indirectly by the facility; and

(c) The department's toll-free complaint number, which shall also be posted in a clearly visible place and manner.

(4) Enhanced services facilities shall maintain a grievance procedure that meets the requirements of rules established by the department.

(5) No facility shall discriminate or retaliate in any manner against a resident or employee because the resident, employee, or any other person made a complaint or provided information to the department, the long-term care ombuds, Washington protection and advocacy system, or a mental health ombuds.

(6) Each enhanced services facility will post in a prominent place in a common area a notice by the Washington protection and advocacy system providing contact information. [2013 c 23 § 180; 2005 c 504 § 412.]

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

[2013 RCW Supp—page 776]

Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

70.97.800 Request for proposal. To the extent that funds are specifically appropriated for this purpose, the department must issue a request for a proposal for enhanced services facility services by June 1, 2014, and complete the procurement process by January 1, 2015. [2013 c 338 § 3.]

Task force—2013 c 338: See note following RCW 43.20A.895.

Chapter 70.105 RCW HAZARDOUS WASTE MANAGEMENT

Sections

70.105.280 Service charges.

70.105.310 Radioactive mixed waste account.

70.105.280 Service charges. (1) The department may assess reasonable service charges against those facilities that store, treat, incinerate, or dispose of dangerous or extremely hazardous waste that contains both a nonradioactive hazardous component and a radioactive component or which are undergoing closure under this chapter in those instances where closure entails the physical characterization of remaining wastes which contain both a nonradioactive hazardous component and a radioactive component or the management of such wastes through treatment or removal, except any commercial low-level radioactive waste facility. Service charges may not exceed the costs to the department in carrying out the duties of this section.

(2) Program elements or activities for which service charges may be assessed include:

(a) Office, staff, and staff support for the purposes of facility or unit permit development, review, and issuance; and

(b) Actions taken to determine and ensure compliance with the state's hazardous waste management act.

(3) Moneys collected through the imposition of such service charges shall be deposited in the radioactive mixed waste account created in RCW 70.105.310.

(4) The department shall adopt rules necessary to implement this section. Facilities that store, treat, incinerate, or dispose of dangerous or extremely hazardous waste that contains both a nonradioactive hazardous component and a radioactive component shall not be subject to service charges prior to such rule making. Facilities undergoing closure under this chapter in those instances where closure entails the physical characterization of remaining wastes which contain both a nonradioactive hazardous component and a radioactive component or the management of such wastes through treatment or removal shall not be subject to service charges prior to such rule making. [2013 2nd sp.s. c 1 § 14; 1989 c 376 § 2.]

Findings—Intent—Effective date—2013 2nd sp.s. c 1: See notes following RCW 70.105D.020.

Additional notes found at www.leg.wa.gov

70.105.310 Radioactive mixed waste account. The radioactive mixed waste account is created within the state treasury. All receipts received from facilities assessed service charges established under RCW 70.105.280 must be

deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may only be used for carrying out the department's powers and duties under this chapter related to the regulation of facilities that treat, store, or dispose of mixed waste or mixed waste facilities that are undergoing closure. [2013 2nd sp.s. c 1 § 12.]

Findings—Intent—Effective date—2013 2nd sp.s. c 1: See notes following RCW 70.105D.020.

**Chapter 70.105D RCW
HAZARDOUS WASTE CLEANUP—
MODEL TOXICS CONTROL ACT**

Sections

70.105D.020	Definitions.
70.105D.030	Department's powers and duties.
70.105D.040	Standard of liability—Settlement.
70.105D.050	Enforcement.
70.105D.070	Toxics control accounts.
70.105D.140	Brownfield redevelopment trust fund account—Created— Report to the office of financial management and the legislature—Rules.
70.105D.150	Designation of a redevelopment opportunity zone—Criteria.
70.105D.160	Brownfield renewal authority.
70.105D.170	Environmental legacy stewardship account.

70.105D.020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Agreed order" means an order issued by the department under this chapter with which the potentially liable person or prospective purchaser receiving the order agrees to comply. An agreed order may be used to require or approve any cleanup or other remedial actions but it is not a settlement under RCW 70.105D.040(4) and shall not contain a covenant not to sue, or provide protection from claims for contribution, or provide eligibility for public funding of remedial actions under RCW 70.105D.070(3) (k) and (q).

(2) "Areawide groundwater contamination" means groundwater contamination on multiple adjacent properties with different ownerships consisting of hazardous substances from multiple sources that have resulted in commingled plumes of contaminated groundwater that are not practicable to address separately.

(3) "Brownfield property" means previously developed and currently abandoned or underutilized real property and adjacent surface waters and sediment where environmental, economic, or community reuse objectives are hindered by the release or threatened release of hazardous substances that the department has determined requires remedial action under this chapter or that the United States environmental protection agency has determined requires remedial action under the federal cleanup law.

(4) "City" means a city or town.

(5) "Department" means the department of ecology.

(6) "Director" means the director of ecology or the director's designee.

(7) "Environmental covenant" has the same meaning as defined in RCW 64.70.020.

(8) "Facility" means (a) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container,

motor vehicle, rolling stock, vessel, or aircraft, or (b) any site or area where a hazardous substance, other than a consumer product in consumer use, has been deposited, stored, disposed of, or placed, or otherwise come to be located.

(9) "Federal cleanup law" means the federal comprehensive environmental response, compensation, and liability act of 1980, 42 U.S.C. Sec. 9601 et seq., as amended by Public Law 99-499.

(10)(a) "Fiduciary" means a person acting for the benefit of another party as a bona fide trustee; executor; administrator; custodian; guardian of estates or guardian ad litem; receiver; conservator; committee of estates of incapacitated persons; trustee in bankruptcy; trustee, under an indenture agreement, trust agreement, lease, or similar financing agreement, for debt securities, certificates of interest or certificates of participation in debt securities, or other forms of indebtedness as to which the trustee is not, in the capacity of trustee, the lender. Except as provided in subsection (22)(b)(iii) of this section, the liability of a fiduciary under this chapter shall not exceed the assets held in the fiduciary capacity.

(b) "Fiduciary" does not mean:

(i) A person acting as a fiduciary with respect to a trust or other fiduciary estate that was organized for the primary purpose of, or is engaged in, actively carrying on a trade or business for profit, unless the trust or other fiduciary estate was created as part of, or to facilitate, one or more estate plans or because of the incapacity of a natural person;

(ii) A person who acquires ownership or control of a facility with the objective purpose of avoiding liability of the person or any other person. It is prima facie evidence that the fiduciary acquired ownership or control of the facility to avoid liability if the facility is the only substantial asset in the fiduciary estate at the time the facility became subject to the fiduciary estate;

(iii) A person who acts in a capacity other than that of a fiduciary or in a beneficiary capacity and in that capacity directly or indirectly benefits from a trust or fiduciary relationship;

(iv) A person who is a beneficiary and fiduciary with respect to the same fiduciary estate, and who while acting as a fiduciary receives benefits that exceed customary or reasonable compensation, and incidental benefits permitted under applicable law;

(v) A person who is a fiduciary and receives benefits that substantially exceed customary or reasonable compensation, and incidental benefits permitted under applicable law; or

(vi) A person who acts in the capacity of trustee of state or federal lands or resources.

(11) "Fiduciary capacity" means the capacity of a person holding title to a facility, or otherwise having control of an interest in the facility pursuant to the exercise of the responsibilities of the person as a fiduciary.

(12) "Foreclosure and its equivalents" means purchase at a foreclosure sale, acquisition, or assignment of title in lieu of foreclosure, termination of a lease, or other repossession, acquisition of a right to title or possession, an agreement in satisfaction of the obligation, or any other comparable formal or informal manner, whether pursuant to law or under warranties, covenants, conditions, representations, or promises from the borrower, by which the holder acquires title to or possession of a facility securing a loan or other obligation.

(13) "Hazardous substance" means:

(a) Any dangerous or extremely hazardous waste as defined in RCW 70.105.010 (1) and (7), or any dangerous or extremely dangerous waste designated by rule pursuant to chapter 70.105 RCW;

(b) Any hazardous substance as defined in RCW 70.105.010(10) or any hazardous substance as defined by rule pursuant to chapter 70.105 RCW;

(c) Any substance that, on March 1, 1989, is a hazardous substance under section 101(14) of the federal cleanup law, 42 U.S.C. Sec. 9601(14);

(d) Petroleum or petroleum products; and

(e) Any substance or category of substances, including solid waste decomposition products, determined by the director by rule to present a threat to human health or the environment if released into the environment.

The term hazardous substance does not include any of the following when contained in an underground storage tank from which there is not a release: Crude oil or any fraction thereof or petroleum, if the tank is in compliance with all applicable federal, state, and local law.

(14) "Holder" means a person who holds indicia of ownership primarily to protect a security interest. A holder includes the initial holder such as the loan originator, any subsequent holder such as a successor-in-interest or subsequent purchaser of the security interest on the secondary market, a guarantor of an obligation, surety, or any other person who holds indicia of ownership primarily to protect a security interest, or a receiver, court-appointed trustee, or other person who acts on behalf or for the benefit of a holder. A holder can be a public or privately owned financial institution, receiver, conservator, loan guarantor, or other similar persons that loan money or guarantee repayment of a loan. Holders typically are banks or savings and loan institutions but may also include others such as insurance companies, pension funds, or private individuals that engage in loaning of money or credit.

(15) "Independent remedial actions" means remedial actions conducted without department oversight or approval, and not under an order, agreed order, or consent decree.

(16) "Indicia of ownership" means evidence of a security interest, evidence of an interest in a security interest, or evidence of an interest in a facility securing a loan or other obligation, including any legal or equitable title to a facility acquired incident to foreclosure and its equivalents. Evidence of such interests includes, mortgages, deeds of trust, sellers interest in a real estate contract, liens, surety bonds, and guarantees of obligations, title held pursuant to a lease financing transaction in which the lessor does not select initially the leased facility, or legal or equitable title obtained pursuant to foreclosure and their equivalents. Evidence of such interests also includes assignments, pledges, or other rights to or other forms of encumbrance against the facility that are held primarily to protect a security interest.

(17) "Industrial properties" means properties that are or have been characterized by, or are to be committed to, traditional industrial uses such as processing or manufacturing of materials, marine terminal and transportation areas and facilities, fabrication, assembly, treatment, or distribution of manufactured products, or storage of bulk materials, that are either:

(a) Zoned for industrial use by a city or county conducting land use planning under chapter 36.70A RCW; or

(b) For counties not planning under chapter 36.70A RCW and the cities within them, zoned for industrial use and adjacent to properties currently used or designated for industrial purposes.

(18) "Institutional controls" means measures undertaken to limit or prohibit activities that may interfere with the integrity of a remedial action or result in exposure to or migration of hazardous substances at a site. "Institutional controls" include environmental covenants.

(19) "Local government" means any political subdivision of the state, including a town, city, county, special purpose district, or other municipal corporation, including brownfield renewal authority created under RCW 70.105D.160.

(20) "Model remedy" or "model remedial action" means a set of technologies, procedures, and monitoring protocols identified by the department for use in routine types of clean-up projects at facilities that have common features and lower risk to human health and the environment.

(21) "Operating a facility primarily to protect a security interest" occurs when all of the following are met: (a) Operating the facility where the borrower has defaulted on the loan or otherwise breached the security agreement; (b) operating the facility to preserve the value of the facility as an ongoing business; (c) the operation is being done in anticipation of a sale, transfer, or assignment of the facility; and (d) the operation is being done primarily to protect a security interest. Operating a facility for longer than one year prior to foreclosure or its equivalents shall be presumed to be operating the facility for other than to protect a security interest.

(22) "Owner or operator" means:

(a) Any person with any ownership interest in the facility or who exercises any control over the facility; or

(b) In the case of an abandoned facility, any person who had owned, or operated, or exercised control over the facility any time before its abandonment;

The term does not include:

(i) An agency of the state or unit of local government which acquired ownership or control through a drug forfeiture action under RCW 69.50.505, or involuntarily through bankruptcy, tax delinquency, abandonment, or other circumstances in which the government involuntarily acquires title. This exclusion does not apply to an agency of the state or unit of local government which has caused or contributed to the release or threatened release of a hazardous substance from the facility;

(ii) A person who, without participating in the management of a facility, holds indicia of ownership primarily to protect the person's security interest in the facility. Holders after foreclosure and its equivalent and holders who engage in any of the activities identified in subsection (23)(e) through (g) of this section shall not lose this exemption provided the holder complies with all of the following:

(A) The holder properly maintains the environmental compliance measures already in place at the facility;

(B) The holder complies with the reporting requirements in the rules adopted under this chapter;

(C) The holder complies with any order issued to the holder by the department to abate an imminent or substantial endangerment;

(D) The holder allows the department or potentially liable persons under an order, agreed order, or settlement agreement under this chapter access to the facility to conduct remedial actions and does not impede the conduct of such remedial actions;

(E) Any remedial actions conducted by the holder are in compliance with any preexisting requirements identified by the department, or, if the department has not identified such requirements for the facility, the remedial actions are conducted consistent with the rules adopted under this chapter; and

(F) The holder does not exacerbate an existing release. The exemption in this subsection (22)(b)(ii) does not apply to holders who cause or contribute to a new release or threatened release or who are otherwise liable under RCW 70.105D.040(1) (b), (c), (d), and (e); provided, however, that a holder shall not lose this exemption if it establishes that any such new release has been remediated according to the requirements of this chapter and that any hazardous substances remaining at the facility after remediation of the new release are divisible from such new release;

(iii) A fiduciary in his, her, or its personal or individual capacity. This exemption does not preclude a claim against the assets of the estate or trust administered by the fiduciary or against a nonemployee agent or independent contractor retained by a fiduciary. This exemption also does not apply to the extent that a person is liable under this chapter independently of the person's ownership as a fiduciary or for actions taken in a fiduciary capacity which cause or contribute to a new release or exacerbate an existing release of hazardous substances. This exemption applies provided that, to the extent of the fiduciary's powers granted by law or by the applicable governing instrument granting fiduciary powers, the fiduciary complies with all of the following:

(A) The fiduciary properly maintains the environmental compliance measures already in place at the facility;

(B) The fiduciary complies with the reporting requirements in the rules adopted under this chapter;

(C) The fiduciary complies with any order issued to the fiduciary by the department to abate an imminent or substantial endangerment;

(D) The fiduciary allows the department or potentially liable persons under an order, agreed order, or settlement agreement under this chapter access to the facility to conduct remedial actions and does not impede the conduct of such remedial actions;

(E) Any remedial actions conducted by the fiduciary are in compliance with any preexisting requirements identified by the department, or, if the department has not identified such requirements for the facility, the remedial actions are conducted consistent with the rules adopted under this chapter; and

(F) The fiduciary does not exacerbate an existing release.

The exemption in this subsection (22)(b)(iii) does not apply to fiduciaries who cause or contribute to a new release or threatened release or who are otherwise liable under RCW 70.105D.040(1) (b), (c), (d), and (e); provided however, that a fiduciary shall not lose this exemption if it establishes that

any such new release has been remediated according to the requirements of this chapter and that any hazardous substances remaining at the facility after remediation of the new release are divisible from such new release. The exemption in this subsection (22)(b)(iii) also does not apply where the fiduciary's powers to comply with this subsection (22)(b)(iii) are limited by a governing instrument created with the objective purpose of avoiding liability under this chapter or of avoiding compliance with this chapter; or

(iv) Any person who has any ownership interest in, operates, or exercises control over real property where a hazardous substance has come to be located solely as a result of migration of the hazardous substance to the real property through the groundwater from a source off the property, if:

(A) The person can demonstrate that the hazardous substance has not been used, placed, managed, or otherwise handled on the property in a manner likely to cause or contribute to a release of the hazardous substance that has migrated onto the property;

(B) The person has not caused or contributed to the release of the hazardous substance;

(C) The person does not engage in activities that damage or interfere with the operation of remedial actions installed on the person's property or engage in activities that result in exposure of humans or the environment to the contaminated groundwater that has migrated onto the property;

(D) If requested, the person allows the department, potentially liable persons who are subject to an order, agreed order, or consent decree, and the authorized employees, agents, or contractors of each, access to the property to conduct remedial actions required by the department. The person may attempt to negotiate an access agreement before allowing access; and

(E) Legal withdrawal of groundwater does not disqualify a person from the exemption in this subsection (22)(b)(iv).

(23) "Participation in management" means exercising decision-making control over the borrower's operation of the facility, environmental compliance, or assuming or manifesting responsibility for the overall management of the enterprise encompassing the day-to-day decision making of the enterprise.

The term does not include any of the following: (a) A holder with the mere capacity or ability to influence, or the unexercised right to control facility operations; (b) a holder who conducts or requires a borrower to conduct an environmental audit or an environmental site assessment at the facility for which indicia of ownership is held; (c) a holder who requires a borrower to come into compliance with any applicable laws or regulations at the facility for which indicia of ownership is held; (d) a holder who requires a borrower to conduct remedial actions including setting minimum requirements, but does not otherwise control or manage the borrower's remedial actions or the scope of the borrower's remedial actions except to prepare a facility for sale, transfer, or assignment; (e) a holder who engages in workout or policing activities primarily to protect the holder's security interest in the facility; (f) a holder who prepares a facility for sale, transfer, or assignment or requires a borrower to prepare a facility for sale, transfer, or assignment; (g) a holder who operates a facility primarily to protect a security interest, or requires a borrower to continue to operate, a facility primarily to protect

a security interest; and (h) a prospective holder who, as a condition of becoming a holder, requires an owner or operator to conduct an environmental audit, conduct an environmental site assessment, come into compliance with any applicable laws or regulations, or conduct remedial actions prior to holding a security interest is not participating in the management of the facility.

(24) "Person" means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, state government agency, unit of local government, federal government agency, or Indian tribe.

(25) "Policing activities" means actions the holder takes to ensure that the borrower complies with the terms of the loan or security interest or actions the holder takes or requires the borrower to take to maintain the value of the security. Policing activities include: Requiring the borrower to conduct remedial actions at the facility during the term of the security interest; requiring the borrower to comply or come into compliance with applicable federal, state, and local environmental and other laws, regulations, and permits during the term of the security interest; securing or exercising authority to monitor or inspect the facility including on-site inspections, or to monitor or inspect the borrower's business or financial condition during the term of the security interest; or taking other actions necessary to adequately police the loan or security interest such as requiring a borrower to comply with any warranties, covenants, conditions, representations, or promises from the borrower.

(26) "Potentially liable person" means any person whom the department finds, based on credible evidence, to be liable under RCW 70.105D.040. The department shall give notice to any such person and allow an opportunity for comment before making the finding, unless an emergency requires otherwise.

(27) "Prepare a facility for sale, transfer, or assignment" means to secure access to the facility; perform routine maintenance on the facility; remove inventory, equipment, or structures; properly maintain environmental compliance measures already in place at the facility; conduct remedial actions to cleanup releases at the facility; or to perform other similar activities intended to preserve the value of the facility where the borrower has defaulted on the loan or otherwise breached the security agreement or after foreclosure and its equivalents and in anticipation of a pending sale, transfer, or assignment, primarily to protect the holder's security interest in the facility. A holder can prepare a facility for sale, transfer, or assignment for up to one year prior to foreclosure and its equivalents and still stay within the security interest exemption in subsection (22)(b)(ii) of this section.

(28) "Primarily to protect a security interest" means the indicia of ownership is held primarily for the purpose of securing payment or performance of an obligation. The term does not include indicia of ownership held primarily for investment purposes nor indicia of ownership held primarily for purposes other than as protection for a security interest. A holder may have other, secondary reasons, for maintaining indicia of ownership, but the primary reason must be for protection of a security interest. Holding indicia of ownership after foreclosure or its equivalents for longer than five years shall be considered to be holding the indicia of ownership for purposes other than primarily to protect a security interest.

For facilities that have been acquired through foreclosure or its equivalents prior to July 23, 1995, this five-year period shall begin as of July 23, 1995.

(29) "Prospective purchaser" means a person who is not currently liable for remedial action at a facility and who proposes to purchase, redevelop, or reuse the facility.

(30) "Public notice" means, at a minimum, adequate notice mailed to all persons who have made timely request of the department and to persons residing in the potentially affected vicinity of the proposed action; mailed to appropriate news media; published in the newspaper of largest circulation in the city or county of the proposed action; and opportunity for interested persons to comment.

(31) "Redevelopment opportunity zone" means a geographic area designated under RCW 70.105D.150.

(32) "Release" means any intentional or unintentional entry of any hazardous substance into the environment, including but not limited to the abandonment or disposal of containers of hazardous substances.

(33) "Remedy" or "remedial action" means any action or expenditure consistent with the purposes of this chapter to identify, eliminate, or minimize any threat or potential threat posed by hazardous substances to human health or the environment including any investigative and monitoring activities with respect to any release or threatened release of a hazardous substance and any health assessments or health effects studies conducted in order to determine the risk or potential risk to human health.

(34) "Security interest" means an interest in a facility created or established for the purpose of securing a loan or other obligation. Security interests include deeds of trusts, sellers interest in a real estate contract, liens, legal, or equitable title to a facility acquired incident to foreclosure and its equivalents, and title pursuant to lease financing transactions. Security interests may also arise from transactions such as sale and leasebacks, conditional sales, installment sales, trust receipt transactions, certain assignments, factoring agreements, accounts receivable financing arrangements, easements, and consignments, if the transaction creates or establishes an interest in a facility for the purpose of securing a loan or other obligation.

(35) "Workout activities" means those actions by which a holder, at any time prior to foreclosure and its equivalents, seeks to prevent, cure, or mitigate a default by the borrower or obligor; or to preserve, or prevent the diminution of, the value of the security. Workout activities include: Restructuring or renegotiating the terms of the security interest; requiring payment of additional rent or interest; exercising forbearance; requiring or exercising rights pursuant to an assignment of accounts or other amounts owed to an obligor; requiring or exercising rights pursuant to an escrow agreement pertaining to amounts owed to an obligor; providing specific or general financial or other advice, suggestions, counseling, or guidance; and exercising any right or remedy the holder is entitled to by law or under any warranties, covenants, conditions, representations, or promises from the borrower. [2013 2nd sp.s. c 1 § 2; 2007 c 104 § 18; 2005 c 191 § 1; 1998 c 6 § 1; 1997 c 406 § 2; 1995 c 70 § 1; 1994 c 254 § 2; 1989 c 2 § 2 (Initiative Measure No. 97, approved November 8, 1988).]

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

Findings—Intent—2013 2nd sp.s. c 1: "The legislature finds that there are a large number of toxic waste sites that have been identified in the department of ecology's priority list as ready for immediate cleanup. The legislature further finds that addressing the cleanup of these toxic waste sites will provide needed jobs to citizens of Washington state. It is the intent of the legislature to prioritize the spending of revenues under chapter 70.105D RCW, the model toxics control act, on cleaning up the most toxic sites, while also providing jobs in communities around the state." [2013 2nd sp.s. c 1 § 1.]

Effective date—2013 2nd sp.s. c 1: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2013." [2013 2nd sp.s. c 1 § 20.]

Application—Construction—Severability—2007 c 104: See RCW 64.70.015 and 64.70.900.

70.105D.030 Department's powers and duties. (1)

The department may exercise the following powers in addition to any other powers granted by law:

(a) Investigate, provide for investigating, or require potentially liable persons to investigate any releases or threatened releases of hazardous substances, including but not limited to inspecting, sampling, or testing to determine the nature or extent of any release or threatened release. If there is a reasonable basis to believe that a release or threatened release of a hazardous substance may exist, the department's authorized employees, agents, or contractors may enter upon any property and conduct investigations. The department shall give reasonable notice before entering property unless an emergency prevents such notice. The department may by subpoena require the attendance or testimony of witnesses and the production of documents or other information that the department deems necessary;

(b) Conduct, provide for conducting, or require potentially liable persons to conduct remedial actions (including investigations under (a) of this subsection) to remedy releases or threatened releases of hazardous substances. In carrying out such powers, the department's authorized employees, agents, or contractors may enter upon property. The department shall give reasonable notice before entering property unless an emergency prevents such notice. In conducting, providing for, or requiring remedial action, the department shall give preference to permanent solutions to the maximum extent practicable and shall provide for or require adequate monitoring to ensure the effectiveness of the remedial action;

(c) Indemnify contractors retained by the department for carrying out investigations and remedial actions, but not for any contractor's reckless or willful misconduct;

(d) Carry out all state programs authorized under the federal cleanup law and the federal resource, conservation, and recovery act, 42 U.S.C. Sec. 6901 et seq., as amended;

(e) Classify substances as hazardous substances for purposes of RCW 70.105D.020 and classify substances and products as hazardous substances for purposes of RCW 82.21.020(1);

(f) Issue orders or enter into consent decrees or agreed orders that include, or issue written opinions under (i) of this subsection that may be conditioned upon, environmental covenants where necessary to protect human health and the environment from a release or threatened release of a hazardous substance from a facility. Prior to establishing an environmental covenant under this subsection, the department shall consult with and seek comment from a city or county depart-

ment with land use planning authority for real property subject to the environmental covenant;

(g) Enforce the application of permanent and effective institutional controls that are necessary for a remedial action to be protective of human health and the environment and the notification requirements established in RCW 70.105D.110, and impose penalties for violations of that section consistent with RCW 70.105D.050;

(h) Require holders to conduct remedial actions necessary to abate an imminent or substantial endangerment pursuant to RCW 70.105D.020(22)(b)(ii)(C);

(i) Provide informal advice and assistance to persons regarding the administrative and technical requirements of this chapter. This may include site-specific advice to persons who are conducting or otherwise interested in independent remedial actions. Any such advice or assistance shall be advisory only, and shall not be binding on the department. As a part of providing this advice and assistance for independent remedial actions, the department may prepare written opinions regarding whether the independent remedial actions or proposals for those actions meet the substantive requirements of this chapter or whether the department believes further remedial action is necessary at the facility. Nothing in this chapter may be construed to preclude the department from issuing a written opinion on whether further remedial action is necessary at any portion of the real property located within a facility, even if further remedial action is still necessary elsewhere at the same facility. Such a written opinion on a portion of a facility must also provide an opinion on the status of the facility as a whole. The department may collect, from persons requesting advice and assistance, the costs incurred by the department in providing such advice and assistance; however, the department shall, where appropriate, waive collection of costs in order to provide an appropriate level of technical assistance in support of public participation. The state, the department, and officers and employees of the state are immune from all liability, and no cause of action of any nature may arise from any act or omission in providing, or failing to provide, informal advice and assistance. The department must track the number of requests for reviews of planned or completed independent remedial actions and establish performance measures to track how quickly the department is able to respond to those requests. By November 1, 2015, the department must submit to the governor and the appropriate legislative fiscal and policy committees a report on achieving the performance measures and provide recommendations for improving performance, including staffing needs;

(j) In fulfilling the objectives of this chapter, the department shall allocate staffing and financial assistance in a manner that considers both the reduction of human and environmental risks and the land reuse potential and planning for the facilities to be cleaned up. This does not preclude the department from allocating resources to a facility based solely on human or environmental risks;

(k) Establish model remedies for common categories of facilities, types of hazardous substances, types of media, or geographic areas to streamline and accelerate the selection of remedies for routine types of cleanups at facilities;

(i) When establishing a model remedy, the department shall:

(A) Identify the requirements for characterizing a facility to select a model remedy, the applicability of the model remedy for use at a facility, and monitoring requirements;

(B) Describe how the model remedy meets clean-up standards and the requirements for selecting a remedy established by the department under this chapter; and

(C) Provide public notice and an opportunity to comment on the proposed model remedy and the conditions under which it may be used at a facility;

(i) When developing model remedies, the department shall solicit and consider proposals from qualified persons. The proposals must, in addition to describing the model remedy, provide the information required under (k)(i)(A) and (B) of this subsection;

(ii) If a facility meets the requirements for use of a model remedy, an analysis of the feasibility of alternative remedies is not required under this chapter. For department-conducted and department-supervised remedial actions, the department must provide public notice and consider public comments on the proposed use of a model remedy at a facility. The department may waive collection of its costs for providing a written opinion under (i) of this subsection on a cleanup that qualifies for and appropriately uses a model remedy; and

(l) Take any other actions necessary to carry out the provisions of this chapter, including the power to adopt rules under chapter 34.05 RCW.

(2) The department shall immediately implement all provisions of this chapter to the maximum extent practicable, including investigative and remedial actions where appropriate. The department shall adopt, and thereafter enforce, rules under chapter 34.05 RCW to:

(a) Provide for public participation, including at least (i) public notice of the development of investigative plans or remedial plans for releases or threatened releases and (ii) concurrent public notice of all compliance orders, agreed orders, enforcement orders, or notices of violation;

(b) Establish a hazard ranking system for hazardous waste sites;

(c) Provide for requiring the reporting by an owner or operator of releases of hazardous substances to the environment that may be a threat to human health or the environment within ninety days of discovery, including such exemptions from reporting as the department deems appropriate, however this requirement shall not modify any existing requirements provided for under other laws;

(d) Establish reasonable deadlines not to exceed ninety days for initiating an investigation of a hazardous waste site after the department receives notice or otherwise receives information that the site may pose a threat to human health or the environment and other reasonable deadlines for remedying releases or threatened releases at the site;

(e) Publish and periodically update minimum clean-up standards for remedial actions at least as stringent as the clean-up standards under section 121 of the federal cleanup law, 42 U.S.C. Sec. 9621, and at least as stringent as all applicable state and federal laws, including health-based standards under state and federal law; and

(f) Apply industrial clean-up standards at industrial properties. Rules adopted under this subsection shall ensure that industrial properties cleaned up to industrial standards

cannot be converted to nonindustrial uses without approval from the department. The department may require that a property cleaned up to industrial standards is cleaned up to a more stringent applicable standard as a condition of conversion to a nonindustrial use. Industrial clean-up standards may not be applied to industrial properties where hazardous substances remaining at the property after remedial action pose a threat to human health or the environment in adjacent nonindustrial areas.

(3) To achieve and protect the state's long-term ecological health, the department shall plan to clean up hazardous waste sites and prevent the creation of future hazards due to improper disposal of toxic wastes at a pace that matches the estimated cash resources in the state and local toxics control accounts and the environmental legacy stewardship account created in RCW 70.105D.170. Estimated cash resources must consider the annual cash flow requirements of major projects that receive appropriations expected to cross multiple biennia. To effectively monitor toxic accounts expenditures, the department shall develop a comprehensive ten-year financing report that identifies long-term remedial action project costs, tracks expenses, and projects future needs.

(4) By November 1, 2016, the department must submit to the governor and the appropriate legislative committees a report on the status of developing model remedies and their use under this chapter. The report must include: The number and types of model remedies identified by the department under subsection (1)(k) of this section; the number and types of model remedy proposals prepared by qualified private sector engineers, consultants, or contractors that were accepted or rejected under subsection (1)(k) of this section and the reasons for rejection; and the success of model remedies in accelerating the cleanup as measured by the number of jobs created by the cleanup, where this information is available to the department, acres of land restored, and the number and types of hazardous waste sites successfully remediated using model remedies.

(5) Before September 20th of each even-numbered year, the department shall:

(a) Develop a comprehensive ten-year financing report in coordination with all local governments with clean-up responsibilities that identifies the projected biennial hazardous waste site remedial action needs that are eligible for funding from the state and local toxics control account and the environmental legacy stewardship account;

(b) Work with local governments to develop working capital reserves to be incorporated in the ten-year financing report;

(c) Identify the projected remedial action needs for orphaned, abandoned, and other clean-up sites that are eligible for funding from the state toxics control account;

(d) Project the remedial action need, cost, revenue, and any recommended working capital reserve estimate to the next biennium's long-term remedial action needs from both the local and state toxics control account and the environmental legacy stewardship account, and submit this information to the appropriate standing fiscal and environmental committees of the senate and house of representatives. This submittal must also include a ranked list of such remedial action projects for both accounts. The submittal must also identify separate budget estimates for large, multiyear

clean-up projects that exceed ten million dollars. The department shall prepare its ten-year capital budget plan that is submitted to the office of financial management to reflect the separate budget estimates for these large clean-up projects and include information on the anticipated private and public funding obligations for completion of the relevant projects.

(6) By December 1st of each odd-numbered year, the department must provide the legislature and the public a report of the department's activities supported by appropriations from the state and local toxics control accounts and the environmental legacy stewardship account. The report must be prepared and displayed in a manner that allows the legislature and the public to easily determine the statewide and local progress made in cleaning up hazardous waste sites under this chapter. The report must include, at a minimum:

(a) The name, location, hazardous waste ranking, and a short description of each site on the hazardous sites list, and the date the site was placed on the hazardous waste sites list; and

(b) For sites where there are state contracts, grants, loans, or direct investments by the state:

(i) The amount of money from the state and local toxics control accounts and the environmental legacy stewardship account used to conduct remedial actions at the site and the amount of that money recovered from potentially liable persons;

(ii) The actual or estimated start and end dates and the actual or estimated expenditures of funds authorized under this chapter for the following project phases:

(A) Emergency or interim actions, if needed;

(B) Remedial investigation;

(C) Feasibility study and selection of a remedy;

(D) Engineering design and construction of the selected remedy;

(E) Operation and maintenance or monitoring of the constructed remedy; and

(F) The final completion date.

(7) The department shall establish a program to identify potential hazardous waste sites and to encourage persons to provide information about hazardous waste sites.

(8) For all facilities where an environmental covenant has been required under subsection (1)(f) of this section, including all facilities where the department has required an environmental covenant under an order, agreed order, or consent decree, or as a condition of a written opinion issued under the authority of subsection (1)(i) of this section, the department shall periodically review the environmental covenant for effectiveness. Except as otherwise provided in (c) of this subsection, the department shall conduct a review at least once every five years after an environmental covenant is recorded.

(a) The review shall consist of, at a minimum:

(i) A review of the title of the real property subject to the environmental covenant to determine whether the environmental covenant was properly recorded and, if applicable, amended or terminated;

(ii) A physical inspection of the real property subject to the environmental covenant to determine compliance with the environmental covenant, including whether any development or redevelopment of the real property has violated the terms of the environmental covenant; and

(iii) A review of the effectiveness of the environmental covenant in limiting or prohibiting activities that may interfere with the integrity of the remedial action or that may result in exposure to or migration of hazardous substances. This shall include a review of available monitoring data.

(b) If an environmental covenant has been amended or terminated without proper authority, or if the terms of an environmental covenant have been violated, or if the environmental covenant is no longer effective in limiting or prohibiting activities that may interfere with the integrity of the remedial action or that may result in exposure to or migration of hazardous substances, then the department shall take any and all appropriate actions necessary to ensure compliance with the environmental covenant and the policies and requirements of this chapter.

(c) For facilities where an environmental covenant required by the department under subsection (1)(f) of this section was required before July 1, 2007, the department shall:

(i) Enter all required information about the environmental covenant into the registry established under RCW 64.70.120 by June 30, 2008;

(ii) For those facilities where more than five years has elapsed since the environmental covenant was required and the department has yet to conduct a review, conduct an initial review according to the following schedule:

(A) By December 30, 2008, fifty facilities;

(B) By June 30, 2009, fifty additional facilities; and

(C) By June 30, 2010, the remainder of the facilities;

(iii) Once this initial review has been completed, conduct subsequent reviews at least once every five years. [2013 2nd sp.s. c 1 § 6; 2009 c 560 § 10. Prior: 2007 c 446 § 1; 2007 c 225 § 1; 2007 c 104 § 19; 2002 c 288 § 3; 2001 c 291 § 401; 1997 c 406 § 3; 1995 c 70 § 2; prior: 1994 c 257 § 11; 1994 c 254 § 3; 1989 c 2 § 3 (Initiative Measure No. 97, approved November 8, 1988).]

Findings—Intent—Effective date—2013 2nd sp.s. c 1: See notes following RCW 70.105D.020.

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

Application—Construction—Severability—2007 c 104: See RCW 64.70.015 and 64.70.900.

Additional notes found at www.leg.wa.gov

70.105D.040 Standard of liability—Settlement. (1)

Except as provided in subsection (3) of this section, the following persons are liable with respect to a facility:

(a) The owner or operator of the facility;

(b) Any person who owned or operated the facility at the time of disposal or release of the hazardous substances;

(c) Any person who owned or possessed a hazardous substance and who by contract, agreement, or otherwise arranged for disposal or treatment of the hazardous substance at the facility, or arranged with a transporter for transport for disposal or treatment of the hazardous substances at the facility, or otherwise generated hazardous wastes disposed of or treated at the facility;

(d) Any person (i) who accepts or accepted any hazardous substance for transport to a disposal, treatment, or other facility selected by such person from which there is a release

or a threatened release for which remedial action is required, unless such facility, at the time of disposal or treatment, could legally receive such substance; or (ii) who accepts a hazardous substance for transport to such a facility and has reasonable grounds to believe that such facility is not operated in accordance with chapter 70.105 RCW; and

(e) Any person who both sells a hazardous substance and is responsible for written instructions for its use if (i) the substance is used according to the instructions and (ii) the use constitutes a release for which remedial action is required at the facility.

(2) Each person who is liable under this section is strictly liable, jointly and severally, for all remedial action costs and for all natural resource damages resulting from the releases or threatened releases of hazardous substances. The attorney general, at the request of the department, is empowered to recover all costs and damages from persons liable therefor.

(3) The following persons are not liable under this section:

(a) Any person who can establish that the release or threatened release of a hazardous substance for which the person would be otherwise responsible was caused solely by:

- (i) An act of God;
- (ii) An act of war; or

(iii) An act or omission of a third party (including but not limited to a trespasser) other than (A) an employee or agent of the person asserting the defense, or (B) any person whose act or omission occurs in connection with a contractual relationship existing, directly or indirectly, with the person asserting this defense to liability. This defense only applies where the person asserting the defense has exercised the utmost care with respect to the hazardous substance, the foreseeable acts or omissions of the third party, and the foreseeable consequences of those acts or omissions;

(b) Any person who is an owner, past owner, or purchaser of a facility and who can establish by a preponderance of the evidence that at the time the facility was acquired by the person, the person had no knowledge or reason to know that any hazardous substance, the release or threatened release of which has resulted in or contributed to the need for the remedial action, was released or disposed of on, in, or at the facility. This subsection (3)(b) is limited as follows:

(i) To establish that a person had no reason to know, the person must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property, consistent with good commercial or customary practice in an effort to minimize liability. Any court interpreting this subsection (3)(b) shall take into account any specialized knowledge or experience on the part of the person, the relationship of the purchase price to the value of the property if uncontaminated, commonly known or reasonably ascertainable information about the property, the obviousness of the presence or likely presence of contamination at the property, and the ability to detect such contamination by appropriate inspection;

(ii) The defense contained in this subsection (3)(b) is not available to any person who had actual knowledge of the release or threatened release of a hazardous substance when the person owned the real property and who subsequently transferred ownership of the property without first disclosing such knowledge to the transferee;

(iii) The defense contained in this subsection (3)(b) is not available to any person who, by any act or omission, caused or contributed to the release or threatened release of a hazardous substance at the facility;

(c) Any natural person who uses a hazardous substance lawfully and without negligence for any personal or domestic purpose in or near a dwelling or accessory structure when that person is: (i) A resident of the dwelling; (ii) a person who, without compensation, assists the resident in the use of the substance; or (iii) a person who is employed by the resident, but who is not an independent contractor;

(d) Any person who, for the purpose of growing food crops, applies pesticides or fertilizers without negligence and in accordance with all applicable laws and regulations.

(4) There may be no settlement by the state with any person potentially liable under this chapter except in accordance with this section.

(a) The attorney general may agree to a settlement with any potentially liable person only if the department finds, after public notice and any required hearing, that the proposed settlement would lead to a more expeditious cleanup of hazardous substances in compliance with clean-up standards under RCW 70.105D.030(2)(e) and with any remedial orders issued by the department. Whenever practicable and in the public interest, the attorney general may expedite such a settlement with persons whose contribution is insignificant in amount and toxicity. A hearing shall be required only if at least ten persons request one or if the department determines a hearing is necessary.

(b) A settlement agreement under this section shall be entered as a consent decree issued by a court of competent jurisdiction.

(c) A settlement agreement may contain a covenant not to sue only of a scope commensurate with the settlement agreement in favor of any person with whom the attorney general has settled under this section. Any covenant not to sue shall contain a reopener clause which requires the court to amend the covenant not to sue if factors not known at the time of entry of the settlement agreement are discovered and present a previously unknown threat to human health or the environment.

(d) A party who has resolved its liability to the state under this section shall not be liable for claims for contribution regarding matters addressed in the settlement. The settlement does not discharge any of the other liable parties but it reduces the total potential liability of the others to the state by the amount of the settlement.

(e) If the state has entered into a consent decree with an owner or operator under this section, the state shall not enforce this chapter against any owner or operator who is a successor in interest to the settling party unless under the terms of the consent decree the state could enforce against the settling party, if:

(i) The successor owner or operator is liable with respect to the facility solely due to that person's ownership interest or operator status acquired as a successor in interest to the owner or operator with whom the state has entered into a consent decree; and

(ii) The stay of enforcement under this subsection does not apply if the consent decree was based on circumstances unique to the settling party that do not exist with regard to the

successor in interest, such as financial hardship. For consent decrees entered into before July 27, 1997, at the request of a settling party or a potential successor owner or operator, the attorney general shall issue a written opinion on whether a consent decree contains such unique circumstances. For all other consent decrees, such unique circumstances shall be specified in the consent decree.

(f) Any person who is not subject to enforcement by the state under (e) of this subsection is not liable for claims for contribution regarding matters addressed in the settlement.

(5)(a) In addition to the settlement authority provided under subsection (4) of this section, the attorney general may agree to a settlement with a prospective purchaser, provided that:

(i) The settlement will yield substantial new resources to facilitate cleanup;

(ii) The settlement will expedite remedial action at the facility consistent with the rules adopted under this chapter; and

(iii) Based on available information, the department determines that the redevelopment or reuse of the facility is not likely to contribute to the existing release or threatened release, interfere with remedial actions that may be needed at the facility, or increase health risks to persons at or in the vicinity of the facility.

(b) The legislature recognizes that the state does not have adequate resources to participate in all property transactions involving contaminated property. The primary purpose of this subsection (5) is to promote the cleanup and reuse of brownfield property. The attorney general and the department may give priority to settlements that will provide a substantial public benefit in addition to cleanup.

(c) A settlement entered under this subsection is governed by subsection (4) of this section.

(6) As an alternative to a settlement under subsection (5) of this section, the department may enter into an agreed order with a prospective purchaser of a property within a designated redevelopment opportunity zone. The agreed order is subject to the limitations in RCW 70.105D.020(1), but stays enforcement by the department under this chapter regarding remedial actions required by the agreed order as long as the prospective purchaser complies with the requirements of the agreed order.

(7) Nothing in this chapter affects or modifies in any way any person's right to seek or obtain relief under other statutes or under common law, including but not limited to damages for injury or loss resulting from a release or threatened release of a hazardous substance. No settlement by the department or remedial action ordered by a court or the department affects any person's right to obtain a remedy under common law or other statutes. [2013 2nd sp.s. c 1 § 7; 1997 c 406 § 4; 1994 c 254 § 4; 1989 c 2 § 4 (Initiative Measure No. 97, approved November 8, 1988).]

Findings—Intent—Effective date—2013 2nd sp.s. c 1: See notes following RCW 70.105D.020.

70.105D.050 Enforcement. (1) With respect to any release, or threatened release, for which the department does not conduct or contract for conducting remedial action and for which the department believes remedial action is in the public interest, the director shall issue orders or agreed orders

requiring potentially liable persons to provide the remedial action. Any liable person, or prospective purchaser who has entered into an agreed order under RCW 70.105D.040(6), who refuses, without sufficient cause, to comply with an order or agreed order of the director is liable in an action brought by the attorney general for:

(a) Up to three times the amount of any costs incurred by the state as a result of the party's refusal to comply; and

(b) A civil penalty of up to twenty-five thousand dollars for each day the party refuses to comply.

The treble damages and civil penalty under this subsection apply to all recovery actions filed on or after March 1, 1989.

(2) Any person who incurs costs complying with an order issued under subsection (1) of this section may petition the department for reimbursement of those costs. If the department refuses to grant reimbursement, the person may within thirty days thereafter file suit and recover costs by proving that he or she was not a liable person under RCW 70.105D.040 and that the costs incurred were reasonable.

(3) The attorney general shall seek, by filing an action if necessary, to recover the amounts spent by the department for investigative and remedial actions and orders, and agreed orders, including amounts spent prior to March 1, 1989.

(4) The attorney general may bring an action to secure such relief as is necessary to protect human health and the environment under this chapter.

(5)(a) Any person may commence a civil action to compel the department to perform any nondiscretionary duty under this chapter. At least thirty days before commencing the action, the person must give notice of intent to sue, unless a substantial endangerment exists. The court may award attorneys' fees and other costs to the prevailing party in the action.

(b) Civil actions under this section and RCW 70.105D.060 may be brought in the superior court of Thurston county or of the county in which the release or threatened release exists.

(6) Any person who fails to provide notification of releases consistent with RCW 70.105D.110 or who submits false information is liable in an action brought by the attorney general for a civil penalty of up to five thousand dollars per day for each day the party refuses to comply.

(7) Any person who owns real property or lender holding a mortgage on real property that is subject to a lien filed under RCW 70.105D.055 may petition the department to have the lien removed or the amount of the lien reduced. If, after consideration of the petition and the information supporting the petition, the department decides to deny the request, the person may, within ninety days after receipt of the department's denial, file suit for removal or reduction of the lien. The person is entitled to removal of a lien filed under RCW 70.105D.055(2)(a) if they can prove by a preponderance of the evidence that the person is not a liable party under RCW 70.105D.040. The person is entitled to a reduction of the amount of the lien if they can prove by a preponderance of the evidence:

(a) For liens filed under RCW 70.105D.055(2)(a), the amount of the lien exceeds the remedial action costs the department incurred related to cleanup of the real property; and

(b) For liens filed under RCW 70.105D.055(2)(c), the amount of the lien exceeds the remedial action costs the department incurred related to cleanup of the real property or exceeds the increase of the fair market value of the real property solely attributable to the remedial action conducted by the department.

(8) The expenditure of moneys under the state and local toxics control accounts created in RCW 70.105D.170 and the environmental legacy stewardship account created in RCW 70.105D.170 does not alter the liability of any person under this chapter, or the authority of the department under this chapter, including the authority to recover those moneys. [2013 2nd sp.s. c 1 § 8; 2005 c 211 § 2; 2002 c 288 § 4; 1994 c 257 § 12; 1989 c 2 § 5 (Initiative Measure No. 97, approved November 8, 1988).]

Findings—Intent—Effective date—2013 2nd sp.s. c 1: See notes following RCW 70.105D.020.

Additional notes found at www.leg.wa.gov

70.105D.070 Toxics control accounts. (1) The state toxics control account and the local toxics control account are hereby created in the state treasury.

(2)(a) Moneys collected under RCW 82.21.030 must be deposited as follows: Fifty-six percent to the state toxics control account under subsection (3) of this section and forty-four percent to the local toxics control account under subsection (4) of this section. When the cumulative amount of deposits made to the state and local toxics control accounts under this section reaches the limit during a fiscal year as established in (b) of this subsection, the remainder of the moneys collected under RCW 82.21.030 during that fiscal year must be deposited into the environmental legacy stewardship account created in RCW 70.105D.170.

(b) The limit on distributions of moneys collected under RCW 82.21.030 to the state and local toxics control accounts for the fiscal year beginning July 1, 2013, is one hundred forty million dollars.

(c) In addition to the funds required under (a) of this subsection, the following moneys must be deposited into the state toxics control account: (i) The costs of remedial actions recovered under this chapter or chapter 70.105A RCW; (ii) penalties collected or recovered under this chapter; and (iii) any other money appropriated or transferred to the account by the legislature.

(3) Moneys in the state toxics control account must be used only to carry out the purposes of this chapter, including but not limited to the following activities:

(a) The state's responsibility for hazardous waste planning, management, regulation, enforcement, technical assistance, and public education required under chapter 70.105 RCW;

(b) The state's responsibility for solid waste planning, management, regulation, enforcement, technical assistance, and public education required under chapter 70.95 RCW;

(c) The hazardous waste clean-up program required under this chapter;

(d) State matching funds required under federal cleanup law;

(e) Financial assistance for local programs in accordance with chapters 70.95, 70.95C, 70.95I, and 70.105 RCW;

(f) State government programs for the safe reduction, recycling, or disposal of paint and hazardous wastes from households, small businesses, and agriculture;

(g) Oil and hazardous materials spill prevention, preparedness, training, and response activities;

(h) Water and environmental health protection and monitoring programs;

(i) Programs authorized under chapter 70.146 RCW;

(j) A public participation program;

(k) Public funding to assist potentially liable persons to pay for the costs of remedial action in compliance with clean-up standards under RCW 70.105D.030(2)(e) but only when the amount and terms of such funding are established under a settlement agreement under RCW 70.105D.040(4) and when the director has found that the funding will achieve both: (i) A substantially more expeditious or enhanced cleanup than would otherwise occur; and (ii) the prevention or mitigation of unfair economic hardship;

(l) Development and demonstration of alternative management technologies designed to carry out the hazardous waste management priorities of RCW 70.105.150;

(m) State agriculture and health programs for the safe use, reduction, recycling, or disposal of pesticides;

(n) Storm water pollution control projects and activities that protect or preserve existing remedial actions or prevent hazardous clean-up sites;

(o) Funding requirements to maintain receipt of federal funds under the federal solid waste disposal act (42 U.S.C. Sec. 6901 et seq.);

(p) Air quality programs and actions for reducing public exposure to toxic air pollution;

(q) Public funding to assist prospective purchasers to pay for the costs of remedial action in compliance with clean-up standards under RCW 70.105D.030(2)(e) if:

(i) The facility is located within a redevelopment opportunity zone designated under RCW 70.105D.150;

(ii) The amount and terms of the funding are established under a settlement agreement under RCW 70.105D.040(5); and

(iii) The director has found the funding meets any additional criteria established in rule by the department, will achieve a substantially more expeditious or enhanced cleanup than would otherwise occur, and will provide a public benefit in addition to cleanup commensurate with the scope of the public funding;

(r) Petroleum-based plastic or expanded polystyrene foam debris cleanup activities in fresh or marine waters;

(s) Appropriations to the local toxics control account or the environmental legacy stewardship account created in RCW 70.105D.170, if the legislature determines that priorities for spending exceed available funds in those accounts;

(t) During the 2013-2015 fiscal biennium, the department of ecology's water quality, shorelands, environmental assessment, administration, and air quality programs;

(u) During the 2013-2015 fiscal biennium, actions at the state conservation commission to improve water quality for shellfish; and

(v) During the 2013-2015 fiscal biennium, actions at the University of Washington for reducing ocean acidification;

(w) For the 2013-2015 fiscal biennium, moneys in the state toxics control account may be spent on projects in sec-

tion 3159, chapter 19, Laws of 2013 2nd sp. sess. and for transfer to the local toxics control account; and

(x) For the 2013-2015 fiscal biennium, moneys in the state toxics control account may be transferred to the radioactive mixed waste account.

(4)(a) The department shall use moneys deposited in the local toxics control account for grants or loans to local governments for the following purposes in descending order of priority:

(i) Extended grant agreements entered into under (c)[(e)](i) of this subsection;

(ii) Remedial actions, including planning for adaptive reuse of properties as provided for under (c)[(e)](iv) of this subsection. The department must prioritize funding of remedial actions at:

(A) Facilities on the department's hazardous sites list with a high hazard ranking for which there is an approved remedial action work plan or an equivalent document under federal cleanup law;

(B) Brownfield properties within a redevelopment opportunity zone if the local government is a prospective purchaser of the property and there is a department-approved remedial action work plan or equivalent document under the federal cleanup law;

(iii) Storm water pollution source projects that: (A) Work in conjunction with a remedial action; (B) protect completed remedial actions against recontamination; or (C) prevent hazardous clean-up sites;

(iv) Hazardous waste plans and programs under chapter 70.105 RCW;

(v) Solid waste plans and programs under chapters 70.95, 70.95C, 70.95I, and 70.105 RCW;

(vi) Petroleum-based plastic or expanded polystyrene foam debris cleanup activities in fresh or marine waters; and

(vii) Appropriations to the state toxics control account or the environmental legacy stewardship account created in RCW 70.105D.170, if the legislature determines that priorities for spending exceed available funds in those accounts.

(b) Funds for plans and programs must be allocated consistent with the priorities and matching requirements established in chapters 70.105, 70.95C, 70.95I, and 70.95 RCW.

(c) During the 2013-2015 fiscal biennium, the local toxics control account may also be used for local government storm water planning and implementation activities.

(d) During the 2013-2015 fiscal biennium, the legislature may transfer from the local toxics control account to the state general fund, such amounts as reflect the excess fund balance in the account.

(e) To expedite cleanups throughout the state, the department may use the following strategies when providing grants to local governments under this subsection:

(i) Enter into an extended grant agreement with a local government conducting remedial actions at a facility where those actions extend over multiple biennia and the total eligible cost of those actions exceeds twenty million dollars. The agreement is subject to the following limitations:

(A) The initial duration of such an agreement may not exceed ten years. The department may extend the duration of such an agreement upon finding substantial progress has been made on remedial actions at the facility;

(B) Extended grant agreements may not exceed fifty percent of the total eligible remedial action costs at the facility; and

(C) The department may not allocate future funding to an extended grant agreement unless the local government has demonstrated to the department that funds awarded under the agreement during the previous biennium have been substantially expended or contracts have been entered into to substantially expend the funds;

(ii) Enter into a grant agreement with a local government conducting a remedial action that provides for periodic reimbursement of remedial action costs as they are incurred as established in the agreement;

(iii) Enter into a grant agreement with a local government prior to it acquiring a property or obtaining necessary access to conduct remedial actions, provided the agreement is conditioned upon the local government acquiring the property or obtaining the access in accordance with a schedule specified in the agreement;

(iv) Provide integrated planning grants to local governments to fund studies necessary to facilitate remedial actions at brownfield properties and adaptive reuse of properties following remediation. Eligible activities include, but are not limited to: Environmental site assessments; remedial investigations; health assessments; feasibility studies; site planning; community involvement; land use and regulatory analyses; building and infrastructure assessments; economic and fiscal analyses; and any environmental analyses under chapter 43.21C RCW;

(v) Provide grants to local governments for remedial actions related to areawide groundwater contamination. To receive the funding, the local government does not need to be a potentially liable person or be required to seek reimbursement of grant funds from a potentially liable person;

(vi) The director may alter grant matching requirements to create incentives for local governments to expedite cleanups when one of the following conditions exists:

(A) Funding would prevent or mitigate unfair economic hardship imposed by the clean-up liability;

(B) Funding would create new substantial economic development, public recreational opportunities, or habitat restoration opportunities that would not otherwise occur; or

(C) Funding would create an opportunity for acquisition and redevelopment of brownfield property under RCW 70.105D.040(5) that would not otherwise occur;

(vii) When pending grant applications under (c)[(e)](iv) and (v) of this subsection (4) exceed the amount of funds available, designated redevelopment opportunity zones must receive priority for distribution of available funds.

(d) [(f)] To expedite multiparty clean-up efforts, the department may purchase remedial action cost-cap insurance. For the 2013-2015 fiscal biennium, moneys in the local toxics control account may be spent on projects in sections 3024, 3035, 3036, and 3059, chapter 19, Laws of 2013 2nd sp. sess.

(5) Except for unanticipated receipts under RCW 43.79.260 through 43.79.282, moneys in the state and local toxics control accounts may be spent only after appropriation by statute.

(6) No moneys deposited into either the state or local toxics control account may be used for: Natural disasters where there is no hazardous substance contamination; high

performance buildings; solid waste incinerator facility feasibility studies, construction, maintenance, or operation; or after January 1, 2010, for projects designed to address the restoration of Puget Sound, funded in a competitive grant process, that are in conflict with the action agenda developed by the Puget Sound partnership under RCW 90.71.310. However, this subsection does not prevent an appropriation from the state toxics control account to the department of revenue to enforce compliance with the hazardous substance tax imposed in chapter 82.21 RCW.

(7) Except during the 2011-2013 fiscal biennium, one percent of the moneys collected under RCW 82.21.030 shall be allocated only for public participation grants to persons who may be adversely affected by a release or threatened release of a hazardous substance and to not-for-profit public interest organizations. The primary purpose of these grants is to facilitate the participation by persons and organizations in the investigation and remedying of releases or threatened releases of hazardous substances and to implement the state's solid and hazardous waste management priorities. No grant may exceed sixty thousand dollars. Grants may be renewed annually. Moneys appropriated for public participation that are not expended at the close of any biennium revert to the state toxics control account.

(8) The department shall adopt rules for grant or loan issuance and performance. To accelerate both remedial action and economic recovery, the department may expedite the adoption of rules necessary to implement chapter 1, Laws of 2013 2nd sp. sess. using the expedited procedures in RCW 34.05.353. The department shall initiate the award of financial assistance by August 1, 2013. To ensure the adoption of rules will not delay financial assistance, the department may administer the award of financial assistance through interpretive guidance pending the adoption of rules through July 1, 2014.

(9) Except as provided under subsection (3)(k) and (q) of this section, nothing in chapter 1, Laws of 2013 2nd sp. sess. affects [affects] the ability of a potentially liable person to receive public funding.

(10) During the 2013-2015 fiscal biennium the local toxics control account may also be used for the centennial clean water program and for storm water grants. [2013 2nd sp.s. c 19 § 7033; 2013 2nd sp.s. c 4 § 992; 2013 2nd sp.s. c 1 § 9; 2012 2nd sp.s. c 7 § 920; 2012 2nd sp.s. c 2 § 6005. Prior: 2011 1st sp.s. c 50 § 964; 2010 1st sp.s. c 37 § 942; 2009 c 564 § 951; 2009 c 187 § 5; prior: 2008 c 329 § 921; 2008 c 329 § 920; 2008 c 329 § 919; 2008 c 328 § 6009; prior: 2007 c 522 § 954; 2007 c 520 § 6033; 2007 c 446 § 2; 2007 c 341 § 30; 2005 c 488 § 926; 2003 1st sp.s. c 25 § 933; 2001 c 27 § 2; 2000 2nd sp.s. c 1 § 912; 1999 c 309 § 923; prior: 1998 c 346 § 905; 1998 c 81 § 2; 1997 c 406 § 5; 1994 c 252 § 5; 1991 sp.s. c 13 § 69; 1989 c 2 § 7 (Initiative Measure No. 97, approved November 8, 1988).]

Reviser's note: This section was amended by 2013 2nd sp.s. c 4 § 992 and by 2013 2nd sp.s. c 19 § 7033, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2013 2nd sp.s. c 19: See note following RCW 43.34.080.

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

Findings—Intent—Effective date—2013 2nd sp.s. c 1: See notes following RCW 70.105D.020.

Effective date—2012 2nd sp.s. c 7: See note following RCW 2.68.020.

Effective date—2012 2nd sp.s. c 2: See note following RCW 43.155.050.

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

Effective date—2010 1st sp.s. c 37: See note following RCW 13.06.050.

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

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

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

Severability—Effective date—2007 c 522: See notes following RCW 15.64.050.

Part headings not law—Severability—Effective date—2007 c 520: See notes following RCW 43.19.125.

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

Part headings not law—Severability—Effective dates—2005 c 488: See notes following RCW 28B.50.360.

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

Finding—2001 c 27: "The legislature finds that there is an increasing number of derelict vessels that have been abandoned in the waters along the shorelines of the state. These vessels pose hazards to navigation and threaten the environment with the potential release of hazardous materials. There is no current federal program that comprehensively addresses this problem, and the legislature recognizes that the state must assist in providing a solution to this increasing hazard." [2001 c 27 § 1.]

Finding—Effective date—1994 c 252: See notes following RCW 70.119A.020.

Additional notes found at www.leg.wa.gov

70.105D.140 Brownfield redevelopment trust fund account—Created—Report to the office of financial management and the legislature—Rules. (1) The brownfield redevelopment trust fund account is created in the state treasury. All receipts from the sources identified in subsection (2) of this section must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only as identified in subsection (4) of this section.

(2) The following receipts must be deposited into the brownfield redevelopment trust fund account:

(a) Moneys appropriated by the legislature to the account for a specific redevelopment opportunity zone established under RCW 70.105D.150 or a specific brownfield renewal authority established under RCW 70.105D.160;

(b) Moneys voluntarily deposited in the account for a specific redevelopment opportunity zone or a specific brownfield renewal authority; and

(c) Receipts from settlements or court orders that direct payment to the account for a specific redevelopment opportunity zone to resolve a person's liability or potential liability under this chapter.

(3) If a settlement or court order does not direct payment of receipts described in subsection (2)(c) of this section into the brownfield redevelopment trust fund account, then the receipts from any payment to the state must be deposited into the state toxics control account established under RCW 70.105D.070.

(4) Expenditures from the brownfield redevelopment trust fund account may only be used for the purposes of remediation and cleanup at the specific redevelopment opportunity zone or specific brownfield renewal authority for which the moneys were deposited in the account.

(5) The department shall track moneys received, interest earned, and moneys expended separately for each facility.

(6) The account must retain its interest earnings in accordance with RCW 43.84.092.

(7) The local government designating the redevelopment opportunity zone under RCW 70.105D.150 or the associated brownfield renewal authority created under RCW 70.105D.160 must be the beneficiary of the deposited moneys.

(8) All expenditures must be used to conduct remediation and cleanup consistent with a plan for the remediation and cleanup of the properties or facilities approved by the department under this chapter. All expenditures must meet the eligibility requirements for the use by local governments under the rules for remedial action grants adopted by the department under this chapter, including requirements for the expenditure of nonstate match funding.

(9) Beginning October 31, 2015, the department must provide a biennial report to the office of financial management and the legislature regarding the activity for each specific redevelopment opportunity zone or specific brownfield renewal authority for which specific legislative appropriation was provided in the previous two fiscal years.

(10) After the department determines that all remedial actions within the redevelopment opportunity zone identified in the plan approved under subsection (8) of this section are completed, including payment of all cost reasonably attributable to the remedial actions and cleanup, any remaining moneys must be transferred to the state toxics control account established under RCW 70.105D.070.

(11) If the department determines that substantial progress has not been made on the plan approved under subsection (8) of this section for a redevelopment opportunity zone or specific brownfield renewal authority for which moneys were deposited in the account within six years, or that the brownfield renewal authority is no longer a viable entity, then all remaining moneys must be transferred to the state toxics control account established under RCW 70.105D.070.

(12) The department is authorized to adopt rules to implement this section. [2013 2nd sp.s. c 1 § 3.]

Findings—Intent—Effective date—2013 2nd sp.s. c 1: See notes following RCW 70.105D.020.

70.105D.150 Designation of a redevelopment opportunity zone—Criteria. (1) A city or county may designate a geographic area within its jurisdiction as a redevelopment opportunity zone if the zone meets the criteria in this subsection and the city or county adopts a resolution that includes the following determinations and commitments:

(a) At least fifty percent of the upland properties in the zone are brownfield properties whether or not the properties are contiguous;

(b) The upland portions of the zone are comprised entirely of parcels of property either owned by the city or county or whose owner has provided consent in writing to have their property included within the zone;

(c) The cleanup of brownfield properties will be integrated with planning for the future uses of the properties and is consistent with the comprehensive land use plan for the zone; and

(d) The proposed properties lie within the incorporated area of a city or within an urban growth area designated under RCW 36.70A.110.

(2) A port district may designate a redevelopment opportunity zone when:

(a) The port district adopts a resolution that includes the determinations and commitments required under subsection (1)(a), (c), and (d) of this section and (c) of this subsection;

(b) The zone meets the criteria in subsection (1)(a), (c), and (d) of this section; and

(c) The port district either:

(i) Owns in fee all of the upland properties within the zone; or

(ii) Owns in fee at least fifty percent of the upland property in the zone, the owners of other parcels of upland property in the zone have provided consent in writing to have their property included in the zone, and the governing body of the city and county in which the zone lies approves of the designation by resolution. [2013 2nd sp.s. c 1 § 4.]

Findings—Intent—Effective date—2013 2nd sp.s. c 1: See notes following RCW 70.105D.020.

70.105D.160 Brownfield renewal authority. (1) A city, county, or port district may establish by resolution a brownfield renewal authority for the purpose of guiding and implementing the cleanup and reuse of properties within a designated redevelopment opportunity zone. Any combination of cities, counties, and port districts may establish a brownfield renewal authority through an interlocal agreement under chapter 39.34 RCW, and the brownfield renewal authority may exercise those powers as are authorized under chapter 39.34 RCW and under this chapter.

(2) A brownfield renewal authority must be governed by a board of directors selected as determined by the resolution or interlocal agreement establishing the authority.

(3) A brownfield renewal authority must be a separate legal entity and be deemed a municipal corporation. It has the power to: Sue and be sued; receive, account for, and disburse funds; employ personnel; and acquire or dispose of any interest in real or personal property within a redevelopment opportunity zone in the furtherance of the authority purposes. A brownfield renewal authority has the power to contract indebtedness and to issue and sell general obligation bonds pursuant to and in the manner provided for general county bonds in chapters 36.67 and 39.46 RCW and other applicable statutes, and to issue revenue bonds pursuant to and in the manner provided for revenue bonds in chapter 36.67 RCW and other applicable statutes.

(4) If the department determines that substantial progress has not been made on the plan approved under RCW 70.105D.140 by the brownfield renewal authority within six years of a city, county, or port district establishing a brownfield renewal authority, the department may require dissolution of the brownfield renewal authority. Upon dissolution of the brownfield renewal authority, except as provided in RCW 70.105D.140, all assets and liabilities transfer to the city,

town, or port district establishing the brownfield renewal authority. [2013 2nd sp.s. c 1 § 5.]

Findings—Intent—Effective date—2013 2nd sp.s. c 1: See notes following RCW 70.105D.020.

70.105D.170 Environmental legacy stewardship account. (1) The environmental legacy stewardship account is created in the state treasury. Beginning July 1, 2013, and every fiscal year thereafter, the annual amount received from the tax imposed by RCW 82.21.030 that exceeds one hundred forty million dollars must be deposited into the environmental legacy stewardship account. The state treasurer may make periodic deposits into the environmental legacy stewardship account based on forecasted revenue. Moneys in the account may only be spent after appropriation.

(2) Moneys in the environmental legacy stewardship account may be spent on:

(a) Grants or loans to local governments for performance and outcome-based projects, model remedies, demonstration projects, procedures, contracts, and project management and oversight that result in significant reductions in the time to complete compared to baseline averages;

(b) Purposes authorized under RCW 70.105D.070 (3) and (4);

(c) Grants or loans awarded through a competitive grant program administered by the department to fund design and construction of low-impact development retrofit projects and other high quality projects that reduce storm water pollution from existing infrastructure. The competitive grant program must apply criteria to review, rank, and prioritize projects for funding based on their water quality benefits, ecological benefits, and effectiveness at reducing environmental degradation; and

(d) Cleanup and disposal of hazardous substances from abandoned or derelict vessels, defined for the purposes of this section as vessels that have little or no value and either have no identified owner or have an identified owner lacking financial resources to clean up and dispose of the vessel, that pose a threat to human health or the environment.

(3) Except as provided under RCW 70.105D.070(3) (k) and (q), nothing in chapter 1, Laws of 2013 2nd sp. sess. expands the ability of a potentially liable person to receive public funding.

(4) Moneys in the environmental legacy stewardship account may also be used as follows:

(a) During the 2013-2015 fiscal biennia, shoreline update technical assistance and for local government shoreline master program update grants;

(b) During the 2013-2015 fiscal biennium, solid and hazardous waste compliance at the department of corrections;

(c) During the 2013-2015 fiscal biennium, activities at the department of fish and wildlife concerning water quality monitoring, hatchery water quality regulatory compliance, and technical assistance to local governments on growth management and shoreline management;

(d) During the 2013-2015 fiscal biennium, forest practices regulation and aquatic land investigation and cleanup activities at the department of natural resources.

(5) For the 2013-2015 fiscal biennium, moneys in the environmental legacy stewardship account may be transferred to the local toxics control account. [2013 2nd sp.s. c

28 § 1; 2013 2nd sp.s. c 19 § 7042; 2013 2nd sp.s. c 4 § 991; 2013 2nd sp.s. c 1 § 10.]

Reviser's note: This section was amended by 2013 2nd sp.s. c 4 § 991, 2013 2nd sp.s. c 19 § 7042, and by 2013 2nd sp.s. c 28 § 1, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2013 2nd sp.s. c 19: See note following RCW 43.34.080.

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

Findings—Intent—Effective date—2013 2nd sp.s. c 1: See notes following RCW 70.105D.020.

Chapter 70.106 RCW POISON PREVENTION— LABELING AND PACKAGING

Sections

70.106.150 Authority to adopt regulations—Delegation of authority to pharmacy quality assurance commission.

70.106.150 Authority to adopt regulations—Delegation of authority to pharmacy quality assurance commission. The authority to promulgate regulations for the efficient enforcement of this chapter is hereby vested in the director. However, the director shall designate the pharmacy quality assurance commission to carry out all the provisions of this chapter pertaining to drugs and cosmetics, with authority to promulgate regulations for the efficient enforcement thereof. [2013 c 19 § 124; 1987 c 236 § 1.]

Chapter 70.116 RCW PUBLIC WATER SYSTEM COORDINATION ACT OF 1977

Sections

70.116.134 Satellite system management agencies—Definitions.

70.116.134 Satellite system management agencies—Definitions. (1) The secretary shall adopt rules pursuant to chapter 34.05 RCW establishing criteria for designating individuals or water purveyors as qualified satellite system management agencies. The criteria shall set forth minimum standards for designation as a satellite system management agency qualified to assume ownership, operation, or both, of an existing or proposed public water system. The criteria shall include demonstration of financial integrity and operational capability, and may require demonstration of previous experience in successful operation and management of a public water system.

(2) Each county shall identify potential satellite system management agencies to the secretary for areas where: (a) No purveyor has been designated a future service area pursuant to this chapter, or (b) an existing purveyor is unable or unwilling to provide service. Preference shall be given to public utilities or utility districts or to investor-owned utilities under the jurisdiction of the utilities and transportation commission.

(3) The secretary shall approve satellite system management agencies meeting the established criteria and shall maintain and make available to counties a list of approved

agencies. Prior to the construction of a new public water system, the individual(s) proposing the new system or requesting service shall first be directed by the local agency responsible for issuing the construction or building permit to one or more qualified satellite system management agencies designated for the service area where the new system is proposed for the purpose of exploring the possibility of a satellite agency either owning or operating the proposed new water system.

(4) Approved satellite system management agencies shall be reviewed periodically by the secretary for continued compliance with established criteria. The secretary may require status reports and other information necessary for such review. Satellite system management agencies shall be subject to reapproval at the discretion of the secretary but not less than once every five years.

(5) The secretary may assess reasonable fees to process applications for initial approval and for periodic review of satellite system management agencies.

(6) For purposes of this section, "satellite system management agency" and "satellite agency" shall mean a person or entity that is certified by the secretary to own or operate more than one public water system on a regional or county-wide basis, without the necessity for a physical connection between such systems. [2013 c 251 § 8; 1991 c 18 § 1.]

Residual balance of funds—Effective date—2013 c 251: See notes following RCW 41.06.280.

Chapter 70.122 RCW NATURAL DEATH ACT

Sections

70.122.130 Health care declarations registry—Rules—Report.
70.122.140 Repealed.

70.122.130 Health care declarations registry—Rules—Report. (1) The department of health shall establish and maintain a statewide health care declarations registry containing the health care declarations identified in subsection (2) of this section as submitted by residents of Washington. The department shall digitally reproduce and store health care declarations in the registry. The department may establish standards for individuals to submit digitally reproduced health care declarations directly to the registry, but is not required to review the health care declarations that it receives to ensure they comply with the particular statutory requirements applicable to the document. The department may contract with an organization that meets the standards identified in this section.

(2)(a) An individual may submit any of the following health care declarations to the department of health to be digitally reproduced and stored in the registry:

- (i) A directive, as defined by this chapter;
- (ii) A durable power of attorney for health care, as authorized in chapter 11.94 RCW;
- (iii) A mental health advance directive, as defined by chapter 71.32 RCW; or
- (iv) A form adopted pursuant to the department of health's authority in RCW 43.70.480.

(b) Failure to submit a health care declaration to the department of health does not affect the validity of the declaration.

(c) Failure to notify the department of health of a valid revocation of a health care declaration does not affect the validity of the revocation.

(d) The entry of a health care directive in the registry under this section does not:

- (i) Affect the validity of the document;
- (ii) Take the place of any requirements in law necessary to make the submitted document legal; or
- (iii) Create a presumption regarding the validity of the document.

(3) The department of health shall prescribe a procedure for an individual to revoke a health care declaration contained in the registry.

(4) The registry must:

(a) Be maintained in a secure database that is accessible through a web site maintained by the department of health;

(b) Send annual electronic messages to individuals that have submitted health care declarations to request that they review the registry materials to ensure that it is current;

(c) Provide individuals who have submitted one or more health care declarations with access to their documents and the ability to revoke their documents at all times; and

(d) Provide the personal representatives of individuals who have submitted one or more health care declarations to the registry, attending physicians, advanced registered nurse practitioners, health care providers licensed by a disciplining authority identified in RCW 18.130.040 who is acting under the direction of a physician or an advanced registered nurse practitioner, and health care facilities, as defined in this chapter or in chapter 71.32 RCW, access to the registry at all times.

(5) In designing the registry and web site, the department of health shall ensure compliance with state and federal requirements related to patient confidentiality.

(6) The department shall provide information to health care providers and health care facilities on the registry web site regarding the different federal and Washington state requirements to ascertain and document whether a patient has an advance directive.

(7) The department of health may accept donations, grants, gifts, or other forms of voluntary contributions to support activities related to the creation and maintenance of the health care declarations registry and statewide public education campaigns related to the existence of the registry. All receipts from donations made under this section, and other contributions and appropriations specifically made for the purposes of creating and maintaining the registry established under this section and statewide public education campaigns related to the existence of the registry, shall be deposited into the general fund. These moneys in the general fund may be spent only after appropriation.

(8) The department of health may adopt rules as necessary to implement chapter 108, Laws of 2006.

(9) By December 1, 2008, the department shall report to the house and senate committees on health care the following information:

- (a) Number of participants in the registry;
- (b) Number of health care declarations submitted by type of declaration as defined in this section;
- (c) Number of health care declarations revoked and the method of revocation;

(d) Number of providers and facilities, by type, that have been provided access to the registry;

(e) Actual costs of operation of the registry. [2013 c 251 § 12; 2006 c 108 § 2.]

Residual balance of funds—Effective date—2013 c 251: See notes following RCW 41.06.280.

Finding—Intent—2006 c 108: "The legislature finds that effective communication between patients, their families, and their caregivers regarding their wishes if they become incapacitated results in health care decisions that are more respectful of patients' desires. Whether the communication is for end-of-life planning or incapacity resulting from mental illness, the state must respect those wishes and support efforts to facilitate such communications and to make that information available when it is needed.

It is the intent of the legislature to establish an electronic registry to improve access to health care decision-making documents. The registry would support, not supplant, the current systems for advance directives and mental health advance directives by improving access to these documents. It is the legislature's intent that the registry would be consulted by health care providers in every instance where there may be a question about the patient's wishes for periods of incapacity and the existence of a document that may clarify a patient's intentions unless the circumstances are such that consulting the registry would compromise the emergency care of the patient." [2006 c 108 § 1.]

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

Chapter 70.127 RCW

IN-HOME SERVICES AGENCIES

(Formerly: Home health, hospice, and home care agencies—Licensure)

Sections

70.127.130 Legend drugs and controlled substances—Rules.

70.127.130 Legend drugs and controlled substances—Rules. Licensees shall conform to the standards of RCW 69.41.030 and 69.50.308. Rules adopted by the department concerning the use of legend drugs or controlled substances shall reference and be consistent with pharmacy quality assurance commission rules. [2013 c 19 § 125; 1993 c 42 § 9; 1988 c 245 § 14.]

Additional notes found at www.leg.wa.gov

Chapter 70.128 RCW

ADULT FAMILY HOMES

Sections

70.128.060 License—Generally—Fees.
 70.128.065 Multiple facility operators—Requirements—Licensure of additional homes.
 70.128.120 Adult family home provider, applicant, resident manager—Minimum qualifications.
 70.128.150 Adult family homes to work with local quality assurance projects—Interference with representative of ombuds program—Penalty.
 70.128.160 Department authority to take actions in response to noncompliance or violations—Civil penalties—Adult family home account.
 70.128.163 Temporary management program—Purposes—Voluntary participation—Temporary management duties, duration—Rules.
 70.128.200 Toll-free telephone number for complaints—Discrimination or retaliation prohibited.
 70.128.230 Long-term caregiver training.
 70.128.270 Legislative intent—Enacting recommendations included in the adult family home quality assurance panel report.
 70.128.280 Required disclosure—Forms—Decrease in scope of care, services, activities—Notice—Increased needs of a resident—Denial of admission to a prospective resident—Department web site.

70.128.290 Correction of a violation or deficiency—Not included in a home's report—Criteria.

70.128.060 License—Generally—Fees. (1) An application for license shall be made to the department upon forms provided by it and shall contain such information as the department reasonably requires.

(2) Subject to the provisions of this section, the department shall issue a license to an adult family home if the department finds that the applicant and the home are in compliance with this chapter and the rules adopted under this chapter. The department may not issue a license if (a) the applicant or a person affiliated with the applicant has prior violations of this chapter relating to the adult family home subject to the application or any other adult family home, or of any other law regulating residential care facilities within the past ten years that resulted in revocation, suspension, or nonrenewal of a license or contract with the department; or (b) the applicant or a person affiliated with the applicant has a history of significant noncompliance with federal, state, or local laws, rules, or regulations relating to the provision of care or services to vulnerable adults or to children. A person is considered affiliated with an applicant if the person is listed on the license application as a partner, officer, director, resident manager, or majority owner of the applying entity, or is the spouse of the applicant.

(3) The license fee shall be submitted with the application.

(4) Proof of financial solvency must be submitted when requested by the department.

(5) The department shall serve upon the applicant a copy of the decision granting or denying an application for a license. An applicant shall have the right to contest denial of his or her application for a license as provided in chapter 34.05 RCW by requesting a hearing in writing within twenty-eight days after receipt of the notice of denial.

(6) The department shall not issue a license to a provider if the department finds that the provider or spouse of the provider or any partner, officer, director, managerial employee, or majority owner has a history of significant noncompliance with federal or state regulations, rules, or laws in providing care or services to vulnerable adults or to children.

(7) The department shall license an adult family home for the maximum level of care that the adult family home may provide. The department shall define, in rule, license levels based upon the education, training, and caregiving experience of the licensed provider or staff.

(8) For adult family homes that serve residents with special needs such as dementia, developmental disabilities, or mental illness, specialty training is required of providers and resident managers consistent with RCW 70.128.230, and also is required for caregivers, with standardized competency testing for caregivers hired after July 28, 2013, as set forth by the department in rule. The department shall examine, with input from experts, providers, consumers, and advocates, whether the existing specialty training courses are adequate for providers, resident managers, and caregivers to meet these residents' special needs, are sufficiently standardized in curricula and instructional techniques, and are accompanied by effective tools to fairly evaluate successful student completion. The department may enhance the existing specialty training

requirements by rule, and may update curricula, instructional techniques, and competency testing based upon its review and stakeholder input. In addition, the department shall examine, with input from experts, providers, consumers, and advocates, whether additional specialty training categories should be created for adult family homes serving residents with other special needs, such as traumatic brain injury, skilled nursing, or bariatric care. The department may establish, by rule, additional specialty training categories and requirements for providers, resident managers, and caregivers, if needed to better serve residents with such special needs.

(9) The department shall establish, by rule, standards used to license nonresident providers and multiple facility operators.

(10) The department shall establish, by rule, for multiple facility operators educational standards substantially equivalent to recognized national certification standards for residential care administrators.

(11) At the time of an application for an adult family home license and upon the annual fee renewal date set by the department, the licensee shall pay a license fee. Beginning July 1, 2011, the per bed license fee and any processing fees, including the initial license fee, must be established in the omnibus appropriations act and any amendment or additions made to that act. The license fees established in the omnibus appropriations act and any amendment or additions made to that act may not exceed the department's annual licensing and oversight activity costs and must include the department's cost of paying providers for the amount of the license fee attributed to medicaid clients.

(12) A provider who receives notification of the department's initiation of a denial, suspension, nonrenewal, or revocation of an adult family home license may, in lieu of appealing the department's action, surrender or relinquish the license. The department shall not issue a new license to or contract with the provider, for the purposes of providing care to vulnerable adults or children, for a period of twenty years following the surrendering or relinquishment of the former license. The licensing record shall indicate that the provider relinquished or surrendered the license, without admitting the violations, after receiving notice of the department's initiation of a denial, suspension, nonrenewal, or revocation of a license.

(13) The department shall establish, by rule, the circumstances requiring a change in the licensed provider, which include, but are not limited to, a change in ownership or control of the adult family home or provider, a change in the provider's form of legal organization, such as from sole proprietorship to partnership or corporation, and a dissolution or merger of the licensed entity with another legal organization. The new provider is subject to the provisions of this chapter, the rules adopted under this chapter, and other applicable law. In order to ensure that the safety of residents is not compromised by a change in provider, the new provider is responsible for correction of all violations that may exist at the time of the new license. [2013 c 300 § 2; 2011 1st sp.s. c 3 § 403; 2009 c 530 § 5; 2004 c 140 § 3; 2001 c 193 § 9; 1995 c 260 § 4; 1989 c 427 § 20.]

Effective date—2011 1st sp.s. c 3 §§ 401-403: See note following RCW 18.51.050.

Finding—Intent—2011 1st sp.s. c 3: See note following RCW 70.128.005.

70.128.065 Multiple facility operators—Requirements—Licensure of additional homes. (1) A multiple facility operator must successfully demonstrate to the department financial solvency and management experience for the homes under its ownership and the ability to meet other relevant safety, health, and operating standards pertaining to the operation of multiple homes, including ways to mitigate the potential impact of vehicular traffic related to the operation of the homes.

(2) The department shall only accept and process an application for licensure of an additional home when:

(a) A period of no less than twenty-four months has passed since the issuance of the initial adult family home license; and

(b) The department has taken no enforcement actions against the applicant's currently licensed adult family homes during the twenty-four months prior to application.

(3)(a) Except as provided in (b) of this subsection, the department shall only accept and process an additional application for licensure of other adult family homes when twelve months has passed since the previous adult family home license, and the department has taken no enforcement actions against the applicant's currently licensed adult family homes during the twelve months prior to application.

(b) The department shall accept and process applications for licensure of additional adult family homes when less than twelve months have passed since the previous adult family home license, if the applications are due to the change in ownership of existing adult family homes that are currently licensed and the department has taken no enforcement actions against the applicant's currently licensed adult family homes during the twelve months prior to application.

(4) In the event of serious noncompliance leading to the imposition of one or more actions listed in RCW 70.128.160(2) for violation of federal, state, or local laws, or regulations relating to provision of care or services to vulnerable adults or children, the department is authorized to take one or more actions listed in RCW 70.128.160(2) against any home or homes operated by the provider if there is a violation in the home or homes.

(5) In the event of serious noncompliance in a home operated by a provider with multiple adult family homes, leading to the imposition of one or more actions listed in RCW 70.128.160(2), the department shall inspect the other homes operated by the provider to determine whether the same or related deficiencies are present in those homes. The cost of these additional inspections may be imposed on the provider as a civil penalty up to a maximum of three hundred dollars per additional inspection.

(6) A provider is ultimately responsible for the day-to-day operations of each licensed home. [2013 c 185 § 1; 2011 1st sp.s. c 3 § 203; 1996 c 81 § 6.]

Finding—Intent—2011 1st sp.s. c 3: See note following RCW 70.128.005.

Additional notes found at www.leg.wa.gov

70.128.120 Adult family home provider, applicant, resident manager—Minimum qualifications. Each adult

family home provider, applicant, and each resident manager shall have the following minimum qualifications, except that only applicants are required to meet the provisions of subsections (10) and (11) of this section:

- (1) Twenty-one years of age or older;
- (2) For those applying after September 1, 2001, to be licensed as providers, and for resident managers whose employment begins after September 1, 2001, a United States high school diploma or high school equivalency certificate as provided in RCW 28B.50.536 or any English or translated government documentation of the following:
 - (a) Successful completion of government-approved public or private school education in a foreign country that includes an annual average of one thousand hours of instruction over twelve years or no less than twelve thousand hours of instruction;
 - (b) A foreign college, foreign university, or United States community college two-year diploma;
 - (c) Admission to, or completion of coursework at, a foreign university or college for which credit was granted;
 - (d) Admission to, or completion of coursework at, a United States college or university for which credits were awarded;
 - (e) Admission to, or completion of postgraduate coursework at, a United States college or university for which credits were awarded; or
 - (f) Successful passage of the United States board examination for registered nursing, or any professional medical occupation for which college or university education preparation was required;
- (3) Good moral and responsible character and reputation;
- (4) Literacy and the ability to communicate in the English language;
- (5) Management and administrative ability to carry out the requirements of this chapter;
- (6) Satisfactory completion of department-approved basic training and continuing education training as required by RCW 74.39A.074, and in rules adopted by the department;
- (7) Satisfactory completion of department-approved, or equivalent, special care training before a provider may provide special care services to a resident;
- (8) Not been convicted of any crime that is disqualifying under RCW 43.43.830 or 43.43.842, or department rules adopted under this chapter, or been found to have abused, neglected, exploited, or abandoned a minor or vulnerable adult as specified in RCW 74.39A.056(2);
- (9) For those applying to be licensed as providers, and for resident managers whose employment begins after August 24, 2011, at least one thousand hours in the previous sixty months of successful, direct caregiving experience obtained after age eighteen to vulnerable adults in a licensed or contracted setting prior to operating or managing an adult family home. The applicant or resident manager must have credible evidence of the successful, direct caregiving experience or, currently hold one of the following professional licenses: Physician licensed under chapter 18.71 RCW; osteopathic physician licensed under chapter 18.57 RCW; osteopathic physician assistant licensed under chapter 18.57A RCW; physician assistant licensed under chapter

18.71A RCW; registered nurse, advanced registered nurse practitioner, or licensed practical nurse licensed under chapter 18.79 RCW;

(10) For applicants, proof of financial solvency, as defined in rule; and

(11) Applicants must successfully complete an adult family home administration and business planning class, prior to being granted a license. The class must be a minimum of forty-eight hours of classroom time and approved by the department. The department shall promote and prioritize bilingual capabilities within available resources and when materials are available for this purpose. [2013 c 39 § 21; 2012 c 164 § 703; 2011 1st sp.s. c 3 § 205; 2006 c 249 § 1; 2002 c 223 § 1; 2001 c 319 § 8; 2000 c 121 § 5; 1996 c 81 § 1; 1995 1st sp.s. c 18 § 117; 1995 c 260 § 5; 1989 c 427 § 24.]

Finding—Intent—Rules—Effective date—2012 c 164: See notes following RCW 18.88B.010.

Finding—Intent—2011 1st sp.s. c 3: See note following RCW 70.128.005.

Additional notes found at www.leg.wa.gov

70.128.150 Adult family homes to work with local quality assurance projects—Interference with representative of ombuds program—Penalty. Whenever possible, adult family homes are encouraged to contact and work with local quality assurance projects such as the volunteer ombuds with the goal of assuring high quality care is provided in the home.

An adult family home may not willfully interfere with a representative of the long-term care ombuds program in the performance of official duties. The department shall impose a penalty of not more than one thousand dollars for any such willful interference. [2013 c 23 § 181; 1995 1st sp.s. c 18 § 27; 1989 c 427 § 28.]

Additional notes found at www.leg.wa.gov

70.128.160 Department authority to take actions in response to noncompliance or violations—Civil penalties—Adult family home account. (1) The department is authorized to take one or more of the actions listed in subsection (2) of this section in any case in which the department finds that an adult family home provider has:

- (a) Failed or refused to comply with the requirements of this chapter or the rules adopted under this chapter;
 - (b) Operated an adult family home without a license or under a revoked license;
 - (c) Knowingly or with reason to know made a false statement of material fact on his or her application for license or any data attached thereto, or in any matter under investigation by the department; or
 - (d) Willfully prevented or interfered with any inspection or investigation by the department.
- (2) When authorized by subsection (1) of this section, the department may take one or more of the following actions:
- (a) Refuse to issue a license;
 - (b) Impose reasonable conditions on a license, such as correction within a specified time, training, and limits on the type of clients the provider may admit or serve;
 - (c) Impose civil penalties of at least one hundred dollars per day per violation;

(d) Impose civil penalties of up to three thousand dollars for each incident that violates adult family home licensing laws and rules, including, but not limited to, chapters 70.128, 70.129, 74.34, and 74.39A RCW and related rules. Each day upon which the same or substantially similar action occurs is a separate violation subject to the assessment of a separate penalty;

(e) Impose civil penalties of up to ten thousand dollars for a current or former licensed provider who is operating an unlicensed home;

(f) Suspend, revoke, or refuse to renew a license; or

(g) Suspend admissions to the adult family home by imposing stop placement.

(3) When the department orders stop placement, the facility shall not admit any person until the stop placement order is terminated. The department may approve readmission of a resident to the facility from a hospital or nursing home during the stop placement. The department shall terminate the stop placement only after: (a) The violations necessitating the stop placement have been corrected; and (b) the provider exhibits the capacity to maintain correction of the violations previously found deficient. However, if upon the revisit the department finds new violations that the department reasonably believes will result in a new stop placement, the previous stop placement shall remain in effect until the new stop placement is imposed. In order to protect the home's existing residents from potential ongoing neglect, when the provider has been cited for a violation that is repeated, uncorrected, pervasive, or presents a threat to the health, safety, or welfare of one or more residents, and the department has imposed a stop placement, the department shall also impose a condition on license or other remedy to facilitate or spur prompt compliance if the violation has not been corrected, and the provider has not exhibited the capacity to maintain correction, within sixty days of the stop placement.

(4) Nothing in subsection (3) of this section is intended to apply to stop placement imposed in conjunction with a license revocation or summary suspension or to prevent the department from imposing a condition on license or other remedy prior to sixty days after a stop placement, if the department considers it necessary to protect one or more residents' well-being. After a department finding of a violation for which a stop placement has been imposed, the department shall make an on-site revisit of the provider within fifteen working days from the request for revisit, to ensure correction of the violation. For violations that are serious or recurring or uncorrected following a previous citation, and create actual or threatened harm to one or more residents' well-being, including violations of residents' rights, the department shall make an on-site revisit as soon as appropriate to ensure correction of the violation. Verification of correction of all other violations may be made by either a department on-site revisit or by written or photographic documentation found by the department to be credible. This subsection does not prevent the department from enforcing license suspensions or revocations. Nothing in this subsection shall interfere with or diminish the department's authority and duty to ensure that the provider adequately cares for residents, including to make departmental on-site revisits as needed to

ensure that the provider protects residents, and to enforce compliance with this chapter.

(5) Chapter 34.05 RCW applies to department actions under this section, except that orders of the department imposing license suspension, stop placement, or conditions for continuation of a license are effective immediately upon notice and shall continue in effect pending any hearing.

(6) A separate adult family home account is created in the custody of the state treasurer. All receipts from civil penalties imposed under this chapter must be deposited into the account. Only the director or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. The department shall use the special account only for promoting the quality of life and care of residents living in adult family homes.

(7) The department shall by rule specify criteria as to when and how the sanctions specified in this section must be applied. The criteria must provide for the imposition of incrementally more severe penalties for deficiencies that are repeated, uncorrected, pervasive, or present a threat to the health, safety, or welfare of one or more residents. The criteria shall be tiered such that those homes consistently found to have deficiencies will be subjected to increasingly severe penalties. The department shall implement prompt and specific enforcement remedies without delay for providers found to have delivered care or failed to deliver care resulting in problems that are repeated, uncorrected, pervasive, or present a threat to the health, safety, or welfare of one or more residents. In the selection of remedies, the health, safety, and well-being of residents must be of paramount importance. [2013 c 300 § 4; 2011 1st sp.s. c 3 § 208; 2001 c 193 § 5; 1995 1st sp.s. c 18 § 28; 1989 c 427 § 31.]

Finding—Intent—2011 1st sp.s. c 3: See note following RCW 70.128.005.

Additional notes found at www.leg.wa.gov

70.128.163 Temporary management program—Purposes—Voluntary participation—Temporary management duties, duration—Rules. (1) When the department has summarily suspended a license, the licensee may, subject to the department's approval, elect to participate in a temporary management program. All provisions of this section shall apply.

The purposes of a temporary management program are as follows:

(a) To mitigate dislocation and transfer trauma of residents while the department and licensee may pursue dispute resolution or appeal of a summary suspension of license;

(b) To facilitate the continuity of safe and appropriate resident care and services;

(c) To preserve a residential option that meets a specialized service need and/or is in a geographical area that has a lack of available providers; and

(d) To provide residents with the opportunity for orderly discharge.

(2) Licensee participation in the temporary management program is voluntary. The department shall have the discretion to approve any temporary manager and the temporary management arrangements. The temporary management

shall assume the total responsibility for the daily operations of the home.

(3) The temporary management shall contract with the licensee as an independent contractor and is responsible for ensuring that all minimum licensing requirements are met. The temporary management shall protect the health, safety, and well-being of the residents for the duration of the temporary management and shall perform all acts reasonably necessary to ensure that residents' needs are met. The licensee is responsible for all costs related to administering the temporary management program and contracting with the temporary management. The temporary management agreement shall at a minimum address the following:

- (a) Provision of liability insurance to protect residents and their property;
- (b) Preservation of resident trust funds;
- (c) The timely payment of past due or current accounts, operating expenses, including but not limited to staff compensation, and all debt that comes due during the period of the temporary management;
- (d) The responsibilities for addressing all other financial obligations that would interfere with the ability of the temporary manager to provide adequate care and services to residents; and
- (e) The authority of the temporary manager to manage the home, including the hiring, managing, and firing of employees for good cause, and to provide adequate care and services to residents.

(4) The licensee and department shall provide written notification immediately to all residents, legal representatives, interested family members, and the state long-term care ombuds program, of the temporary management and the reasons for it. This notification shall include notice that residents may move from the home without notifying the licensee in advance, and without incurring any charges, fees, or costs otherwise available for insufficient advance notice, during the temporary management period.

(5) The temporary management period under this section concludes twenty-eight days after issuance of the formal notification of enforcement action or conclusion of administrative proceedings, whichever date is later. Nothing in this section precludes the department from revoking its approval of the temporary management and/or exercising its licensing enforcement authority under this chapter. The department's decision whether to approve or to revoke a temporary management arrangement is not subject to the administrative procedure act, chapter 34.05 RCW.

(6) The department is authorized to adopt rules implementing this section. In implementing this section, the department shall consult with consumers, advocates, and organizations representing adult family homes. The department may recruit and approve qualified, licensed providers interested in serving as temporary managers. [2013 c 23 § 182; 2009 c 560 § 6; 2001 c 193 § 6.]

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

70.128.200 Toll-free telephone number for complaints—Discrimination or retaliation prohibited. (1) The [2013 RCW Supp—page 796]

department shall maintain a toll-free telephone number for receiving complaints regarding adult family homes.

(2) An adult family home shall post in a place and manner clearly visible to residents and visitors the department's toll-free complaint telephone number.

(3) No adult family home shall discriminate or retaliate in any manner against a resident on the basis or for the reason that such resident or any other person made a complaint to the department or the long-term care ombuds or cooperated with the investigation of such a complaint. [2013 c 23 § 183; 1995 1st sp.s. c 18 § 30.]

Additional notes found at www.leg.wa.gov

70.128.230 Long-term caregiver training. (1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Caregiver" includes all adult family home resident managers and any person who provides residents with hands-on personal care on behalf of an adult family home, except volunteers who are directly supervised.

(b) "Indirect supervision" means oversight by a person who has demonstrated competency in the core areas or has been fully exempted from the training requirements pursuant to this section and is quickly and easily available to the caregiver, but not necessarily on-site.

(2) Training must have three components: Orientation, basic training, and continuing education. All adult family home providers, resident managers, and employees, or volunteers who routinely interact with residents shall complete orientation. Caregivers shall complete orientation, basic training, and continuing education.

(3) Orientation consists of introductory information on residents' rights, communication skills, fire and life safety, and universal precautions. Orientation must be provided at the facility by appropriate adult family home staff to all adult family home employees before the employees have routine interaction with residents.

(4) Basic training consists of modules on the core knowledge and skills that caregivers need to learn and understand to effectively and safely provide care to residents. Basic training must be outcome-based, and the effectiveness of the basic training must be measured by demonstrated competency in the core areas through the use of a competency test. Basic training must be completed by caregivers within one hundred twenty days of the date on which they begin to provide hands-on care. Until competency in the core areas has been demonstrated, caregivers shall not provide hands-on personal care to residents without direct supervision.

(5) For adult family homes that serve residents with special needs such as dementia, developmental disabilities, or mental illness, specialty training is required of providers and resident managers.

(a) Specialty training consists of modules on the core knowledge and skills that providers and resident managers need to effectively and safely provide care to residents with special needs. Specialty training should be integrated into basic training wherever appropriate. Specialty training must be outcome-based, and the effectiveness of the specialty training measured by demonstrated competency in the core specialty areas through the use of a competency test.

(b) Specialty training must be completed by providers and resident managers before admitting and serving residents who have been determined to have special needs related to mental illness, dementia, or a developmental disability. Should a resident develop special needs while living in a home without specialty designation, the provider and resident manager have one hundred twenty days to complete specialty training.

(6) Continuing education consists of ongoing delivery of information to caregivers on various topics relevant to the care setting and care needs of residents. Competency testing is not required for continuing education. Continuing education is not required in the same calendar year in which basic or modified basic training is successfully completed. Continuing education is required in each calendar year thereafter. If specialty training is completed, the specialty training applies toward any continuing education requirement for up to two years following the completion of the specialty training.

(7) Persons who successfully challenge the competency test for basic training are fully exempt from the basic training requirements of this section. Persons who successfully challenge the specialty training competency test are fully exempt from the specialty training requirements of this section.

(8) (a) Registered nurses and licensed practical nurses licensed under chapter 18.79 RCW are exempt from any continuing education requirement established under this section.

(b) The department may adopt rules that would exempt licensed persons from all or part of the training requirements under this chapter, if they are (i) performing the tasks for which they are licensed and (ii) subject to chapter 18.130 RCW.

(9) In an effort to improve access to training and education and reduce costs, especially for rural communities, the coordinated system of long-term care training and education must include the use of innovative types of learning strategies such as internet resources, videotapes, and distance learning using satellite technology coordinated through community colleges, private associations, or other entities, as defined by the department.

(10) Adult family homes that desire to deliver facility-based training with facility designated trainers, or adult family homes that desire to pool their resources to create shared training systems, must be encouraged by the department in their efforts. The department shall develop criteria for reviewing and approving trainers and training materials. The department may approve a curriculum based upon attestation by an adult family home administrator that the adult family home's training curriculum addresses basic and specialty training competencies identified by the department, and shall review a curriculum to verify that it meets these requirements. The department may conduct the review as part of the next regularly scheduled inspection authorized under RCW 70.128.070. The department shall rescind approval of any curriculum if it determines that the curriculum does not meet these requirements.

(11) The department shall adopt rules by September 1, 2002, for the implementation of this section.

(12)(a) Except as provided in (b) of this subsection, the orientation, basic training, specialty training, and continuing education requirements of this section commence September

1, 2002, and shall be applied to (i) employees hired subsequent to September 1, 2002; or (ii) existing employees that on September 1, 2002, have not successfully completed the training requirements under RCW 70.128.120 or 70.128.130 and this section. Existing employees who have not successfully completed the training requirements under RCW 70.128.120 or 70.128.130 shall be subject to all applicable requirements of this section.

(b) Beginning January 7, 2012, long-term care workers, as defined in RCW 74.39A.009, employed by an adult family home are also subject to the training requirements under RCW 74.39A.074. [2013 c 259 § 5; 2012 c 164 § 705; 2002 c 233 § 3; 2000 c 121 § 3.]

Finding—Intent—Rules—Effective date—2012 c 164: See notes following RCW 18.88B.010.

Additional notes found at www.leg.wa.gov

70.128.270 Legislative intent—Enacting recommendations included in the adult family home quality assurance panel report. (1) The protection of vulnerable residents living in adult family homes and other long-term care facilities in the state is a matter of ongoing concern and grave importance. In 2011, the legislature examined problems with the quality of care and oversight of adult family homes in Washington. The 2011 legislature passed Engrossed Substitute House Bill No. 1277 to address some of these issues, and in addition, created an adult family home quality assurance panel, chaired by the state long-term care ombudsman [ombuds], to meet and make recommendations to the governor and legislature by December 1, 2012, for further improvements in adult family home care and the oversight of the homes by the department of social and health services.

(2) The legislature recognizes that significant progress has been made over the years in adult family home care, and that many adult family homes provide high quality care and are the preferred alternative for many residents in contrast to a larger care facility setting. The legislature finds however that the quality of care in some adult family homes would be improved, and abuse and neglect would decline, if these homes' caregivers and providers received better training and mentoring, residents and their families were more informed and able to select an appropriate home, and oversight by the department of social and health services was more vigorous and prompt against poorly performing homes. It is therefore the intent of the legislature to enact the recommendations included in the adult family home quality assurance panel report in order to improve the quality of care of vulnerable residents and the department's oversight of adult family homes. [2013 c 300 § 1.]

70.128.280 Required disclosure—Forms—Decrease in scope of care, services, activities—Notice—Increased needs of a resident—Denial of admission to a prospective resident—Department web site. (1) In order to enhance the selection of an appropriate adult family home, all adult family homes licensed under this chapter shall disclose the scope of, and charges for, the care, services, and activities provided by the home or customarily arranged for by the home. The disclosure must be provided to the home's residents and the residents' representatives, if any, prior to admission, and to interested prospective residents and their representatives

upon request, using standardized disclosure forms developed by the department with stakeholders' input. The home may also disclose supplemental information to prospective residents and other interested persons.

(2)(a) The disclosure forms that the department develops must be standardized, reasonable in length, and easy to read. The form setting forth the scope of an adult family home's care, services, and activities must be available from the adult family home through a link to the department's web site developed pursuant to this section. This form must indicate, among other categories, the scope of personal care and medication service provided, the scope of skilled nursing services or nursing delegation provided or available, any specialty care designations held by the adult family home, the customary number of caregivers present during the day and whether the home has awake staff at night, any particular cultural or language access available, and clearly state whether the home admits medicaid clients or retains residents who later become eligible for medicaid. The adult family home shall provide or arrange for the care, services, and activities disclosed in its form.

(b) The department must also develop a second standardized disclosure form with stakeholders' input for use by adult family homes to set forth an adult family home's charges for its care, services, items, and activities, including the charges not covered by the home's daily or monthly rate, or by medicaid, medicare, or other programs. This form must be available from the home and disclosed to residents and their representatives, if any, prior to admission, and to interested prospective residents and their representatives upon request.

(3)(a) If the adult family home decreases the scope of care, services, or activities it provides, due to circumstances beyond the home's control, the home shall provide a minimum of thirty days' written notice to the residents, and the residents' representative if any, before the effective date of the decrease in the scope of care, services, or activities provided.

(b) If the adult family home voluntarily decreases the scope of care, services, or activities it provides, and any such decrease will result in the discharge of one or more residents, then ninety days' written notice must be provided prior to the effective date of the decrease. Notice must be given to the residents and the residents' representative, if any.

(c) If the adult family home increases the scope of care, services, or activities it provides, the home shall promptly provide written notice to the residents, and the residents' representative if any, and shall indicate the date on which the increase is effective.

(4) When the care needs of a resident exceed the disclosed scope of care or services that the adult family home provides, the home may exceed the care or services previously disclosed, provided that the additional care or services are permitted by the adult family home's license, and the home can safely and appropriately serve the resident with available staff or through the provision of reasonable accommodations required by state or federal law. The provision of care or services to a resident that exceed those previously disclosed by the home does not mean that the home is capable of or required to provide the same care or services to other residents, unless required as a reasonable accommodation under state or federal law.

(5) An adult family home may deny admission to a prospective resident if the home determines that the needs of the prospective resident cannot be met, so long as the adult family home operates in compliance with state and federal law, including RCW 70.129.030(3) and the reasonable accommodation requirements of state and federal antidiscrimination laws.

(6) The department shall work with consumers, advocates, and other stakeholders to combine and improve existing web resources to create a more robust, comprehensive, and user-friendly web site for family members, residents, and prospective residents of adult family homes in Washington. The department may contract with outside vendors and experts to assist in the development of the web site. The web site should be easy to navigate and have links to information important for residents, prospective residents, and their family members or representatives including, but not limited to: (a) Explanations of the types of licensed long-term care facilities, levels of care, and specialty designations; (b) lists of suggested questions when looking for a care facility; (c) warning signs of abuse, neglect, or financial exploitation; and (d) contact information for the department and the long-term care ombudsman [ombuds]. In addition, the consumer oriented web site should include a searchable list of all adult family homes in Washington, with links to inspection and investigation reports and any enforcement actions by the department for the previous three years. If a violation or enforcement remedy is deleted, rescinded, or modified under RCW 70.128.167 or chapter 34.05 RCW, the department shall make the appropriate changes to the information on the web site as soon as reasonably feasible, but no later than thirty days after the violation or enforcement remedy has been deleted, rescinded, or modified. To facilitate the comparison of adult family homes, the web site should also include a link to each licensed adult family home's disclosure form required by subsection (2)(a) of this section. The department's web site should also include periodically updated information about whether an adult family home has a current vacancy, if the home provides such information to the department, or may include links to other consumer-oriented web sites with the vacancy information. [2013 c 300 § 3.]

70.128.290 Correction of a violation or deficiency—Not included in a home's report—Criteria. (1) If during an inspection, reinspection, or complaint investigation by the department, an adult family home corrects a violation or deficiency that the department discovers, the department shall record and consider such violation or deficiency for purposes of the home's compliance history; however, the licensor or complaint investigator may not include in the home's report the violation or deficiency if the violation or deficiency:

- (a) Is corrected to the satisfaction of the department prior to the exit conference;
- (b) Is not recurring; and
- (c) Did not pose a significant risk of harm or actual harm to a resident.

(2) For the purposes of this section, "recurring" means that the violation or deficiency was found under the same regulation or statute in one of the two most recent preceding

inspections, reinspections, or complaint investigations. [2013 c 300 § 5.]

Chapter 70.129 RCW LONG-TERM CARE RESIDENT RIGHTS

Sections

70.129.030	Notice of rights and services—Admission of individuals.
70.129.090	Advocacy, access, and visitation rights.
70.129.110	Disclosure, transfer, and discharge requirements.
70.129.160	Ombuds implementation duties.
70.129.170	Nonjudicial remedies through regulatory authorities encouraged—Remedies cumulative.

70.129.030 Notice of rights and services—Admission of individuals. (1) The facility must inform the resident both orally and in writing in a language that the resident understands of his or her rights and all rules and regulations governing resident conduct and responsibilities during the stay in the facility. The notification must be made prior to or upon admission. Receipt of the information must be acknowledged in writing.

(2) The resident or his or her legal representative has the right:

(a) Upon an oral or written request, to access all records pertaining to himself or herself including clinical records within twenty-four hours; and

(b) After receipt of his or her records for inspection, to purchase at a cost not to exceed the community standard photocopies of the records or portions of them upon request and two working days' advance notice to the facility.

(3) The facility shall only admit or retain individuals whose needs it can safely and appropriately serve in the facility with appropriate available staff and through the provision of reasonable accommodations required by state or federal law. Except in cases of genuine emergency, the facility shall not admit an individual before obtaining a thorough assessment of the resident's needs and preferences. The assessment shall contain, unless unavailable despite the best efforts of the facility, the resident applicant, and other interested parties, the following minimum information: Recent medical history; necessary and contraindicated medications; a licensed medical or other health professional's diagnosis, unless the individual objects for religious reasons; significant known behaviors or symptoms that may cause concern or require special care; mental illness, except where protected by confidentiality laws; level of personal care needs; activities and service preferences; and preferences regarding other issues important to the resident applicant, such as food and daily routine.

(4) The facility must inform each resident in writing in a language the resident or his or her representative understands before admission, and at least once every twenty-four months thereafter of: (a) Services, items, and activities customarily available in the facility or arranged for by the facility as permitted by the facility's license; (b) charges for those services, items, and activities including charges for services, items, and activities not covered by the facility's per diem rate or applicable public benefit programs; and (c) the rules of facility operations required under RCW 70.129.140(2). Each resident and his or her representative must be informed in writing in advance of changes in the availability or the charges

for services, items, or activities, or of changes in the facility's rules. Except in emergencies, thirty days' advance notice must be given prior to the change. However, for facilities licensed for six or fewer residents, if there has been a substantial and continuing change in the resident's condition necessitating substantially greater or lesser services, items, or activities, then the charges for those services, items, or activities may be changed upon fourteen days' advance written notice.

(5) The facility must furnish a written description of residents rights that includes:

(a) A description of the manner of protecting personal funds, under RCW 70.129.040;

(b) A posting of names, addresses, and telephone numbers of the state survey and certification agency, the state licensure office, the state ombuds program, and the protection and advocacy systems; and

(c) A statement that the resident may file a complaint with the appropriate state licensing agency concerning alleged resident abuse, neglect, and misappropriation of resident property in the facility.

(6) Notification of changes.

(a) A facility must immediately consult with the resident's physician, and if known, make reasonable efforts to notify the resident's legal representative or an interested family member when there is:

(i) An accident involving the resident which requires or has the potential for requiring physician intervention;

(ii) A significant change in the resident's physical, mental, or psychosocial status (i.e., a deterioration in health, mental, or psychosocial status in either life-threatening conditions or clinical complications).

(b) The facility must promptly notify the resident or the resident's representative shall make reasonable efforts to notify an interested family member, if known, when there is:

(i) A change in room or roommate assignment; or

(ii) A decision to transfer or discharge the resident from the facility.

(c) The facility must record and update the address and phone number of the resident's representative or interested family member, upon receipt of notice from them. [2013 c 23 § 184; 1998 c 272 § 5; 1997 c 386 § 31; 1994 c 214 § 4.]

Additional notes found at www.leg.wa.gov

70.129.090 Advocacy, access, and visitation rights.

(1) The resident has the right and the facility must not interfere with access to any resident by the following:

(a) Any representative of the state;

(b) The resident's individual physician;

(c) The state long-term care ombuds as established under chapter 43.190 RCW;

(d) The agency responsible for the protection and advocacy system for individuals with developmental disabilities as established under part C of the developmental disabilities assistance and bill of rights act;

(e) The agency responsible for the protection and advocacy system for individuals with mental illness as established under the protection and advocacy for mentally ill individuals act;

(f) Subject to reasonable restrictions to protect the rights of others and to the resident's right to deny or withdraw con-

sent at any time, immediate family or other relatives of the resident and others who are visiting with the consent of the resident;

(g) The agency responsible for the protection and advocacy system for individuals with disabilities as established under section 509 of the rehabilitation act of 1973, as amended, who are not served under the mandates of existing protection and advocacy systems created under federal law.

(2) The facility must provide reasonable access to a resident by his or her representative or an entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time.

(3) The facility must allow representatives of the state ombuds to examine a resident's clinical records with the permission of the resident or the resident's legal representative, and consistent with state and federal law. [2013 c 23 § 185; 1994 c 214 § 10.]

70.129.110 Disclosure, transfer, and discharge requirements. (1) The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless:

(a) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;

(b) The safety of individuals in the facility is endangered;

(c) The health of individuals in the facility would otherwise be endangered;

(d) The resident has failed to make the required payment for his or her stay; or

(e) The facility ceases to operate.

(2) All long-term care facilities shall fully disclose to potential residents or their legal representative the service capabilities of the facility prior to admission to the facility. If the care needs of the applicant who is medicaid eligible are in excess of the facility's service capabilities, the department shall identify other care settings or residential care options consistent with federal law.

(3) Before a long-term care facility transfers or discharges a resident, the facility must:

(a) First attempt through reasonable accommodations to avoid the transfer or discharge, unless agreed to by the resident;

(b) Notify the resident and representative and make a reasonable effort to notify, if known, an interested family member of the transfer or discharge and the reasons for the move in writing and in a language and manner they understand;

(c) Record the reasons in the resident's record; and

(d) Include in the notice the items described in subsection (5) of this section.

(4)(a) Except when specified in this subsection, the notice of transfer or discharge required under subsection (3) of this section must be made by the facility at least thirty days before the resident is transferred or discharged.

(b) Notice may be made as soon as practicable before transfer or discharge when:

(i) The safety of individuals in the facility would be endangered;

(ii) The health of individuals in the facility would be endangered;

(iii) An immediate transfer or discharge is required by the resident's urgent medical needs; or

(iv) A resident has not resided in the facility for thirty days.

(5) The written notice specified in subsection (3) of this section must include the following:

(a) The reason for transfer or discharge;

(b) The effective date of transfer or discharge;

(c) The location to which the resident is transferred or discharged;

(d) The name, address, and telephone number of the state long-term care ombuds;

(e) For residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of individuals with developmental disabilities established under part C of the developmental disabilities assistance and bill of rights act; and

(f) For residents with mental illness, the mailing address and telephone number of the agency responsible for the protection and advocacy of individuals with mental illness established under the protection and advocacy for mentally ill individuals act.

(6) A facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

(7) A resident discharged in violation of this section has the right to be readmitted immediately upon the first availability of a gender-appropriate bed in the facility. [2013 c 23 § 186; 1997 c 392 § 205; 1994 c 214 § 12.]

Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392: See notes following RCW 74.39A.009.

70.129.160 Ombuds implementation duties. The long-term care ombuds shall monitor implementation of this chapter and determine the degree to which veterans' homes, nursing facilities, adult family homes, and assisted living facilities ensure that residents are able to exercise their rights. The long-term care ombuds shall consult with the departments of health and social and health services, long-term care facility organizations, resident groups, senior citizen organizations, and organizations concerning individuals with disabilities. [2013 c 23 § 187; 2012 c 10 § 58; 1998 c 245 § 113; 1994 c 214 § 18.]

Application—2012 c 10: See note following RCW 18.20.010.

70.129.170 Nonjudicial remedies through regulatory authorities encouraged—Remedies cumulative. The legislature intends that long-term care facility or nursing home residents, their family members or guardians, the long-term care ombuds, protection and advocacy personnel identified in RCW 70.129.110(5) (e) and (f), and others who may seek to assist long-term care facility or nursing home residents, use the least formal means available to satisfactorily resolve disputes that may arise regarding the rights conferred by the provisions of this chapter and RCW 18.20.180, 18.51.009, 72.36.037, and 70.128.125. Wherever feasible, direct discussion with facility personnel or administrators should be

employed. Failing that, and where feasible, recourse may be sought through state or federal long-term care or nursing home licensing or other regulatory authorities. However, the procedures suggested in this section are cumulative and shall not restrict an agency or person from seeking a remedy provided by law or from obtaining additional relief based on the same facts, including any remedy available to an individual at common law. Chapter 214, Laws of 1994 is not intended to, and shall not be construed to, create any right of action on the part of any individual beyond those in existence under any common law or statutory doctrine. Chapter 214, Laws of 1994 is not intended to, and shall not be construed to, operate in derogation of any right of action on the part of any individual in existence on June 9, 1994. [2013 c 23 § 188; 1994 c 214 § 19.]

Chapter 70.146 RCW WATER POLLUTION CONTROL FACILITIES FINANCING

Sections

70.146.070 Grants or loans for water pollution control facilities—Considerations.

70.146.070 Grants or loans for water pollution control facilities—Considerations. (1) When making grants or loans for water pollution control facilities, the department shall consider the following:

- (a) The protection of water quality and public health;
- (b) The cost to residential ratepayers if they had to finance water pollution control facilities without state assistance;
- (c) Actions required under federal and state permits and compliance orders;
- (d) The level of local fiscal effort by residential ratepayers since 1972 in financing water pollution control facilities;
- (e) Except as otherwise conditioned by RCW 70.146.110, whether the entity receiving assistance is a Puget Sound partner, as defined in RCW 90.71.010;
- (f) Whether the project is referenced in the action agenda developed by the Puget Sound partnership under RCW 90.71.310;
- (g) Except as otherwise provided in RCW 70.146.120, and effective one calendar year following the development and statewide availability of model evergreen community management plans and ordinances under RCW 35.105.050, whether the project is sponsored by an entity that has been recognized, and what gradation of recognition was received, in the evergreen community recognition program created in RCW 35.105.030;
- (h) The extent to which the applicant county or city, or if the applicant is another public body, the extent to which the county or city in which the applicant public body is located, has established programs to mitigate nonpoint pollution of the surface or subterranean water sought to be protected by the water pollution control facility named in the application for state assistance; and
- (i) The recommendations of the Puget Sound partnership, created in RCW 90.71.210, and any other board, council, commission, or group established by the legislature or a

state agency to study water pollution control issues in the state.

(2) Except where necessary to address a public health need or substantial environmental degradation, a county, city, or town planning under RCW 36.70A.040 may not receive a grant or loan for water pollution control facilities unless it has adopted a comprehensive plan, including a capital facilities plan element, and development regulations as required by RCW 36.70A.040. A county, city, or town that has adopted a comprehensive plan and development regulations as provided in RCW 36.70A.040 may request a grant or loan for water pollution control facilities. This subsection does not require any county, city, or town planning under RCW 36.70A.040 to adopt a comprehensive plan or development regulations before requesting a grant or loan under this chapter if such request is made before the expiration of the time periods specified in RCW 36.70A.040. A county, city, or town planning under RCW 36.70A.040 that has not adopted a comprehensive plan and development regulations within the time periods specified in RCW 36.70A.040 is not prohibited from receiving a grant or loan under this chapter if the comprehensive plan and development regulations are adopted as required by RCW 36.70A.040 before the department executes a contractual agreement for the grant or loan.

(3) Whenever the department is considering awarding grants or loans for public facilities to special districts requesting funding for a proposed facility located in a county, city, or town planning under RCW 36.70A.040, it shall consider whether the county, city, or town planning under RCW 36.70A.040 in whose planning jurisdiction the proposed facility is located has adopted a comprehensive plan and development regulations as required by RCW 36.70A.040.

(4) After January 1, 2010, any project designed to address the effects of water pollution on Puget Sound may be funded under this chapter only if the project is not in conflict with the action agenda developed by the Puget Sound partnership under RCW 90.71.310. [2013 c 275 § 4; 2008 c 299 § 26. Prior: 2007 c 341 § 60; 2007 c 341 § 26; 1999 c 164 § 603; 1997 c 429 § 30; 1991 sp.s. c 32 § 24; 1986 c 3 § 10.]

Short title—2008 c 299: See note following RCW 35.105.010.

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

Findings—Intent—Part headings and subheadings not law—Effective date—Severability—1999 c 164: See notes following RCW 43.160.010.

Additional notes found at www.leg.wa.gov

Chapter 70.148 RCW UNDERGROUND PETROLEUM STORAGE TANKS

Sections

70.148.020 Pollution liability insurance program trust account. (*Expires July 1, 2020.*)

70.148.020 Pollution liability insurance program trust account. (*Expires July 1, 2020.*) (1) The pollution liability insurance program trust account is established in the custody of the state treasurer. All funds appropriated for this chapter and all premiums collected for reinsurance shall be deposited in the account. Expenditures from the account shall be used exclusively for the purposes of this chapter

including payment of costs of administering the pollution liability insurance and underground storage tank community assistance programs. Expenditures for payment of administrative and operating costs of the agency are subject to the allotment procedures under chapter 43.88 RCW and may be made only after appropriation by statute. No appropriation is required for other expenditures from the account.

(2) Each calendar quarter, the director shall report to the insurance commissioner the loss and surplus reserves required for the calendar quarter. The director shall notify the department of revenue of this amount by the fifteenth day of each calendar quarter.

(3) Each calendar quarter the director shall determine the amount of reserves necessary to fund commitments made to provide financial assistance under RCW 70.148.130 to the extent that the financial assistance reserves do not jeopardize the operations and liabilities of the pollution liability insurance program. The director shall notify the department of revenue of this amount by the fifteenth day of each calendar quarter. The director may immediately establish an initial financial assistance reserve of five million dollars from available revenues. The director may not expend more than fifteen million dollars for the financial assistance program.

(4) During the 2013-2015 fiscal biennium, the legislature may transfer from the pollution liability insurance program trust account to the state general fund such amounts as reflect the excess fund balance of the account.

(5) This section expires July 1, 2020. [2013 2nd sp.s. c 4 § 993; 2012 1st sp.s. c 3 § 1; 2006 c 276 § 1; 2005 c 518 § 942; 1999 c 73 § 1; 1998 c 245 § 114; 1991 sp.s. c 13 § 90; 1991 c 4 § 7; 1990 c 64 § 3; 1989 c 383 § 3.]

Reviser's note: Pursuant to RCW 43.135.041, chapter 3, Laws of 2012 1st special session was subject to an advisory vote of the people in the November 2012 general election on whether the tax increase in such session law should be maintained or repealed. The advisory vote was in favor of repeal.

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

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

Additional notes found at www.leg.wa.gov

Chapter 70.225 RCW

PRESCRIPTION MONITORING PROGRAM

Sections

70.225.020 Prescription monitoring program—Subject to funding—Duties of dispensers.

70.225.020 Prescription monitoring program—Subject to funding—Duties of dispensers. (1) The department shall establish and maintain a prescription monitoring program to monitor the prescribing and dispensing of all Schedules II, III, IV, and V controlled substances and any additional drugs identified by the pharmacy quality assurance commission as demonstrating a potential for abuse by all professionals licensed to prescribe or dispense such substances in this state. The program shall be designed to improve health care quality and effectiveness by reducing abuse of controlled substances, reducing duplicative prescribing and overprescribing of controlled substances, and improving controlled substance prescribing practices with the intent of

eventually establishing an electronic database available in real time to dispensers and prescribers of controlled substances. As much as possible, the department should establish a common database with other states. This program's management and operations shall be funded entirely from the funds in the account established under RCW 74.09.215. Nothing in this chapter prohibits voluntary contributions from private individuals and business entities as defined under Title 23, 23B, 24, or 25 RCW to assist in funding the prescription monitoring program.

(2) Except as provided in subsection (4) of this section, each dispenser shall submit to the department by electronic means information regarding each prescription dispensed for a drug included under subsection (1) of this section. Drug prescriptions for more than one day use should be reported. The information submitted for each prescription shall include, but not be limited to:

- (a) Patient identifier;
- (b) Drug dispensed;
- (c) Date of dispensing;
- (d) Quantity dispensed;
- (e) Prescriber; and
- (f) Dispenser.

(3) Each dispenser shall submit the information in accordance with transmission methods established by the department.

(4) The data submission requirements of subsections (1) through (3) of this section do not apply to:

(a) Medications provided to patients receiving inpatient services provided at hospitals licensed under chapter 70.41 RCW; or patients of such hospitals receiving services at the clinics, day surgery areas, or other settings within the hospital's license where the medications are administered in single doses;

(b) Pharmacies operated by the department of corrections for the purpose of providing medications to offenders in department of corrections institutions who are receiving pharmaceutical services from a department of corrections pharmacy, except that the department of corrections must submit data related to each offender's current prescriptions for controlled substances upon the offender's release from a department of corrections institution; or

(c) Veterinarians licensed under chapter 18.92 RCW. The department, in collaboration with the veterinary board of governors, shall establish alternative data reporting requirements for veterinarians that allow veterinarians to report:

- (i) By either electronic or nonelectronic methods;
- (ii) Only those data elements that are relevant to veterinary practices and necessary to accomplish the public protection goals of this chapter; and
- (iii) No more frequently than once every three months and no less frequently than once every six months.

(5) The department shall continue to seek federal grants to support the activities described in chapter 259, Laws of 2007. The department may not require a practitioner or a pharmacist to pay a fee or tax specifically dedicated to the operation and management of the system. [2013 c 36 § 2; 2013 c 19 § 126; 2012 c 192 § 1; 2007 c 259 § 43.]

Reviser's note: This section was amended by 2013 c 19 § 126 and by 2013 c 36 § 2, each without reference to the other. Both amendments are

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

Findings—2013 c 36: "The legislature finds that:

(1) The prescription monitoring program contributes to patient safety and reduction in drug errors for all patients, including medicaid beneficiaries in Washington state. Further, the prescription monitoring program provides the critical function of reducing costs borne by medicaid and provides for the detection of fraud in the medicaid system.

(2) Because of the nexus between medicaid, medicaid fraud, and cost reductions, the funding for the operations and management of the prescription monitoring program should be funded entirely from the medicaid fraud penalty account under RCW 74.09.215, with the option of funding the prescription monitoring program through voluntary contributions from private individuals and corporations as defined under Title 23, 23B, 24, or 25 RCW." [2013 c 36 § 1.]

Chapter 70.230 RCW

AMBULATORY SURGICAL FACILITIES

Sections

70.230.080 Coordinated quality improvement—Rules.

70.230.140 Information concerning practitioners—Disclosure.

70.230.080 Coordinated quality improvement—

Rules. (1) Every ambulatory surgical facility shall maintain a coordinated quality improvement program for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice. The program shall include at least the following:

(a) The establishment of one or more quality improvement committees with the responsibility to review the services rendered in the ambulatory surgical facility, both retrospectively and prospectively, in order to improve the quality of medical care of patients and to prevent medical malpractice. Different quality improvement committees may be established as a part of the quality improvement program to review different health care services. Such committees shall oversee and coordinate the quality improvement and medical malpractice prevention program and shall ensure that information gathered pursuant to the program is used to review and to revise the policies and procedures of the ambulatory surgical facility;

(b) A process, including a medical staff privileges sanction procedure which must be conducted substantially in accordance with medical staff bylaws and applicable rules, regulations, or policies of the medical staff through which credentials, physical and mental capacity, professional conduct, and competence in delivering health care services are periodically reviewed as part of an evaluation of staff privileges;

(c) The periodic review of the credentials, physical and mental capacity, and competence in delivering health care services of all persons who are employed or associated with the ambulatory surgical facility;

(d) A procedure for the prompt resolution of grievances by patients or their representatives related to accidents, injuries, treatment, and other events that may result in claims of medical malpractice;

(e) The maintenance and continuous collection of information concerning the ambulatory surgical facility's experience with negative health care outcomes and incidents injurious to patients, patient grievances, professional liability premiums, settlements, awards, costs incurred by the ambulatory

surgical facility for patient injury prevention, and safety improvement activities;

(f) The maintenance of relevant and appropriate information gathered pursuant to (a) through (e) of this subsection concerning individual practitioners within the practitioner's personnel or credential file maintained by the ambulatory surgical facility;

(g) Education programs dealing with quality improvement, patient safety, medication errors, injury prevention, staff responsibility to report professional misconduct, the legal aspects of patient care, improved communication with patients, and causes of malpractice claims for staff personnel engaged in patient care activities; and

(h) Policies to ensure compliance with the reporting requirements of this section.

(2) Any person who, in substantial good faith, provides information to further the purposes of the quality improvement and medical malpractice prevention program or who, in substantial good faith, participates on the quality improvement committee is not subject to an action for civil damages or other relief as a result of such activity. Any person or entity participating in a coordinated quality improvement program that, in substantial good faith, shares information or documents with one or more other programs, committees, or boards under subsection (8) of this section is not subject to an action for civil damages or other relief as a result of the activity. For the purposes of this section, sharing information is presumed to be in substantial good faith. However, the presumption may be rebutted upon a showing of clear, cogent, and convincing evidence that the information shared was knowingly false or deliberately misleading.

(3) Information and documents, including complaints and incident reports, created specifically for, and collected and maintained by, a quality improvement committee are not subject to review or disclosure, except as provided in this section, or discovery or introduction into evidence in any civil action, and no person who was in attendance at a meeting of such committee or who participated in the creation, collection, or maintenance of information or documents specifically for the committee shall be permitted or required to testify in any civil action as to the content of such proceedings or the documents and information prepared specifically for the committee. This subsection does not preclude: (a) In any civil action, the discovery of the identity of persons involved in the medical care that is the basis of the civil action whose involvement was independent of any quality improvement activity; (b) in any civil action, the testimony of any person concerning the facts which form the basis for the institution of such proceedings of which the person had personal knowledge acquired independently of such proceedings; (c) in any civil action by a health care provider regarding the restriction or revocation of that individual's clinical or staff privileges, introduction into evidence of information collected and maintained by quality improvement committees regarding such health care provider; (d) in any civil action, disclosure of the fact that staff privileges were terminated or restricted, including the specific restrictions imposed, if any, and the reasons for the restrictions; or (e) in any civil action, discovery and introduction into evidence of the patient's medical records required by rule of the department to be made regarding the care and treatment received.

(4) Each quality improvement committee shall, on at least a semiannual basis, report to the management of the ambulatory surgical facility, as identified in the facility's application, in which the committee is located. The report shall review the quality improvement activities conducted by the committee, and any actions taken as a result of those activities.

(5) The department shall adopt such rules as are deemed appropriate to effectuate the purposes of this section.

(6) The medical quality assurance commission, the board of osteopathic medicine and surgery, or the podiatric medical board, as appropriate, may review and audit the records of committee decisions in which a practitioner's privileges are terminated or restricted. Each ambulatory surgical facility shall produce and make accessible to the commission or board the appropriate records and otherwise facilitate the review and audit. Information so gained is not subject to the discovery process and confidentiality shall be respected as required by subsection (3) of this section. Failure of an ambulatory surgical facility to comply with this subsection is punishable by a civil penalty not to exceed two hundred fifty dollars.

(7) The department and any accrediting organization may review and audit the records of a quality improvement committee or peer review committee in connection with their inspection and review of the ambulatory surgical facility. Information so obtained is not subject to the discovery process, and confidentiality shall be respected as required by subsection (3) of this section. Each ambulatory surgical facility shall produce and make accessible to the department the appropriate records and otherwise facilitate the review and audit.

(8) A coordinated quality improvement program may share information and documents, including complaints and incident reports, created specifically for, and collected and maintained by, a quality improvement committee or a peer review committee under RCW 4.24.250 with one or more other coordinated quality improvement programs maintained in accordance with this section or RCW 43.70.510 or 70.41.200, a quality assurance committee maintained in accordance with RCW 18.20.390 or 74.42.640, or a peer review committee under RCW 4.24.250, for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice. The privacy protections of chapter 70.02 RCW and the federal health insurance portability and accountability act of 1996 and its implementing regulations apply to the sharing of individually identifiable patient information held by a coordinated quality improvement program. Any rules necessary to implement this section shall meet the requirements of applicable federal and state privacy laws. Information and documents disclosed by one coordinated quality improvement program to another coordinated quality improvement program or a peer review committee under RCW 4.24.250 and any information and documents created or maintained as a result of the sharing of information and documents are not subject to the discovery process and confidentiality shall be respected as required by subsection (3) of this section, RCW 18.20.390 (6) and (8), 70.41.200(3), 74.42.640 (7) and (9), and 4.24.250.

(9) An ambulatory surgical facility that participates in a coordinated quality improvement program under RCW 43.70.510 shall be deemed to have met the requirements of this section.

(10) Violation of this section shall not be considered negligence per se. [2013 c 301 § 4; 2007 c 273 § 9.]

70.230.140 Information concerning practitioners—Disclosure. (1) Prior to granting or renewing clinical privileges or association of any practitioner or hiring a practitioner, an ambulatory surgical facility approved pursuant to this chapter shall request from the practitioner and the practitioner shall provide the following information:

(a) The name of any hospital, ambulatory surgical facility, or other facility with or at which the practitioner had or has any association, employment, privileges, or practice during the prior five years: PROVIDED, That the ambulatory surgical facility may request additional information going back further than five years, and the physician shall use his or her best efforts to comply with such a request for additional information;

(b) Whether the physician has ever been or is in the process of being denied, revoked, terminated, suspended, restricted, reduced, limited, sanctioned, placed on probation, monitored, or not renewed for any professional activity listed in (b)(i) through (x) of this subsection, or has ever voluntarily or involuntarily relinquished, withdrawn, or failed to proceed with an application for any professional activity listed in (b)(i) through (x) of this subsection in order to avoid an adverse action or to preclude an investigation or while under investigation relating to professional competence or conduct:

(i) License to practice any profession in any jurisdiction;

(ii) Other professional registration or certification in any jurisdiction;

(iii) Specialty or subspecialty board certification;

(iv) Membership on any hospital medical staff;

(v) Clinical privileges at any facility, including hospitals, ambulatory surgical centers, or skilled nursing facilities;

(vi) Medicare, medicaid, the food and drug administration, the national institute of health (office of human research protection), governmental, national, or international regulatory agency, or any public program;

(vii) Professional society membership or fellowship;

(viii) Participation or membership in a health maintenance organization, preferred provider organization, independent practice association, physician-hospital organization, or other entity;

(ix) Academic appointment;

(x) Authority to prescribe controlled substances (drug enforcement agency or other authority);

(c) Any pending professional medical misconduct proceedings or any pending medical malpractice actions in this state or another state, the substance of the allegations in the proceedings or actions, and any additional information concerning the proceedings or actions as the practitioner deems appropriate;

(d) The substance of the findings in the actions or proceedings and any additional information concerning the actions or proceedings as the practitioner deems appropriate;

(e) A waiver by the practitioner of any confidentiality provisions concerning the information required to be pro-

vided to ambulatory surgical facilities pursuant to this subsection; and

(f) A verification by the practitioner that the information provided by the practitioner is accurate and complete.

(2) Prior to granting privileges or association to any practitioner or hiring a practitioner, an ambulatory surgical facility approved under this chapter shall request from any hospital or ambulatory surgical facility with or at which the practitioner had or has privileges, was associated, or was employed, during the preceding five years, the following information concerning the practitioner:

(a) Any pending professional medical misconduct proceedings or any pending medical malpractice actions, in this state or another state;

(b) Any judgment or settlement of a medical malpractice action and any finding of professional misconduct in this state or another state by a licensing or disciplinary board; and

(c) Any information required to be reported by hospitals or ambulatory surgical facilities pursuant to RCW 18.130.070.

(3) The medical quality assurance commission, board of osteopathic medicine and surgery, podiatric medical board, or dental quality assurance commission, as appropriate, shall be advised within thirty days of the name of any practitioner denied staff privileges, association, or employment on the basis of adverse findings under subsection (1) of this section.

(4) A hospital, ambulatory surgical facility, or other facility that receives a request for information from another hospital, ambulatory surgical facility, or other facility pursuant to subsections (1) and (2) of this section shall provide such information concerning the physician in question to the extent such information is known to the hospital, ambulatory surgical facility, or other facility receiving such a request, including the reasons for suspension, termination, or curtailment of employment or privileges at the hospital, ambulatory surgical facility, or facility. A hospital, ambulatory surgical facility, other facility, or other person providing such information in good faith is not liable in any civil action for the release of such information.

(5) Information and documents, including complaints and incident reports, created specifically for, and collected and maintained by, a quality improvement committee are not subject to discovery or introduction into evidence in any civil action, and no person who was in attendance at a meeting of such committee or who participated in the creation, collection, or maintenance of information or documents specifically for the committee shall be permitted or required to testify in any civil action as to the content of such proceedings or the documents and information prepared specifically for the committee. This subsection does not preclude: (a) In any civil action, the discovery of the identity of persons involved in the medical care that is the basis of the civil action whose involvement was independent of any quality improvement activity; (b) in any civil action, the testimony of any person concerning the facts which form the basis for the institution of such proceedings of which the person had personal knowledge acquired independently of such proceedings; (c) in any civil action by a health care provider regarding the restriction or revocation of that individual's clinical or staff privileges, introduction into evidence information collected and maintained by quality improvement committees regarding such

health care provider; (d) in any civil action, disclosure of the fact that staff privileges were terminated or restricted, including the specific restrictions imposed, if any, and the reasons for the restrictions; or (e) in any civil action, discovery and introduction into evidence of the patient's medical records required by rule of the department to be made regarding the care and treatment received.

(6) Ambulatory surgical facilities shall be granted access to information held by the medical quality assurance commission, board of osteopathic medicine and surgery, or podiatric medical board pertinent to decisions of the ambulatory surgical facility regarding credentialing and recredentialing of practitioners.

(7) Violation of this section shall not be considered negligence per se. [2013 c 301 § 5; 2007 c 273 § 15.]

Chapter 70.290 RCW

WASHINGTON VACCINE ASSOCIATION

Sections

70.290.030 Composition of association—Board of directors—Duties.
70.290.075 Third-party administrators—Registration and reporting.

70.290.030 Composition of association—Board of directors—Duties. (1) The association is comprised of all health carriers issuing or renewing health benefit plans in Washington state and all third-party administrators conducting business on behalf of residents of Washington state or Washington health care providers and facilities. Third-party administrators are subject to registration under RCW 70.290.075.

(2) The association is a nonprofit corporation under chapter 24.03 RCW and has the powers granted under that chapter.

(3) The board of directors includes the following voting members:

(a) Four members, selected from health carriers or third-party administrators, excluding health maintenance organizations, that have the most fully insured and self-funded covered lives in Washington state. The count of total covered lives includes enrollment in all companies included in their holding company system. Each health carrier or third-party administrator is entitled to no more than a single position on the board to represent all entities under common ownership or control.

(b) One member selected from the health maintenance organization having the most fully insured and self-insured covered lives in Washington state. The count of total lives includes enrollment in all companies included in its holding company system. Each health maintenance organization is entitled to no more than a single position on the board to represent all entities under common ownership or control.

(c) One member, representing health carriers not otherwise represented on the board under (a) or (b) of this subsection, who is elected from among the health carrier members not designated under (a) or (b) of this subsection.

(d) One member, representing Taft Hartley plans, appointed by the secretary from a list of nominees submitted by the Northwest administrators association.

(e) One member representing Washington state employers offering self-funded health coverage, appointed by the

secretary from a list of nominees submitted by the Puget Sound health alliance.

(f) Two physician members appointed by the secretary, including at least one board certified pediatrician.

(g) The secretary, or a designee of the secretary with expertise in childhood immunization purchasing and distribution.

(4) The directors' terms and appointments must be specified in the plan of operation adopted by the association.

(5) The board of directors of the association must:

(a) Prepare and adopt articles of association and bylaws;

(b) Prepare and adopt a plan of operation. The plan of operation must include a dispute mechanism through which a carrier or third-party administrator can challenge an assessment determination by the board under RCW 70.290.040. The board must include a means to bring unresolved disputes to an impartial decision maker as a component of the dispute mechanism;

(c) Submit the plan of operation to the secretary for approval;

(d) Conduct all activities in accordance with the approved plan of operation;

(e) Enter into contracts as necessary or proper to collect and disburse the assessment;

(f) Enter into contracts as necessary or proper to administer the plan of operation;

(g) Sue or be sued, including taking any legal action necessary or proper for the recovery of any assessment for, on behalf of, or against members of the association or other participating person;

(h) Appoint, from among its directors, committees as necessary to provide technical assistance in the operation of the association, including the hiring of independent consultants as necessary;

(i) Obtain such liability and other insurance coverage for the benefit of the association, its directors, officers, employees, and agents as may in the judgment of the board of directors be helpful or necessary for the operation of the association;

(j) On an annual basis, beginning no later than November 1, 2010, and by November 1st of each year thereafter, establish the estimated amount of the assessment;

(k) Notify, in writing, each health carrier and third-party administrator of the health carrier's or third-party administrator's estimated total assessment by November 15th of each year;

(l) Submit a periodic report to the secretary listing those health carriers or third-party administrators that failed to remit their assessments and audit health carrier and third-party administrator books and records for accuracy of assessment payment submission;

(m) Allow each health carrier or third-party administrator no more than ninety days after the notification required by (k) of this subsection to remit any amounts in arrears or submit a payment plan, subject to approval by the association and initial payment under an approved payment plan;

(n) Deposit annual assessments collected by the association, less the association's administrative costs, with the state treasurer to the credit of the universal vaccine purchase account established in RCW 43.70.720;

(o) Borrow and repay such working capital, reserve, or other funds as, in the judgment of the board of directors, may be helpful or necessary for the operation of the association; and

(p) Perform any other functions as may be necessary or proper to carry out the plan of operation and to affect any or all of the purposes for which the association is organized.

(6) The secretary must convene the initial meeting of the association board of directors. [2013 c 144 § 48; 2010 c 174 § 3.]

70.290.075 Third-party administrators—Registration and reporting. (1) A third-party administrator must register with the association. Registrants must report a change of legal name, business name, business address, or business telephone number to the association within ten days after the change.

(2) The association must establish data elements and procedures for the registration of third-party administrators necessary to implement this section in its plan of operation. [2013 c 144 § 47.]

Chapter 70.310 RCW LABELING OF BUILDING MATERIALS CONTAINING ASBESTOS

Sections

70.310.010	Purpose of chapter.
70.310.020	Definitions.
70.310.030	Labeling requirement for asbestos-containing building materials.
70.310.040	Placement of label—Content of label's notice—Tampering with label unlawful.
70.310.050	Enforcement of chapter—Penalties.

70.310.010 Purpose of chapter. Asbestos is a known human carcinogen that causes painful, premature deaths due to diseases such as asbestosis, mesothelioma, lung and gastrointestinal cancers, and other diseases and cancers. Activities that can lead to the release of asbestos fibers include installation, use, maintenance, repair, removal, and disposal of asbestos-containing building materials.

Many people are unaware that asbestos-containing building materials are still imported, sold, and used in the United States. Because few regulations exist that require the disclosure of asbestos in building materials, people can unknowingly be exposed to asbestos. Asbestos is generally invisible, odorless, very durable, and highly aerodynamic. Exposure can occur well after it has been disturbed and long distances from where the asbestos release occurred.

The purpose of this chapter is to allow people to make informed decisions regarding whether or not they purchase or use building materials containing asbestos. More specifically, building materials that contain asbestos must be clearly labeled as such by manufacturers, wholesalers, and distributors. [2013 c 51 § 1.]

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

(1) "Asbestos" includes the asbestiform varieties of actinolite, amosite (cummingtonite-grunerite), tremolite, chrysotile,

tile (serpentine), crocidolite (riebeckite), anthophyllite, and any of these minerals that have been chemically treated or altered. The chemical abstracts service registry number for each is as follows: Asbestos (1332-21-4), actinolite (13768-00-8), amosite (12172-73-5), tremolite (14567-73-8), chrysotile (12001-29-5), crocidolite (12001-28-4), and anthophyllite (17068-78-9).

(2) "Asbestos-containing building material" means any building material to which asbestos is deliberately added in any concentration or that contains more than one percent asbestos by weight or area as determined using the United States environmental protection agency method for the determination of asbestos in building materials, EPA/600/R-93/116, July 1993.

(3) "Building material" includes materials designed for, or used in, construction, renovation, repair, or maintenance of institutional, commercial, public, industrial, or residential buildings and structures. The term does not include automobiles, recreational vehicles, boats, or other mobile means of transportation.

(4) "Consumer" means any person that acquires a building material for direct use or ownership, rather than for resale or use in production and manufacturing.

(5) "Department" means the department of ecology.

(6) "Person" means any individual, firm, public or private corporation, association, partnership, political subdivision, municipality, or government agency.

(7) "Retailer" means any person that sells goods or commodities directly to consumers. [2013 c 51 § 2.]

70.310.030 Labeling requirement for asbestos-containing building materials. (1) Effective January 1, 2014, it is unlawful to manufacture, wholesale, or distribute for sale an asbestos-containing building material that is not labeled as required by RCW 70.310.040 or as required under federal law, 40 C.F.R. part 763, subpart I, Sec. 173.171 (1994). The labeling requirement also applies to stock-on-hand, meaning any asbestos-containing building material in their possession or control after December 31, 2013, must be labeled. Retailers that do not manufacture, wholesale, or distribute asbestos-containing building materials are exempt from this chapter.

(2)(a) Subsection (1) of this section does not apply to asbestos-containing building materials that have already been installed, applied, or used by the consumer.

(b) Subsection (1) of this section does not apply to asbestos-containing building materials used solely for United States military purposes.

(3) Any manufacturer, wholesaler, or distributor may submit a written request for an exemption from the labeling requirements of this chapter, and the department may grant such an exemption if it determines that the labeling requirements are technically infeasible or create an undue economic hardship. Each exemption is in effect for a period not to exceed three years from the date issued and is subject to the terms and conditions prescribed by the department. [2013 c 51 § 3.]

70.310.040 Placement of label—Content of label's notice—Tampering with label unlawful. (1) A label must be placed in a prominent location adjacent to the product name or description on the exterior of the wrapping and pack-

aging in which the asbestos-containing building material is placed for storage, shipment, and sale.

(2) A label must also be placed on the exterior surface of the asbestos-containing building material itself unless it is sold as a liquid or paste, is sand or gravel, or an exemption is granted pursuant to RCW 70.310.030(3).

(3) Asbestos-containing building materials must have a legible label that clearly identifies it as containing asbestos. The department may adopt rules regarding the implementation of this chapter. At a minimum, the label must state the following:

CAUTION!

This product contains ASBESTOS which is known to cause cancer and lung disease. Avoid creating dust. Intentionally removing or tampering with this label is a violation of state law.

(4) It is unlawful for any person to remove, deface, cover, or otherwise obscure or tamper with a label or sticker that has been applied in compliance with this section, unless the asbestos-containing building material is in the possession of the end user. [2013 c 51 § 4.]

70.310.050 Enforcement of chapter—Penalties. (1)

The provisions of this chapter may be enforced by the department, local air authorities, or their designees.

(2) A person found in violation of this chapter is subject to the penalties provided under RCW 70.94.431. [2013 c 51 § 5.]

Chapter 70.315 RCW

**WATER PURVEYORS—
FIRE SUPPRESSION WATER FACILITIES**

Sections

70.315.010	Findings and declaration of purpose.
70.315.020	Definitions.
70.315.030	Cost allocation and recovery.
70.315.040	Contracts to provide for facilities and services.
70.315.050	Payment by counties.
70.315.060	Liability protection for fire suppression water facilities and services.
70.315.900	Liberal construction.
70.315.901	Powers conferred by chapter are supplemental.
70.315.902	Ratification of prior acts.

70.315.010 Findings and declaration of purpose. (1)

The legislature finds that historically governmental and non-governmental water purveyors have played two key public service roles: Providing safe drinking water and providing water for fire protection. This dual function approach is a deeply embedded and state-regulated feature of water system planning, engineering, operation, and maintenance. This dual function enables purveyors to provide these critical public services in a cost-effective way that protects public health and safety, promotes economic development, and supports appropriate land use planning.

(2) The legislature finds that the provision of integrated, dual function water facilities and services benefits all customers of a purveyor, similar to other benefits provided to water system customers in response to regulation regarding safe drinking water such as treatment and water quality monitoring.

(3) The legislature finds that water purveyors plan, construct, acquire, operate, and maintain fire suppression water facilities in response to regulatory requirements, including without limitation the public water system coordination act, RCW 70.116.080, the design of public water systems and water system operations requirements, chapter 246-290 WAC, Parts 3 and 5, the state building code, chapter 19.27 RCW, and the international fire code. The availability of infrastructure and water to fight fires allows for the development and habitability of property, increases property values, and benefits customers and property through lower casualty insurance rates.

(4) The legislature finds that recent Washington supreme court decisions, including *Lane v. City of Seattle*, 164 Wn.2d 875 (2008), and *City of Tacoma v. City of Bonney Lake, et al.*, 173 Wn.2d 584 (2012), have created uncertainty and confusion as to the role, responsibilities, cost allocation, and recovery authority of water purveyors. If left unresolved, the absence of legal clarity will adversely affect the availability and condition of fire suppression infrastructure necessary to protect life and property.

(5) It is the legislature's intent to determine appropriate methods of organizing public services and the authority of water purveyors with respect to critical public services. The legislature further intends this chapter to clarify the authority of water purveyors to provide fire suppression water facilities and services and to recover the costs for those facilities and services. The legislature also intends to provide liability protections appropriate for water purveyors engaged in this vital public service. [2013 c 127 § 1.]

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

(1) "Fire suppression water facilities" means water supply transmission and distribution facilities, interties, pipes, valves, control systems, lines, storage, pumps, fire hydrants, and other facilities, or any part thereof, used or usable for the delivery of water for fire suppression purposes.

(2) "Fire suppression water services" or "services" means operation and maintenance of fire suppression water facilities and the delivery of water for fire suppression purposes.

(3) "Municipal corporation" means any city, town, county, water-sewer district, port district, public utility district, irrigation district, and any other municipal corporation, quasi-municipal corporation, or political subdivision of the state.

(4) "Purveyor" has the same meaning as set forth in RCW 70.116.030(4). [2013 c 127 § 2.]

70.315.030 Cost allocation and recovery. A purveyor may allocate and recover the costs of fire suppression water facilities and services from all customers as costs of complying with state laws and regulations, or from customers based on service to, benefits conferred upon, and burdens and impacts caused by various classes of customers, or both. [2013 c 127 § 3.]

70.315.040 Contracts to provide for facilities and services. A city, town, or county may contract with purveyors

for the provision of fire suppression water facilities, services, or both. The contract may take the form of a franchise agreement, an interlocal agreement pursuant to chapter 39.34 RCW, or an agreement under other contracting authority, and may provide for funding or cost recovery of fire suppression water facilities, services, or both, as the parties may agree. [2013 c 127 § 4.]

70.315.050 Payment by counties. A county is not required to pay for fire suppression water facilities or services except: (1) As a customer of a purveyor; (2) in areas where a county is acting as a purveyor; or (3) where a county has agreed to do so consistent with RCW 70.315.040. [2013 c 127 § 5.]

70.315.060 Liability protection for fire suppression water facilities and services. (1) A purveyor that is a municipal corporation is not liable for any damages that arise out of a fire event and relate to the operation, maintenance, and provision of fire suppression water facilities and services that are located within or outside its corporate boundaries.

(2) A purveyor that is not a municipal corporation is not liable for any damages that arise out of a fire event and relate to the operation, maintenance, and provision of fire suppression water facilities and services if the purveyor has a description of fire hydrant maintenance measures. The description of fire hydrant maintenance measures must be kept on file by the water purveyor and be available to the public, and may be included within the purveyor's most recently approved water system plan or small water system management program.

(3) Consistent with RCW 36.55.060, with respect to counties and notwithstanding the provisions of subsections (1) and (2) of this section, agreements or franchises may, as the parties mutually agree, include indemnification, hold harmless, or other risk management provisions under which purveyors indemnify and hold harmless cities, towns, and counties against damages arising from fire suppression activities during fire events. Such provisions are unaffected by subsections (1) and (2) of this section. [2013 c 127 § 6.]

70.315.900 Liberal construction. This chapter is exempted from the rule of strict construction and must be liberally construed to give full effect to the objectives and purposes for which it was enacted. [2013 c 127 § 7.]

70.315.901 Powers conferred by chapter are supplemental. (1) The powers and authority conferred by this chapter are supplemental to powers and authority conferred by other law, and nothing contained in this chapter may be construed as limiting any other powers or authority of any municipal corporation or other entity under applicable law.

(2) As to water companies that are regulated by the utilities and transportation commission under Title 80 RCW, nothing in this chapter is intended to change or limit the authority or jurisdiction of the utilities and transportation commission. [2013 c 127 § 8.]

70.315.902 Ratification of prior acts. To the extent that they provide for or address funding, cost allocation, and recovery of fire suppression water facilities and services, all

ordinances, resolutions, and contracts adopted, entered, implemented, or performed prior to July 28, 2013, are hereby validated, ratified, and confirmed. This chapter must not affect or impair any ordinance, resolution, or contract lawfully entered into prior to July 28, 2013. [2013 c 127 § 9.]

Chapter 70.320 RCW

SERVICE COORDINATION ORGANIZATIONS— ACCOUNTABILITY MEASURES

Sections

70.320.010	Definitions.
70.320.020	Contract performance measures developed under RCW 70.320.030 based on outcomes.
70.320.030	Adoption of performance measures.
70.320.040	Contract requirements.
70.320.050	Report to the legislature.
70.320.060	Civil actions—Outcomes and performance measures do not establish a standard of care.

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

(1) "Authority" means the health care authority.

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

(3) "Emerging best practice" or "promising practice" means a program or practice that, based on statistical analyses or a well-established theory of change, shows potential for meeting the evidence-based or research-based criteria, which may include the use of a program that is evidence-based for outcomes other than those listed in this section.

(4) "Evidence-based" means a program or practice that has been tested in heterogeneous or intended populations with multiple randomized, or statistically controlled evaluations, or both; or one large multiple site randomized, or statistically controlled evaluation, or both, where the weight of the evidence from a systemic review demonstrates sustained improvements in at least one outcome. "Evidence-based" also means a program or practice that can be implemented with a set of procedures to allow successful replication in Washington and, when possible, is determined to be cost-beneficial.

(5) "Research-based" means a program or practice that has been tested with a single randomized, or statistically controlled evaluation, or both, demonstrating sustained desirable outcomes; or where the weight of the evidence from a systemic review supports sustained outcomes as described in this subsection but does not meet the full criteria for evidence-based.

(6) "Service coordination organization" or "service contracting entity" means the authority and department, or an entity that may contract with the state to provide, directly or through subcontracts, a comprehensive delivery system of medical, behavioral, long-term care, or social support services, including entities such as regional support networks as defined in RCW 71.24.025, managed care organizations that provide medical services to clients under chapter 74.09 RCW, counties providing chemical dependency services under chapters 74.50 and 70.96A RCW, and area agencies on aging providing case management services under chapter 74.39A RCW. [2013 c 320 § 1.]

70.320.020 Contract performance measures developed under RCW 70.320.030 based on outcomes. (1) The authority and the department shall base contract performance measures developed under RCW 70.320.030 on the following outcomes when contracting with service contracting entities: Improvements in client health status and wellness; increases in client participation in meaningful activities; reductions in client involvement with criminal justice systems; reductions in avoidable costs in hospitals, emergency rooms, crisis services, and jails and prisons; increases in stable housing in the community; improvements in client satisfaction with quality of life; and reductions in population-level health disparities.

(2) The performance measures must demonstrate the manner in which the following principles are achieved within each of the outcomes under subsection (1) of this section:

(a) Maximization of the use of evidence-based practices will be given priority over the use of research-based and promising practices, and research-based practices will be given priority over the use of promising practices. The agencies will develop strategies to identify programs that are effective with ethnically diverse clients and to consult with tribal governments, experts within ethnically diverse communities and community organizations that serve diverse communities;

(b) The maximization of the client's independence, recovery, and employment;

(c) The maximization of the client's participation in treatment decisions; and

(d) The collaboration between consumer-based support programs in providing services to the client.

(3) In developing performance measures under RCW 70.320.030, the authority and the department shall consider expected outcomes relevant to the general populations that each agency serves. The authority and the department may adapt the outcomes to account for the unique needs and characteristics of discrete subcategories of populations receiving services, including ethnically diverse communities.

(4) The authority and the department shall coordinate the establishment of the expected outcomes and the performance measures between each agency as well as each program to identify expected outcomes and performance measures that are common to the clients enrolled in multiple programs and to eliminate conflicting standards among the agencies and programs.

(5) The authority and the department shall establish timelines and mechanisms for service contracting entities to report data related to performance measures and outcomes, including phased implementation of public reporting of outcome and performance measures in a form that allows for comparison of performance measures and levels of improvement between geographic regions of Washington. [2013 c 320 § 2.]

70.320.030 Adoption of performance measures. By September 1, 2014:

(1) The authority shall adopt performance measures to determine whether service contracting entities are achieving the outcomes described in RCW 70.320.020 for clients enrolled in medical managed care programs operated according to Title XIX or XXI of the federal social security act.

(2) The department shall adopt performance measures to determine whether service contracting entities are achieving the outcomes described in RCW 70.320.020 for clients receiving mental health, long-term care, or chemical dependency services. [2013 c 320 § 3.]

70.320.040 Contract requirements. By July 1, 2015, the authority and the department shall require that contracts with service coordination organizations include provisions requiring the adoption of the outcomes and performance measures developed under this chapter and mechanisms for reporting data to support each of the outcomes and performance measures. [2013 c 320 § 4.]

70.320.050 Report to the legislature. (1) By December 1, 2014, the department and the authority shall report jointly to the legislature on the expected outcomes and the performance measures. The report must identify the performance measures and the expected outcomes established for each program, the relationship between the performance measures and expected improvements in client outcomes, mechanisms for reporting outcomes and measuring performance, and options for applying the performance measures and expected outcomes development process to other health and social service programs.

(2) By December 1, 2016, the department and the authority shall report to the legislature on the incorporation of the performance measures into contracts with service coordination organizations and progress toward achieving the identified outcomes. [2013 c 320 § 5.]

70.320.060 Civil actions—Outcomes and performance measures do not establish a standard of care. The outcomes and performance measures established pursuant to this chapter do not establish a standard of care in any civil action brought by a recipient of services. The failure of a service coordination organization to meet the outcomes and performance measures established pursuant to this chapter does not create civil liability on the part of the service coordination organization in a claim brought by a recipient of services. [2013 c 320 § 6.]

Title 71

MENTAL ILLNESS

Chapters

- 71.05** Mental illness.
- 71.09** Sexually violent predators.
- 71.20** Local funds for community services.
- 71.24** Community mental health services act.
- 71.34** Mental health services for minors.

Chapter 71.05 RCW MENTAL ILLNESS

Sections

- 71.05.137 Mental health commissioners—Authority.
- 71.05.154 Detention of persons with mental disorders—Evaluation—Consultation with emergency room physician.
- 71.05.156 Evaluation—Individual with grave disability.

- 71.05.212 Evaluation—Credible witnesses—Consideration of information and records. *(Effective until July 1, 2014.)*
- 71.05.212 Evaluation—Consideration of information and records. *(Effective July 1, 2014.)*
- 71.05.245 Determination of likelihood of serious harm—Use of recent history evidence. *(Effective until July 1, 2014.)*
- 71.05.245 Determination of grave disability or likelihood of serious harm—Use of recent history evidence. *(Effective July 1, 2014.)*
- 71.05.280 Additional confinement—Grounds.
- 71.05.320 Remand for additional treatment—Less restrictive alternatives—Duration—Grounds—Hearing.
- 71.05.365 Involuntary commitment—Individualized discharge plan. *(Effective July 1, 2018.)*
- 71.05.385 Repealed. *(Effective July 1, 2014.)*
- 71.05.390 Repealed. *(Effective July 1, 2014.)*
- 71.05.420 Repealed. *(Effective July 1, 2014.)*
- 71.05.425 Persons committed following dismissal of sex, violent, or felony harassment offense—Notification of conditional release, final release, leave, transfer, or escape—To whom given—Definitions. *(Effective until July 1, 2014.)*
- 71.05.425 Persons committed following dismissal of sex, violent, or felony harassment offense—Notification of conditional release, final release, leave, transfer, or escape—To whom given—Definitions. *(Effective July 1, 2014.)*
- 71.05.427 Repealed. *(Effective July 1, 2014.)*
- 71.05.440 Repealed. *(Effective July 1, 2014.)*
- 71.05.445 Court-ordered mental health treatment of persons subject to department of corrections supervision—Initial assessment inquiry—Required notifications—Rules. *(Effective July 1, 2014.)*
- 71.05.620 Court files and records closed—Exceptions—Rules. *(Effective July 1, 2014.)*
- 71.05.630 Repealed. *(Effective July 1, 2014.)*
- 71.05.640 Repealed. *(Effective July 1, 2014.)*
- 71.05.660 Treatment records—Privileged communications unaffected. *(Effective July 1, 2014.)*
- 71.05.680 Treatment records—Access under false pretenses, penalty. *(Effective July 1, 2014.)*
- 71.05.690 Repealed. *(Effective July 1, 2014.)*
- 71.05.740 Reporting of commitment data.

71.05.137 Mental health commissioners—Authority.

The judges of the superior court of the county by majority vote may authorize mental health commissioners, appointed pursuant to RCW 71.05.135, to perform any or all of the following duties:

- (1) Receive all applications, petitions, and proceedings filed in the superior court for the purpose of disposing of them pursuant to this chapter or RCW 10.77.094;
- (2) Investigate the facts upon which to base warrants, subpoenas, orders to directions in actions, or proceedings filed pursuant to this chapter or RCW 10.77.094;
- (3) For the purpose of this chapter, exercise all powers and perform all the duties of a court commissioner appointed pursuant to RCW 2.24.010;
- (4) Hold hearings in proceedings under this chapter or RCW 10.77.094 and make written reports of all proceedings under this chapter or RCW 10.77.094 which shall become a part of the record of superior court;
- (5) Provide such supervision in connection with the exercise of its jurisdiction as may be ordered by the presiding judge; and
- (6) Cause the orders and findings to be entered in the same manner as orders and findings are entered in cases in the superior court. [2013 c 27 § 1; 1989 c 174 § 2.]

Additional notes found at www.leg.wa.gov

71.05.154 Detention of persons with mental disorders—Evaluation—Consultation with emergency room physician. A designated mental health professional conducting an evaluation of a person under RCW 71.05.150 or

71.05.153 must consult with any examining emergency room physician regarding the physician's observations and opinions relating to the person's condition, and whether, in the view of the physician, detention is appropriate. The designated mental health professional shall take serious consideration of observations and opinions by examining emergency room physicians in determining whether detention under this chapter is appropriate. The designated mental health professional must document the consultation with an examining emergency room physician, including the physician's observations or opinions regarding whether detention of the person is appropriate. [2013 c 334 § 1.]

71.05.156 Evaluation—Individual with grave disability. A designated mental health professional who conducts an evaluation for imminent likelihood of serious harm or imminent danger because of being gravely disabled under RCW 71.05.153 must also evaluate the person under RCW 71.05.150 for likelihood of serious harm or grave disability that does not meet the imminent standard for emergency detention. [2013 c 334 § 2.]

71.05.212 Evaluation—Credible witnesses—Consideration of information and records. (Effective until July 1, 2014.) (1) Whenever a designated mental health professional or professional person is conducting an evaluation under this chapter, consideration shall include all reasonably available information from credible witnesses and records regarding:

- (a) Prior recommendations for evaluation of the need for civil commitments when the recommendation is made pursuant to an evaluation conducted under chapter 10.77 RCW;
- (b) History of one or more violent acts;
- (c) Prior determinations of incompetency or insanity under chapter 10.77 RCW; and
- (d) Prior commitments under this chapter.

(2) Credible witnesses may include family members, landlords, neighbors, or others with significant contact and history of involvement with the person. If the designated mental health professional relies upon information from a credible witness in reaching his or her decision to detain the individual, then he or she must provide contact information for any such witness to the prosecutor. The designated mental health professional or prosecutor shall provide notice of the date, time, and location of the probable cause hearing to such a witness.

(3) When conducting an evaluation for offenders identified under RCW 72.09.370, the designated mental health professional or professional person shall consider an offender's history of judicially required or administratively ordered antipsychotic medication while in confinement. [2011 2nd sp.s. c 6 § 2; 1999 c 214 § 5; 1998 c 297 § 19.]

Expiration date—2013 c 335; 2011 2nd sp.s. c 6 § 2: "Section 2 of this act expires July 1, 2014." [2013 c 335 § 2; 2011 2nd sp.s. c 6 § 3.]

Effective date—2011 2nd sp.s. c 6: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [December 20, 2011], except for section 2 of this act which takes effect January 1, 2012." [2011 2nd sp.s. c 6 § 4.]

Intent—Effective date—1999 c 214: See notes following RCW 72.09.370.

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

71.05.212 Evaluation—Consideration of information and records. (Effective July 1, 2014.) (1) Whenever a designated mental health professional or professional person is conducting an evaluation under this chapter, consideration shall include all reasonably available information from credible witnesses and records regarding:

- (a) Prior recommendations for evaluation of the need for civil commitments when the recommendation is made pursuant to an evaluation conducted under chapter 10.77 RCW;
- (b) Historical behavior, including history of one or more violent acts;
- (c) Prior determinations of incompetency or insanity under chapter 10.77 RCW; and
- (d) Prior commitments under this chapter.

(2) Credible witnesses may include family members, landlords, neighbors, or others with significant contact and history of involvement with the person. If the designated mental health professional relies upon information from a credible witness in reaching his or her decision to detain the individual, then he or she must provide contact information for any such witness to the prosecutor. The designated mental health professional or prosecutor shall provide notice of the date, time, and location of the probable cause hearing to such a witness.

(3) Symptoms and behavior of the respondent which standing alone would not justify civil commitment may support a finding of grave disability or likelihood of serious harm when:

- (a) Such symptoms or behavior are closely associated with symptoms or behavior which preceded and led to a past incident of involuntary hospitalization, severe deterioration, or one or more violent acts;
- (b) These symptoms or behavior represent a marked and concerning change in the baseline behavior of the respondent; and
- (c) Without treatment, the continued deterioration of the respondent is probable.

(4) When conducting an evaluation for offenders identified under RCW 72.09.370, the designated mental health professional or professional person shall consider an offender's history of judicially required or administratively ordered antipsychotic medication while in confinement. [2010 c 280 § 2; 1999 c 214 § 5; 1998 c 297 § 19.]

Effective date—2013 c 335; 2011 2nd sp.s. c 6; 2010 c 280 §§ 2 and 3: "Sections 2 and 3 of this act take effect July 1, 2014." [2013 c 335 § 1; 2011 2nd sp.s. c 6 § 1; 2010 c 280 § 5.]

Intent—Effective date—1999 c 214: See notes following RCW 72.09.370.

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

71.05.245 Determination of likelihood of serious harm—Use of recent history evidence. (Effective until July 1, 2014.) In making a determination of whether there is a likelihood of serious harm in a hearing conducted under RCW 71.05.240 or 71.05.320, the court shall give great weight to any evidence before the court regarding whether the person has: (1) A recent history of one or more violent acts; or (2) a recent history of one or more commitments

under this chapter or its equivalent provisions under the laws of another state which were based on a likelihood of serious harm. The existence of prior violent acts or commitments under this chapter or its equivalent shall not be the sole basis for determining whether a person presents a likelihood of serious harm.

For the purposes of this section "recent" refers to the period of time not exceeding three years prior to the current hearing. [1999 c 13 § 6; 1998 c 297 § 14.]

Purpose—Construction—1999 c 13: See note following RCW 10.77.010.

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

71.05.245 Determination of grave disability or likelihood of serious harm—Use of recent history evidence. (Effective July 1, 2014.) (1) In making a determination of whether a person is gravely disabled or presents a likelihood of serious harm in a hearing conducted under RCW 71.05.240 or 71.05.320, the court must consider the symptoms and behavior of the respondent in light of all available evidence concerning the respondent's historical behavior.

(2) Symptoms or behavior which standing alone would not justify civil commitment may support a finding of grave disability or likelihood of serious harm when: (a) Such symptoms or behavior are closely associated with symptoms or behavior which preceded and led to a past incident of involuntary hospitalization, severe deterioration, or one or more violent acts; (b) these symptoms or behavior represent a marked and concerning change in the baseline behavior of the respondent; and (c) without treatment, the continued deterioration of the respondent is probable.

(3) In making a determination of whether there is a likelihood of serious harm in a hearing conducted under RCW 71.05.240 or 71.05.320, the court shall give great weight to any evidence before the court regarding whether the person has: (a) A recent history of one or more violent acts; or (b) a recent history of one or more commitments under this chapter or its equivalent provisions under the laws of another state which were based on a likelihood of serious harm. The existence of prior violent acts or commitments under this chapter or its equivalent shall not be the sole basis for determining whether a person presents a likelihood of serious harm.

For the purposes of this subsection "recent" refers to the period of time not exceeding three years prior to the current hearing. [2010 c 280 § 3; 1999 c 13 § 6; 1998 c 297 § 14.]

Effective date—2013 c 335; 2011 2nd sp.s. c 6; 2010 c 280 §§ 2 and 3: See note following RCW 71.05.212.

Purpose—Construction—1999 c 13: See note following RCW 10.77.010.

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

71.05.280 Additional confinement—Grounds. At the expiration of the fourteen-day period of intensive treatment, a person may be confined for further treatment pursuant to RCW 71.05.320 if:

(1) Such person after having been taken into custody for evaluation and treatment has threatened, attempted, or inflicted: (a) Physical harm upon the person of another or himself or herself, or substantial damage upon the property of

another, and (b) as a result of mental disorder presents a likelihood of serious harm; or

(2) Such person was taken into custody as a result of conduct in which he or she attempted or inflicted physical harm upon the person of another or himself or herself, or substantial damage upon the property of others, and continues to present, as a result of mental disorder, a likelihood of serious harm; or

(3) Such person has been determined to be incompetent and criminal charges have been dismissed pursuant to RCW 10.77.086(4), and has committed acts constituting a felony, and as a result of a mental disorder, presents a substantial likelihood of repeating similar acts.

(a) In any proceeding pursuant to this subsection it shall not be necessary to show intent, willfulness, or state of mind as an element of the crime;

(b) For any person subject to commitment under this subsection where the charge underlying the finding of incompetence is for a felony classified as violent under RCW 9.94A.030, the court shall determine whether the acts the person committed constitute a violent offense under RCW 9.94A.030; or

(4) Such person is gravely disabled. [2013 c 289 § 4; 2008 c 213 § 6; 1998 c 297 § 15; 1997 c 112 § 22; 1986 c 67 § 3; 1979 ex.s. c 215 § 14; 1974 ex.s. c 145 § 19; 1973 1st ex.s. c 142 § 33.]

Findings—2013 c 289: See note following RCW 10.77.086.

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

71.05.320 Remand for additional treatment—Less restrictive alternatives—Duration—Grounds—Hearing.

(1) If the court or jury finds that grounds set forth in RCW 71.05.280 have been proven and that the best interests of the person or others will not be served by a less restrictive treatment which is an alternative to detention, the court shall remand him or her to the custody of the department or to a facility certified for ninety day treatment by the department for a further period of intensive treatment not to exceed ninety days from the date of judgment. If the grounds set forth in RCW 71.05.280(3) are the basis of commitment, then the period of treatment may be up to but not exceed one hundred eighty days from the date of judgment in a facility certified for one hundred eighty day treatment by the department.

(2) If the court or jury finds that grounds set forth in RCW 71.05.280 have been proven, but finds that treatment less restrictive than detention will be in the best interest of the person or others, then the court shall remand him or her to the custody of the department or to a facility certified for ninety day treatment by the department or to a less restrictive alternative for a further period of less restrictive treatment not to exceed ninety days from the date of judgment. If the grounds set forth in RCW 71.05.280(3) are the basis of commitment, then the period of treatment may be up to but not exceed one hundred eighty days from the date of judgment.

(3) The person shall be released from involuntary treatment at the expiration of the period of commitment imposed under subsection (1) or (2) of this section unless the superintendent or professional person in charge of the facility in which he or she is confined, or in the event of a less restrictive alternative, the designated mental health professional, files a

new petition for involuntary treatment on the grounds that the committed person:

(a) During the current period of court ordered treatment: (i) Has threatened, attempted, or inflicted physical harm upon the person of another, or substantial damage upon the property of another, and (ii) as a result of mental disorder or developmental disability presents a likelihood of serious harm; or

(b) Was taken into custody as a result of conduct in which he or she attempted or inflicted serious physical harm upon the person of another, and continues to present, as a result of mental disorder or developmental disability a likelihood of serious harm; or

(c)(i) Is in custody pursuant to RCW 71.05.280(3) and as a result of mental disorder or developmental disability continues to present a substantial likelihood of repeating acts similar to the charged criminal behavior, when considering the person's life history, progress in treatment, and the public safety.

(ii) In cases under this subsection where the court has made an affirmative special finding under RCW 71.05.280(3)(b), the commitment shall continue for up to an additional one hundred eighty day period whenever the petition presents prima facie evidence that the person continues to suffer from a mental disorder or developmental disability that results in a substantial likelihood of committing acts similar to the charged criminal behavior, unless the person presents proof through an admissible expert opinion that the person's condition has so changed such that the mental disorder or developmental disability no longer presents a substantial likelihood of the person committing acts similar to the charged criminal behavior. The initial or additional commitment period may include transfer to a specialized program of intensive support and treatment, which may be initiated prior to or after discharge from the state hospital; or

(d) Continues to be gravely disabled.

If the conduct required to be proven in (b) and (c) of this subsection was found by a judge or jury in a prior trial under this chapter, it shall not be necessary to prove such conduct again.

(4) For a person committed under subsection (2) of this section who has been remanded to a period of less restrictive treatment, in addition to the grounds specified in subsection (3) of this section, the designated mental health professional may file a new petition for continued less restrictive treatment if:

(a) The person was previously committed by a court to detention for involuntary mental health treatment during the thirty-six months that preceded the person's initial detention date during the current involuntary commitment cycle, excluding any time spent in a mental health facility or in confinement as a result of a criminal conviction;

(b) In view of the person's treatment history or current behavior, the person is unlikely to voluntarily participate in outpatient treatment without an order for less restrictive treatment; and

(c) Outpatient treatment that would be provided under a less restrictive treatment order is necessary to prevent a relapse, decompensation, or deterioration that is likely to result in the person presenting a likelihood of serious harm or

the person becoming gravely disabled within a reasonably short period of time.

(5) A new petition for involuntary treatment filed under subsection (3) or (4) of this section shall be filed and heard in the superior court of the county of the facility which is filing the new petition for involuntary treatment unless good cause is shown for a change of venue. The cost of the proceedings shall be borne by the state.

(6) The hearing shall be held as provided in RCW 71.05.310, and if the court or jury finds that the grounds for additional confinement as set forth in this section are present, the court may order the committed person returned for an additional period of treatment not to exceed one hundred eighty days from the date of judgment. At the end of the one hundred eighty day period of commitment, the committed person shall be released unless a petition for another one hundred eighty day period of continued treatment is filed and heard in the same manner as provided in this section. Successive one hundred eighty day commitments are permissible on the same grounds and pursuant to the same procedures as the original one hundred eighty day commitment. However, a commitment is not permissible under subsection (4) of this section if thirty-six months have passed since the last date of discharge from detention for inpatient treatment that preceded the current less restrictive alternative order, nor shall a commitment under subsection (4) of this section be permissible if the likelihood of serious harm in subsection (4)(c) of this section is based solely on harm to the property of others.

(7) No person committed as provided in this section may be detained unless a valid order of commitment is in effect. No order of commitment can exceed one hundred eighty days in length. [2013 c 289 § 5; 2009 c 323 § 2; 2008 c 213 § 9; 2006 c 333 § 304; 1999 c 13 § 7; 1997 c 112 § 26; 1989 c 420 § 15; 1986 c 67 § 5; 1979 ex.s. c 215 § 15; 1975 1st ex.s. c 199 § 9; 1974 ex.s. c 145 § 23; 1973 1st ex.s. c 142 § 37.]

Findings—2013 c 289: See note following RCW 10.77.086.

Findings—Intent—2009 c 323: "(1) The legislature finds that many persons who are released from involuntary mental health treatment in an inpatient setting would benefit from an order for less restrictive treatment in order to provide the structure and support necessary to facilitate long-term stability and success in the community.

(2) The legislature intends to make it easier to renew orders for less restrictive treatment following a period of inpatient commitment in cases in which a person has been involuntarily committed more than once and is likely to benefit from a renewed order for less restrictive treatment.

(3) The legislature finds that public safety is enhanced when a designated mental health professional is able to file a petition to revoke an order for less restrictive treatment under RCW 71.05.340 before a person who is the subject of the petition becomes ill enough to present a likelihood of serious harm." [2009 c 323 § 1.]

Finding—Purpose—Intent—Severability—Part headings not law—Effective dates—2006 c 333: See notes following RCW 71.24.016.

Purpose—Construction—1999 c 13: See note following RCW 10.77.010.

71.05.365 Involuntary commitment—Individualized discharge plan. (Effective July 1, 2018.) When a person has been involuntarily committed for treatment to a hospital for a period of ninety or one hundred eighty days, and the superintendent or professional person in charge of the hospital determines that the person no longer requires active psychiatric treatment at an inpatient level of care, the regional support network responsible for resource management ser-

vices for the person must work with the hospital to develop an individualized discharge plan and arrange for a transition to the community in accordance with the person's individualized discharge plan within twenty-one days of the determination. [2013 c 338 § 4.]

Effective date—2013 c 338 § 4: "Section 4 of this act takes effect July 1, 2018." [2013 c 338 § 8.]

Task force—2013 c 338: See note following RCW 43.20A.895.

71.05.385 Repealed. (Effective July 1, 2014.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

71.05.390 Repealed. (Effective July 1, 2014.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

71.05.420 Repealed. (Effective July 1, 2014.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

71.05.425 Persons committed following dismissal of sex, violent, or felony harassment offense—Notification of conditional release, final release, leave, transfer, or escape—To whom given—Definitions. (Effective until July 1, 2014.) (1)(a) Except as provided in subsection (2) of this section, at the earliest possible date, and in no event later than thirty days before conditional release, final release, authorized leave under RCW 71.05.325(2), or transfer to a facility other than a state mental hospital, the superintendent shall send written notice of conditional release, release, authorized leave, or transfer of a person committed under RCW 71.05.280(3) or 71.05.320(3)(c) following dismissal of a sex, violent, or felony harassment offense pursuant to RCW 10.77.086(4) to the following:

- (i) The chief of police of the city, if any, in which the person will reside;
- (ii) The sheriff of the county in which the person will reside; and
- (iii) The prosecuting attorney of the county in which the criminal charges against the committed person were dismissed.

(b) The same notice as required by (a) of this subsection shall be sent to the following, if such notice has been requested in writing about a specific person committed under RCW 71.05.280(3) or 71.05.320(3)(c) following dismissal of a sex, violent, or felony harassment offense pursuant to RCW 10.77.086(4):

- (i) The victim of the sex, violent, or felony harassment offense that was dismissed pursuant to RCW 10.77.086(4) preceding commitment under RCW 71.05.280(3) or 71.05.320(3)(c) or the victim's next of kin if the crime was a homicide;
- (ii) Any witnesses who testified against the person in any court proceedings;
- (iii) Any person specified in writing by the prosecuting attorney. Information regarding victims, next of kin, or witnesses requesting the notice, information regarding any other person specified in writing by the prosecuting attorney to receive the notice, and the notice are confidential and shall

not be available to the person committed under this chapter; and

(iv) The chief of police of the city, if any, and the sheriff of the county, if any, which had jurisdiction of the person on the date of the applicable offense.

(c) The thirty-day notice requirements contained in this subsection shall not apply to emergency medical transfers.

(d) The existence of the notice requirements in this subsection will not require any extension of the release date in the event the release plan changes after notification.

(2) If a person committed under RCW 71.05.280(3) or 71.05.320(3)(c) following dismissal of a sex, violent, or felony harassment offense pursuant to RCW 10.77.086(4) escapes, the superintendent shall immediately notify, by the most reasonable and expedient means available, the chief of police of the city and the sheriff of the county in which the person escaped and in which the person resided immediately before the person's arrest and the prosecuting attorney of the county in which the criminal charges against the committed person were dismissed. If previously requested, the superintendent shall also notify the witnesses and the victim of the sex, violent, or felony harassment offense that was dismissed pursuant to RCW 10.77.086(4) preceding commitment under RCW 71.05.280(3) or 71.05.320(3) or the victim's next of kin if the crime was a homicide. In addition, the secretary shall also notify appropriate parties pursuant to *RCW 71.05.390(18). If the person is recaptured, the superintendent shall send notice to the persons designated in this subsection as soon as possible but in no event later than two working days after the department learns of such recapture.

(3) If the victim, the victim's next of kin, or any witness is under the age of sixteen, the notice required by this section shall be sent to the parent or legal guardian of the child.

(4) The superintendent shall send the notices required by this chapter to the last address provided to the department by the requesting party. The requesting party shall furnish the department with a current address.

(5) For purposes of this section the following terms have the following meanings:

(a) "Violent offense" means a violent offense under RCW 9.94A.030;

(b) "Sex offense" means a sex offense under RCW 9.94A.030;

(c) "Next of kin" means a person's spouse, state registered domestic partner, parents, siblings, and children;

(d) "Felony harassment offense" means a crime of harassment as defined in RCW 9A.46.060 that is a felony. [2013 c 289 § 6; 2011 c 305 § 5; 2009 c 521 § 158; 2008 c 213 § 10; 2005 c 504 § 710; 2000 c 94 § 10; 1999 c 13 § 8; 1994 c 129 § 9; 1992 c 186 § 9; 1990 c 3 § 109.]

***Reviser's note:** RCW 71.05.390 was repealed by 2013 c 200 § 34, effective January 1, 2014.

Findings—2013 c 289: See note following RCW 10.77.086.

Findings—2011 c 305: See note following RCW 74.09.295.

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

Purpose—Construction—1999 c 13: See note following RCW 10.77.010.

Findings—Intent—1994 c 129: See note following RCW 4.24.550.

Additional notes found at www.leg.wa.gov

71.05.425 Persons committed following dismissal of sex, violent, or felony harassment offense—Notification of conditional release, final release, leave, transfer, or escape—To whom given—Definitions. (Effective July 1, 2014.) (1)(a) Except as provided in subsection (2) of this section, at the earliest possible date, and in no event later than thirty days before conditional release, final release, authorized leave under RCW 71.05.325(2), or transfer to a facility other than a state mental hospital, the superintendent shall send written notice of conditional release, release, authorized leave, or transfer of a person committed under RCW 71.05.280(3) or 71.05.320(3)(c) following dismissal of a sex, violent, or felony harassment offense pursuant to RCW 10.77.086(4) to the following:

(i) The chief of police of the city, if any, in which the person will reside;

(ii) The sheriff of the county in which the person will reside; and

(iii) The prosecuting attorney of the county in which the criminal charges against the committed person were dismissed.

(b) The same notice as required by (a) of this subsection shall be sent to the following, if such notice has been requested in writing about a specific person committed under RCW 71.05.280(3) or 71.05.320(3)(c) following dismissal of a sex, violent, or felony harassment offense pursuant to RCW 10.77.086(4):

(i) The victim of the sex, violent, or felony harassment offense that was dismissed pursuant to RCW 10.77.086(4) preceding commitment under RCW 71.05.280(3) or 71.05.320(3)(c) or the victim's next of kin if the crime was a homicide;

(ii) Any witnesses who testified against the person in any court proceedings;

(iii) Any person specified in writing by the prosecuting attorney. Information regarding victims, next of kin, or witnesses requesting the notice, information regarding any other person specified in writing by the prosecuting attorney to receive the notice, and the notice are confidential and shall not be available to the person committed under this chapter; and

(iv) The chief of police of the city, if any, and the sheriff of the county, if any, which had jurisdiction of the person on the date of the applicable offense.

(c) The thirty-day notice requirements contained in this subsection shall not apply to emergency medical transfers.

(d) The existence of the notice requirements in this subsection will not require any extension of the release date in the event the release plan changes after notification.

(2) If a person committed under RCW 71.05.280(3) or 71.05.320(3)(c) following dismissal of a sex, violent, or felony harassment offense pursuant to RCW 10.77.086(4) escapes, the superintendent shall immediately notify, by the most reasonable and expedient means available, the chief of police of the city and the sheriff of the county in which the person escaped and in which the person resided immediately before the person's arrest and the prosecuting attorney of the county in which the criminal charges against the committed

person were dismissed. If previously requested, the superintendent shall also notify the witnesses and the victim of the sex, violent, or felony harassment offense that was dismissed pursuant to RCW 10.77.086(4) preceding commitment under RCW 71.05.280(3) or 71.05.320(3) or the victim's next of kin if the crime was a homicide. In addition, the secretary shall also notify appropriate parties pursuant to RCW 70.02.230(2)(n). If the person is recaptured, the superintendent shall send notice to the persons designated in this subsection as soon as possible but in no event later than two working days after the department learns of such recapture.

(3) If the victim, the victim's next of kin, or any witness is under the age of sixteen, the notice required by this section shall be sent to the parent or legal guardian of the child.

(4) The superintendent shall send the notices required by this chapter to the last address provided to the department by the requesting party. The requesting party shall furnish the department with a current address.

(5) For purposes of this section the following terms have the following meanings:

(a) "Violent offense" means a violent offense under RCW 9.94A.030;

(b) "Sex offense" means a sex offense under RCW 9.94A.030;

(c) "Next of kin" means a person's spouse, state registered domestic partner, parents, siblings, and children;

(d) "Felony harassment offense" means a crime of harassment as defined in RCW 9A.46.060 that is a felony. [2013 c 289 § 6; 2013 c 200 § 30; 2011 c 305 § 5; 2009 c 521 § 158; 2008 c 213 § 10; 2005 c 504 § 710; 2000 c 94 § 10; 1999 c 13 § 8; 1994 c 129 § 9; 1992 c 186 § 9; 1990 c 3 § 109.]

Reviser's note: This section was amended by 2013 c 200 § 30 and by 2013 c 289 § 6, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—2013 c 289: See note following RCW 10.77.086.

Effective date—2013 c 200: See note following RCW 70.02.010.

Findings—2011 c 305: See note following RCW 74.09.295.

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

Purpose—Construction—1999 c 13: See note following RCW 10.77.010.

Findings—Intent—1994 c 129: See note following RCW 4.24.550.

Additional notes found at www.leg.wa.gov

71.05.427 Repealed. (Effective July 1, 2014.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

71.05.440 Repealed. (Effective July 1, 2014.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

71.05.445 Court-ordered mental health treatment of persons subject to department of corrections supervision—Initial assessment inquiry—Required notifications—Rules. (Effective July 1, 2014.) (1)(a) When a mental health service provider conducts its initial assessment for

a person receiving court-ordered treatment, the service provider shall inquire and shall be told by the offender whether he or she is subject to supervision by the department of corrections.

(b) When a person receiving court-ordered treatment or treatment ordered by the department of corrections discloses to his or her mental health service provider that he or she is subject to supervision by the department of corrections, the mental health service provider shall notify the department of corrections that he or she is treating the offender and shall notify the offender that his or her community corrections officer will be notified of the treatment, provided that if the offender has received relief from disclosure pursuant to RCW 9.94A.562, 70.96A.155, or 71.05.132 and the offender has provided the mental health service provider with a copy of the order granting relief from disclosure pursuant to RCW 9.94A.562, 70.96A.155, or 71.05.132, the mental health service provider is not required to notify the department of corrections that the mental health service provider is treating the offender. The notification may be written or oral and shall not require the consent of the offender. If an oral notification is made, it must be confirmed by a written notification. For purposes of this section, a written notification includes notification by e-mail or facsimile, so long as the notifying mental health service provider is clearly identified.

(2) The information to be released to the department of corrections shall include all relevant records and reports, as defined by rule, necessary for the department of corrections to carry out its duties.

(3) The department and the department of corrections, in consultation with regional support networks, mental health service providers as defined in RCW 71.05.020, mental health consumers, and advocates for persons with mental illness, shall adopt rules to implement the provisions of this section related to the type and scope of information to be released. These rules shall:

(a) Enhance and facilitate the ability of the department of corrections to carry out its responsibility of planning and ensuring community protection with respect to persons subject to sentencing under chapter 9.94A or 9.95 RCW, including accessing and releasing or disclosing information of persons who received mental health services as a minor; and

(b) Establish requirements for the notification of persons under the supervision of the department of corrections regarding the provisions of this section.

(4) The information received by the department of corrections under this section shall remain confidential and subject to the limitations on disclosure outlined in chapter 71.05 RCW, except as provided in RCW 72.09.585.

(5) No mental health service provider or individual employed by a mental health service provider shall be held responsible for information released to or used by the department of corrections under the provisions of this section or rules adopted under this section.

(6) Whenever federal law or federal regulations restrict the release of information contained in the treatment records of any patient who receives treatment for alcoholism or drug dependency, the release of the information may be restricted as necessary to comply with federal law and regulations.

(7) This section does not modify the terms and conditions of disclosure of information related to sexually transmitted diseases under chapter 70.24 RCW.

(8) The department shall, subject to available resources, electronically, or by the most cost-effective means available, provide the department of corrections with the names, last dates of services, and addresses of specific regional support networks and mental health service providers that delivered mental health services to a person subject to chapter 9.94A or 9.95 RCW pursuant to an agreement between the departments. [2013 c 200 § 31; 2009 c 320 § 4; 2005 c 504 § 711; 2004 c 166 § 4; 2002 c 39 § 2; 2000 c 75 § 3.]

Effective date—2013 c 200: See note following RCW 70.02.010.

Conflict with federal requirements—2009 c 320: See note following RCW 71.05.020.

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

Severability—Effective dates—2004 c 166: See notes following RCW 71.05.040.

Intent—2000 c 75: "It is the intent of the legislature to enhance and facilitate the ability of the department of corrections to carry out its responsibility of planning and ensuring community protection with respect to persons subject to sentencing under chapter 9.94A RCW by authorizing access to, and release or disclosure of, necessary information related to mental health services. This includes accessing and releasing or disclosing information of persons who received mental health services as a minor. The legislature does not intend this act to readdress access to information and records regarding continuity of care.

The legislature recognizes that persons with mental illness have a right to the confidentiality of information related to mental health services, including the fact of their receiving such services, unless there is a state interest that supersedes this right. It is the intent of the legislature to balance that right of the individual with the state interest to enhance public safety." [2000 c 75 § 1.]

71.05.620 Court files and records closed—Exceptions—Rules. (Effective July 1, 2014.) (1) The files and records of court proceedings under this chapter and chapters 70.96A, 71.34, and 70.96B RCW shall be closed but shall be accessible to any person who is the subject of a petition and to the person's attorney, guardian ad litem, resource management services, or service providers authorized to receive such information by resource management services.

(2) The department shall adopt rules to implement this section. [2013 c 200 § 23; 2005 c 504 § 111; 1989 c 205 § 12.]

Effective date—2013 c 200: See note following RCW 70.02.010.

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

Additional notes found at www.leg.wa.gov

71.05.630 Repealed. (Effective July 1, 2014.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

71.05.640 Repealed. (Effective July 1, 2014.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

71.05.660 Treatment records—Privileged communications unaffected. (*Effective July 1, 2014.*) Nothing in this chapter or chapter 70.02, 70.96A, 71.34, or 70.96B RCW shall be construed to interfere with communications between physicians, psychiatric advanced registered nurse practitioners, or psychologists and patients and attorneys and clients. [2013 c 200 § 21; 2009 c 217 § 9; 2005 c 504 § 114; 1989 c 205 § 16.]

Effective date—2013 c 200: See note following RCW 70.02.010.

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

Additional notes found at www.leg.wa.gov

71.05.680 Treatment records—Access under false pretenses, penalty. (*Effective July 1, 2014.*) Any person who requests or obtains confidential information pursuant to RCW 71.05.620 under false pretenses shall be guilty of a gross misdemeanor. [2013 c 200 § 22; 2005 c 504 § 713; 1999 c 13 § 11. Prior: 1989 c 205 § 18.]

Effective date—2013 c 200: See note following RCW 70.02.010.

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

Purpose—Construction—1999 c 13: See note following RCW 10.77.010.

Additional notes found at www.leg.wa.gov

71.05.690 Repealed. (*Effective July 1, 2014.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

71.05.740 Reporting of commitment data. By August 1, 2013, all regional support networks in the state of Washington must forward historical mental health involuntary commitment information retained by the organization including identifying information and dates of commitment to the department. As soon as feasible, the regional support networks must arrange to report new commitment data to the department within twenty-four hours. Commitment information under this section does not need to be resent if it is already in the possession of the department. Regional support networks and the department shall be immune from liability related to the sharing of commitment information under this section. [2013 c 216 § 2.]

Chapter 71.09 RCW SEXUALLY VIOLENT PREDATORS

Sections

71.09.800 Rules.

71.09.800 Rules. The secretary shall adopt rules under the administrative procedure act, chapter 34.05 RCW, for the oversight and operation of the program established pursuant to this chapter. Such rules shall include provisions for an annual inspection of the special commitment center; requirements for treatment plans and the retention of records; and

guidelines for attorneys to follow when bringing legal materials into secure facilities. Guidelines for attorneys shall not interfere with attorney-client privilege. [2013 c 43 § 2; 2000 c 44 § 1.]

Additional notes found at www.leg.wa.gov

Chapter 71.20 RCW

LOCAL FUNDS FOR COMMUNITY SERVICES

Sections

71.20.110 Tax levy directed—Allocation of funds for federal matching funds purposes.

71.20.110 Tax levy directed—Allocation of funds for federal matching funds purposes. (1) In order to provide additional funds for the coordination and provision of community services for persons with developmental disabilities or mental health services, the county governing authority of each county in the state must budget and levy annually a tax in a sum equal to the amount which would be raised by a levy of two and one-half cents per thousand dollars of assessed value against the taxable property in the county, or as such amount is modified pursuant to subsection (2) or (3) of this section, to be used for such purposes. However, all or part of the funds collected from the tax levied for the purposes of this section may be transferred to the state of Washington, department of social and health services, for the purpose of obtaining federal matching funds to provide and coordinate community services for persons with developmental disabilities and mental health services. In the event a county elects to transfer such tax funds to the state for this purpose, the state must grant these moneys and the additional funds received as matching funds to service-providing community agencies or community boards in the county which has made such transfer, pursuant to the plan approved by the county, as provided by chapters 71.24 and 71.28 RCW and by chapter 71A.14 RCW, all as now or hereafter amended.

(2) The amount of a levy allocated to the purposes specified in this section may be reduced in the same proportion as the regular property tax levy of the county is reduced by chapter 84.55 RCW.

(3)(a) The amount of a levy allocated to the purposes specified in this section may be modified from the amount required by subsection (1) of this section as follows:

(i) If the certified levy is reduced from the preceding year's certified levy, the amount of the levy allocated to the purposes specified in this section may be reduced by no more than the same percentage as the certified levy is reduced from the preceding year's certified levy;

(ii) If the certified levy is increased from the preceding year's certified levy, the amount of the levy allocated to the purposes specified in this section must be increased from the amount of the levy so allocated in the previous year by at least the same percentage as the certified levy is increased from the preceding year's certified levy. However, the amount of the levy allocated to the purposes specified in this section does not have to be increased under this subsection (3)(a)(ii) for the portion of a certified levy increase resulting from a voter-approved increase under RCW 84.55.050 that is dedicated to a specific purpose; or

(iii) If the certified levy is unchanged from the preceding year's certified levy, the amount of the levy allocated to the purposes specified in this section must be equal to or greater than the amount of the levy so allocated in the preceding year.

(b) For purposes of this subsection, "certified levy" means the property tax levy for general county purposes certified to the county assessor as required by RCW 84.52.070, excluding any amounts certified under chapters 84.69 and 84.68 RCW.

(4) Subsections (2) and (3) of this section do not preclude a county from increasing the levy amount in subsection (1) of this section to an amount that is greater than the change in the regular county levy. [2013 c 123 § 1; 1988 c 176 § 910; 1983 c 3 § 183; 1980 c 155 § 5; 1974 ex.s. c 71 § 8; 1973 1st ex.s. c 195 § 85; 1971 ex.s. c 84 § 1; 1970 ex.s. c 47 § 8; 1967 ex.s. c 110 § 16.]

Additional notes found at www.leg.wa.gov

Chapter 71.24 RCW

COMMUNITY MENTAL HEALTH SERVICES ACT

Sections

71.24.025	Definitions.
71.24.035	Secretary's powers and duties as state mental health authority—Secretary designated as regional support network, when. (<i>Effective July 1, 2014.</i>)
71.24.310	Administration of chapters 71.05 and 71.24 RCW through regional support networks—Implementation of chapter 71.05 RCW.
71.24.330	Regional support networks—Contracts with department—Requirements.
71.24.350	Mental health ombuds office.
71.24.845	Regional support networks—Transfers between networks.

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

(1) "Acutely mentally ill" means a condition which is limited to a short-term severe crisis episode of:

(a) A mental disorder as defined in RCW 71.05.020 or, in the case of a child, as defined in RCW 71.34.020;

(b) Being gravely disabled as defined in RCW 71.05.020 or, in the case of a child, a gravely disabled minor as defined in RCW 71.34.020; or

(c) Presenting a likelihood of serious harm as defined in RCW 71.05.020 or, in the case of a child, as defined in RCW 71.34.020.

(2) "Available resources" means funds appropriated for the purpose of providing community mental health programs, federal funds, except those provided according to Title XIX of the Social Security Act, and state funds appropriated under this chapter or chapter 71.05 RCW by the legislature during any biennium for the purpose of providing residential services, resource management services, community support services, and other mental health services. This does not include funds appropriated for the purpose of operating and administering the state psychiatric hospitals.

(3) "Child" means a person under the age of eighteen years.

(4) "Chronically mentally ill adult" or "adult who is chronically mentally ill" means an adult who has a mental disorder and meets at least one of the following criteria:

(a) Has undergone two or more episodes of hospital care for a mental disorder within the preceding two years; or

(b) Has experienced a continuous psychiatric hospitalization or residential treatment exceeding six months' duration within the preceding year; or

(c) Has been unable to engage in any substantial gainful activity by reason of any mental disorder which has lasted for a continuous period of not less than twelve months. "Substantial gainful activity" shall be defined by the department by rule consistent with Public Law 92-603, as amended.

(5) "Clubhouse" means a community-based program that provides rehabilitation services and is certified by the department of social and health services.

(6) "Community mental health program" means all mental health services, activities, or programs using available resources.

(7) "Community mental health service delivery system" means public or private agencies that provide services specifically to persons with mental disorders as defined under RCW 71.05.020 and receive funding from public sources.

(8) "Community support services" means services authorized, planned, and coordinated through resource management services including, at a minimum, assessment, diagnosis, emergency crisis intervention available twenty-four hours, seven days a week, prescreening determinations for persons who are mentally ill being considered for placement in nursing homes as required by federal law, screening for patients being considered for admission to residential services, diagnosis and treatment for children who are acutely mentally ill or severely emotionally disturbed discovered under screening through the federal Title XIX early and periodic screening, diagnosis, and treatment program, investigation, legal, and other nonresidential services under chapter 71.05 RCW, case management services, psychiatric treatment including medication supervision, counseling, psychotherapy, assuring transfer of relevant patient information between service providers, recovery services, and other services determined by regional support networks.

(9) "Consensus-based" means a program or practice that has general support among treatment providers and experts, based on experience or professional literature, and may have anecdotal or case study support, or that is agreed but not possible to perform studies with random assignment and controlled groups.

(10) "County authority" means the board of county commissioners, county council, or county executive having authority to establish a community mental health program, or two or more of the county authorities specified in this subsection which have entered into an agreement to provide a community mental health program.

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

(12) "Designated mental health professional" means a mental health professional designated by the county or other authority authorized in rule to perform the duties specified in this chapter.

(13) "Emerging best practice" or "promising practice" means a program or practice that, based on statistical analyses or a well established theory of change, shows potential for meeting the evidence-based or research-based criteria, which may include the use of a program that is evidence-based for

outcomes other than those listed in subsection (14) of this section.

(14) "Evidence-based" means a program or practice that has been tested in heterogeneous or intended populations with multiple randomized, or statistically controlled evaluations, or both; or one large multiple site randomized, or statistically controlled evaluation, or both, where the weight of the evidence from a systemic review demonstrates sustained improvements in at least one outcome. "Evidence-based" also means a program or practice that can be implemented with a set of procedures to allow successful replication in Washington and, when possible, is determined to be cost-beneficial.

(15) "Licensed service provider" means an entity licensed according to this chapter or chapter 71.05 RCW or an entity deemed to meet state minimum standards as a result of accreditation by a recognized behavioral health accrediting body recognized and having a current agreement with the department, that meets state minimum standards or persons licensed under chapter 18.57, 18.71, 18.83, or 18.79 RCW, as it applies to registered nurses and advanced registered nurse practitioners.

(16) "Long-term inpatient care" means inpatient services for persons committed for, or voluntarily receiving intensive treatment for, periods of ninety days or greater under chapter 71.05 RCW. "Long-term inpatient care" as used in this chapter does not include: (a) Services for individuals committed under chapter 71.05 RCW who are receiving services pursuant to a conditional release or a court-ordered less restrictive alternative to detention; or (b) services for individuals voluntarily receiving less restrictive alternative treatment on the grounds of the state hospital.

(17) "Mental health services" means all services provided by regional support networks and other services provided by the state for persons who are mentally ill.

(18) "Mentally ill persons," "persons who are mentally ill," and "the mentally ill" mean persons and conditions defined in subsections (1), (4), (27), and (28) of this section.

(19) "Recovery" means the process in which people are able to live, work, learn, and participate fully in their communities.

(20) "Regional support network" means a county authority or group of county authorities or other entity recognized by the secretary in contract in a defined region.

(21) "Registration records" include all the records of the department, regional support networks, treatment facilities, and other persons providing services to the department, county departments, or facilities which identify persons who are receiving or who at any time have received services for mental illness.

(22) "Research-based" means a program or practice that has been tested with a single randomized, or statistically controlled evaluation, or both, demonstrating sustained desirable outcomes; or where the weight of the evidence from a systemic review supports sustained outcomes as described in subsection (14) of this section but does not meet the full criteria for evidence-based.

(23) "Residential services" means a complete range of residences and supports authorized by resource management services and which may involve a facility, a distinct part thereof, or services which support community living, for per-

sons who are acutely mentally ill, adults who are chronically mentally ill, children who are severely emotionally disturbed, or adults who are seriously disturbed and determined by the regional support network to be at risk of becoming acutely or chronically mentally ill. The services shall include at least evaluation and treatment services as defined in chapter 71.05 RCW, acute crisis respite care, long-term adaptive and rehabilitative care, and supervised and supported living services, and shall also include any residential services developed to service persons who are mentally ill in nursing homes, assisted living facilities, and adult family homes, and may include outpatient services provided as an element in a package of services in a supported housing model. Residential services for children in out-of-home placements related to their mental disorder shall not include the costs of food and shelter, except for children's long-term residential facilities existing prior to January 1, 1991.

(24) "Resilience" means the personal and community qualities that enable individuals to rebound from adversity, trauma, tragedy, threats, or other stresses, and to live productive lives.

(25) "Resource management services" mean the planning, coordination, and authorization of residential services and community support services administered pursuant to an individual service plan for: (a) Adults and children who are acutely mentally ill; (b) adults who are chronically mentally ill; (c) children who are severely emotionally disturbed; or (d) adults who are seriously disturbed and determined solely by a regional support network to be at risk of becoming acutely or chronically mentally ill. Such planning, coordination, and authorization shall include mental health screening for children eligible under the federal Title XIX early and periodic screening, diagnosis, and treatment program. Resource management services include seven day a week, twenty-four hour a day availability of information regarding enrollment of adults and children who are mentally ill in services and their individual service plan to designated mental health professionals, evaluation and treatment facilities, and others as determined by the regional support network.

(26) "Secretary" means the secretary of social and health services.

(27) "Seriously disturbed person" means a person who:

(a) Is gravely disabled or presents a likelihood of serious harm to himself or herself or others, or to the property of others, as a result of a mental disorder as defined in chapter 71.05 RCW;

(b) Has been on conditional release status, or under a less restrictive alternative order, at some time during the preceding two years from an evaluation and treatment facility or a state mental health hospital;

(c) Has a mental disorder which causes major impairment in several areas of daily living;

(d) Exhibits suicidal preoccupation or attempts; or

(e) Is a child diagnosed by a mental health professional, as defined in chapter 71.34 RCW, as experiencing a mental disorder which is clearly interfering with the child's functioning in family or school or with peers or is clearly interfering with the child's personality development and learning.

(28) "Severely emotionally disturbed child" or "child who is severely emotionally disturbed" means a child who has been determined by the regional support network to be

experiencing a mental disorder as defined in chapter 71.34 RCW, including those mental disorders that result in a behavioral or conduct disorder, that is clearly interfering with the child's functioning in family or school or with peers and who meets at least one of the following criteria:

(a) Has undergone inpatient treatment or placement outside of the home related to a mental disorder within the last two years;

(b) Has undergone involuntary treatment under chapter 71.34 RCW within the last two years;

(c) Is currently served by at least one of the following child-serving systems: Juvenile justice, child-protection/welfare, special education, or developmental disabilities;

(d) Is at risk of escalating maladjustment due to:

(i) Chronic family dysfunction involving a caretaker who is mentally ill or inadequate;

(ii) Changes in custodial adult;

(iii) Going to, residing in, or returning from any placement outside of the home, for example, psychiatric hospital, short-term inpatient, residential treatment, group or foster home, or a correctional facility;

(iv) Subject to repeated physical abuse or neglect;

(v) Drug or alcohol abuse; or

(vi) Homelessness.

(29) "State minimum standards" means minimum requirements established by rules adopted by the secretary and necessary to implement this chapter for: (a) Delivery of mental health services; (b) licensed service providers for the provision of mental health services; (c) residential services; and (d) community support services and resource management services.

(30) "Treatment records" include registration and all other records concerning persons who are receiving or who at any time have received services for mental illness, which are maintained by the department, by regional support networks and their staffs, and by treatment facilities. Treatment records do not include notes or records maintained for personal use by a person providing treatment services for the department, regional support networks, or a treatment facility if the notes or records are not available to others.

(31) "Tribal authority," for the purposes of this section and RCW 71.24.300 only, means: The federally recognized Indian tribes and the major Indian organizations recognized by the secretary insofar as these organizations do not have a financial relationship with any regional support network that would present a conflict of interest. [2013 c 338 § 5; 2012 c 10 § 59; 2008 c 261 § 2; 2007 c 414 § 1; 2006 c 333 § 104. Prior: 2005 c 504 § 105; 2005 c 503 § 2; 2001 c 323 § 8; 1999 c 10 § 2; 1997 c 112 § 38; 1995 c 96 § 4; prior: 1994 sp.s. c 9 § 748; 1994 c 204 § 1; 1991 c 306 § 2; 1989 c 205 § 2; 1986 c 274 § 2; 1982 c 204 § 3.]

Task force—2013 c 338: See note following RCW 43.20A.895.

Application—2012 c 10: See note following RCW 18.20.010.

Intent—Findings—2008 c 261: See note following RCW 71.24.320.

Finding—Purpose—Intent—Severability—Part headings not law—Effective dates—2006 c 333: See notes following RCW 71.24.016.

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

[2013 RCW Supp—page 820]

Correction of references—Savings—Severability—2005 c 503: See notes following RCW 71.24.015.

Purpose—Intent—1999 c 10: "The purpose of this act is to eliminate dates and provisions in chapter 71.24 RCW which are no longer needed. The legislature does not intend this act to make, and no provision of this act shall be construed as, a substantive change in the service delivery system or funding of the community mental health services law." [1999 c 10 § 1.]

Additional notes found at www.leg.wa.gov

71.24.035 Secretary's powers and duties as state mental health authority—Secretary designated as regional support network, when. (Effective July 1, 2014.)

(1) The department is designated as the state mental health authority.

(2) The secretary shall provide for public, client, and licensed service provider participation in developing the state mental health program, developing contracts with regional support networks, and any waiver request to the federal government under medicaid.

(3) The secretary shall provide for participation in developing the state mental health program for children and other underserved populations, by including representatives on any committee established to provide oversight to the state mental health program.

(4) The secretary shall be designated as the regional support network if the regional support network fails to meet state minimum standards or refuses to exercise responsibilities under RCW 71.24.045, until such time as a new regional support network is designated under RCW 71.24.320.

(5) The secretary shall:

(a) Develop a biennial state mental health program that incorporates regional biennial needs assessments and regional mental health service plans and state services for adults and children with mental illness. The secretary shall also develop a six-year state mental health plan;

(b) Assure that any regional or county community mental health program provides access to treatment for the region's residents, including parents who are respondents in dependency cases, in the following order of priority: (i) Persons with acute mental illness; (ii) adults with chronic mental illness and children who are severely emotionally disturbed; and (iii) persons who are seriously disturbed. Such programs shall provide:

(A) Outpatient services;

(B) Emergency care services for twenty-four hours per day;

(C) Day treatment for persons with mental illness which includes training in basic living and social skills, supported work, vocational rehabilitation, and day activities. Such services may include therapeutic treatment. In the case of a child, day treatment includes age-appropriate basic living and social skills, educational and prevocational services, day activities, and therapeutic treatment;

(D) Screening for patients being considered for admission to state mental health facilities to determine the appropriateness of admission;

(E) Employment services, which may include supported employment, transitional work, placement in competitive employment, and other work-related services, that result in persons with mental illness becoming engaged in meaningful and gainful full or part-time work. Other sources of funding such as the division of vocational rehabilitation may be uti-

lized by the secretary to maximize federal funding and provide for integration of services;

(F) Consultation and education services; and

(G) Community support services;

(c) Develop and adopt rules establishing state minimum standards for the delivery of mental health services pursuant to RCW 71.24.037 including, but not limited to:

(i) Licensed service providers. These rules shall permit a county-operated mental health program to be licensed as a service provider subject to compliance with applicable statutes and rules. The secretary shall provide for deeming of compliance with state minimum standards for those entities accredited by recognized behavioral health accrediting bodies recognized and having a current agreement with the department;

(ii) Regional support networks; and

(iii) Inpatient services, evaluation and treatment services and facilities under chapter 71.05 RCW, resource management services, and community support services;

(d) Assure that the special needs of persons who are minorities, elderly, disabled, children, low-income, and parents who are respondents in dependency cases are met within the priorities established in this section;

(e) Establish a standard contract or contracts, consistent with state minimum standards, RCW 71.24.320 and 71.24.330, which shall be used in contracting with regional support networks. The standard contract shall include a maximum fund balance, which shall be consistent with that required by federal regulations or waiver stipulations;

(f) Establish, to the extent possible, a standardized auditing procedure which minimizes paperwork requirements of regional support networks and licensed service providers. The audit procedure shall focus on the outcomes of service and not the processes for accomplishing them;

(g) Develop and maintain an information system to be used by the state and regional support networks that includes a tracking method which allows the department and regional support networks to identify mental health clients' participation in any mental health service or public program on an immediate basis. The information system shall not include individual patient's case history files. Confidentiality of client information and records shall be maintained as provided in this chapter and chapter 70.02 RCW;

(h) License service providers who meet state minimum standards;

(i) Certify regional support networks that meet state minimum standards;

(j) Periodically monitor the compliance of certified regional support networks and their network of licensed service providers for compliance with the contract between the department, the regional support network, and federal and state rules at reasonable times and in a reasonable manner;

(k) Fix fees to be paid by evaluation and treatment centers to the secretary for the required inspections;

(l) Monitor and audit regional support networks and licensed service providers as needed to assure compliance with contractual agreements authorized by this chapter;

(m) Adopt such rules as are necessary to implement the department's responsibilities under this chapter;

(n) Assure the availability of an appropriate amount, as determined by the legislature in the operating budget by

amounts appropriated for this specific purpose, of community-based, geographically distributed residential services;

(o) Certify crisis stabilization units that meet state minimum standards;

(p) Certify clubhouses that meet state minimum standards; and

(q) Certify triage facilities that meet state minimum standards.

(6) The secretary shall use available resources only for regional support networks, except to the extent authorized, and in accordance with any priorities or conditions specified, in the biennial appropriations act.

(7) Each certified regional support network and licensed service provider shall file with the secretary, on request, such data, statistics, schedules, and information as the secretary reasonably requires. A certified regional support network or licensed service provider which, without good cause, fails to furnish any data, statistics, schedules, or information as requested, or files fraudulent reports thereof, may have its certification or license revoked or suspended.

(8) The secretary may suspend, revoke, limit, or restrict a certification or license, or refuse to grant a certification or license for failure to conform to: (a) The law; (b) applicable rules and regulations; (c) applicable standards; or (d) state minimum standards.

(9) The superior court may restrain any regional support network or service provider from operating without certification or a license or any other violation of this section. The court may also review, pursuant to procedures contained in chapter 34.05 RCW, any denial, suspension, limitation, restriction, or revocation of certification or license, and grant other relief required to enforce the provisions of this chapter.

(10) Upon petition by the secretary, and after hearing held upon reasonable notice to the facility, the superior court may issue a warrant to an officer or employee of the secretary authorizing him or her to enter at reasonable times, and examine the records, books, and accounts of any regional support network or service provider refusing to consent to inspection or examination by the authority.

(11) Notwithstanding the existence or pursuit of any other remedy, the secretary may file an action for an injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, or operation of a regional support network or service provider without certification or a license under this chapter.

(12) The standards for certification of evaluation and treatment facilities shall include standards relating to maintenance of good physical and mental health and other services to be afforded persons pursuant to this chapter and chapters 71.05 and 71.34 RCW, and shall otherwise assure the effectuation of the purposes of these chapters.

(13) The standards for certification of crisis stabilization units shall include standards that:

(a) Permit location of the units at a jail facility if the unit is physically separate from the general population of the jail;

(b) Require administration of the unit by mental health professionals who direct the stabilization and rehabilitation efforts; and

(c) Provide an environment affording security appropriate with the alleged criminal behavior and necessary to protect the public safety.

(14) The standards for certification of a clubhouse shall at a minimum include:

(a) The facilities may be peer-operated and must be recovery-focused;

(b) Members and employees must work together;

(c) Members must have the opportunity to participate in all the work of the clubhouse, including administration, research, intake and orientation, outreach, hiring, training and evaluation of staff, public relations, advocacy, and evaluation of clubhouse effectiveness;

(d) Members and staff and ultimately the clubhouse director must be responsible for the operation of the clubhouse, central to this responsibility is the engagement of members and staff in all aspects of clubhouse operations;

(e) Clubhouse programs must be comprised of structured activities including but not limited to social skills training, vocational rehabilitation, employment training and job placement, and community resource development;

(f) Clubhouse programs must provide in-house educational programs that significantly utilize the teaching and tutoring skills of members and assist members by helping them to take advantage of adult education opportunities in the community;

(g) Clubhouse programs must focus on strengths, talents, and abilities of its members;

(h) The work-ordered day may not include medication clinics, day treatment, or other therapy programs within the clubhouse.

(15) The department shall distribute appropriated state and federal funds in accordance with any priorities, terms, or conditions specified in the appropriations act.

(16) The secretary shall assume all duties assigned to the nonparticipating regional support networks under chapters 71.05 and 71.34 RCW and this chapter. Such responsibilities shall include those which would have been assigned to the nonparticipating counties in regions where there are not participating regional support networks.

The regional support networks, or the secretary's assumption of all responsibilities under chapters 71.05 and 71.34 RCW and this chapter, shall be included in all state and federal plans affecting the state mental health program including at least those required by this chapter, the medicaid program, and P.L. 99-660. Nothing in these plans shall be inconsistent with the intent and requirements of this chapter.

(17) The secretary shall:

(a) Disburse funds for the regional support networks within sixty days of approval of the biennial contract. The department must either approve or reject the biennial contract within sixty days of receipt.

(b) Enter into biennial contracts with regional support networks. The contracts shall be consistent with available resources. No contract shall be approved that does not include progress toward meeting the goals of this chapter by taking responsibility for: (i) Short-term commitments; (ii) residential care; and (iii) emergency response systems.

(c) Notify regional support networks of their allocation of available resources at least sixty days prior to the start of a new biennial contract period.

(d) Deny all or part of the funding allocations to regional support networks based solely upon formal findings of non-compliance with the terms of the regional support network's

contract with the department. Regional support networks disputing the decision of the secretary to withhold funding allocations are limited to the remedies provided in the department's contracts with the regional support networks.

(18) The department, in cooperation with the state congressional delegation, shall actively seek waivers of federal requirements and such modifications of federal regulations as are necessary to allow federal medicaid reimbursement for services provided by freestanding evaluation and treatment facilities certified under chapter 71.05 RCW. The department shall periodically report its efforts to the appropriate committees of the senate and the house of representatives. [2013 c 200 § 24; 2011 c 148 § 4. Prior: 2008 c 267 § 5; 2008 c 261 § 3; prior: 2007 c 414 § 2; 2007 c 410 § 8; 2007 c 375 § 12; 2006 c 333 § 201; prior: 2005 c 504 § 715; 2005 c 503 § 7; prior: 2001 c 334 § 7; 2001 c 323 § 10; 1999 c 10 § 4; 1998 c 245 § 137; prior: 1991 c 306 § 3; 1991 c 262 § 1; 1991 c 29 § 1; 1990 1st ex.s. c 8 § 1; 1989 c 205 § 3; 1987 c 105 § 1; 1986 c 274 § 3; 1982 c 204 § 4.]

Effective date—2013 c 200: See note following RCW 70.02.010.

Certification of triage facilities—Effective date—2011 c 148: See notes following RCW 71.05.020.

Intent—Findings—2008 c 261: See note following RCW 71.24.320.

Short title—2007 c 410: See note following RCW 13.34.138.

Findings—Purpose—Construction—Severability—2007 c 375: See notes following RCW 10.31.110.

Finding—Purpose—Intent—Severability—Part headings not law—Effective dates—2006 c 333: See notes following RCW 71.24.016.

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

Correction of references—Savings—Severability—2005 c 503: See notes following RCW 71.24.015.

Purpose—Intent—1999 c 10: See note following RCW 71.24.025.

Additional notes found at www.leg.wa.gov

71.24.310 Administration of chapters 71.05 and 71.24 RCW through regional support networks—Implementation of chapter 71.05 RCW. The legislature finds that administration of chapter 71.05 RCW and this chapter can be most efficiently and effectively implemented as part of the regional support network defined in RCW 71.24.025. For this reason, the legislature intends that the department and the regional support networks shall work together to implement chapter 71.05 RCW as follows:

(1) By June 1, 2006, regional support networks shall recommend to the department the number of state hospital beds that should be allocated for use by each regional support network. The statewide total allocation shall not exceed the number of state hospital beds offering long-term inpatient care, as defined in this chapter, for which funding is provided in the biennial appropriations act.

(2) If there is consensus among the regional support networks regarding the number of state hospital beds that should be allocated for use by each regional support network, the department shall contract with each regional support network accordingly.

(3) If there is not consensus among the regional support networks regarding the number of beds that should be allo-

cated for use by each regional support network, the department shall establish by emergency rule the number of state hospital beds that are available for use by each regional support network. The emergency rule shall be effective September 1, 2006. The primary factor used in the allocation shall be the estimated number of adults with acute and chronic mental illness in each regional support network area, based upon population-adjusted incidence and utilization.

(4) The allocation formula shall be updated at least every three years to reflect demographic changes, and new evidence regarding the incidence of acute and chronic mental illness and the need for long-term inpatient care. In the updates, the statewide total allocation shall include (a) all state hospital beds offering long-term inpatient care for which funding is provided in the biennial appropriations act; plus (b) the estimated equivalent number of beds or comparable diversion services contracted in accordance with subsection (5) of this section.

(5) The department is encouraged to enter performance-based contracts with regional support networks to provide some or all of the regional support network's allocated long-term inpatient treatment capacity in the community, rather than in the state hospital. The performance contracts shall specify the number of patient days of care available for use by the regional support network in the state hospital.

(6) If a regional support network uses more state hospital patient days of care than it has been allocated under subsection (3) or (4) of this section, or than it has contracted to use under subsection (5) of this section, whichever is less, it shall reimburse the department for that care, except during the period of July 1, 2012, through December 31, 2013, where reimbursements may be temporarily altered per section 204, chapter 4, Laws of 2013 2nd sp. sess. The reimbursement rate per day shall be the hospital's total annual budget for long-term inpatient care, divided by the total patient days of care assumed in development of that budget.

(7) One-half of any reimbursements received pursuant to subsection (6) of this section shall be used to support the cost of operating the state hospital and, during the 2007-2009 fiscal biennium, implementing new services that will enable a regional support network to reduce its utilization of the state hospital. The department shall distribute the remaining half of such reimbursements among regional support networks that have used less than their allocated or contracted patient days of care at that hospital, proportional to the number of patient days of care not used. [2013 2nd sp.s. c 4 § 994. Prior: 2009 c 564 § 1810; 2009 c 564 § 952; 2006 c 333 § 107; 1989 c 205 § 6.]

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

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

Finding—Purpose—Intent—Severability—Part headings not law—Effective dates—2006 c 333: See notes following RCW 71.24.016.

Additional notes found at www.leg.wa.gov

71.24.330 Regional support networks—Contracts with department—Requirements. (1)(a) Contracts between a regional support network and the department shall include mechanisms for monitoring performance under the contract and remedies for failure to substantially comply with the requirements of the contract including, but not limited to,

financial penalties, termination of the contract, and reprocurement of the contract.

(b) The department shall incorporate the criteria to measure the performance of service coordination organizations into contracts with regional support networks as provided in chapter 70.320 RCW.

(2) The regional support network procurement processes shall encourage the preservation of infrastructure previously purchased by the community mental health service delivery system, the maintenance of linkages between other services and delivery systems, and maximization of the use of available funds for services versus profits. However, a regional support network selected through the procurement process is not required to contract for services with any county-owned or operated facility. The regional support network procurement process shall provide that public funds appropriated by the legislature shall not be used to promote or deter, encourage, or discourage employees from exercising their rights under Title 29, chapter 7, subchapter II, United States Code or chapter 41.56 RCW.

(3) In addition to the requirements of RCW 71.24.035, contracts shall:

(a) Define administrative costs and ensure that the regional support network does not exceed an administrative cost of ten percent of available funds;

(b) Require effective collaboration with law enforcement, criminal justice agencies, and the chemical dependency treatment system;

(c) Require substantial implementation of department adopted integrated screening and assessment process and matrix of best practices;

(d) Maintain the decision-making independence of designated mental health professionals;

(e) Except at the discretion of the secretary or as specified in the biennial budget, require regional support networks to pay the state for the costs associated with individuals who are being served on the grounds of the state hospitals and who are not receiving long-term inpatient care as defined in RCW 71.24.025;

(f) Include a negotiated alternative dispute resolution clause; and

(g) Include a provision requiring either party to provide one hundred eighty days' notice of any issue that may cause either party to voluntarily terminate, refuse to renew, or refuse to sign a mandatory amendment to the contract to act as a regional support network. If either party decides to voluntarily terminate, refuse to renew, or refuse to sign a mandatory amendment to the contract to serve as a regional support network they shall provide ninety days' advance notice in writing to the other party. [2013 c 320 § 9; 2008 c 261 § 6; 2006 c 333 § 203; 2005 c 503 § 6.]

Intent—Findings—2008 c 261: See note following RCW 71.24.320.

Finding—Purpose—Intent—Severability—Part headings not law—Effective dates—2006 c 333: See notes following RCW 71.24.016.

Correction of references—Savings—Severability—2005 c 503: See notes following RCW 71.24.015.

71.24.350 Mental health ombuds office. The department shall require each regional support network to provide for a separately funded mental health ombuds office in each regional support network that is independent of the regional

support network. The ombuds office shall maximize the use of consumer advocates. [2013 c 23 § 189; 2005 c 504 § 803.]

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Alphabetization—Correction of references—2005 c 504: See note following RCW 71.05.020.

71.24.845 Regional support networks—Transfers between networks. The regional support networks shall jointly develop a uniform transfer agreement to govern the transfer of clients between regional support networks. By September 1, 2013, the regional support networks shall submit the uniform transfer agreement to the department. By December 1, 2013, the department shall establish guidelines to implement the uniform transfer agreement and may modify the uniform transfer agreement as necessary to avoid impacts on state administrative systems. [2013 c 230 § 1.]

Chapter 71.34 RCW MENTAL HEALTH SERVICES FOR MINORS

Sections

71.34.315	Mental health commissioners—Authority.
71.34.340	Repealed. (<i>Effective July 1, 2014.</i>)
71.34.345	Repealed. (<i>Effective July 1, 2014.</i>)
71.34.350	Repealed. (<i>Effective July 1, 2014.</i>)

71.34.315 Mental health commissioners—Authority. The judges of the superior court of the county by majority vote may authorize mental health commissioners, appointed pursuant to RCW 71.05.135, to perform any or all of the following duties:

(1) Receive all applications, petitions, and proceedings filed in the superior court for the purpose of disposing of them pursuant to this chapter or RCW 10.77.094;

(2) Investigate the facts upon which to base warrants, subpoenas, orders to directions in actions, or proceedings filed pursuant to this chapter or RCW 10.77.094;

(3) For the purpose of this chapter, exercise all powers and perform all the duties of a court commissioner appointed pursuant to RCW 2.24.010;

(4) Hold hearings in proceedings under this chapter or RCW 10.77.094 and make written reports of all proceedings under this chapter or RCW 10.77.094 which shall become a part of the record of superior court;

(5) Provide such supervision in connection with the exercise of its jurisdiction as may be ordered by the presiding judge; and

(6) Cause the orders and findings to be entered in the same manner as orders and findings are entered in cases in the superior court. [2013 c 27 § 2; 1989 c 174 § 3. Formerly RCW 71.34.280.]

Additional notes found at www.leg.wa.gov

71.34.340 Repealed. (*Effective July 1, 2014.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

71.34.345 Repealed. (*Effective July 1, 2014.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

71.34.350 Repealed. (*Effective July 1, 2014.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

Title 72

STATE INSTITUTIONS

Chapters

72.09 Department of corrections.

Chapter 72.09 RCW

DEPARTMENT OF CORRECTIONS

Sections

72.09.015	Definitions.
72.09.285	Rental voucher list—Housing providers.
72.09.410	Work ethic camp program—Generally.
72.09.460	Inmate participation in education and work programs—Legislative intent—Priorities—Rules—Payment of costs.
72.09.585	Mental health services information—Required inquiries and disclosures—Release to court, individuals, indeterminate sentence review board, state and local agencies. (<i>Effective July 1, 2014.</i>)
72.09.670	Gang involvement among incarcerated offenders—Intervention programs—Study.
72.09.745	Security threat groups—Information collection.
72.09.750	Access to reentry programs and services for wrongly convicted persons.

72.09.015 Definitions. The definitions in this section apply throughout this chapter.

(1) "Adult basic education" means education or instruction designed to achieve general competence of skills in reading, writing, and oral communication, including English as a second language and preparation and testing services for obtaining a high school diploma or a high school equivalency certificate as provided in RCW 28B.50.536.

(2) "Base level of correctional services" means the minimum level of field services the department of corrections is required by statute to provide for the supervision and monitoring of offenders.

(3) "Civil judgment for assault" means a civil judgment for monetary damages awarded to a correctional officer or department employee entered by a court of competent jurisdiction against an inmate that is based on, or arises from, injury to the correctional officer or department employee caused by the inmate while the correctional officer or department employee was acting in the course and scope of his or her employment.

(4) "Community custody" has the same meaning as that provided in RCW 9.94A.030 and also includes community placement and community supervision as defined in RCW 9.94B.020.

(5) "Contraband" means any object or communication the secretary determines shall not be allowed to be: (a) Brought into; (b) possessed while on the grounds of; or (c) sent from any institution under the control of the secretary.

(6) "Correctional facility" means a facility or institution operated directly or by contract by the secretary for the purposes of incarcerating adults in total or partial confinement, as defined in RCW 9.94A.030.

(7) "County" means a county or combination of counties.

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

(9) "Earned early release" means earned release as authorized by RCW 9.94A.729.

(10) "Evidence-based" means a program or practice that has had multiple-site random controlled trials across heterogeneous populations demonstrating that the program or practice is effective in reducing recidivism for the population.

(11) "Extended family visit" means an authorized visit between an inmate and a member of his or her immediate family that occurs in a private visiting unit located at the correctional facility where the inmate is confined.

(12) "Good conduct" means compliance with department rules and policies.

(13) "Good performance" means successful completion of a program required by the department, including an education, work, or other program.

(14) "Immediate family" means the inmate's children, stepchildren, grandchildren, great grandchildren, parents, stepparents, grandparents, great grandparents, siblings, and a person legally married to or in a state registered domestic partnership with an inmate. "Immediate family" does not include an inmate adopted by another inmate or the immediate family of the adopted or adopting inmate.

(15) "Indigent inmate," "indigent," and "indigency" mean an inmate who has less than a ten-dollar balance of disposable income in his or her institutional account on the day a request is made to utilize funds and during the thirty days previous to the request.

(16) "Individual reentry plan" means the plan to prepare an offender for release into the community. It should be developed collaboratively between the department and the offender and based on an assessment of the offender using a standardized and comprehensive tool to identify the offender's risks and needs. The individual reentry plan describes actions that should occur to prepare individual offenders for release from prison or jail, specifies the supervision and services they will experience in the community, and describes an offender's eventual discharge to aftercare upon successful completion of supervision. An individual reentry plan is updated throughout the period of an offender's incarceration and supervision to be relevant to the offender's current needs and risks.

(17) "Inmate" means a person committed to the custody of the department, including but not limited to persons residing in a correctional institution or facility and persons released from such facility on furlough, work release, or community custody, and persons received from another state, state agency, county, or federal jurisdiction.

(18) "Labor" means the period of time before a birth during which contractions are of sufficient frequency, intensity, and duration to bring about effacement and progressive dilation of the cervix.

(19) "Physical restraint" means the use of any bodily force or physical intervention to control an offender or limit an offender's freedom of movement in a way that does not involve a mechanical restraint. Physical restraint does not include momentary periods of minimal physical restriction by direct person-to-person contact, without the aid of mechanical restraint, accomplished with limited force and designed to:

(a) Prevent an offender from completing an act that would result in potential bodily harm to self or others or damage property;

(b) Remove a disruptive offender who is unwilling to leave the area voluntarily; or

(c) Guide an offender from one location to another.

(20) "Postpartum recovery" means (a) the entire period a woman or youth is in the hospital, birthing center, or clinic after giving birth and (b) an additional time period, if any, a treating physician determines is necessary for healing after the woman or youth leaves the hospital, birthing center, or clinic.

(21) "Privilege" means any goods or services, education or work programs, or earned early release days, the receipt of which are directly linked to an inmate's (a) good conduct; and (b) good performance. Privileges do not include any goods or services the department is required to provide under the state or federal Constitution or under state or federal law.

(22) "Promising practice" means a practice that presents, based on preliminary information, potential for becoming a research-based or consensus-based practice.

(23) "Research-based" means a program or practice that has some research demonstrating effectiveness, but that does not yet meet the standard of evidence-based practices.

(24) "Restraints" means anything used to control the movement of a person's body or limbs and includes:

(a) Physical restraint; or

(b) Mechanical device including but not limited to: Metal handcuffs, plastic ties, ankle restraints, leather cuffs, other hospital-type restraints, tasers, or batons.

(25) "Secretary" means the secretary of corrections or his or her designee.

(26) "Significant expansion" includes any expansion into a new product line or service to the class I business that results from an increase in benefits provided by the department, including a decrease in labor costs, rent, or utility rates (for water, sewer, electricity, and disposal), an increase in work program space, tax advantages, or other overhead costs.

(27) "Superintendent" means the superintendent of a correctional facility under the jurisdiction of the Washington state department of corrections, or his or her designee.

(28) "Transportation" means the conveying, by any means, of an incarcerated pregnant woman or youth from the correctional facility to another location from the moment she leaves the correctional facility to the time of arrival at the other location, and includes the escorting of the pregnant incarcerated woman or youth from the correctional facility to a transport vehicle and from the vehicle to the other location.

(29) "Unfair competition" means any net competitive advantage that a business may acquire as a result of a correctional industries contract, including labor costs, rent, tax advantages, utility rates (water, sewer, electricity, and disposal), and other overhead costs. To determine net competitive advantage, the department of corrections shall review and quantify any expenses unique to operating a for-profit business inside a prison.

(30) "Vocational training" or "vocational education" means "vocational education" as defined in RCW 72.62.020.

(31) "Washington business" means an in-state manufacturer or service provider subject to chapter 82.04 RCW existing on June 10, 2004.

(32) "Work programs" means all classes of correctional industries jobs authorized under RCW 72.09.100. [2013 c 39 § 22. Prior: 2011 1st sp.s. c 21 § 38; 2011 c 282 § 1; 2010 c 181 § 1; 2009 c 521 § 165; 2008 c 231 § 47; 2007 c 483 § 202; 2004 c 167 § 6; 1995 1st sp.s. c 19 § 3; 1987 c 312 § 2.]

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

Effective dates—2009 c 521 §§ 5-8, 79, 87-103, 107, 151, 165, 166, 173-175, and 190-192: See note following RCW 2.10.900.

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Severability—2008 c 231: See note following RCW 9.94A.500.

Intent—2007 c 483: See note following RCW 72.09.270.

Findings—Part headings not law—Severability—2007 c 483: See RCW 72.78.005, 72.78.900, and 72.78.901.

Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19: See notes following RCW 72.09.450.

72.09.285 Rental voucher list—Housing providers.

(1) A housing provider may be placed on a list with the department to receive rental vouchers under RCW 9.94A.729 in accordance with the provisions of this section.

(2) For living environments with between four and eight beds, or a greater number of individuals if permitted by local code, the department shall provide transition support that verifies an offender is participating in programming or services including, but not limited to, substance abuse treatment, mental health treatment, sex offender treatment, educational programming, development of positive living skills, or employment programming. In addition, when selecting housing providers, the department shall consider the compatibility of the proposed offender housing with the surrounding neighborhood and underlying zoning. The department shall adopt procedures to limit the concentration of housing providers who provide housing to sex offenders in a single neighborhood or area.

(3)(a) The department shall provide the local law and justice council, county sheriff, or, if such housing is located within a city, a city's chief law enforcement officer with notice anytime a housing provider or new housing location requests to be or is added to the list within that county.

(b) The county or city local government may provide the department with a community impact statement which includes the number and location of other special needs housing in the neighborhood and a review of services and supports in the area to assist offenders in their transition. If a community impact statement is provided to the department within ten business days of the notice of a new housing provider or housing location request, the department shall consider the community impact statement in determining whether to add the provider to the list and, if the provider is added, shall include the community impact statement in the notice that a provider is added to the list within that county.

(4) If a certificate of inspection, as provided in RCW 59.18.125, is required by local regulation and the local government does not have a current certificate of inspection on file, the local government shall have ten business days from the later of (a) receipt of notice from the department as provided in subsection (3) of this section; or (b) from the date the local government is given access to the dwelling unit to conduct an inspection or reinspection to issue a certificate. This

section is deemed satisfied if a local government does not issue a timely certificate of inspection.

(5)(a) If, within ten business days of receipt of a notice from the department of a new location or new housing provider, the county or city determines that the housing is in a neighborhood with an existing concentration of special needs housing, including but not limited to offender reentry housing, retirement homes, assisted living, emergency or transitional housing, or adult family homes, the county or city may request that the department program administrator remove the new location or new housing provider from the list.

(b) This subsection does not apply to housing providers approved by the department to receive rental vouchers on July 28, 2013.

(6) The county or city may at any time request a housing provider be removed from the list if it provides information to the department that:

(a) It has determined that the housing does not comply with state and local fire and building codes or applicable zoning and development regulations in effect at the time the housing provider first began receiving housing vouchers; or

(b) The housing provider is not complying with the provisions of this section.

(7) After receiving a request to remove a housing provider from the county or city, the department shall immediately notify the provider of the concerns and request that the provider demonstrate that it is in compliance with the provisions of this section. If, after ten days' written notice, the housing provider cannot demonstrate to the department that it is in compliance with the reasons for the county's or city's request for removal, the department shall remove the housing provider from the list.

(8) A housing provider who provides housing pursuant to this section is not liable for civil damages arising from the criminal conduct of an offender to any greater extent than a regular tenant, and no special duties are created under this section. [2013 c 266 § 2.]

72.09.410 Work ethic camp program—Generally.

The department of corrections shall establish one work ethic camp. The secretary shall locate the work ethic camp within an already existing department compound or facility, or in a facility that is scheduled to come on line within the initial implementation date outlined in this section. The facility selected for the camp shall appropriately accommodate the logistical and cost-effective objectives contained in RCW 72.09.400 through *72.09.420, 9.94A.690, and **section 5, chapter 338, Laws of 1993. The department shall be ready to assign inmates to the camp one hundred twenty days after July 1, 1993. The department shall establish the work ethic camp program cycle to last from one hundred twenty to one hundred eighty days. The department shall develop all aspects of the work ethic camp program including, but not limited to, program standards, conduct standards, educational components including preparation for a high school equivalency certificate as described in RCW 28B.50.536, offender incentives, drug rehabilitation program parameters, individual and team work goals, techniques for improving the offender's self-esteem, citizenship skills for successful living in the community, measures to hold the offender accountable for his or her behavior, and the successful completion of the

work ethic camp program granted to the offender based on successful attendance, participation, and performance as defined by the secretary. The work ethic camp shall be designed and implemented so that offenders are continually engaged in meaningful activities and unstructured time is kept to a minimum. In addition, the department is encouraged to explore the integration and overlay of a military style approach to the work ethic camp. [2013 c 39 § 23; 1993 c 338 § 3.]

Reviser's note: *(1) RCW 72.09.420 was repealed by 1998 c 273 § 1.
 **(2) 1993 c 338 § 5 was vetoed by the governor.

Additional notes found at www.leg.wa.gov

72.09.460 Inmate participation in education and work programs—Legislative intent—Priorities—Rules—Payment of costs. (1) The legislature intends that all inmates be required to participate in department-approved education programs, work programs, or both, unless exempted as specifically provided in this section. Eligible inmates who refuse to participate in available education or work programs available at no charge to the inmates shall lose privileges according to the system established under RCW 72.09.130. Eligible inmates who are required to contribute financially to an education or work program and refuse to contribute shall be placed in another work program. Refusal to contribute shall not result in a loss of privileges.

(2) The legislature recognizes more inmates may agree to participate in education and work programs than are available. The department must make every effort to achieve maximum public benefit by placing inmates in available and appropriate education and work programs.

(3)(a) The department shall, to the extent possible and considering all available funds, prioritize its resources to meet the following goals for inmates in the order listed:

(i) Achievement of basic academic skills through obtaining a high school diploma or a high school equivalency certificate as provided in RCW 28B.50.536;

(ii) Achievement of vocational skills necessary for purposes of work programs and for an inmate to qualify for work upon release;

(iii) Additional work and education programs necessary for compliance with an offender's individual reentry plan under RCW 72.09.270 with the exception of postsecondary education degree programs as provided in RCW 72.09.465; and

(iv) Other appropriate vocational, work, or education programs that are not necessary for compliance with an offender's individual reentry plan under RCW 72.09.270 with the exception of postsecondary education degree programs as provided in RCW 72.09.465.

(b) If programming is provided pursuant to (a)(i) through (iii) of this subsection, the department shall pay the cost of such programming, including but not limited to books, materials, supplies, and postage costs related to correspondence courses.

(c) If programming is provided pursuant to (a)(iv) of this subsection, inmates shall be required to pay all or a portion of the costs, including books, fees, and tuition, for participation in any vocational, work, or education program as provided in department policies. Department policies shall include a formula for determining how much an offender shall be required

to pay. The formula shall include steps which correlate to an offender average monthly income or average available balance in a personal inmate savings account and which are correlated to a prorated portion or percent of the per credit fee for tuition, books, or other ancillary costs. The formula shall be reviewed every two years. A third party may pay directly to the department all or a portion of costs and tuition for any programming provided pursuant to (a)(iv) of this subsection on behalf of an inmate. Such payments shall not be subject to any of the deductions as provided in this chapter.

(d) The department may accept any and all donations and grants of money, equipment, supplies, materials, and services from any third party, including but not limited to nonprofit entities, and may receive, utilize, and dispose of same to complete the purposes of this section.

(e) Any funds collected by the department under (c) and (d) of this subsection and subsections (8) and (9) of this section shall be used solely for the creation, maintenance, or expansion of inmate educational and vocational programs.

(4) The department shall provide access to a program of education to all offenders who are under the age of eighteen and who have not met high school graduation requirements or requirements to earn a high school equivalency certificate as provided in RCW 28B.50.536 in accordance with chapter 28A.193 RCW. The program of education established by the department and education provider under RCW 28A.193.020 for offenders under the age of eighteen must provide each offender a choice of curriculum that will assist the inmate in achieving a high school diploma or high school equivalency certificate. The program of education may include but not be limited to basic education, prevocational training, work ethic skills, conflict resolution counseling, substance abuse intervention, and anger management counseling. The curriculum may balance these and other rehabilitation, work, and training components.

(5)(a) In addition to the policies set forth in this section, the department shall consider the following factors in establishing criteria for assessing the inclusion of education and work programs in an inmate's individual reentry plan and in placing inmates in education and work programs:

(i) An inmate's release date and custody level. An inmate shall not be precluded from participating in an education or work program solely on the basis of his or her release date, except that inmates with a release date of more than one hundred twenty months in the future shall not comprise more than ten percent of inmates participating in a new class I correctional industry not in existence on June 10, 2004;

(ii) An inmate's education history and basic academic skills;

(iii) An inmate's work history and vocational or work skills;

(iv) An inmate's economic circumstances, including but not limited to an inmate's family support obligations; and

(v) Where applicable, an inmate's prior performance in department-approved education or work programs;

(b) The department shall establish, and periodically review, inmate behavior standards and program goals for all education and work programs. Inmates shall be notified of applicable behavior standards and program goals prior to placement in an education or work program and shall be

removed from the education or work program if they consistently fail to meet the standards or goals.

(6) Eligible inmates who refuse to participate in available education or work programs available at no charge to the inmates shall lose privileges according to the system established under RCW 72.09.130. Eligible inmates who are required to contribute financially to an education or work program and refuse to contribute shall be placed in another work program. Refusal to contribute shall not result in a loss of privileges.

(7) The department shall establish, by rule, objective medical standards to determine when an inmate is physically or mentally unable to participate in available education or work programs. When the department determines an inmate is permanently unable to participate in any available education or work program due to a health condition, the inmate is exempt from the requirement under subsection (1) of this section. When the department determines an inmate is temporarily unable to participate in an education or work program due to a medical condition, the inmate is exempt from the requirement of subsection (1) of this section for the period of time he or she is temporarily disabled. The department shall periodically review the medical condition of all inmates with temporary disabilities to ensure the earliest possible entry or reentry by inmates into available programming.

(8) The department shall establish policies requiring an offender to pay all or a portion of the costs and tuition for any vocational training or postsecondary education program if the offender previously abandoned coursework related to education or vocational training without excuse as defined in rule by the department. Department policies shall include a formula for determining how much an offender shall be required to pay. The formula shall include steps which correlate to an offender average monthly income or average available balance in a personal inmate savings account and which are correlated to a prorated portion or percent of the per credit fee for tuition, books, or other ancillary costs. The formula shall be reviewed every two years. A third party may pay directly to the department all or a portion of costs and tuition for any program on behalf of an inmate under this subsection. Such payments shall not be subject to any of the deductions as provided in this chapter.

(9) Notwithstanding any other provision in this section, an inmate sentenced to life without the possibility of release, sentenced to death under chapter 10.95 RCW, or subject to the provisions of 8 U.S.C. Sec. 1227:

(a) Shall not be required to participate in education programming except as may be necessary for the maintenance of discipline and security;

(b) May receive not more than one postsecondary academic degree in a program offered by the department or its contracted providers;

(c) May participate in prevocational or vocational training that may be necessary to participate in a work program;

(d) Shall be subject to the applicable provisions of this chapter relating to inmate financial responsibility for programming. [2013 c 39 § 24; 2007 c 483 § 402; 2004 c 167 § 5; 1998 c 244 § 10; 1997 c 338 § 43; 1995 1st sp.s. c 19 § 5.]

Findings—Intent—2007 c 483: "Research and practice show that long-term success in helping offenders prepare for economic self-sufficiency requires strategies that address their education and employment needs.

[2013 RCW Supp—page 828]

Recent research suggests that a solid academic foundation and employment- and career-focused programs can be cost-effective in reducing the likelihood of reoffense. To this end, the legislature intends that the state strive to provide every inmate with basic academic skills as well as educational and vocational training designed to meet the assessed needs of the offender.

Nonetheless, it is vital that offenders engaged in educational or vocational training contribute to their own success. An offender should financially contribute to his or her education, particularly postsecondary educational pursuits. The legislature intends to provide more flexibility for offenders in obtaining postsecondary education by allowing third parties to make contributions to the offender's education without mandatory deductions. In developing the loan program, the department is encouraged to adopt rules and standards similar to those that apply to students in noninstitutional settings for issues such as applying for a loan, maintaining accountability, and accruing interest on the loan obligation." [2007 c 483 § 401.]

Findings—Part headings not law—Severability—2007 c 483: See RCW 72.78.005, 72.78.900, and 72.78.901.

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19: See notes following RCW 72.09.450.

Additional notes found at www.leg.wa.gov

72.09.585 Mental health services information—Required inquiries and disclosures—Release to court, individuals, indeterminate sentence review board, state and local agencies. (Effective July 1, 2014.) (1) When the department is determining an offender's risk management level, the department shall inquire of the offender and shall be told whether the offender is subject to court-ordered treatment for mental health services or chemical dependency services. The department shall request and the offender shall provide an authorization to release information form that meets applicable state and federal requirements and shall provide the offender with written notice that the department will request the offender's mental health and substance abuse treatment information. An offender's failure to inform the department of court-ordered treatment is a violation of the conditions of supervision if the offender is in the community and an infraction if the offender is in confinement, and the violation or infraction is subject to sanctions.

(2) When an offender discloses that he or she is subject to court-ordered mental health services or chemical dependency treatment, the department shall provide the mental health services provider or chemical dependency treatment provider with a written request for information and any necessary authorization to release information forms. The written request shall comply with rules adopted by the department of social and health services or protocols developed jointly by the department and the department of social and health services. A single request shall be valid for the duration of the offender's supervision in the community. Disclosures of information related to mental health services made pursuant to a department request shall not require consent of the offender.

(3) The information received by the department under RCW 71.05.445 or 70.02.250 may be released to the indeterminate sentence review board as relevant to carry out its responsibility of planning and ensuring community protection with respect to persons under its jurisdiction. Further disclosure by the indeterminate sentence review board is subject to the limitations set forth in subsections (5) and (6) of this section and must be consistent with the written policy of the indeterminate sentence review board. The decision to

disclose or not shall not result in civil liability for the indeterminate sentence review board or staff assigned to perform board-related duties provided that the decision was reached in good faith and without gross negligence.

(4) The information received by the department under RCW 71.05.445 or 70.02.250 may be used to meet the statutory duties of the department to provide evidence or report to the court. Disclosure to the public of information provided to the court by the department related to mental health services shall be limited in accordance with RCW 9.94A.500 or this section.

(5) The information received by the department under RCW 71.05.445 or 70.02.250 may be disclosed by the department to other state and local agencies as relevant to plan for and provide offenders transition, treatment, and supervision services, or as relevant and necessary to protect the public and counteract the danger created by a particular offender, and in a manner consistent with the written policy established by the secretary. The decision to disclose or not shall not result in civil liability for the department or its employees so long as the decision was reached in good faith and without gross negligence. The information received by a state or local agency from the department shall remain confidential and subject to the limitations on disclosure set forth in chapters 70.02, 71.05, and 71.34 RCW and, subject to these limitations, may be released only as relevant and necessary to counteract the danger created by a particular offender.

(6) The information received by the department under RCW 71.05.445 or 70.02.250 may be disclosed by the department to individuals only with respect to offenders who have been determined by the department to have a high risk of reoffending by a risk assessment, as defined in RCW 9.94A.030, only as relevant and necessary for those individuals to take reasonable steps for the purpose of self-protection, or as provided in RCW 72.09.370(2). The information may not be disclosed for the purpose of engaging the public in a system of supervision, monitoring, and reporting offender behavior to the department. The department must limit the disclosure of information related to mental health services to the public to descriptions of an offender's behavior, risk he or she may present to the community, and need for mental health treatment, including medications, and shall not disclose or release to the public copies of treatment documents or records, except as otherwise provided by law. All disclosure of information to the public must be done in a manner consistent with the written policy established by the secretary. The decision to disclose or not shall not result in civil liability for the department or its employees so long as the decision was reached in good faith and without gross negligence. Nothing in this subsection prevents any person from reporting to law enforcement or the department behavior that he or she believes creates a public safety risk. [2013 c 200 § 32; 2011 1st sp.s. c 40 § 24; 2004 c 166 § 5; 2000 c 75 § 4.]

Effective date—2013 c 200: See note following RCW 70.02.010.

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Severability—Effective dates—2004 c 166: See notes following RCW 71.05.040.

Intent—2000 c 75: See note following RCW 71.05.445.

72.09.670 Gang involvement among incarcerated offenders—Intervention programs—Study. (1) The department shall study and establish best practices to reduce gang involvement and recruitment among incarcerated offenders. The department shall study and make recommendations regarding the establishment of:

(a) Intervention programs within the institutions of the department for offenders who are seeking to opt out of gangs. The intervention programs shall include, but are not limited to, tattoo removal, anger management, preparation to obtain a high school equivalency certificate as described in RCW 28B.50.536, and other interventions; and

(b) An intervention program to assist gang members with successful reentry into the community.

(2) The department shall report to the legislature on its findings and recommendations by January 1, 2009. [2013 c 39 § 25; 2008 c 276 § 601.]

Severability—Part headings, subheadings not law—2008 c 276: See notes following RCW 36.28A.200.

72.09.745 Security threat groups—Information collection. (1) The department may collect, evaluate, and analyze data and specific investigative and intelligence information concerning the existence, structure, activities, and operations of security threat groups and the participants involved therein under the jurisdiction of the department. The data compiled may aid in addressing violence reduction, illegal activities, and identification of offender separation or protection needs, and may be used to assist law enforcement agencies and prosecutors in developing evidence for purposes of criminal prosecution upon request.

(2) The following security threat group information collected and maintained by the department shall be exempt from public disclosure under chapter 42.56 RCW: (a) Information that could lead to the identification of a person's security threat group status, affiliation, or activities; (b) information that reveals specific security threats associated with the operation and activities of security threat groups; and (c) information that identifies the number of security threat group members, affiliates, or associates. [2013 c 315 § 1.]

72.09.750 Access to reentry programs and services for wrongly convicted persons. When a court refers a person to the department under RCW 4.100.060 as part of the person's award in a wrongful conviction claim, the department must provide reasonable access to existing reentry programs and services. Nothing in this section requires the department to establish new reentry programs or services. [2013 c 175 § 12.]

Title 73

VETERANS AND VETERANS' AFFAIRS

Chapters

73.08 Veterans' relief.

73.16 Employment and reemployment.

73.20 Acknowledgments and powers of attorney.

Chapter 73.08 RCW
VETERANS' RELIEF

Sections

73.08.005	Definitions.
73.08.080	Tax levy authorized.

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

(1) "Direct costs" includes those allowable costs that can be readily assigned to the statutory objectives of this chapter, consistent with the cost principles promulgated by the federal office of management and budget in circular No. A-87, dated May 10, 2004.

(2) "Family" means the spouse or domestic partner, surviving spouse, surviving domestic partner, and dependent children of a living or deceased veteran.

(3) "Indigent" means a person who is defined as such by the county legislative authority using one or more of the following definitions:

(a) Receiving one of the following types of public assistance: Temporary assistance for needy families, aged, blind, or disabled assistance benefits, pregnant women assistance benefits, poverty-related veterans' benefits, food stamps or food stamp benefits transferred electronically, refugee resettlement benefits, medicaid, medical care services, or supplemental security income;

(b) Receiving an annual income, after taxes, of up to one hundred fifty percent or less of the current federally established poverty level, or receiving an annual income not exceeding a higher qualifying income established by the county legislative authority; or

(c) Unable to pay reasonable costs for shelter, food, utilities, and transportation because his or her available funds are insufficient.

(4) "Indirect costs" includes those allowable costs that are generally associated with carrying out the statutory objectives of this chapter, but the identification and tracking of those costs cannot be readily assigned to a specific statutory objective without an accounting effort that is disproportionate to the benefit received. A county legislative authority may allocate allowable indirect costs to its veterans' assistance fund if it is accomplished in a manner consistent with the cost principles promulgated by the federal office of management and budget in circular No. A-87, dated May 10, 2004.

(5) "Veteran" has the same meaning as defined in RCW 41.04.005 and 41.04.007, and in addition may include, at the discretion of the county legislative authority and in consultation with the veterans' advisory board, any other person who at the time he or she seeks the benefits of RCW 73.08.010, 73.08.070, and 73.08.080:

(a) Has received a general discharge under honorable conditions; or

(b) Has received a medical or physical discharge with an honorable record.

(6) "Veterans' advisory board" means a board established by a county legislative authority under the authority of RCW 73.08.035.

(7) "Veterans' assistance fund" means an account in the custody of the county auditor, or the chief financial officer in

a county operating under a charter, that is funded by taxes levied under the authority of RCW 73.08.080.

(8) "Veterans' assistance program" means a program approved by the county legislative authority under the authority of RCW 73.08.010 that is fully or partially funded by the veterans' assistance fund authorized by RCW 73.08.080. [2013 c 42 § 2; 2011 1st sp.s. c 36 § 17; 2010 1st sp.s. c 8 § 17; 2009 c 35 § 1; 2008 c 6 § 502; 2005 c 250 § 2.]

Findings—Intent—2011 1st sp.s. c 36: See RCW 74.62.005.

Effective date—2011 1st sp.s. c 36: See note following RCW 74.62.005.

Findings—Intent—Short title—Effective date—2010 1st sp.s. c 8: See notes following RCW 74.04.225.

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

Intent—2005 c 250: "(1) It is the intent of the legislature that each county establish a veterans' assistance program to benefit indigent veterans and their families. These programs must be funded, at least in part, by veterans' assistance funds. The legislature intends also for each county to establish a veterans' advisory board responsible for advising the county legislative authority on needed and appropriate assistance programs for local indigent veterans and their families. Recognizing the valuable insight and perspectives that veterans offer, it is the intent of the legislature that each board be comprised entirely of veterans.

(2) The legislature recognizes that ongoing veterans' relief or assistance programs in some areas of the state have provided meaningful assistance to indigent veterans and family members. The legislature further recognizes that veterans' service organizations have traditionally been the initial point of contact for indigent veterans and family members seeking assistance. In recognition of these factors, the legislature intends to authorize, upon the satisfaction of certain administrative requirements, existing veterans' relief or assistance programs to continue providing needed and effective assistance to indigent veterans and their families.

(3) The legislature recognizes that counties respond to the needs of indigent veterans and family members in the manner most appropriate to the needs and resources of the county. The legislature intends for the provisions of this act to facilitate the effective use of assistance funds through efficient model programs that benefit veterans and family members experiencing financial hardships.

(4) It is the policy of the state of Washington that bias shall not play a role in the distribution of the veterans' assistance fund." [2005 c 250 § 1.]

73.08.080 Tax levy authorized. (1) The legislative authority in each county must levy, in addition to the taxes now levied by law, a tax in a sum equal to the amount which would be raised by not less than one and one-eighth cents per thousand dollars of assessed value, and not greater than twenty-seven cents per thousand dollars of assessed value against the taxable property of their respective counties, to be levied and collected as now prescribed by law for the assessment and collection of taxes, for the purpose of creating a veterans' assistance fund. Expenditures from the veterans' assistance fund, and interest earned on balances from the fund, may be used only for:

(a) The veterans' assistance programs authorized by RCW 73.08.010;

(b) The burial or cremation of a deceased indigent veteran or deceased family member of an indigent veteran as authorized by RCW 73.08.070; and

(c) The direct and indirect costs incurred in the administration of the fund as authorized by subsection (2) of this section.

(2) If the funds on deposit in the veterans' assistance fund, less outstanding warrants, on the first Tuesday in September exceed the lesser of the expected yield of one and one-eighth cents per thousand dollars of assessed value

against the taxable property of the county or the expected yield of a levy determined as set forth in subsection (5) of this section, the county legislative authority may levy a lesser amount than would otherwise be required under subsection (1) or (5) of this section.

(3) The direct and indirect costs incurred in the administration of the veterans' assistance fund must be computed by the county auditor, or the chief financial officer in a county operating under a charter, not less than annually. Following the computation of these direct and indirect costs, an amount equal to these costs may then be transferred from the veterans' assistance fund to the county current expense fund.

(4) The amount of a levy allocated to the purposes specified in this section may be reduced in the same proportion as the regular property tax levy of the county is reduced by chapter 84.55 RCW.

(5)(a) The amount of a levy allocated to the purposes specified in this section may be modified from the amount required by subsection (1) of this section as follows:

(i) If the certified levy is reduced from the preceding year's certified levy, the amount of the levy allocated to the purposes specified in this section may be reduced by no more than the same percentage as the certified levy is reduced from the preceding year's certified levy;

(ii) If the certified levy is increased from the preceding year's certified levy, the amount of the levy allocated to the purposes specified in this section may not be less than the base allocation increased by the same percentage as the certified levy is increased from the preceding year's certified levy. However, the amount of the levy allocated to the purposes specified in this section does not have to be increased under this subsection (5)(a)(ii) for the portion of a certified levy increase resulting from a voter-approved increase under RCW 84.55.050 that is dedicated to a specific purpose; or

(iii) If the certified levy is unchanged from the preceding year's certified levy, the amount of the levy allocated to the purposes specified in this section must be equal to or greater than the base allocation.

(b) For purposes of this subsection, the following definitions apply:

(i) "Base allocation" means the most recent allocation that was not reduced under subsection (2) of this section.

(ii) "Certified levy" means the property tax levy for general county purposes certified to the county assessor as required by RCW 84.52.070, excluding any amounts certified under chapters 84.69 and 84.68 RCW.

(6) Subsections (2), (4), and (5) of this section do not preclude a county from increasing the levy amount in subsection (1) of this section to an amount that is greater than the change in the regular county levy. [2013 c 123 § 2; 2005 c 250 § 6; 1985 c 181 § 2; 1983 c 295 § 6; 1980 c 155 § 6; 1973 2nd ex.s. c 4 § 5; 1973 1st ex.s. c 195 § 86; 1970 ex.s. c 47 § 9; 1969 c 57 § 1; 1945 c 144 § 7; 1921 c 41 § 7; 1919 c 83 § 7; 1907 c 64 § 7; 1893 c 37 § 2; 1888 p 210 § 7; Rem. Supp. 1945 § 10742. Formerly RCW 73.08.020.]

Intent—2005 c 250: See note following RCW 73.08.005.

Additional notes found at www.leg.wa.gov

Chapter 73.16 RCW EMPLOYMENT AND REEMPLOYMENT

Sections

73.16.061 Enforcement of provisions.

73.16.061 Enforcement of provisions. (1) In case any employer, his or her successor or successors fails or refuses to comply with the provisions of RCW 73.16.031 through 73.16.061 and 73.16.090, the attorney general shall bring action in the superior court in the county in which the employer is located or does business to obtain an order to specifically require such employer to comply with the provisions of this chapter, and, as an incident thereto, to compensate such person for any loss of wages or benefits suffered by reason of such employer's unlawful act if:

(a) The service in question was state duty not covered by the uniformed services employment and reemployment rights act of 1994, P.L. 103-353 (38 U.S.C. Sec. 4301 et seq.); and

(b) The employer support for guard and reserve ombuds, or his or her designee, has inquired in the matter and has been unable to resolve it.

(2) If the conditions in subsection (1)(a) and (b) of this section are met, any such person who does not desire the services of the attorney general may, by private counsel, bring such action. [2013 c 23 § 190; 2001 c 133 § 10; 1953 c 212 § 6.]

Additional notes found at www.leg.wa.gov

Chapter 73.20 RCW ACKNOWLEDGMENTS AND POWERS OF ATTORNEY

Sections

73.20.010 Acknowledgments.

73.20.010 Acknowledgments. In addition to the acknowledgment of instruments and the performance of other notarial acts in the manner and form and as otherwise authorized by law, instruments may be acknowledged, documents attested, oaths and affirmations administered, depositions and affidavits executed, and other notarial acts performed, before or by any commissioned officer in active service of the armed forces of the United States with the rank of second lieutenant or higher in the army or marine corps, or with the rank of ensign or higher in the navy or coast guard, or with equivalent rank in any other component part of the armed forces of the United States, by any person who either:

(1) Is a member of the armed forces of the United States;

or

(2) Is serving as a merchant seaman or seawoman outside the limits of the United States included within the forty-eight states and the District of Columbia; or

(3) Is outside said limits by permission, assignment, or direction of any department or official of the United States government, in connection with any activity pertaining to the prosecution of any war in which the United States is then engaged.

Such acknowledgment of instruments, attestation of documents, administration of oaths and affirmations, execution of depositions and affidavits, and performance of other notar-

ial acts, heretofore or hereafter made or taken, are hereby declared legal, valid, and binding, and instruments and documents so acknowledged, authenticated, or sworn to shall be admissible in evidence and eligible to record in this state under the same circumstances, and with the same force and effect as if such acknowledgment, attestation, oath, affirmation, deposition, affidavit, or other notarial act, had been made or taken within this state before or by a duly qualified officer or official as otherwise provided by law.

In the taking of acknowledgments and the performing of other notarial acts requiring certification, a certificate endorsed upon or attached to the instrument or documents, which shows the date of the notarial act and which states, in substance, that the person appearing before the officer acknowledged the instrument as his or her act or made or signed the instrument or document under oath, shall be sufficient for all intents and purposes. The instrument or document shall not be rendered invalid by the failure to state the place of execution or acknowledgment.

If the signature, rank, and branch of service or subdivision thereof, of any such commissioned officer appear upon such instrument or document or certificate, no further proof of the authority of such officer so to act shall be required and such action by such commissioned officer shall be prima facie evidence that the person making such oath or acknowledgment is within the purview of this section. [2013 c 23 § 191; 1945 c 271 § 1; Rem. Supp. 1945 § 10758-13a. See also, 1943 c 47. Formerly RCW 73.20.010 through 73.20.040.]

Acknowledgments, generally: Chapter 64.08 RCW.

Title 74

PUBLIC ASSISTANCE

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Chapter 74.04 RCW

GENERAL PROVISIONS—ADMINISTRATION

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- 74.04.011 Secretary's authority—Personnel.
- 74.04.014 Office of fraud and accountability—Authority—Confidentiality.
- 74.04.080 County administrator—Personnel—Bond.
- 74.04.350 Federal surplus commodities—Not to be construed as public assistance, eligibility not affected.
- 74.04.385 Unlawful practices relating to surplus commodities—Penalty.
- 74.04.480 Educational leaves of absence for personnel.
- 74.04.535 Food stamp employment and training program.
- 74.04.805 Essential needs and housing support eligibility. (*Effective January 1, 2014.*)

74.04.011 Secretary's authority—Personnel. The secretary of social and health services shall be the administrative head and appointing authority of the department of social and health services and he or she shall have the power to and shall employ such assistants and personnel as may be necessary for the general administration of the department: PROVIDED, That such employment is in accordance with the rules and regulations of the state merit system. The secretary shall through and by means of his or her assistants and personnel exercise such powers and perform such duties as may be prescribed by the public assistance laws of this state.

The authority vested in the secretary as appointing authority may be delegated by the secretary or his or her designee to any suitable employee of the department. [2013 c 23 § 192; 1979 c 141 § 295; 1969 ex.s. c 173 § 4; 1959 c 26 § 74.04.011. Prior: 1953 c 174 § 3. (i) 1937 c 111 § 3; RRS § 10785-2. (ii) 1937 c 111 § 5; RRS § 10785-4.]

State civil service law: Chapter 41.06 RCW.

74.04.014 Office of fraud and accountability—Authority—Confidentiality. (1) In carrying out the provisions of this chapter, the office of fraud and accountability shall have prompt access to all individuals, records, electronic data, reports, audits, reviews, documents, and other materials available to the department of revenue, department of labor and industries, department of early learning, employment security department, department of licensing, and any other government entity that can be used to help facilitate investigations of fraud or abuse as determined necessary by the director of the office of fraud and accountability.

(2) The investigator shall have access to all original child care records maintained by licensed and unlicensed child care providers with the consent of the provider or with a court order or valid search warrant.

(3) Information gathered by the department, the office, or the fraud ombuds shall be safeguarded and remain confidential as required by applicable state or federal law. Whenever information or assistance requested under subsection (1) or (2) of this section is, in the judgment of the director, unreasonably refused or not provided, the director of the office of fraud and accountability must report the circumstances to the secretary immediately. [2013 c 23 § 193; 2012 c 253 § 4; 2011 1st sp.s. c 42 § 24.]

Findings—Purpose—2012 c 253: See note following RCW 74.08.580.

Findings—Intent—Effective date—2011 1st sp.s. c 42: See notes following RCW 74.08A.260.

Finding—2011 1st sp.s. c 42: See note following RCW 74.04.004.

74.04.080 County administrator—Personnel—Bond.

The county administrator shall have the power to, and shall, employ such personnel as may be necessary to carry out the provisions of this title, which employment shall be in accordance with the rules and regulations of the state merit system, and in accordance with personnel and administrative standards established by the department. The county administrator before qualifying shall furnish a surety bond in such amount as may be fixed by the secretary, but not less than five thousand dollars, conditioned that the administrator will faithfully account for all money and property that may come into his or her possession or control. The cost of such bond shall be an administrative expense and shall be paid by the department. [2013 c 23 § 194; 1979 c 141 § 300; 1959 c 26 § 74.04.080. Prior: 1953 c 174 § 14; 1941 c 128 § 2, part; 1939 c 216 § 4, part; Code 1881 §§ 2680, 2696; 1854 p 422 § 19; 1854 p 395 § 1; Rem. Supp. 1941 § 10007-104a, part.]

74.04.350 Federal surplus commodities—Not to be construed as public assistance, eligibility not affected.

Federal surplus commodities shall not be deemed or construed to be public assistance and care or a substitute, in whole or in part, therefor; and the receipt of such commodities by eligible families and individuals shall not subject them, their legally responsible relatives, their property, or their estates to any demand, claim, or liability on account thereof. A person's need or eligibility for public assistance or care shall not be affected by his or her receipt of federal surplus commodities. [2013 c 23 § 195; 1959 c 26 § 74.04.350. Prior: 1957 c 187 § 3.]

74.04.385 Unlawful practices relating to surplus commodities—Penalty.

It shall be unlawful for any recipient of federal or other surplus commodities received under RCW 74.04.380 to sell, transfer, barter, or otherwise dispose of such commodities to any other person. It shall be unlawful for any person to receive, possess, or use any surplus commodities received under RCW 74.04.380 unless he or she has been certified as eligible to receive, possess, and use such commodities by the state department of social and health services.

Violation of the provisions of RCW 74.04.380 or this section shall constitute a misdemeanor and upon conviction thereof shall be punished by imprisonment in the county jail for not more than six months or by a fine of not more than five hundred dollars or both. [2013 c 23 § 196; 1979 c 141 § 314; 1963 c 219 § 2.]

74.04.480 Educational leaves of absence for personnel.

The state department of social and health services is hereby authorized to promulgate rules and regulations governing the granting to any employee of the department, other than a provisional employee, a leave of absence for educational purposes to attend an institution of learning for the purpose of improving his or her skill, knowledge, and technique

in the administration of social welfare programs which will benefit the department.

Pursuant to the rules and regulations of the department, employees of the department who are engaged in the administration of public welfare programs may (1) attend courses of training provided by institutions of higher learning; (2) attend special courses of study or seminars of short duration conducted by experts on a temporary basis for the purpose; (3) accept fellowships or traineeships at institutions of higher learning with such stipends as are permitted by regulations of the federal government.

The department of social and health services is hereby authorized to accept any funds from the federal government or any other public or private agency made available for training purposes for public assistance personnel and to conform with such requirements as are necessary in order to receive such funds. [2013 c 23 § 197; 1979 c 141 § 321; 1963 c 228 § 15.]

74.04.535 Food stamp employment and training program.

(1) The department, the employment security department, and the state board for community and technical colleges shall work in partnership to expand the food stamp employment and training program. Subject to federal approval, the program shall be expanded to three additional community colleges or other community-based locations in 2010 and shall expand capacity at participating colleges. To the greatest extent possible, expansion shall be geographically diverse. The agencies shall:

(a) Identify and seek out partnerships with community-based organizations that can provide support services and case management to participants through performance-based contracts in the food stamp employment and training program, and do not replace the positions or work of department employees;

(b) Identify eligible nonfederal matching funds to draw down the federal match for food stamp employment and training services. Matching funds may include: Local funds, foundation grants, employer-paid costs, and the state allocation to community and technical colleges.

(2) Employment and training funds may be allocated for: Educational programs to develop skills for employability, vocational education, English as a second language courses, adult basic education, courses to assist persons to obtain a high school equivalency certificate as described in RCW 28B.50.536, remedial programs, job readiness training, case management, intake, assessment, evaluation, and barrier removal and support services such as tuition, books, child care, transportation, housing, and counseling services.

(3) The department shall annually track and report outcomes including those achieved through performance-based contracts as follows: Federal funding received, the number of participants served, achievement points, the number of participants who enter employment during or after participation in the food stamp employment and training program, and the average wage of jobs attained. The report shall be submitted to the governor and appropriate committees of the legislature on November 1st of each year, beginning in 2010.

(4) For purposes of this section, "food stamp employment and training program" refers to a program established and administered through the employment security depart-

ment and the department of social and health services. [2013 c 39 § 26; 2010 1st sp.s. c 8 § 3.]

Implementation—2010 1st sp.s. c 8 §§ 1-10 and 29: See note following RCW 74.04.225.

Findings—Intent—Short title—Effective date—2010 1st sp.s. c 8: See notes following RCW 74.04.225.

74.04.805 Essential needs and housing support eligibility. (*Effective January 1, 2014.*) (1) The department is responsible for determining eligibility for referral for essential needs and housing support under RCW 43.185C.220. Persons eligible are persons who:

(a) Are incapacitated from gainful employment by reason of bodily or mental infirmity that will likely continue for a minimum of ninety days. The standard for incapacity in this subsection, as evidenced by the ninety-day duration standard, is not intended to be as stringent as federal supplemental security income disability standards;

(b) Are citizens or aliens lawfully admitted for permanent residence or otherwise residing in the United States under color of law;

(c) Have furnished the department their social security number. If the social security number cannot be furnished because it has not been issued or is not known, an application for a number must be made prior to authorization of benefits, and the social security number must be provided to the department upon receipt;

(d) Have countable income as described in RCW 74.04.005 at or below four hundred twenty-eight dollars for a married couple or at or below three hundred thirty-nine dollars for a single individual;

(e) Do not have countable resources in excess of those described in RCW 74.04.005; and

(f) Are not eligible for:

(i) The aged, blind, or disabled assistance program;

(ii) The pregnant women assistance program; or

(iii) Federal aid assistance, other than basic food benefits transferred electronically and medical assistance.

(2) The following persons are not eligible for a referral for essential needs and housing support:

(a) Persons who are unemployable due primarily to alcohol or drug addiction, except as provided in subsection (3) of this subsection. These persons must be referred to appropriate assessment, treatment, shelter, or supplemental security income referral services as authorized under chapter 74.50 RCW. Referrals must be made at the time of application or at the time of eligibility review. This subsection may not be construed to prohibit the department from making a referral for essential needs and housing report for persons who have a substance abuse addiction who are incapacitated due to other physical or mental conditions that meet the eligibility criteria for a referral for essential needs and housing support;

(b) Persons who refuse or fail to cooperate in obtaining federal aid assistance, without good cause;

(c) Persons who refuse or fail without good cause to participate in drug or alcohol treatment if an assessment by a certified chemical dependency counselor indicates a need for such treatment. Good cause must be found to exist when a person's physical or mental condition, as determined by the department, prevents the person from participating in drug or alcohol dependency treatment, when needed outpatient drug

or alcohol treatment is not available to the person in the county of his or her residence or when needed inpatient treatment is not available in a location that is reasonably accessible for the person; and

(d) Persons who are fleeing to avoid prosecution of, or to avoid custody or confinement for conviction of, a felony, or an attempt to commit a felony, under the laws of the state of Washington or the place from which the person flees; or who are violating a condition of probation, community supervision, or parole imposed under federal or state law for a felony or gross misdemeanor conviction.

(3) For purposes of determining whether a person is incapacitated from gainful employment under subsection (1) of this section:

(a) The department shall adopt by rule medical criteria for incapacity determinations to ensure that eligibility decisions are consistent with statutory requirements and are based on clear, objective medical information; and

(b) The process implementing the medical criteria must involve consideration of opinions of the treating or consulting physicians or health care professionals regarding incapacity, and any eligibility decision which rejects uncontroverted medical opinion must set forth clear and convincing reasons for doing so.

(4) For purposes of reviewing a person's continuing eligibility and in order to remain eligible for the program, persons who have been found to have an incapacity from gainful employment must demonstrate that there has been no material improvement in their medical or mental health condition. The department may discontinue benefits when there was specific error in the prior determination that found the person eligible by reason of incapacitation.

(5) The department must review the cases of all persons who have received benefits under the essential needs and housing support program for twelve consecutive months, and at least annually after the first review, to determine whether they are eligible for the aged, blind, or disabled assistance program. [2013 2nd sp.s. c 10 § 3.]

Effective date—2013 2nd sp.s. c 10: See note following RCW 74.62.030.

Chapter 74.08 RCW

ELIGIBILITY GENERALLY— STANDARDS OF ASSISTANCE

Sections

74.08.050	Applications for grants.
74.08.280	Payments to persons incapable of self-care—Protective payee services.
74.08.340	No vested rights conferred.
74.08.370	Old age assistance grants charged against general fund.

74.08.050 Applications for grants. Application for a grant in any category of public assistance shall be made to the county office by the applicant or by another on his or her behalf, and shall be reduced to writing upon standard forms prescribed by the department, and a written acknowledgment of receipt of the application by the department shall be given to each applicant at the time of making application. [2013 c 23 § 198; 1971 ex.s. c 169 § 3; 1959 c 26 § 74.08.050. Prior: 1953 c 174 § 26; 1949 c 6 § 6; Rem. Supp. 1949 § 9998-33f.]

74.08.280 Payments to persons incapable of self-care—Protective payee services. If any person receiving public assistance has demonstrated an inability to care for oneself or for money, the department may direct the payment of the installments of public assistance to any responsible person, social service agency, or corporation or to a legally appointed guardian for his or her benefit. The state may contract with persons, social service agencies, or corporations approved by the department to provide protective payee services for a fixed amount per recipient receiving protective payee services to cover administrative costs. The department may by rule specify a fee to cover administrative costs. Such fee shall not be withheld from a recipient's grant.

If the state requires the appointment of a guardian for this purpose, the department shall pay all costs and reasonable fees as fixed by the court. [2013 c 23 § 199; 1987 c 406 § 10; 1979 c 141 § 328; 1959 c 26 § 74.08.280. Prior: 1953 c 174 § 40; 1937 c 156 § 7; 1935 c 182 § 10; RRS § 9998-10.]

Living situation presumption: RCW 74.12.255, 74.04.0052.

74.08.340 No vested rights conferred. All assistance granted under this title shall be deemed to be granted and to be held subject to the provisions of any amending or repealing act that may hereafter be enacted, and no recipient shall have any claim for compensation, or otherwise, by reason of his or her assistance being affected in any way by such amending or repealing act. There is no legal entitlement to public assistance. [2013 c 23 § 200; 1997 c 58 § 102; 1959 c 26 § 74.08.340. Prior: 1935 c 182 § 21; RRS § 9998-21.]

Additional notes found at www.leg.wa.gov

74.08.370 Old age assistance grants charged against general fund. All old age assistance grants under this title shall be a charge against and payable out of the general fund of the state. Payment thereof shall be by warrant drawn upon vouchers duly prepared and verified by the secretary of the department of social and health services or his or her official representative. [2013 c 23 § 201; 1973 c 106 § 33; 1959 c 26 § 74.08.370. Prior: 1935 c 182 § 24; RRS § 9998-24. FORMER PART OF SECTION: 1935 c 182 § 25; RRS § 9998-25, now codified as RCW 74.08.375.]

Chapter 74.08A RCW

WASHINGTON WORKFIRST TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

Sections

74.08A.250 "Work activity" defined.

74.08A.380 Teen parents—Education requirements.

74.08A.250 "Work activity" defined. Unless the context clearly requires otherwise, as used in this chapter, "work activity" means:

- (1) Unsubsidized paid employment in the private or public sector;
- (2) Subsidized paid employment in the private or public sector, including employment through the state or federal work-study program for a period not to exceed twenty-four months;
- (3) Work experience, including:

- (a) An internship or practicum, that is paid or unpaid and is required to complete a course of vocational training or to obtain a license or certificate in a high-demand occupation, as determined by the employment security department. No internship or practicum shall exceed twelve months; or

- (b) Work associated with the refurbishing of publicly assisted housing, if sufficient paid employment is not available;

- (4) On-the-job training;

- (5) Job search and job readiness assistance;

- (6) Community service programs, including a recipient's voluntary service at a child care or preschool facility licensed under chapter 43.215 RCW or an elementary school in which his or her child is enrolled;

- (7) Vocational educational training, not to exceed twelve months with respect to any individual;

- (8) Job skills training directly related to employment;

- (9) Education directly related to employment, in the case of a recipient who has not received a high school diploma or a high school equivalency certificate as provided in RCW 28B.50.536;

- (10) Satisfactory attendance at secondary school or in a course of study leading to a high school equivalency certificate as provided in RCW 28B.50.536, in the case of a recipient who has not completed secondary school or received such a certificate;

- (11) The provision of child care services to an individual who is participating in a community service program;

- (12) Internships, that shall be paid or unpaid work experience performed by an intern in a business, industry, or government or nongovernmental agency setting;

- (13) Practicums, which include any educational program in which a student is working under the close supervision of a professional in an agency, clinic, or other professional practice setting for purposes of advancing their skills and knowledge;

- (14) Services required by the recipient under RCW 74.08.025(3) and 74.08A.010(4) to become employable;

- (15) Financial literacy activities designed to be effective in assisting a recipient in becoming self-sufficient and financially stable; and

- (16) Parent education services or programs that support development of appropriate parenting skills, life skills, and employment-related competencies. [2013 c 39 § 27; 2011 1st sp.s. c 42 § 8; 2009 c 353 § 6; 2006 c 107 § 2; 2000 c 10 § 1; 1997 c 58 § 311.]

Findings—Intent—Effective date—2011 1st sp.s. c 42: See notes following RCW 74.08A.260.

Finding—2011 1st sp.s. c 42: See note following RCW 74.04.004.

Findings—Intent—2006 c 107: "The legislature finds that for a variety of reasons, many citizens may lack the basic financial knowledge necessary to spend their money wisely, save for the future, and manage money challenges, such as a job loss, financing a college education, or a catastrophic injury. The legislature also finds that financial literacy is an essential element in achieving financial stability and self-sufficiency. The legislature intends to encourage participation in financial literacy training by WorkFirst participants, in order to promote their ability to make financial decisions that will contribute to their long-term financial well-being." [2006 c 107 § 1.]

Effective date—2006 c 107: "This act takes effect January 1, 2007." [2006 c 107 § 4.]

74.08A.380 Teen parents—Education requirements.

All applicants under the age of eighteen years who are approved for assistance and, within one hundred eighty days after the date of federal certification of the Washington temporary assistance for needy families program, all unmarried minor parents or pregnant minor applicants shall, as a condition of receiving benefits, actively progress toward the completion of a high school diploma or a high school equivalency certificate as provided in RCW 28B.50.536. [2013 c 39 § 28; 1997 c 58 § 503.]

Chapter 74.09 RCW MEDICAL CARE

Sections

74.09.010	Definitions. <i>(Effective January 1, 2014.)</i>
74.09.035	Medical care services—Eligibility, standards—Limits. <i>(Effective January 1, 2014.)</i>
74.09.210	Fraudulent practices—Penalties.
74.09.215	Medicaid fraud penalty account.
74.09.230	False statements, fraud—Penalties.
74.09.510	Medical assistance—Eligibility. <i>(Effective January 1, 2014.)</i>
74.09.522	Medical assistance—Agreements with managed health care systems required for services to recipients of temporary assistance for needy families—Principles to be applied in purchasing managed health care—Expiration of subsections.
74.09.5223	Findings—Chronic care management.
74.09.523	PACE program—Definitions—Requirements.
74.09.557	Medical assistance—Complex rehabilitation technology products. <i>(Effective January 1, 2014.)</i>
74.09.605	Incorporation of outcomes/criteria into contracts with managed care organizations.
74.09.611	Hospital quality incentive payments—Noncritical access hospitals.

74.09.010 Definitions. (Effective January 1, 2014.)

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

(1) "Authority" means the Washington state health care authority.

(2) "Children's health program" means the health care services program provided to children under eighteen years of age and in households with incomes at or below the federal poverty level as annually defined by the federal department of health and human services as adjusted for family size, and who are not otherwise eligible for medical assistance or the limited casualty program for the medically needy.

(3) "Chronic care management" means the health care management within a health home of persons identified with, or at high risk for, one or more chronic conditions. Effective chronic care management:

(a) Actively assists patients to acquire self-care skills to improve functioning and health outcomes, and slow the progression of disease or disability;

(b) Employs evidence-based clinical practices;

(c) Coordinates care across health care settings and providers, including tracking referrals;

(d) Provides ready access to behavioral health services that are, to the extent possible, integrated with primary care; and

(e) Uses appropriate community resources to support individual patients and families in managing chronic conditions.

(4) "Chronic condition" means a prolonged condition and includes, but is not limited to:

(a) A mental health condition;

(b) A substance use disorder;

(c) Asthma;

(d) Diabetes;

(e) Heart disease; and

(f) Being overweight, as evidenced by a body mass index over twenty-five.

(5) "County" means the board of county commissioners, county council, county executive, or tribal jurisdiction, or its designee.

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

(7) "Department of health" means the Washington state department of health created pursuant to RCW 43.70.020.

(8) "Director" means the director of the Washington state health care authority.

(9) "Full benefit dual eligible beneficiary" means an individual who, for any month: Has coverage for the month under a medicare prescription drug plan or medicare advantage plan with part D coverage; and is determined eligible by the state for full medicaid benefits for the month under any eligibility category in the state's medicaid plan or a section 1115 demonstration waiver that provides pharmacy benefits.

(10) "Health home" or "primary care health home" means coordinated health care provided by a licensed primary care provider coordinating all medical care services, and a multidisciplinary health care team comprised of clinical and nonclinical staff. The term "coordinating all medical care services" shall not be construed to require prior authorization by a primary care provider in order for a patient to receive treatment for covered services by an optometrist licensed under chapter 18.53 RCW. Primary care health home services shall include those services defined as health home services in 42 U.S.C. Sec. 1396w-4 and, in addition, may include, but are not limited to:

(a) Comprehensive care management including, but not limited to, chronic care treatment and management;

(b) Extended hours of service;

(c) Multiple ways for patients to communicate with the team, including electronically and by phone;

(d) Education of patients on self-care, prevention, and health promotion, including the use of patient decision aids;

(e) Coordinating and assuring smooth transitions and follow-up from inpatient to other settings;

(f) Individual and family support including authorized representatives;

(g) The use of information technology to link services, track tests, generate patient registries, and provide clinical data; and

(h) Ongoing performance reporting and quality improvement.

(11) "Internal management" means the administration of medical assistance, medical care services, the children's health program, and the limited casualty program.

(12) "Limited casualty program" means the medical care program provided to medically needy persons as defined under Title XIX of the federal social security act, and to medically indigent persons who are without income or resources sufficient to secure necessary medical services.

(13) "Medical assistance" means the federal aid medical care program provided to categorically needy persons as defined under Title XIX of the federal social security act.

(14) "Medical care services" means the limited scope of care financed by state funds and provided to persons who are not eligible for medicaid under RCW 74.09.510 and who are eligible for the aged, blind, or disabled assistance program authorized in RCW 74.62.030 or the essential needs and housing support program pursuant to RCW 74.04.805.

(15) "Multidisciplinary health care team" means an interdisciplinary team of health professionals which may include, but is not limited to, medical specialists, nurses, pharmacists, nutritionists, dieticians, social workers, behavioral and mental health providers including substance use disorder prevention and treatment providers, doctors of chiropractic, physical therapists, licensed complementary and alternative medicine practitioners, home care and other long-term care providers, and physicians' assistants.

(16) "Nursing home" means nursing home as defined in RCW 18.51.010.

(17) "Poverty" means the federal poverty level determined annually by the United States department of health and human services, or successor agency.

(18) "Primary care provider" means a general practice physician, family practitioner, internist, pediatrician, osteopath, naturopath, physician assistant, osteopathic physician assistant, and advanced registered nurse practitioner licensed under Title 18 RCW.

(19) "Secretary" means the secretary of social and health services. [2013 2nd sp.s. c 10 § 8. Prior: 2011 1st sp.s. c 15 § 2; 2011 c 316 § 2; prior: 2010 1st sp.s. c 8 § 28; 2007 c 3 § 2; 1990 c 296 § 6; 1987 c 406 § 11; 1981 1st ex.s. c 6 § 18; 1981 c 8 § 17; 1979 c 141 § 333; 1959 c 26 § 74.09.010; prior: 1955 c 273 § 2.]

Effective date—2013 2nd sp.s. c 10: See note following RCW 74.62.030.

Effective date—2011 1st sp.s. c 15: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2011." [2011 1st sp.s. c 15 § 130.]

Findings—Intent—2011 1st sp.s. c 15: "The legislature finds that:

(1) Washington state government must be organized to be efficient, cost-effective, and responsive to its residents;

(2) The cost of state-purchased health care continues to grow at an unsustainable rate, now representing nearly one-third of the state's budget and hindering our ability to invest in other essential services such as education and public safety;

(3) Responsibility for state health care purchasing is currently spread over multiple agencies, but successful interagency collaboration on quality and cost initiatives has helped demonstrate the benefits to the state of centralized health care purchasing;

(4) Consolidating the majority of state health care purchasing into a single state agency will best position the state to work with others, including private sector purchasers, health insurance carriers, health care providers, and consumers to increase the quality and affordability of health care for all state residents;

(5) The development and implementation of uniform state policies for all state-purchased health care is among the purposes for which the health care authority was originally created; and

(6) The state will be best able to take advantage of the opportunities and meet its obligations under the federal affordable care act, including establishment of a health benefit exchange and medicaid expansion, if primary responsibility for doing so rests with a single state agency.

The legislature therefore intends, where appropriate, to consolidate state health care purchasing within the health care authority, positioning the state to use its full purchasing power to get the greatest value for its money, and allowing other agencies to focus even more intently on their core missions." [2011 1st sp.s. c 15 § 1.]

Report—2011 1st sp.s. c 15: "(1) By December 10, 2011, the department of social and health services and the health care authority shall provide

a preliminary report, and by December 1, 2012, provide a final implementation plan, to the governor and the legislature with recommendations regarding the role of the health care authority in the state's purchasing of mental health treatment, substance abuse treatment, and long-term care services, including services for those with developmental disabilities.

(2) The reports shall:

(a) Consider options for effectively coordinating the purchase and delivery of care for people who need long-term care, developmental disabilities, mental health, or chemical dependency services. Options considered may include, but are not limited to, transitioning purchase of these services from the department of social and health services to the health care authority, and strategies for the agencies to collaborate seamlessly while purchasing services separately; and

(b) Address the following components:

(i) Incentives to improve prevention efforts;

(ii) Service delivery approaches, including models for care management and care coordination and benefit design;

(iii) Rules to assure that those requiring long-term care services and supports receive that care in the least restrictive setting appropriate to their needs;

(iv) Systems to measure cost savings;

(v) Mechanisms to measure health outcomes and consumer satisfaction;

(vi) The designation of a single point of entry for financial and functional eligibility determinations for long-term care services; and

(vii) Process for collaboration with local governments.

(3) In developing these recommendations, the agencies shall:

(a) Consult with tribal governments and with interested stakeholders, including consumers, health care and other service providers, health insurance carriers, and local governments; and

(b) Cooperate with the joint select committee on health reform implementation established in House Concurrent Resolution No. 4404 and any of its advisory committees. The agencies shall strongly consider the guidance and input received from these forums in the development of its recommendations.

(4) The agencies shall submit a progress report to the governor and the legislature by November 15, 2013, that provides details on the agencies' progress on purchasing coordination to date." [2011 1st sp.s. c 15 § 116.]

Agency transfer—2011 1st sp.s. c 15: "(1) All powers, duties, and functions of the department of social and health services pertaining to the medical assistance program and the medicaid purchasing administration are transferred to the health care authority to the extent necessary to carry out the purposes of this act. All references to the secretary or the department of social and health services in the Revised Code of Washington shall be construed to mean the director or the health care authority when referring to the functions transferred in this section.

(2)(a) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the department of social and health services pertaining to the powers, functions, and duties transferred shall be delivered to the custody of the health care authority. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the department of social and health services in carrying out the powers, functions, and duties transferred shall be made available to the health care authority. All funds, credits, or other assets held in connection with the powers, functions, and duties transferred shall be assigned to the health care authority.

(b) Any appropriations made to the department of social and health services for carrying out the powers, functions, and duties transferred shall, on July 1, 2011, be transferred and credited to the health care authority.

(c) Whenever any question arises as to the transfer of any personnel, funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the director of financial management shall make a determination as to the proper allocation and certify the same to the state agencies concerned.

(3) All employees of the medicaid purchasing administration at the department of social and health services are transferred to the jurisdiction of the health care authority. All employees classified under chapter 41.06 RCW, the state civil service law, are assigned to the health care authority to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing state civil service.

(4) All rules and all pending business before the department of social and health services pertaining to the powers, functions, and duties transferred shall be continued and acted upon by the health care authority. All existing contracts and obligations shall remain in full force and shall be per-

formed by the health care authority.

(5) The transfer of the powers, duties, functions, and personnel of the department of social and health services shall not affect the validity of any act performed before July 1, 2011.

(6) If apportionments of budgeted funds are required because of the transfers directed by this section, the director of financial management shall certify the apportionments to the agencies affected, the state auditor, and the state treasurer. Each of these shall make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with the certification.

(7) A nonsupervisory medicaid purchasing unit bargaining unit is created at the health care authority. All nonsupervisory civil service employees of the medicaid purchasing administration at the department of social and health services assigned to the health care authority under this section whose positions are within the existing bargaining unit description at the department of social and health services shall become a part of the nonsupervisory medicaid purchasing unit bargaining unit at the health care authority under the provisions of chapter 41.80 RCW. The exclusive bargaining representative of the existing bargaining unit at the department of social and health services is certified as the exclusive bargaining representative of the nonsupervisory medicaid purchasing unit bargaining unit at the health care authority without the necessity of an election.

(8) A supervisory medicaid purchasing unit bargaining unit is created at the health care authority. All supervisory civil service employees of the medicaid purchasing administration at the department of social and health services assigned to the health care authority under this section whose positions are within the existing bargaining unit description at the department of social and health services shall become a part of the supervisory medicaid purchasing unit bargaining unit at the health care authority under the provisions of chapter 41.80 RCW. The exclusive bargaining representative of the existing bargaining unit at the department of social and health services is certified as the exclusive bargaining representative of the supervisory medicaid purchasing unit bargaining unit at the health care authority without the necessity of an election.

(9) The bargaining units of employees created under this section are appropriate units under the provisions of chapter 41.80 RCW. However, nothing contained in this section shall be construed to alter the authority of the public employment relations commission under the provisions of chapter 41.80 RCW to amend or modify the bargaining units.

(10) Positions from the department of social and health services central administration are transferred to the jurisdiction of the health care authority. Employees classified under chapter 41.06 RCW, the state civil service law, are assigned to the health care authority to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing state civil service.

(11) All classified employees of the department of social and health services central administration assigned to the health care authority under subsection (10) of this section whose positions are within an existing bargaining unit description at the health care authority shall become a part of the existing bargaining unit at the health care authority and shall be considered an appropriate inclusion or modification of the existing bargaining unit under the provisions of chapter 41.80 RCW." [2011 1st sp.s. c 15 § 124.]

References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: "The code reviser shall note wherever "administrator" is used or referred to in the Revised Code of Washington as the head of the health care authority that the title of the agency head has been changed to "director." The code reviser shall prepare legislation for the 2012 regular session that changes all statutory references to "administrator" of the health care authority to "director" of the health care authority." [2011 1st sp.s. c 15 § 125.]

Findings—Intent—Short title—Effective date—2010 1st sp.s. c 8: See notes following RCW 74.04.225.

Additional notes found at www.leg.wa.gov

74.09.035 Medical care services—Eligibility, standards—Limits. (Effective January 1, 2014.) (1) To the extent of available funds, medical care services may be provided to:

(a) Persons eligible for the aged, blind, or disabled assistance program authorized in RCW 74.62.030 and who are not eligible for medicaid under RCW 74.09.510; and

(b) Persons eligible for essential needs and housing support under RCW 74.04.805 and who are not eligible for medicaid under RCW 74.09.510.

(2) Enrollment in medical care services may not result in expenditures that exceed the amount that has been appropriated in the operating budget. If it appears that continued enrollment will result in expenditures exceeding the appropriated level for a particular fiscal year, the department may freeze new enrollment and establish a waiting list of persons who may receive benefits only when sufficient funds are available.

(3) Determination of the amount, scope, and duration of medical care services shall be limited to coverage as defined by the authority, except that adult dental, and routine foot care shall not be included unless there is a specific appropriation for these services.

(4) The authority shall enter into performance-based contracts with one or more managed health care systems for the provision of medical care services under this section. The contract must provide for integrated delivery of medical and mental health services.

(5) The authority shall establish standards of assistance and resource and income exemptions, which may include deductibles and co-insurance provisions. In addition, the authority may include a prohibition against the voluntary assignment of property or cash for the purpose of qualifying for assistance.

(6) Eligibility for medical care services shall commence with the date of eligibility for the aged, blind, or disabled assistance program provided under RCW 74.62.030 or the date of eligibility for the essential needs and housing support program under RCW 74.04.805. [2013 2nd sp.s. c 10 § 7. Prior: 2011 1st sp.s. c 36 § 6; 2011 1st sp.s. c 15 § 3; 2011 c 284 § 3; prior: 2010 1st sp.s. c 8 § 29; 2010 c 94 § 22; 1987 c 406 § 12; 1985 c 5 § 1; 1983 1st ex.s. c 43 § 2; 1982 1st ex.s. c 19 § 3; 1981 1st ex.s. c 6 § 19.]

Effective date—2013 2nd sp.s. c 10: See note following RCW 74.62.030.

Effective date—2011 1st sp.s. c 36 § 6: "Section 6 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 22, 2011." [2011 1st sp.s. c 36 § 39.]

Findings—Intent—2011 1st sp.s. c 36: See RCW 74.62.005.

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Implementation—2010 1st sp.s. c 8 §§ 1-10 and 29: See note following RCW 74.04.225.

Findings—Intent—Short title—Effective date—2010 1st sp.s. c 8: See notes following RCW 74.04.225.

Purpose—2010 c 94: See note following RCW 44.04.280.

Additional notes found at www.leg.wa.gov

74.09.210 Fraudulent practices—Penalties. (1) No person, firm, corporation, partnership, association, agency, institution, or other legal entity, but not including an individual public assistance recipient of health care, shall, on behalf of himself or herself or others, obtain or attempt to obtain benefits or payments under this chapter in a greater amount than that to which entitled by means of:

(a) A willful false statement;

(b) By willful misrepresentation, or by concealment of any material facts; or

(c) By other fraudulent scheme or device, including, but not limited to:

(i) Billing for services, drugs, supplies, or equipment that were unfurnished, of lower quality, or a substitution or misrepresentation of items billed; or

(ii) Repeated billing for purportedly covered items, which were not in fact so covered.

(2) Any person or entity knowingly violating any of the provisions of subsection (1) of this section shall be liable for repayment of any excess benefits or payments received, plus interest at the rate and in the manner provided in RCW 43.20B.695. Such person or other entity shall further, in addition to any other penalties provided by law, be subject to civil penalties. The director or the attorney general may assess civil penalties in an amount not to exceed three times the amount of such excess benefits or payments: PROVIDED, That these civil penalties shall not apply to any acts or omissions occurring prior to September 1, 1979. RCW 43.20A.215 governs notice of a civil fine assessed by the director and provides the right to an adjudicative proceeding.

(3) A criminal action need not be brought against a person for that person to be civilly liable under this section.

(4) In all administrative proceedings under this section, service, adjudicative proceedings, and judicial review of such determinations shall be in accordance with chapter 34.05 RCW, the administrative procedure act.

(5) Civil penalties shall be deposited upon their receipt into the medicaid fraud penalty account established in RCW 74.09.215.

(6) The attorney general may contract with private attorneys and local governments in bringing actions under this section as necessary. [2013 c 23 § 202; 2012 c 241 § 102; 2011 1st sp.s. c 15 § 15; 1989 c 175 § 146; 1987 c 283 § 7; 1979 ex.s. c 152 § 2.]

Intent—Finding—2012 c 241: See note following RCW 74.66.010.

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Additional notes found at www.leg.wa.gov

74.09.215 Medicaid fraud penalty account. The medicaid fraud penalty account is created in the state treasury. All receipts from civil penalties collected under RCW 74.09.210, all receipts received under judgments or settlements that originated under a filing under the federal false claims act, and all receipts received under judgments or settlements that originated under the state medicaid fraud false claims act, chapter 74.66 RCW, must be deposited into the account. Moneys in the account may be spent only after appropriation and must be used only for medicaid services, fraud detection and prevention activities, recovery of improper payments, for other medicaid fraud enforcement activities, and the prescription monitoring program established in chapter 70.225 RCW. For the 2013-2015 fiscal biennium, moneys in the account may be spent on inpatient and outpatient rebasing and conversion to the tenth version of the international classification of diseases. For the 2011-2013 fiscal biennium, moneys in the account may be spent on inpatient and outpatient rebasing. [2013 2nd sp.s. c 4 § 1902;

2013 2nd sp.s. c 4 § 997; 2013 2nd sp.s. c 4 § 995; 2013 c 36 § 3; 2012 c 241 § 103.]

Reviser's note: This section was amended by 2013 2nd sp.s. c 4 § 995, 2013 2nd sp.s. c 4 § 997, and by 2013 2nd sp.s. c 4 § 1902, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

Findings—2013 c 36: See note following RCW 70.225.020.

Intent—Finding—2012 c 241: See note following RCW 74.66.010.

74.09.230 False statements, fraud—Penalties. Any person, including any corporation, that

(1) knowingly makes or causes to be made any false statement or representation of a material fact in any application for any payment under any medical care program authorized under this chapter, or

(2) at any time knowingly makes or causes to be made any false statement or representation of a material fact for use in determining rights to such payment, or knowingly falsifies, conceals, or covers up by any trick, scheme, or device a material fact in connection with such application or payment, or

(3) having knowledge of the occurrence of any event affecting (a) the initial or continued right to any payment, or (b) the initial or continued right to any such payment of any other individual in whose behalf he or she has applied for or is receiving such payment, conceals or fails to disclose such event with an intent fraudulently to secure such payment either in a greater amount or quantity than is due or when no such payment is authorized,

shall be guilty of a class C felony: PROVIDED, That the fine, if imposed, shall not be in an amount more than twenty-five thousand dollars, except as authorized by RCW 9A.20.030. [2013 c 23 § 203; 1979 ex.s. c 152 § 4.]

74.09.510 Medical assistance—Eligibility. (Effective January 1, 2014.) Medical assistance may be provided in accordance with eligibility requirements established by the authority, as defined in the social security Title XIX state plan for mandatory categorically needy persons and:

(1) Individuals who would be eligible for cash assistance except for their institutional status;

(2) Individuals who are under twenty-one years of age, who would be eligible for medicaid, but do not qualify as dependent children and who are in (a) foster care, (b) subsidized adoption, (c) a nursing facility or an intermediate care facility for persons with intellectual disabilities, or (d) inpatient psychiatric facilities;

(3) Individuals who:

(a) Are under twenty-one years of age;

(b) On or after July 22, 2007, were in foster care under the legal responsibility of the department or a federally recognized tribe located within the state; and

(c) On their eighteenth birthday, were in foster care under the legal responsibility of the department or a federally recognized tribe located within the state;

(4) Persons who are aged, blind, or disabled who: (a) Receive only a state supplement, or (b) would not be eligible for cash assistance if they were not institutionalized;

(5) Categorically eligible individuals who meet the income and resource requirements of the cash assistance programs;

(6) Individuals who are enrolled in managed health care systems, who have otherwise lost eligibility for medical assistance, but who have not completed a current six-month enrollment in a managed health care system, and who are eligible for federal financial participation under Title XIX of the social security act;

(7) Children and pregnant women allowed by federal statute for whom funding is appropriated;

(8) Working individuals with disabilities authorized under section 1902(a)(10)(A)(ii) of the social security act for whom funding is appropriated;

(9) Other individuals eligible for medical services under RCW 74.09.700 for whom federal financial participation is available under Title XIX of the social security act;

(10) Persons allowed by section 1931 of the social security act for whom funding is appropriated; and

(11) Women who: (a) Are under sixty-five years of age; (b) have been screened for breast and cervical cancer under the national breast and cervical cancer early detection program administered by the department of health or tribal entity and have been identified as needing treatment for breast or cervical cancer; and (c) are not otherwise covered by health insurance. Medical assistance provided under this subsection is limited to the period during which the woman requires treatment for breast or cervical cancer, and is subject to any conditions or limitations specified in the omnibus appropriations act. [2013 2nd sp.s. c 10 § 6. Prior: 2011 1st sp.s. c 36 § 9; 2011 1st sp.s. c 15 § 25; 2010 c 94 § 24; 2007 c 315 § 1; prior: 2001 2nd sp.s. c 15 § 3; 2001 1st sp.s. c 4 § 1; prior: 1997 c 59 § 14; 1997 c 58 § 201; 1991 sp.s. c 8 § 8; 1989 1st ex.s. c 10 § 8; 1989 c 87 § 2; 1985 c 5 § 2; 1981 2nd ex.s. c 3 § 5; 1981 1st ex.s. c 6 § 20; 1981 c 8 § 19; 1971 ex.s. c 169 § 4; 1970 ex.s. c 60 § 1; 1967 ex.s. c 30 § 4.]

Effective date—2013 2nd sp.s. c 10: See note following RCW 74.62.030.

Findings—Intent—2011 1st sp.s. c 36: See RCW 74.62.005.

Effective date—2011 1st sp.s. c 36: See note following RCW 74.62.005.

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Purpose—2010 c 94: See note following RCW 44.04.280.

Conflict with federal requirements—2007 c 315: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [2007 c 315 § 3.]

Findings—Intent—2001 2nd sp.s. c 15: See note following RCW 74.09.540.

Additional notes found at www.leg.wa.gov

74.09.522 Medical assistance—Agreements with managed health care systems required for services to recipients of temporary assistance for needy families—Principles to be applied in purchasing managed health

care—Expiration of subsections. (1) For the purposes of this section:

(a) "Managed health care system" means any health care organization, including health care providers, insurers, health care service contractors, health maintenance organizations, health insuring organizations, or any combination thereof, that provides directly or by contract health care services covered under this chapter and rendered by licensed providers, on a prepaid capitated basis and that meets the requirements of section 1903(m)(1)(A) of Title XIX of the federal social security act or federal demonstration waivers granted under section 1115(a) of Title XI of the federal social security act;

(b) "Nonparticipating provider" means a person, health care provider, practitioner, facility, or entity, acting within their scope of practice, that does not have a written contract to participate in a managed health care system's provider network, but provides health care services to enrollees of programs authorized under this chapter whose health care services are provided by the managed health care system.

(2) The authority shall enter into agreements with managed health care systems to provide health care services to recipients of temporary assistance for needy families under the following conditions:

(a) Agreements shall be made for at least thirty thousand recipients statewide;

(b) Agreements in at least one county shall include enrollment of all recipients of temporary assistance for needy families;

(c) To the extent that this provision is consistent with section 1903(m) of Title XIX of the federal social security act or federal demonstration waivers granted under section 1115(a) of Title XI of the federal social security act, recipients shall have a choice of systems in which to enroll and shall have the right to terminate their enrollment in a system: PROVIDED, That the authority may limit recipient termination of enrollment without cause to the first month of a period of enrollment, which period shall not exceed twelve months: AND PROVIDED FURTHER, That the authority shall not restrict a recipient's right to terminate enrollment in a system for good cause as established by the authority by rule;

(d) To the extent that this provision is consistent with section 1903(m) of Title XIX of the federal social security act, participating managed health care systems shall not enroll a disproportionate number of medical assistance recipients within the total numbers of persons served by the managed health care systems, except as authorized by the authority under federal demonstration waivers granted under section 1115(a) of Title XI of the federal social security act;

(e)(i) In negotiating with managed health care systems the authority shall adopt a uniform procedure to enter into contractual arrangements, to be included in contracts issued or renewed on or after January 1, 2015, including:

(A) Standards regarding the quality of services to be provided;

(B) The financial integrity of the responding system;

(C) Provider reimbursement methods that incentivize chronic care management within health homes, including comprehensive medication management services for patients with multiple chronic conditions consistent with the findings and goals established in RCW 74.09.5223;

(D) Provider reimbursement methods that reward health homes that, by using chronic care management, reduce emergency department and inpatient use;

(E) Promoting provider participation in the program of training and technical assistance regarding care of people with chronic conditions described in RCW 43.70.533, including allocation of funds to support provider participation in the training, unless the managed care system is an integrated health delivery system that has programs in place for chronic care management;

(F) Provider reimbursement methods within the medical billing processes that incentivize pharmacists or other qualified providers licensed in Washington state to provide comprehensive medication management services consistent with the findings and goals established in RCW 74.09.5223; and

(G) Evaluation and reporting on the impact of comprehensive medication management services on patient clinical outcomes and total health care costs, including reductions in emergency department utilization, hospitalization, and drug costs.

(ii)(A) Health home services contracted for under this subsection may be prioritized to enrollees with complex, high cost, or multiple chronic conditions.

(B) Contracts that include the items in (e)(i)(C) through (G) of this subsection must not exceed the rates that would be paid in the absence of these provisions;

(f) The authority shall seek waivers from federal requirements as necessary to implement this chapter;

(g) The authority shall, wherever possible, enter into prepaid capitation contracts that include inpatient care. However, if this is not possible or feasible, the authority may enter into prepaid capitation contracts that do not include inpatient care;

(h) The authority shall define those circumstances under which a managed health care system is responsible for out-of-plan services and assure that recipients shall not be charged for such services;

(i) Nothing in this section prevents the authority from entering into similar agreements for other groups of people eligible to receive services under this chapter; and

(j) The authority must consult with the federal center for medicare and medicaid innovation and seek funding opportunities to support health homes.

(3) The authority shall ensure that publicly supported community health centers and providers in rural areas, who show serious intent and apparent capability to participate as managed health care systems are seriously considered as contractors. The authority shall coordinate its managed care activities with activities under chapter 70.47 RCW.

(4) The authority shall work jointly with the state of Oregon and other states in this geographical region in order to develop recommendations to be presented to the appropriate federal agencies and the United States congress for improving health care of the poor, while controlling related costs.

(5) The legislature finds that competition in the managed health care marketplace is enhanced, in the long term, by the existence of a large number of managed health care system options for medicaid clients. In a managed care delivery system, whose goal is to focus on prevention, primary care, and improved enrollee health status, continuity in care relationships is of substantial importance, and disruption to clients

and health care providers should be minimized. To help ensure these goals are met, the following principles shall guide the authority in its healthy options managed health care purchasing efforts:

(a) All managed health care systems should have an opportunity to contract with the authority to the extent that minimum contracting requirements defined by the authority are met, at payment rates that enable the authority to operate as far below appropriated spending levels as possible, consistent with the principles established in this section.

(b) Managed health care systems should compete for the award of contracts and assignment of medicaid beneficiaries who do not voluntarily select a contracting system, based upon:

(i) Demonstrated commitment to or experience in serving low-income populations;

(ii) Quality of services provided to enrollees;

(iii) Accessibility, including appropriate utilization, of services offered to enrollees;

(iv) Demonstrated capability to perform contracted services, including ability to supply an adequate provider network;

(v) Payment rates; and

(vi) The ability to meet other specifically defined contract requirements established by the authority, including consideration of past and current performance and participation in other state or federal health programs as a contractor.

(c) Consideration should be given to using multiple year contracting periods.

(d) Quality, accessibility, and demonstrated commitment to serving low-income populations shall be given significant weight in the contracting, evaluation, and assignment process.

(e) All contractors that are regulated health carriers must meet state minimum net worth requirements as defined in applicable state laws. The authority shall adopt rules establishing the minimum net worth requirements for contractors that are not regulated health carriers. This subsection does not limit the authority of the Washington state health care authority to take action under a contract upon finding that a contractor's financial status seriously jeopardizes the contractor's ability to meet its contract obligations.

(f) Procedures for resolution of disputes between the authority and contract bidders or the authority and contracting carriers related to the award of, or failure to award, a managed care contract must be clearly set out in the procurement document.

(6) The authority may apply the principles set forth in subsection (5) of this section to its managed health care purchasing efforts on behalf of clients receiving supplemental security income benefits to the extent appropriate.

(7) A managed health care system shall pay a nonparticipating provider that provides a service covered under this chapter to the system's enrollee no more than the lowest amount paid for that service under the managed health care system's contracts with similar providers in the state.

(8) For services covered under this chapter to medical assistance or medical care services enrollees and provided on or after August 24, 2011, nonparticipating providers must accept as payment in full the amount paid by the managed health care system under subsection (7) of this section in

addition to any deductible, coinsurance, or copayment that is due from the enrollee for the service provided. An enrollee is not liable to any nonparticipating provider for covered services, except for amounts due for any deductible, coinsurance, or copayment under the terms and conditions set forth in the managed health care system contract to provide services under this section.

(9) Pursuant to federal managed care access standards, 42 C.F.R. Sec. 438, managed health care systems must maintain a network of appropriate providers that is supported by written agreements sufficient to provide adequate access to all services covered under the contract with the authority, including hospital-based physician services. The authority will monitor and periodically report on the proportion of services provided by contracted providers and nonparticipating providers, by county, for each managed health care system to ensure that managed health care systems are meeting network adequacy requirements. No later than January 1st of each year, the authority will review and report its findings to the appropriate policy and fiscal committees of the legislature for the preceding state fiscal year.

(10) Payments under RCW 74.60.130 are exempt from this section.

(11) Subsections (7) through (9) of this section expire July 1, 2016. [2013 2nd sp.s. c 17 § 13; 2013 c 261 § 2. Prior: 2011 1st sp.s. c 15 § 29; 2011 1st sp.s. c 9 § 2; 2011 c 316 § 4; prior: 1997 c 59 § 15; 1997 c 34 § 1; 1989 c 260 § 2; 1987 1st ex.s. c 5 § 21; 1986 c 303 § 2.]

Effective date—2013 2nd sp.s. c 17: See note following RCW 74.60.005.

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Findings—Intent—2011 1st sp.s. c 9: See note following RCW 70.47.020.

Legislative findings—Intent—1986 c 303: "(1) The legislature finds that:

- (a) Good health care for indigent persons is of importance to the state;
- (b) To ensure the availability of a good level of health care, efforts must be made to encourage cost consciousness on the part of providers and consumers, while maintaining medical assistance recipients within the mainstream of health care delivery;
- (c) Managed health care systems have been found to be effective in controlling costs while providing good health care services;
- (d) By enrolling medical assistance recipients within managed health care systems, the state's goal is to ensure that medical assistance recipients receive at least the same quality of care they currently receive.

(2) It is the intent of the legislature to develop and implement new strategies that promote the use of managed health care systems for medical assistance recipients by establishing prepaid capitated programs for both inpatient and outpatient services." [1986 c 303 § 1.]

Additional notes found at www.leg.wa.gov

74.09.5223 Findings—Chronic care management.

The legislature finds that chronic care management, including comprehensive medication management services, provided by licensed pharmacists and qualified providers is a critical component of a collaborative, multidisciplinary, inter-professional approach to the treatment of chronic diseases for targeted individuals, to improve the quality of care and reduce overall cost in the treatment of such diseases. [2013 c 261 § 1.]

[2013 RCW Supp—page 842]

74.09.523 PACE program—Definitions—Requirements. (1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "PACE" means the program of all-inclusive care for the elderly, a managed care medicare/medicaid program authorized under sections 1894, 1905(a), and 1934 of the social security act and administered by the department.

(b) "PACE program agreement" means an agreement between a PACE organization, the health care financing administration, and the department.

(2) A PACE program may operate in the state only in accordance with a PACE program agreement with the department.

(3) A PACE program shall at the time of entering into the initial PACE program agreement, and at each renewal thereof, demonstrate cash reserves to cover expenses in the event of insolvency.

(a) The cash reserves at a minimum shall equal the sum of:

- (i) One month's total capitation revenue; and
- (ii) One month's average payment to subcontractors.

(b) The program may demonstrate cash reserves to cover expenses of insolvency with one or more of the following: Reasonable and sufficient net worth, insolvency insurance, or parental guarantees.

(4) A PACE program must provide full disclosure regarding the terms of enrollment and the option to disenroll at any time to all persons who seek to participate or who are participants in the program.

(5) The department must establish rules to authorize long-term care clients enrolled in a PACE program to elect to continue their enrollment in a PACE program regardless of improved status related to functional criteria for nursing facility level of care, consistent with 42 C.F.R. Sec. 460.160(b) (2013).

(6) The department must develop and implement a coordinated plan to provide education about PACE program site operations under this section. The plan must include:

(a) A strategy to assure that case managers and other staff with responsibilities related to eligibility determinations discuss the option and potential benefits of participating in a PACE program with all eligible long-term care clients;

(b) Requirements that all clients eligible for placement in the community options program entry system waiver program that are age fifty-five or over and reside in a PACE service area be referred to the PACE provider for evaluation. The department's plan must assure that referrals are conducted in a manner that is consistent with federal requirements of Title XIX of the federal social security act; and

(c) Requirements for additional and ongoing training for case managers and other staff with responsibilities related to eligibility determinations in those counties in which a PACE program is operating. The training must include instruction in recognizing the benefits of continued enrollment in a PACE program for those clients who have experienced improved status related to functional criteria for nursing facility level of care.

(7) The department must identify a private entity that operates PACE program sites in Washington to provide the training required under subsection (6) of this section at no cost to the state. [2013 c 258 § 1; 2001 c 191 § 2.]

Finding—2001 c 191: "The legislature finds that PACE programs provide essential care to the frail elderly in the state of Washington. PACE serves to enhance the quality of life and autonomy for frail, older adults, maximize the dignity of and respect for older adults, enable frail and older adults to live in their homes and their community as long as medically possible, and preserve and support the older adult's family unit." [2001 c 191 § 1.]

Additional notes found at www.leg.wa.gov

74.09.557 Medical assistance—Complex rehabilitation technology products. (Effective January 1, 2014.) (1)

The authority shall establish a separate recognition for individually configured, complex rehabilitation technology products and services for complex needs patients with the medical assistance program. This separate recognition shall:

(a) Establish a budget and services category separate from other categories, such as durable medical equipment and supplies;

(b) Take into consideration the customized nature of complex rehabilitation technology and the broad range of services necessary to meet the unique medical and functional needs of people with complex medical needs; and

(c) Establish standards for the purchase of complex rehabilitation technology exclusively from qualified complex rehabilitation technology suppliers.

(2) The authority shall require complex needs patients receiving complex rehabilitation technology to be evaluated by:

(a) A licensed health care provider who performs specialty evaluations within his or her scope of practice, including a physical therapist licensed under chapter 18.74 RCW and an occupational therapist licensed under chapter 18.59 RCW, and has no financial relationship with the qualified complex rehabilitation technology supplier; and

(b) A qualified complex rehabilitation technology professional, as identified in subsection (3)(d)(iii) of this section.

(3) As used in this section:

(a) "Complex needs patient" means an individual with a diagnosis or medical condition that results in significant physical or functional needs and capacities. "Complex needs patient" does not negate the requirement that an individual meet medical necessity requirements under authority rules to qualify for receiving a complex rehabilitation product.

(b) "Complex rehabilitation technology" means wheelchairs and seating systems classified as durable medical equipment within the medicare program as of January 1, 2013, that:

(i) Are individually configured for individuals to meet their specific and unique medical, physical, and functional needs and capacities for basic activities of daily living and instrumental activities of daily living identified as medically necessary to prevent hospitalization or institutionalization of a complex needs patient;

(ii) Are primarily used to serve a medical purpose and generally not useful to a person in the absence of an illness or injury; and

(iii) Require certain services to allow for appropriate design, configuration, and use of such item, including patient evaluation and equipment fitting and configuration.

(c) "Individually configured" means a device has a combination of features, adjustments, or modifications specific to a complex needs patient that a qualified complex rehabilitation technology supplier provides by measuring, fitting, pro-

gramming, adjusting, or adapting the device as appropriate so that the device is consistent with an assessment or evaluation of the complex needs patient by a health care professional and consistent with the complex needs patient's medical condition, physical and functional needs and capacities, body size, period of need, and intended use.

(d) "Qualified complex rehabilitation technology supplier" means a company or entity that:

(i) Is accredited by a recognized accrediting organization as a supplier of complex rehabilitation technology;

(ii) Meets the supplier and quality standards established for durable medical equipment suppliers under the medicare program;

(iii) For each site that it operates, employs at least one complex rehabilitation technology professional, who has been certified by the rehabilitation engineering and assistive technology society of North America as an assistive technology professional, to analyze the needs and capacities of complex needs patients, assist in selecting appropriate covered complex rehabilitation technology items for such needs and capacities, and provide training in the use of the selected covered complex rehabilitation technology items;

(iv) Has the complex rehabilitation technology professional physically present for the evaluation and determination of the appropriate individually configured complex rehabilitation technologies for the complex needs patient;

(v) Provides service and repairs by qualified technicians for all complex rehabilitation technology products it sells; and

(vi) Provides written information to the complex needs patient at the time of delivery about how the individual may receive service and repair. [2013 c 178 § 2.]

Intent—2013 c 178: "The legislature intends to:

(1) Protect access for complex needs patients to important technology and supporting services;

(2) Establish and improve safeguards relating to the delivery and provision of medically necessary complex rehabilitation technology; and

(3) Provide supports for complex needs patients to stay in the home or community setting, prevent institutionalization, and prevent hospitalizations and other costly secondary complications." [2013 c 178 § 1.]

Effective date—2013 c 178: "This act takes effect January 1, 2014." [2013 c 178 § 3.]

74.09.605 Incorporation of outcomes/criteria into contracts with managed care organizations.

The authority shall incorporate the expected outcomes and criteria to measure the performance of service coordination organizations as provided in chapter 70.320 RCW into contracts with managed care organizations that provide services to clients under this chapter. [2013 c 320 § 7.]

74.09.611 Hospital quality incentive payments—Noncritical access hospitals.

(1) If sufficient funds are made available as provided in subsection (2) of this section the authority, in collaboration with the Washington state hospital association, shall design a system of hospital quality incentive payments for noncritical access hospitals. The system must be based upon the following principles:

(a) Evidence-based treatment and processes must be used to improve health care outcomes for hospital patients;

(b) Effective purchasing strategies to improve the quality of health care services should involve the use of common

quality improvement measures by public and private health care purchasers, while recognizing that some measures may not be appropriate for application to specialty pediatric, psychiatric, or rehabilitation hospitals;

(c) Quality measures chosen for the system should be consistent with the standards that have been developed by national quality improvement organizations, such as the national quality forum, the federal centers for medicare and medicaid services, or the federal agency for healthcare research and quality. New reporting burdens to hospitals should be minimized by giving priority to measures hospitals are currently required to report to governmental agencies, such as the hospital compare measures collected by the federal centers for medicare and medicaid services;

(d) Benchmarks for each quality improvement measure should be set at levels that are feasible for hospitals to achieve, yet represent real improvements in quality and performance for a majority of hospitals in Washington state; and

(e) Hospital performance and incentive payments should be designed in a manner such that all noncritical access hospitals are able to receive the incentive payments if performance is at or above the benchmark score set in the system established under this section.

(2) If hospital safety net assessment funds under RCW 74.60.020 are made available, such funds must be used to support an additional one percent increase in inpatient hospital rates for noncritical access hospitals that:

(a) Meet the quality incentive benchmarks established under this section; and

(b) Participate in Washington state hospital association collaboratives related to the benchmarks in order to improve care and promote sharing of best practices with other hospitals.

(3) Funds directed from any other lawful source may also be used to support the purposes of this section. [2013 2nd sp.s. c 17 § 18.]

Effective date—2013 2nd sp.s. c 17: See note following RCW 74.60.005.

Chapter 74.12 RCW

TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

(Formerly: Aid to families with dependent children)

Sections

74.12.010	Definitions.
74.12.035	Additional eligibility requirements—Students—Exceptions.
74.12.250	Payment of grant to another—Limited guardianship.

74.12.010 Definitions. For the purposes of the administration of temporary assistance for needy families, the term "dependent child" means any child in need under the age of eighteen years who is living with a relative as specified under federal temporary assistance for needy families program requirements, in a place of residence maintained by one or more of such relatives as his or her or their homes. The term a "dependent child" shall, notwithstanding the foregoing, also include a child who would meet such requirements except for his or her removal from the home of a relative specified above as a result of a judicial determination that continuation therein would be contrary to the welfare of such child, for whose placement and care the state department of social and health services or the county office is responsible, and who

has been placed in a licensed or approved child care institution or foster home as a result of such determination and who: (1) Was receiving an aid to families with dependent children grant for the month in which court proceedings leading to such determination were initiated; or (2) would have received aid to families with dependent children for such month if application had been made therefor; or (3) in the case of a child who had been living with a specified relative within six months prior to the month in which such proceedings were initiated, would have received aid to families with dependent children for such month if in such month he or she had been living with such a relative and application had been made therefor, as authorized by the social security act.

"Temporary assistance for needy families" means money payments, services, and remedial care with respect to a dependent child or dependent children and the needy parent or relative with whom the child lives. [2013 c 23 § 204; 1999 c 120 § 1; 1997 c 59 § 16; 1992 c 136 § 2; 1983 1st ex.s. c 41 § 40; 1981 1st ex.s. c 6 § 23; 1981 c 8 § 21; 1979 c 141 § 350; 1973 2nd ex.s. c 31 § 1; 1969 ex.s. c 173 § 13; 1965 ex.s. c 37 § 1; 1963 c 228 § 18; 1961 c 265 § 1; 1959 c 26 § 74.12.010. Prior: 1957 c 63 § 10; 1953 c 174 § 24; 1941 c 242 § 1; 1937 c 114 § 1; Rem. Supp. 1941 § 9992-101.]

Additional notes found at www.leg.wa.gov

74.12.035 Additional eligibility requirements—Students—Exceptions. (1) Children over eighteen years of age and under nineteen years of age who are full-time students reasonably expected to complete a program of secondary school, or the equivalent level of vocational or technical training, before reaching nineteen years of age are eligible to receive temporary assistance for needy families: PROVIDED HOWEVER, That if such students do not successfully complete such program before reaching nineteen years of age, the assistance rendered under this subsection during such period shall not be a debt due the state.

(2) Children with disabilities who are eighteen years of age and under twenty-one years of age and who are full-time students whose education is being provided in accordance with RCW 28A.155.020 are eligible to receive temporary assistance for needy families benefits.

(3) The department is authorized to grant exceptions to the eligibility restrictions for children eighteen years of age and under twenty-one years of age under subsections (1) and (2) of this section only when it determines by reasonable, objective criteria that such exceptions are likely to enable the children to complete their high school education, high school equivalency certificate as provided in RCW 28B.50.536, or vocational education. [2013 c 39 § 29; 1999 c 120 § 2; 1997 c 59 § 18; 1985 c 335 § 1; 1981 2nd ex.s. c 10 § 3.]

State consolidated standards of need: RCW 74.04.770.

74.12.250 Payment of grant to another—Limited guardianship. If the department, after investigation, finds that any applicant for assistance under this chapter or any recipient of funds under this chapter would not use, or is not utilizing, the grant adequately for the needs of his or her child or children or would dissipate the grant or is dissipating such grant, or would be or is unable to manage adequately the funds paid on behalf of said child and that to provide or continue payments to the applicant or recipient would be con-

trary to the welfare of the child, the department may make such payments to another individual who is interested in or concerned with the welfare of such child and relative: PROVIDED, That the department shall provide such counseling and other services as are available and necessary to develop greater ability on the part of the relative to manage funds in such manner as to protect the welfare of the family. Periodic review of each case shall be made by the department to determine if said relative is able to resume management of the assistance grant. If after a reasonable period of time the payments to the relative cannot be resumed, the department may request the attorney general to file a petition in the superior court for the appointment of a guardian for the child or children. Such petition shall set forth the facts warranting such appointment. Notice of the hearing on such petition shall be served upon the recipient and the department not less than ten days before the date set for such hearing. Such petition may be filed with the clerk of superior court and all process issued and served without payment of costs. If upon the hearing of such petition the court is satisfied that it is for the best interest of the child or children, and all parties concerned, that a guardian be appointed, he or she shall order the appointment, and may require the guardian to render to the court a detailed itemized account of expenditures of such assistance payments at such time as the court may deem advisable.

It is the intention of this section that the guardianship herein provided for shall be a special and limited guardianship solely for the purpose of safeguarding the assistance grants made to dependent children. Such guardianship shall terminate upon the termination of such assistance grant, or sooner on order of the court, upon good cause shown. [2013 c 23 § 205; 1997 c 58 § 506; 1963 c 228 § 21; 1961 c 206 § 1.]

Additional notes found at www.leg.wa.gov

- 74.13.700 Denial or delay of licensure or approval of unsupervised access to children.
- 74.13.705 Background checks—Out-of-state requests—Fees.

74.13.020 Definitions. (Effective until December 1, 2013.) For purposes of this chapter:

(1) "Case management" means convening family meetings, developing, revising, and monitoring implementation of any case plan or individual service and safety plan, coordinating and monitoring services needed by the child and family, caseworker-child visits, family visits, and the assumption of court-related duties, excluding legal representation, including preparing court reports, attending judicial hearings and permanency hearings, and ensuring that the child is progressing toward permanency within state and federal mandates, including the Indian child welfare act.

(2) "Child" means:

(a) A person less than eighteen years of age; or

(b) A person age eighteen to twenty-one years who is eligible to receive the extended foster care services authorized under RCW 74.13.031.

(3) "Child protective services" has the same meaning as in RCW 26.44.020.

(4) "Child welfare services" means social services including voluntary and in-home services, out-of-home care, case management, and adoption services which strengthen, supplement, or substitute for, parental care and supervision for the purpose of:

(a) Preventing or remedying, or assisting in the solution of problems which may result in families in conflict, or the neglect, abuse, exploitation, or criminal behavior of children;

(b) Protecting and caring for dependent, abused, or neglected children;

(c) Assisting children who are in conflict with their parents, and assisting parents who are in conflict with their children, with services designed to resolve such conflicts;

(d) Protecting and promoting the welfare of children, including the strengthening of their own homes where possible, or, where needed;

(e) Providing adequate care of children away from their homes in foster family homes or day care or other child care agencies or facilities.

"Child welfare services" does not include child protection services.

(5) "Committee" means the child welfare transformation design committee.

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

(7) "Extended foster care services" means residential and other support services the department is authorized to provide to foster children. These services may include placement in licensed, relative, or otherwise approved care, or supervised independent living settings; assistance in meeting basic needs; independent living services; medical assistance; and counseling or treatment.

(8) "Measurable effects" means a statistically significant change which occurs as a result of the service or services a supervising agency is assigned in a performance-based contract, in time periods established in the contract.

(9) "Nonminor dependent" means any individual age eighteen to twenty-one years who is participating in extended foster care services authorized under RCW 74.13.031.

**Chapter 74.13 RCW
CHILD WELFARE SERVICES**

Sections

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- 74.13.020 Definitions. (Effective December 1, 2013.)
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- 74.13.280 Client information. (Effective July 1, 2014.)
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- 74.13.360 Performance-based contracts—Child welfare demonstration sites—Department duties—Contracts with tribes.
- 74.13.368 Performance-based contracts—Child welfare transformation design committee. (Suspended until December 1, 2015, and expires July 1, 2016.)
- 74.13.540 Independent living services.
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- 74.13.632 School-aged youth in out-of-home care—Educational experiences and progress—Reports.
- 74.13.640 Child fatality reviews.
- 74.13.690 Child welfare measurements.

(10) "Out-of-home care services" means services provided after the shelter care hearing to or for children in out-of-home care, as that term is defined in RCW 13.34.030, and their families, including the recruitment, training, and management of foster parents, the recruitment of adoptive families, and the facilitation of the adoption process, family reunification, independent living, emergency shelter, residential group care, and foster care, including relative placement.

(11) "Performance-based contracting" means the structuring of all aspects of the procurement of services around the purpose of the work to be performed and the desired results with the contract requirements set forth in clear, specific, and objective terms with measurable outcomes. Contracts shall also include provisions that link the performance of the contractor to the level and timing of reimbursement.

(12) "Permanency services" means long-term services provided to secure a child's safety, permanency, and well-being, including foster care services, family reunification services, adoption services, and preparation for independent living services.

(13) "Primary prevention services" means services which are designed and delivered for the primary purpose of enhancing child and family well-being and are shown, by analysis of outcomes, to reduce the risk to the likelihood of the initial need for child welfare services.

(14) "Supervised independent living" includes, but is not limited to, apartment living, room and board arrangements, college or university dormitories, and shared roommate settings. Supervised independent living settings must be approved by the children's administration or the court.

(15) "Supervising agency" means an agency licensed by the state under RCW 74.15.090, or licensed by a federally recognized Indian tribe located in this state under RCW 74.15.190, that has entered into a performance-based contract with the department to provide case management for the delivery and documentation of child welfare services, as defined in this section. This definition is applicable on or after December 30, 2015.

(16) "Unsupervised" has the same meaning as in RCW 43.43.830.

(17) "Voluntary placement agreement" means, for the purposes of extended foster care services, a written voluntary agreement between a nonminor dependent who agrees to submit to the care and authority of the department for the purposes of participating in the extended foster care program. [2013 c 332 § 7; 2013 c 162 § 4; 2012 c 205 § 12. Prior: 2011 c 330 § 4; 2010 c 291 § 3; prior: 2009 c 520 § 2; 2009 c 235 § 3; 1999 c 267 § 7; 1979 c 155 § 76; 1977 ex.s. c 291 § 21; 1975-'76 2nd ex.s. c 71 § 3; 1971 ex.s. c 292 § 66; 1965 c 30 § 3.]

Reviser's note: (1) The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

(2) This section was amended by 2013 c 162 § 4 and by 2013 c 332 § 7, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Expiration date—2013 c 332 §§ 7 and 9: "Sections 7 and 9 of this act expire December 1, 2013." [2013 c 332 § 16.]

Findings—Recommendations—Application—2013 c 332: See notes following RCW 13.34.267.

Expiration date—2013 c 162 § 4: "Section 4 of this act expires December 1, 2013." [2013 c 162 § 9.]

[2013 RCW Supp—page 846]

Findings—Rules—2013 c 162: See notes following RCW 74.13.700.

Intent—2011 c 330: See note following RCW 13.04.011.

Findings—2010 c 291: See note following RCW 74.13.368.

Findings—Intent—2009 c 235: See note following RCW 74.13.031.

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

Additional notes found at www.leg.wa.gov

74.13.020 Definitions. (Effective December 1, 2013.)

For purposes of this chapter:

(1) "Case management" means convening family meetings, developing, revising, and monitoring implementation of any case plan or individual service and safety plan, coordinating and monitoring services needed by the child and family, caseworker-child visits, family visits, and the assumption of court-related duties, excluding legal representation, including preparing court reports, attending judicial hearings and permanency hearings, and ensuring that the child is progressing toward permanency within state and federal mandates, including the Indian child welfare act.

(2) "Child" means:

(a) A person less than eighteen years of age; or

(b) A person age eighteen to twenty-one years who is eligible to receive the extended foster care services authorized under RCW 74.13.031.

(3) "Child protective services" has the same meaning as in RCW 26.44.020.

(4) "Child welfare services" means social services including voluntary and in-home services, out-of-home care, case management, and adoption services which strengthen, supplement, or substitute for, parental care and supervision for the purpose of:

(a) Preventing or remedying, or assisting in the solution of problems which may result in families in conflict, or the neglect, abuse, exploitation, or criminal behavior of children;

(b) Protecting and caring for dependent, abused, or neglected children;

(c) Assisting children who are in conflict with their parents, and assisting parents who are in conflict with their children, with services designed to resolve such conflicts;

(d) Protecting and promoting the welfare of children, including the strengthening of their own homes where possible, or, where needed;

(e) Providing adequate care of children away from their homes in foster family homes or day care or other child care agencies or facilities.

"Child welfare services" does not include child protection services.

(5) "Committee" means the child welfare transformation design committee.

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

(7) "Extended foster care services" means residential and other support services the department is authorized to provide to foster children. These services include, but are not limited to, placement in licensed, relative, or otherwise approved care, or supervised independent living settings; assistance in meeting basic needs; independent living services; medical assistance; and counseling or treatment.

(8) "Family assessment" means a comprehensive assessment of child safety, risk of subsequent child abuse or

neglect, and family strengths and needs that is applied to a child abuse or neglect report. Family assessment does not include a determination as to whether child abuse or neglect occurred, but does determine the need for services to address the safety of the child and the risk of subsequent maltreatment.

(9) "Measurable effects" means a statistically significant change which occurs as a result of the service or services a supervising agency is assigned in a performance-based contract, in time periods established in the contract.

(10) "Nonminor dependent" means any individual age eighteen to twenty-one years who is participating in extended foster care services authorized under RCW 74.13.031.

(11) "Out-of-home care services" means services provided after the shelter care hearing to or for children in out-of-home care, as that term is defined in RCW 13.34.030, and their families, including the recruitment, training, and management of foster parents, the recruitment of adoptive families, and the facilitation of the adoption process, family reunification, independent living, emergency shelter, residential group care, and foster care, including relative placement.

(12) "Performance-based contracting" means the structuring of all aspects of the procurement of services around the purpose of the work to be performed and the desired results with the contract requirements set forth in clear, specific, and objective terms with measurable outcomes. Contracts shall also include provisions that link the performance of the contractor to the level and timing of reimbursement.

(13) "Permanency services" means long-term services provided to secure a child's safety, permanency, and well-being, including foster care services, family reunification services, adoption services, and preparation for independent living services.

(14) "Primary prevention services" means services which are designed and delivered for the primary purpose of enhancing child and family well-being and are shown, by analysis of outcomes, to reduce the risk to the likelihood of the initial need for child welfare services.

(15) "Supervised independent living" includes, but is not limited to, apartment living, room and board arrangements, college or university dormitories, and shared roommate settings. Supervised independent living settings must be approved by the children's administration or the court.

(16) "Supervising agency" means an agency licensed by the state under RCW 74.15.090, or licensed by a federally recognized Indian tribe located in this state under RCW 74.15.190, that has entered into a performance-based contract with the department to provide case management for the delivery and documentation of child welfare services, as defined in this section. This definition is applicable on or after December 30, 2015.

(17) "Unsupervised" has the same meaning as in RCW 43.43.830.

(18) "Voluntary placement agreement" means, for the purposes of extended foster care services, a written voluntary agreement between a nonminor dependent who agrees to submit to the care and authority of the department for the purposes of participating in the extended foster care program. [2013 c 332 § 8; 2013 c 162 § 5. Prior: 2012 c 259 § 7; 2012 c 205 § 12; prior: 2011 c 330 § 4; 2010 c 291 § 3; prior: 2009 c 520 § 2; 2009 c 235 § 3; 1999 c 267 § 7; 1979 c 155 § 76;

1977 ex.s. c 291 § 21; 1975-76 2nd ex.s. c 71 § 3; 1971 ex.s. c 292 § 66; 1965 c 30 § 3.]

Reviser's note: (1) The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

(2) This section was amended by 2013 c 162 § 5 and by 2013 c 332 § 8, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2013 c 332 §§ 8 and 10: "Sections 8 and 10 of this act take effect December 1, 2013." [2013 c 332 § 17.]

Findings—Recommendations—Application—2013 c 332: See notes following RCW 13.34.267.

Effective date—2013 c 162 § 5: "Section 5 of this act takes effect December 1, 2013." [2013 c 162 § 10.]

Findings—Rules—2013 c 162: See notes following RCW 74.13.700.

Effective date—2012 c 259 §§ 1 and 3-10: See note following RCW 26.44.020.

Family assessment response evaluation—Family assessment response survey—2012 c 259: See notes following RCW 26.44.260.

Intent—2011 c 330: See note following RCW 13.04.011.

Findings—2010 c 291: See note following RCW 74.13.368.

Findings—Intent—2009 c 235: See note following RCW 74.13.031.

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

Additional notes found at www.leg.wa.gov

74.13.031 Duties of department—Child welfare services—Children's services advisory committee. (Effective until December 1, 2013.) (1) The department and supervising agencies shall develop, administer, supervise, and monitor a coordinated and comprehensive plan that establishes, aids, and strengthens services for the protection and care of runaway, dependent, or neglected children.

(2) Within available resources, the department and supervising agencies shall recruit an adequate number of prospective adoptive and foster homes, both regular and specialized, i.e. homes for children of ethnic minority, including Indian homes for Indian children, sibling groups, handicapped and emotionally disturbed, teens, pregnant and parenting teens, and the department shall annually report to the governor and the legislature concerning the department's and supervising agency's success in: (a) Meeting the need for adoptive and foster home placements; (b) reducing the foster parent turnover rate; (c) completing home studies for legally free children; and (d) implementing and operating the passport program required by RCW 74.13.285. The report shall include a section entitled "Foster Home Turn-Over, Causes and Recommendations."

(3) The department shall investigate complaints of any recent act or failure to act on the part of a parent or caretaker that results in death, serious physical or emotional harm, or sexual abuse or exploitation, or that presents an imminent risk of serious harm, and on the basis of the findings of such investigation, offer child welfare services in relation to the problem to such parents, legal custodians, or persons serving in loco parentis, and/or bring the situation to the attention of an appropriate court, or another community agency. An investigation is not required of nonaccidental injuries which are clearly not the result of a lack of care or supervision by the child's parents, legal custodians, or persons serving in loco parentis. If the investigation reveals that a crime against

a child may have been committed, the department shall notify the appropriate law enforcement agency.

(4) The department or supervising agencies shall offer, on a voluntary basis, family reconciliation services to families who are in conflict.

(5) The department or supervising agencies shall monitor placements of children in out-of-home care and in-home dependencies to assure the safety, well-being, and quality of care being provided is within the scope of the intent of the legislature as defined in RCW 74.13.010 and 74.15.010. Under this section children in out-of-home care and in-home dependencies and their caregivers shall receive a private and individual face-to-face visit each month. The department and the supervising agencies shall randomly select no less than ten percent of the caregivers currently providing care to receive one unannounced face-to-face visit in the caregiver's home per year. No caregiver will receive an unannounced visit through the random selection process for two consecutive years. If the caseworker makes a good faith effort to conduct the unannounced visit to a caregiver and is unable to do so, that month's visit to that caregiver need not be unannounced. The department and supervising agencies are encouraged to group monthly visits to caregivers by geographic area so that in the event an unannounced visit cannot be completed, the caseworker may complete other required monthly visits. The department shall use a method of random selection that does not cause a fiscal impact to the department.

The department or supervising agencies shall conduct the monthly visits with children and caregivers to whom it is providing child welfare services.

(6) The department and supervising agencies shall have authority to accept custody of children from parents and to accept custody of children from juvenile courts, where authorized to do so under law, to provide child welfare services including placement for adoption, to provide for the routine and necessary medical, dental, and mental health care, or necessary emergency care of the children, and to provide for the physical care of such children and make payment of maintenance costs if needed. Except where required by Public Law 95-608 (25 U.S.C. Sec. 1915), no private adoption agency which receives children for adoption from the department shall discriminate on the basis of race, creed, or color when considering applications in their placement for adoption.

(7) The department and supervising agency shall have authority to provide temporary shelter to children who have run away from home and who are admitted to crisis residential centers.

(8) The department and supervising agency shall have authority to purchase care for children.

(9) The department shall establish a children's services advisory committee with sufficient members representing supervising agencies which shall assist the secretary in the development of a partnership plan for utilizing resources of the public and private sectors, and advise on all matters pertaining to child welfare, licensing of child care agencies, adoption, and services related thereto. At least one member shall represent the adoption community.

(10)(a) The department and supervising agencies shall provide continued extended foster care services to nonminor dependents who are:

(i) Enrolled in a secondary education program or a secondary education equivalency program;

(ii) Enrolled and participating in a postsecondary academic or postsecondary vocational education program; or

(iii) Participating in a program or activity designed to promote employment or remove barriers to employment.

(b) To be eligible for extended foster care services, the nonminor dependent must have been dependent and in foster care at the time that he or she reached age eighteen years. If the dependency case of the nonminor dependent was dismissed pursuant to RCW 13.34.267, he or she may receive extended foster care services pursuant to a voluntary placement agreement under RCW 74.13.336 or pursuant to an order of dependency issued by the court under RCW 13.34.268. A nonminor dependent whose dependency case was dismissed by the court must have requested extended foster care services before reaching age nineteen years.

(c) The department shall develop and implement rules regarding youth eligibility requirements.

(11) The department shall have authority to provide adoption support benefits, or relative guardianship subsidies on behalf of youth ages eighteen to twenty-one years who achieved permanency through adoption or a relative guardianship at age sixteen or older and who meet the criteria described in subsection (10) of this section.

(12) The department shall refer cases to the division of child support whenever state or federal funds are expended for the care and maintenance of a child, including a child with a developmental disability who is placed as a result of an action under chapter 13.34 RCW, unless the department finds that there is good cause not to pursue collection of child support against the parent or parents of the child. Cases involving individuals age eighteen through twenty shall not be referred to the division of child support unless required by federal law.

(13) The department and supervising agencies shall have authority within funds appropriated for foster care services to purchase care for Indian children who are in the custody of a federally recognized Indian tribe or tribally licensed child-placing agency pursuant to parental consent, tribal court order, or state juvenile court order. The purchase of such care is exempt from the requirements of chapter 74.13B RCW and may be purchased from the federally recognized Indian tribe or tribally licensed child-placing agency, and shall be subject to the same eligibility standards and rates of support applicable to other children for whom the department purchases care.

Notwithstanding any other provision of RCW 13.32A.170 through 13.32A.200 and 74.13.032 through 74.13.036, or of this section all services to be provided by the department under subsections (4), (6), and (7) of this section, subject to the limitations of these subsections, may be provided by any program offering such services funded pursuant to Titles II and III of the federal juvenile justice and delinquency prevention act of 1974.

(14) Within amounts appropriated for this specific purpose, the supervising agency or department shall provide preventive services to families with children that prevent or shorten the duration of an out-of-home placement.

(15) The department and supervising agencies shall have authority to provide independent living services to youths, including individuals who have attained eighteen years of age, and have not attained twenty-one years of age who are or have been in foster care.

(16) The department and supervising agencies shall consult at least quarterly with foster parents, including members of the foster parent association of Washington state, for the purpose of receiving information and comment regarding how the department and supervising agencies are performing the duties and meeting the obligations specified in this section and RCW 74.13.250 and 74.13.320 regarding the recruitment of foster homes, reducing foster parent turnover rates, providing effective training for foster parents, and administering a coordinated and comprehensive plan that strengthens services for the protection of children. Consultation shall occur at the regional and statewide levels.

(17)(a) The department shall, within current funding levels, place on its public web site a document listing the duties and responsibilities the department has to a child subject to a dependency petition including, but not limited to, the following:

- (i) Reasonable efforts, including the provision of services, toward reunification of the child with his or her family;
- (ii) Sibling visits subject to the restrictions in RCW 13.34.136(2)(b)(ii);
- (iii) Parent-child visits;
- (iv) Statutory preference for placement with a relative or other suitable person, if appropriate; and
- (v) Statutory preference for an out-of-home placement that allows the child to remain in the same school or school district, if practical and in the child's best interests.

(b) The document must be prepared in conjunction with a community-based organization and must be updated as needed. [2013 c 332 § 9; 2013 c 32 § 1; 2012 c 52 § 2. Prior: 2011 c 330 § 5; 2011 c 160 § 2; prior: 2009 c 520 § 51; 2009 c 491 § 7; (2009 c 235 § 4 expired October 1, 2010); 2009 c 235 § 2; 2008 c 267 § 6; 2007 c 413 § 10; prior: 2006 c 266 § 1; 2006 c 221 § 3; 2004 c 183 § 3; 2001 c 192 § 1; 1999 c 267 § 8; 1998 c 314 § 10; prior: 1997 c 386 § 32; 1997 c 272 § 1; 1995 c 191 § 1; 1990 c 146 § 9; prior: 1987 c 505 § 69; 1987 c 170 § 10; 1983 c 246 § 4; 1982 c 118 § 3; 1981 c 298 § 16; 1979 ex.s. c 165 § 22; 1979 c 155 § 77; 1977 ex.s. c 291 § 22; 1975-'76 2nd ex.s. c 71 § 4; 1973 1st ex.s. c 101 § 2; 1967 c 172 § 17.]

Reviser's note: This section was amended by 2013 c 32 § 1 and by 2013 c 332 § 9, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Expiration date—2013 c 332 §§ 7 and 9: See note following RCW 74.13.020.

Findings—Recommendations—Application—2013 c 332: See notes following RCW 13.34.267.

Expiration date—2013 c 32 § 1: "Section 1 of this act expires December 1, 2013." [2013 c 32 § 4.]

Intent—2012 c 52: "Since 2006, under a program known as "foster care to 21," the Washington state legislature has provided services to young adults transitioning out of foster care in order for them to enroll in and complete their postsecondary educations. In 2008, the United States congress passed the fostering connections to success and increasing adoptions act of 2008, which allows states to receive a federal match for state dollars expended in supporting youth transitioning out of foster care. In 2011, the Washington state legislature opted to create the "extended foster care pro-

gram," in order to receive the federal match for youth completing high school. It is the intent of this act to enable the state to receive the federal match to offset costs expended on supporting youth seeking postsecondary education. This act would result in these youth being served under the extended foster care program, for which there is a federal match, instead of the foster care to 21 program, which relies solely on state dollars. It is the intent of the legislature to allow all youth currently enrolled in the foster care to 21 program for the purposes of postsecondary education to remain enrolled until they turn twenty-one, are no longer otherwise eligible, or choose to leave the program. Within three years of June 7, 2012, the "foster care to 21" program will cease to operate, and youth seeking a postsecondary education will be solely served by the extended foster care program." [2012 c 52 § 1.]

Intent—2011 c 330: See note following RCW 13.04.011.

Findings—2011 c 160: "The legislature finds that foster parents are a critical piece of the dependency system. The legislature further finds that the majority of foster parents provide excellent care to children in the dependency system, many of whom have suffered serious damage in their families of origin. It is the legislature's belief that through the selfless dedication of many foster parents that abused and neglected children are able to heal and go on to lead productive lives. The legislature also believes that some foster parents act in ways that are damaging to the children in their care and it is the department of social and health services' responsibility to make sure all children in care are safe. The legislature finds that unannounced visits to caregivers' homes is another method by which the department of social and health services can make sure the children in foster care are safe." [2011 c 160 § 1.]

Effective date—2009 c 235 § 2: "Section 2 of this act takes effect October 1, 2010." [2009 c 235 § 7.]

Expiration date—2009 c 235 § 4: "Section 4 of this act expires October 1, 2010." [2009 c 235 § 8.]

Findings—Intent—2009 c 235: "(1) The legislature finds that the federal fostering connections to success and increasing adoptions act of 2008 provides important new opportunities for the state to use federal funding to promote permanency and positive outcomes for youth in foster care and for those who age out of the foster care system.

(2) The legislature also finds that research regarding former foster youth is generally sobering. Longitudinal research on the adult functioning of former foster youth indicates a disproportionate likelihood that youth aging out of foster care and those who spent several years in care will experience poor outcomes in a variety of areas, including limited human capital upon which to build economic security; untreated mental or behavioral health problems; involvement in the criminal justice and corrections systems; and early parenthood combined with second-generation child welfare involvement. The legislature further finds that research also demonstrates that access to adequate and appropriate supports during the period of transition from foster care to independence can have significant positive impacts on adult functioning and can improve outcomes relating to educational attainment and postsecondary enrollment; employment and earnings; and reduced rates of teen pregnancies.

(3) The legislature intends to clarify existing authority for foster care services beyond age eighteen and to establish authority for future expansion of housing and other supports for youth aging out of foster care and youth who achieved permanency in later adolescence." [2009 c 235 § 1.]

Effective date—2008 c 267 § 6: "Section 6 of this act takes effect December 31, 2008." [2008 c 267 § 14.]

Severability—2007 c 413: See note following RCW 13.34.215.

Construction—2006 c 266: "Nothing in this act shall be construed to create:

- (1) An entitlement to services;
- (2) Judicial authority to extend the jurisdiction of juvenile court in a proceeding under chapter 13.34 RCW to a youth who has attained eighteen years of age or to order the provision of services to the youth; or
- (3) A private right of action or claim on the part of any individual, entity, or agency against the department of social and health services or any contractor of the department." [2006 c 266 § 2.]

Adoption of rules—2006 c 266: "The department of social and health services is authorized to adopt rules establishing eligibility for independent living services and placement for youths under this act." [2006 c 266 § 3.]

Study and report—2006 c 266: "(1) Beginning in July 2008 and subject to the approval of its governing board, the Washington state institute for public policy shall conduct a study measuring the outcomes for foster youth who have received continued support pursuant to RCW 74.13.031(10). The

study should include measurements of any savings to the state and local government. The institute shall issue a report containing its preliminary findings to the legislature by December 1, 2008, and a final report by December 1, 2009.

(2) The institute is authorized to accept nonstate funds to conduct the study required in subsection (1) of this section." [2006 c 266 § 4.]

Finding—2006 c 221: See note following RCW 13.34.315.

Effective date—2004 c 183: See note following RCW 13.34.160.

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

Declaration of purpose—1967 c 172: See RCW 74.15.010.

Abuse of child: Chapter 26.44 RCW.

Licensing of agencies caring for or placing children, expectant mothers, and individuals with developmental disabilities: Chapter 74.15 RCW.

Additional notes found at www.leg.wa.gov

74.13.031 Duties of department—Child welfare services—Children’s services advisory committee. (Effective December 1, 2013.) (1) The department and supervising agencies shall develop, administer, supervise, and monitor a coordinated and comprehensive plan that establishes, aids, and strengthens services for the protection and care of run-away, dependent, or neglected children.

(2) Within available resources, the department and supervising agencies shall recruit an adequate number of prospective adoptive and foster homes, both regular and specialized, i.e. homes for children of ethnic minority, including Indian homes for Indian children, sibling groups, handicapped and emotionally disturbed, teens, pregnant and parenting teens, and the department shall annually report to the governor and the legislature concerning the department’s and supervising agency’s success in: (a) Meeting the need for adoptive and foster home placements; (b) reducing the foster parent turnover rate; (c) completing home studies for legally free children; and (d) implementing and operating the passport program required by RCW 74.13.285. The report shall include a section entitled "Foster Home Turn-Over, Causes and Recommendations."

(3) The department shall investigate complaints of any recent act or failure to act on the part of a parent or caretaker that results in death, serious physical or emotional harm, or sexual abuse or exploitation, or that presents an imminent risk of serious harm, and on the basis of the findings of such investigation, offer child welfare services in relation to the problem to such parents, legal custodians, or persons serving in loco parentis, and/or bring the situation to the attention of an appropriate court, or another community agency. An investigation is not required of nonaccidental injuries which are clearly not the result of a lack of care or supervision by the child’s parents, legal custodians, or persons serving in loco parentis. If the investigation reveals that a crime against a child may have been committed, the department shall notify the appropriate law enforcement agency.

(4) As provided in RCW 26.44.030(11), the department may respond to a report of child abuse or neglect by using the family assessment response.

(5) The department or supervising agencies shall offer, on a voluntary basis, family reconciliation services to families who are in conflict.

(6) The department or supervising agencies shall monitor placements of children in out-of-home care and in-home dependencies to assure the safety, well-being, and quality of

care being provided is within the scope of the intent of the legislature as defined in RCW 74.13.010 and 74.15.010. Under this section children in out-of-home care and in-home dependencies and their caregivers shall receive a private and individual face-to-face visit each month. The department and the supervising agencies shall randomly select no less than ten percent of the caregivers currently providing care to receive one unannounced face-to-face visit in the caregiver’s home per year. No caregiver will receive an unannounced visit through the random selection process for two consecutive years. If the caseworker makes a good faith effort to conduct the unannounced visit to a caregiver and is unable to do so, that month’s visit to that caregiver need not be unannounced. The department and supervising agencies are encouraged to group monthly visits to caregivers by geographic area so that in the event an unannounced visit cannot be completed, the caseworker may complete other required monthly visits. The department shall use a method of random selection that does not cause a fiscal impact to the department.

The department or supervising agencies shall conduct the monthly visits with children and caregivers to whom it is providing child welfare services.

(7) The department and supervising agencies shall have authority to accept custody of children from parents and to accept custody of children from juvenile courts, where authorized to do so under law, to provide child welfare services including placement for adoption, to provide for the routine and necessary medical, dental, and mental health care, or necessary emergency care of the children, and to provide for the physical care of such children and make payment of maintenance costs if needed. Except where required by Public Law 95-608 (25 U.S.C. Sec. 1915), no private adoption agency which receives children for adoption from the department shall discriminate on the basis of race, creed, or color when considering applications in their placement for adoption.

(8) The department and supervising agency shall have authority to provide temporary shelter to children who have run away from home and who are admitted to crisis residential centers.

(9) The department and supervising agency shall have authority to purchase care for children.

(10) The department shall establish a children’s services advisory committee with sufficient members representing supervising agencies which shall assist the secretary in the development of a partnership plan for utilizing resources of the public and private sectors, and advise on all matters pertaining to child welfare, licensing of child care agencies, adoption, and services related thereto. At least one member shall represent the adoption community.

(11)(a) The department and supervising agencies shall provide continued extended foster care services to nonminor dependents who are:

(i) Enrolled in a secondary education program or a secondary education equivalency program;

(ii) Enrolled and participating in a postsecondary academic or postsecondary vocational education program; or

(iii) Participating in a program or activity designed to promote employment or remove barriers to employment.

(b) To be eligible for extended foster care services, the nonminor dependent must have been dependent and in foster

care at the time that he or she reached age eighteen years. If the dependency case of the nonminor dependent was dismissed pursuant to RCW 13.34.267, he or she may receive extended foster care services pursuant to a voluntary placement agreement under RCW 74.13.336 or pursuant to an order of dependency issued by the court under RCW 13.34.268. A nonminor dependent whose dependency case was dismissed by the court must have requested extended foster care services before reaching age nineteen years.

(c) The department shall develop and implement rules regarding youth eligibility requirements.

(12) The department shall have authority to provide adoption support benefits, or relative guardianship subsidies on behalf of youth ages eighteen to twenty-one years who achieved permanency through adoption or a relative guardianship at age sixteen or older and who meet the criteria described in subsection (11) of this section.

(13) The department shall refer cases to the division of child support whenever state or federal funds are expended for the care and maintenance of a child, including a child with a developmental disability who is placed as a result of an action under chapter 13.34 RCW, unless the department finds that there is good cause not to pursue collection of child support against the parent or parents of the child. Cases involving individuals age eighteen through twenty shall not be referred to the division of child support unless required by federal law.

(14) The department and supervising agencies shall have authority within funds appropriated for foster care services to purchase care for Indian children who are in the custody of a federally recognized Indian tribe or tribally licensed child-placing agency pursuant to parental consent, tribal court order, or state juvenile court order. The purchase of such care is exempt from the requirements of chapter 74.13B RCW and may be purchased from the federally recognized Indian tribe or tribally licensed child-placing agency, and shall be subject to the same eligibility standards and rates of support applicable to other children for whom the department purchases care.

Notwithstanding any other provision of RCW 13.32A.170 through 13.32A.200 and 74.13.032 through 74.13.036, or of this section all services to be provided by the department under subsections (4), (7), and (8) of this section, subject to the limitations of these subsections, may be provided by any program offering such services funded pursuant to Titles II and III of the federal juvenile justice and delinquency prevention act of 1974.

(15) Within amounts appropriated for this specific purpose, the supervising agency or department shall provide preventive services to families with children that prevent or shorten the duration of an out-of-home placement.

(16) The department and supervising agencies shall have authority to provide independent living services to youths, including individuals who have attained eighteen years of age, and have not attained twenty-one years of age who are or have been in foster care.

(17) The department and supervising agencies shall consult at least quarterly with foster parents, including members of the foster parent association of Washington state, for the purpose of receiving information and comment regarding how the department and supervising agencies are performing

the duties and meeting the obligations specified in this section and RCW 74.13.250 and 74.13.320 regarding the recruitment of foster homes, reducing foster parent turnover rates, providing effective training for foster parents, and administering a coordinated and comprehensive plan that strengthens services for the protection of children. Consultation shall occur at the regional and statewide levels.

(18)(a) The department shall, within current funding levels, place on its public web site a document listing the duties and responsibilities the department has to a child subject to a dependency petition including, but not limited to, the following:

- (i) Reasonable efforts, including the provision of services, toward reunification of the child with his or her family;
- (ii) Sibling visits subject to the restrictions in RCW 13.34.136(2)(b)(ii);
- (iii) Parent-child visits;
- (iv) Statutory preference for placement with a relative or other suitable person, if appropriate; and
- (v) Statutory preference for an out-of-home placement that allows the child to remain in the same school or school district, if practical and in the child's best interests.

(b) The document must be prepared in conjunction with a community-based organization and must be updated as needed. [2013 c 332 § 10; 2013 c 32 § 2. Prior: 2012 c 259 § 8; 2012 c 52 § 2; prior: 2011 c 330 § 5; 2011 c 160 § 2; prior: 2009 c 520 § 51; 2009 c 491 § 7; (2009 c 235 § 4 expired October 1, 2010); 2009 c 235 § 2; 2008 c 267 § 6; 2007 c 413 § 10; prior: 2006 c 266 § 1; 2006 c 221 § 3; 2004 c 183 § 3; 2001 c 192 § 1; 1999 c 267 § 8; 1998 c 314 § 10; prior: 1997 c 386 § 32; 1997 c 272 § 1; 1995 c 191 § 1; 1990 c 146 § 9; prior: 1987 c 505 § 69; 1987 c 170 § 10; 1983 c 246 § 4; 1982 c 118 § 3; 1981 c 298 § 16; 1979 ex.s. c 165 § 22; 1979 c 155 § 77; 1977 ex.s. c 291 § 22; 1975-'76 2nd ex.s. c 71 § 4; 1973 1st ex.s. c 101 § 2; 1967 c 172 § 17.]

Reviser's note: This section was amended by 2013 c 32 § 2 and by 2013 c 332 § 10, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2013 c 332 §§ 8 and 10: See note following RCW 74.13.020.

Findings—Recommendations—Application—2013 c 332: See notes following RCW 13.34.267.

Effective date—2013 c 32 § 2: "Section 2 of this act takes effect December 1, 2013." [2013 c 32 § 3.]

Effective date—2012 c 259 §§ 1 and 3-10: See note following RCW 26.44.020.

Family assessment response evaluation—Family assessment response survey—2012 c 259: See notes following RCW 26.44.260.

Intent—2012 c 52: "Since 2006, under a program known as "foster care to 21," the Washington state legislature has provided services to young adults transitioning out of foster care in order for them to enroll in and complete their postsecondary educations. In 2008, the United States congress passed the fostering connections to success and increasing adoptions act of 2008, which allows states to receive a federal match for state dollars expended in supporting youth transitioning out of foster care. In 2011, the Washington state legislature opted to create the "extended foster care program," in order to receive the federal match for youth completing high school. It is the intent of this act to enable the state to receive the federal match to offset costs expended on supporting youth seeking postsecondary education. This act would result in these youth being served under the extended foster care program, for which there is a federal match, instead of the foster care to 21 program, which relies solely on state dollars. It is the intent of the legislature to allow all youth currently enrolled in the foster care to 21 program for the purposes of postsecondary education to remain

enrolled until they turn twenty-one, are no longer otherwise eligible, or choose to leave the program. Within three years of June 7, 2012, the "foster care to 21" program will cease to operate, and youth seeking a postsecondary education will be solely served by the extended foster care program." [2012 c 52 § 1.]

Intent—2011 c 330: See note following RCW 13.04.011.

Findings—2011 c 160: "The legislature finds that foster parents are a critical piece of the dependency system. The legislature further finds that the majority of foster parents provide excellent care to children in the dependency system, many of whom have suffered serious damage in their families of origin. It is the legislature's belief that through the selfless dedication of many foster parents that abused and neglected children are able to heal and go on to lead productive lives. The legislature also believes that some foster parents act in ways that are damaging to the children in their care and it is the department of social and health services' responsibility to make sure all children in care are safe. The legislature finds that unannounced visits to caregivers' homes is another method by which the department of social and health services can make sure the children in foster care are safe." [2011 c 160 § 1.]

Effective date—2009 c 235 § 2: "Section 2 of this act takes effect October 1, 2010." [2009 c 235 § 7.]

Expiration date—2009 c 235 § 4: "Section 4 of this act expires October 1, 2010." [2009 c 235 § 8.]

Findings—Intent—2009 c 235: "(1) The legislature finds that the federal fostering connections to success and increasing adoptions act of 2008 provides important new opportunities for the state to use federal funding to promote permanency and positive outcomes for youth in foster care and for those who age out of the foster care system.

(2) The legislature also finds that research regarding former foster youth is generally sobering. Longitudinal research on the adult functioning of former foster youth indicates a disproportionate likelihood that youth aging out of foster care and those who spent several years in care will experience poor outcomes in a variety of areas, including limited human capital upon which to build economic security; untreated mental or behavioral health problems; involvement in the criminal justice and corrections systems; and early parenthood combined with second-generation child welfare involvement. The legislature further finds that research also demonstrates that access to adequate and appropriate supports during the period of transition from foster care to independence can have significant positive impacts on adult functioning and can improve outcomes relating to educational attainment and postsecondary enrollment; employment and earnings; and reduced rates of teen pregnancies.

(3) The legislature intends to clarify existing authority for foster care services beyond age eighteen and to establish authority for future expansion of housing and other supports for youth aging out of foster care and youth who achieved permanency in later adolescence." [2009 c 235 § 1.]

Effective date—2008 c 267 § 6: "Section 6 of this act takes effect December 31, 2008." [2008 c 267 § 14.]

Severability—2007 c 413: See note following RCW 13.34.215.

Construction—2006 c 266: "Nothing in this act shall be construed to create:

(1) An entitlement to services;
 (2) Judicial authority to extend the jurisdiction of juvenile court in a proceeding under chapter 13.34 RCW to a youth who has attained eighteen years of age or to order the provision of services to the youth; or

(3) A private right of action or claim on the part of any individual, entity, or agency against the department of social and health services or any contractor of the department." [2006 c 266 § 2.]

Adoption of rules—2006 c 266: "The department of social and health services is authorized to adopt rules establishing eligibility for independent living services and placement for youths under this act." [2006 c 266 § 3.]

Study and report—2006 c 266: "(1) Beginning in July 2008 and subject to the approval of its governing board, the Washington state institute for public policy shall conduct a study measuring the outcomes for foster youth who have received continued support pursuant to RCW 74.13.031(10). The study should include measurements of any savings to the state and local government. The institute shall issue a report containing its preliminary findings to the legislature by December 1, 2008, and a final report by December 1, 2009.

(2) The institute is authorized to accept nonstate funds to conduct the study required in subsection (1) of this section." [2006 c 266 § 4.]

Finding—2006 c 221: See note following RCW 13.34.315.

Effective date—2004 c 183: See note following RCW 13.34.160.

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

Declaration of purpose—1967 c 172: See RCW 74.15.010.

Abuse of child: Chapter 26.44 RCW.

Licensing of agencies caring for or placing children, expectant mothers, and individuals with developmental disabilities: Chapter 74.15 RCW.

Additional notes found at www.leg.wa.gov

74.13.107 Child and family reinvestment account— Methodology for calculating savings resulting from reductions in foster care caseloads and per capita costs.

(1) The child and family reinvestment account is created in the state treasury. Moneys in the account may be spent only after appropriation. Moneys in the account may be expended solely for improving outcomes related to: (a) Safely reducing entry into the foster care system and preventing reentry; (b) safely increasing reunifications; (c) achieving permanency for children unable to be reunified; and (d) improving outcomes for youth who will age out of the foster care system. Moneys may be expended for shared savings under performance-based contracts.

(2) Revenues to the child and family reinvestment account consist of: (a) Savings to the state general fund resulting from reductions in foster care caseloads and per capita costs, as calculated and transferred into the account under this section; and (b) any other public or private funds appropriated to or deposited in the account.

(3)(a) The department of social and health services, in collaboration with the office of financial management and the caseload forecast council, shall develop a methodology for calculating the savings under this section. The methodology must be used for the 2013-2015 fiscal biennium, and for each biennium thereafter. The methodology must establish a baseline for calculating savings. In developing the methodology, the department of social and health services shall incorporate the relevant requirements of any demonstration waiver granted to the state under P.L. 112-34. The savings must be based on actual caseload and per capita expenditures.

(b) The caseload and the per capita expenditures for youth in extended foster care pursuant to RCW 74.13.031 and as determined under RCW 43.88C.010(9) shall not be included in the following:

(i) The calculation of savings transferred to the account;
 or
 (ii) The capped allocation of the demonstration waiver granted to the state under P.L. 112-34.

(c) By December 1, 2012, the department of social and health services shall submit the proposed methodology to the governor and the appropriate committees of the legislature. The methodology is deemed approved unless the legislature enacts legislation to modify or reject the methodology.

(d) The department of social and health services shall use the methodology established in (a) of this subsection to calculate savings to the state general fund for transfer into the child and family reinvestment account in fiscal year 2014 and each fiscal year thereafter. Savings calculated by the department under this section are not subject to RCW 43.79.460. The department shall report the amount of the state general fund savings achieved to the office of financial management and the fiscal committees of the legislature at the end of each

fiscal year. The office of financial management shall provide notice to the state treasurer of the amount of state general fund savings, as calculated by the department of social and health services, for transfer into the child and family reinvestment account.

(e) Nothing in this section prohibits (i) the caseload forecast council from forecasting the foster care caseload under RCW 43.88C.010 or (ii) the department from including maintenance funding in its budget submittal for caseload costs that exceed the baseline established in (a) of this subsection. [2013 c 332 § 12; 2012 c 204 § 2.]

Reviser's note—Sunset Act application: The child and family reinvestment account and methodology for calculating savings is subject to review, termination, and possible extension under chapter 43.131 RCW, the Sunset Act. See RCW 43.131.415. RCW 74.13.107 is scheduled for future repeal under RCW 43.131.416.

Findings—Recommendations—Application—2013 c 332: See notes following RCW 13.34.267.

Findings—Intent—2012 c 204: "(1) The legislature finds that the federal child and family services improvement and innovation act provides an important new opportunity for Washington state to flexibly use federal funding, traditionally limited to foster care, to achieve the following outcomes: Increase permanency for all infants, children, and youth by reducing the time spent in foster care placements when possible and promoting a successful transition to adulthood for older youth; increase the positive outcomes for infants, children, youth, and families in their homes and communities, including tribal communities; improve the safety and well-being of infants, children, and youth; and prevent child abuse and neglect and the reentry of infants, children, and youth into foster care.

(2) The legislature finds that the licensed out-of-home foster care caseload has declined by eighteen percent from fiscal year 2008 to fiscal year 2011. The legislature further finds that under the current system, as caseloads decline, fewer state and federal funds are available in the child welfare budget for prevention and reunification services to continue improving outcomes.

(3) The legislature recognizes the need to reinvest savings related to foster care caseload reductions into effective efforts that improve outcomes. The legislature intends to maximize limited resources by continuing to focus on efforts to improve child safety, child permanency, and child well-being in Washington state." [2012 c 204 § 1.]

74.13.280 Client information. (Effective July 1, 2014.) (1) Except as provided in RCW 70.02.220, whenever a child is placed in out-of-home care by the department or a supervising agency, the department or agency shall share information known to the department or agency about the child and the child's family with the care provider and shall consult with the care provider regarding the child's case plan. If the child is dependent pursuant to a proceeding under chapter 13.34 RCW, the department or supervising agency shall keep the care provider informed regarding the dates and location of dependency review and permanency planning hearings pertaining to the child.

(2) Information about the child and the child's family shall include information known to the department or agency as to whether the child is a sexually reactive child, has exhibited high-risk behaviors, or is physically assaultive or physically aggressive, as defined in this section.

(3) Information about the child shall also include information known to the department or agency that the child:

(a) Has received a medical diagnosis of fetal alcohol syndrome or fetal alcohol effect;

(b) Has been diagnosed by a qualified mental health professional as having a mental health disorder;

(c) Has witnessed a death or substantial physical violence in the past or recent past; or

(d) Was a victim of sexual or severe physical abuse in the recent past.

(4) Any person who receives information about a child or a child's family pursuant to this section shall keep the information confidential and shall not further disclose or disseminate the information except as authorized by law. Care providers shall agree in writing to keep the information that they receive confidential and shall affirm that the information will not be further disclosed or disseminated, except as authorized by law.

(5) Nothing in this section shall be construed to limit the authority of the department or supervising agencies to disclose client information or to maintain client confidentiality as provided by law.

(6) As used in this section:

(a) "Sexually reactive child" means a child who exhibits sexual behavior problems including, but not limited to, sexual behaviors that are developmentally inappropriate for their age or are harmful to the child or others.

(b) "High-risk behavior" means an observed or reported and documented history of one or more of the following:

(i) Suicide attempts or suicidal behavior or ideation;

(ii) Self-mutilation or similar self-destructive behavior;

(iii) Fire-setting or a developmentally inappropriate fascination with fire;

(iv) Animal torture;

(v) Property destruction; or

(vi) Substance or alcohol abuse.

(c) "Physically assaultive or physically aggressive" means a child who exhibits one or more of the following behaviors that are developmentally inappropriate and harmful to the child or to others:

(i) Observed assaultive behavior;

(ii) Reported and documented history of the child willfully assaulting or inflicting bodily harm; or

(iii) Attempting to assault or inflict bodily harm on other children or adults under circumstances where the child has the apparent ability or capability to carry out the attempted assaults including threats to use a weapon. [2013 c 200 § 28; 2009 c 520 § 72. Prior: 2007 c 409 § 6; 2007 c 220 § 4; 2001 c 318 § 3; 1997 c 272 § 7; 1995 c 311 § 21; 1991 c 340 § 4; 1990 c 284 § 10.]

Effective date—2013 c 200: See note following RCW 70.02.010.

Effective date—2007 c 409: See note following RCW 13.34.096.

Finding—Effective date—1990 c 284: See notes following RCW 74.13.250.

Additional notes found at www.leg.wa.gov

74.13.289 Blood-borne pathogens—Client information—Training. (Effective July 1, 2014.) (1) Upon any placement, the department or supervising agency shall inform each out-of-home care provider if the child to be placed in that provider's care is infected with a blood-borne pathogen, and shall identify the specific blood-borne pathogen for which the child was tested if known by the department or supervising agency.

(2) All out-of-home care providers licensed by the department shall receive training related to blood-borne pathogens, including prevention, transmission, infection control, treatment, testing, and confidentiality.

(3) Any disclosure of information related to HIV must be in accordance with RCW 70.02.220.

(4) The department of health shall identify by rule the term "blood-borne pathogen" as used in this section. [2013 c 209; 2009 c 520 § 76; 2004 c 40 § 3.]

Effective date—2013 c 200: See note following RCW 70.02.010.

74.13.333 Rights of foster parents—Complaints—Investigation—Notice of any personnel action—Report.

(1) A foster parent who believes that a department or supervising agency employee has retaliated against the foster parent or in any other manner discriminated against the foster parent because:

(a) The foster parent made a complaint with the office of the family and children's ombuds, the attorney general, law enforcement agencies, the department, or the supervising agency, provided information, or otherwise cooperated with the investigation of such a complaint;

(b) The foster parent has caused to be instituted any proceedings under or related to Title 13 RCW;

(c) The foster parent has testified or is about to testify in any proceedings under or related to Title 13 RCW;

(d) The foster parent has advocated for services on behalf of the foster child;

(e) The foster parent has sought to adopt a foster child in the foster parent's care; or

(f) The foster parent has discussed or consulted with anyone concerning the foster parent's rights under this chapter or chapter 74.15 or 13.34 RCW, may file a complaint with the office of the family and children's ombuds.

(2) The ombuds may investigate the allegations of retaliation. The ombuds shall have access to all relevant information and resources held by or within the department by which to conduct the investigation. Upon the conclusion of its investigation, the ombuds shall provide its findings in written form to the department.

(3) The department shall notify the office of the family and children's ombuds in writing, within thirty days of receiving the ombuds's findings, of any personnel action taken or to be taken with regard to the department employee.

(4) The office of the family and children's ombuds shall also include its recommendations regarding complaints filed under this section in its annual report pursuant to RCW 43.06A.030. The office of the family and children's ombuds shall identify trends which may indicate a need to improve relations between the department or supervising agency and foster parents. [2013 c 23 § 206. Prior: 2009 c 520 § 82; 2009 c 491 § 11; 2004 c 181 § 1.]

74.13.334 Department and supervising agency's procedures to respond to foster parents' complaints. The department and supervising agency shall develop procedures for responding to recommendations of the office of the family and children's ombuds as a result of any and all complaints filed by foster parents under RCW 74.13.333. [2013 c 23 § 207; 2009 c 520 § 83; 2004 c 181 § 2.]

74.13.336 Extended foster care services. (1) A youth who has reached age eighteen years may request extended foster care services authorized under RCW 74.13.031 at any

time before he or she reaches the age of nineteen years if on or after July 28, 2013:

(a) The dependency proceeding of the youth was dismissed pursuant to RCW 13.34.267(4) at the time that he or she reached age eighteen years; or

(b) The court, after holding the dependency case open pursuant to RCW 13.34.267(1), has dismissed the case because the youth became ineligible for extended foster care services.

(2)(a) Upon a request for extended foster care services by a youth pursuant to subsection (1) of this section, a determination that the youth is eligible for extended foster care services, and the completion of a voluntary placement agreement, the department shall provide extended foster care services to the youth.

(b) In order to continue receiving extended foster care services after entering into a voluntary placement agreement with the department, the youth must agree to the entry of an order of dependency within one hundred eighty days of the date that the youth is placed in foster care pursuant to a voluntary placement agreement.

(3) A youth may enter into a voluntary placement agreement for extended foster care services only once. A youth may transition among the eligibility categories identified in RCW 74.13.031 while under the same voluntary placement agreement, provided that the youth remains eligible for extended foster care services during the transition.

(4) "Voluntary placement agreement," for the purposes of this section, means a written voluntary agreement between a nonminor dependent who agrees to submit to the care and authority of the department for the purposes of participating in the extended foster care program. [2013 c 332 § 5.]

Findings—Recommendations—Application—2013 c 332: See notes following RCW 13.34.267.

74.13.360 Performance-based contracts—Child welfare demonstration sites—Department duties—Contracts with tribes. (1) No later than December 30, 2016:

(a) In the demonstration sites selected under *RCW 74.13.368(4)(a), child welfare services shall be provided by supervising agencies with whom the department has entered into performance-based contracts. Supervising agencies may enter into subcontracts with other licensed agencies; and

(b) Except as provided in subsection (3) of this section, and notwithstanding any law to the contrary, the department may not directly provide child welfare services to families and children provided child welfare services by supervising agencies in the demonstration sites selected under *RCW 74.13.368(4)(a).

(2) No later than December 30, 2016, for families and children provided child welfare services by supervising agencies in the demonstration sites selected under *RCW 74.13.368(4)(a), the department is responsible for only the following:

(a) Monitoring the quality of services for which the department contracts under this chapter;

(b) Ensuring that the services are provided in accordance with federal law and the laws of this state, including the Indian child welfare act;

(c) Providing child protection functions and services, including intake and investigation of allegations of child

abuse or neglect, emergency shelter care functions under RCW 13.34.050, and referrals to appropriate providers; and

(d) Issuing licenses pursuant to chapter 74.15 RCW.

(3) No later than December 30, 2016, for families and children provided child welfare services by supervising agencies in the demonstration sites selected under *RCW 74.13.368(4)(a), the department may provide child welfare services only:

(a) For the limited purpose of establishing a control or comparison group as deemed necessary by the child welfare transformation design committee, with input from the Washington state institute for public policy, to implement the demonstration sites selected and defined pursuant to *RCW 74.13.368(4)(a) in which the performance in achieving measurable outcomes will be compared and evaluated pursuant to RCW 74.13.370; or

(b) In an emergency or as a provider of last resort. The department shall adopt rules describing the circumstances under which the department may provide those services. For purposes of this section, "provider of last resort" means the department is unable to contract with a private agency to provide child welfare services in a particular geographic area or, after entering into a contract with a private agency, either the contractor or the department terminates the contract.

(4) For purposes of this chapter, on and after September 1, 2010, performance-based contracts shall be structured to hold the supervising agencies accountable for achieving the following goals in order of importance: Child safety; child permanency, including reunification; and child well-being.

(5) A federally recognized tribe located in this state may enter into a performance-based contract with the department to provide child welfare services to Indian children whether or not they reside on a reservation. Nothing in this section prohibits a federally recognized Indian tribe located in this state from providing child welfare services to its members or other Indian children pursuant to existing tribal law, regulation, or custom, or from directly entering into agreements for the provision of such services with the department, if the department continues to otherwise provide such services, or with federal agencies. [2013 c 205 § 4; 2012 c 205 § 8; 2010 c 291 § 4; 2009 c 520 § 3.]

*Reviser's note: RCW 74.13.368 was suspended by 2013 c 205 § 5 until December 1, 2015.

Findings—Reports—2013 c 205: See note following RCW 74.13.690.

Findings—2010 c 291: See note following RCW 74.13.368.

74.13.368 Performance-based contracts—Child welfare transformation design committee. (*Suspended until December 1, 2015, and expires July 1, 2016.*) (1)(a) The child welfare transformation design committee is established, with members as provided in this subsection.

(i) The governor or the governor's designee;

(ii) Four private agencies that, as of May 18, 2009, provide child welfare services to children and families referred to them by the department. Two agencies must be headquartered in western Washington and two must be headquartered in eastern Washington. Two agencies must have an annual budget of at least one million state-contracted dollars and two must have an annual budget of less than one million state-contracted dollars;

(iii) The assistant secretary of the children's administration in the department;

(iv) Two regional administrators in the children's administration selected by the assistant secretary, one from one of the department's administrative regions one or two, and one from one of the department's administrative regions three, four, five, or six;

(v) The administrator for the division of licensed resources in the children's administration;

(vi) Two nationally recognized experts in performance-based contracts;

(vii) The attorney general or the attorney general's designee;

(viii) A representative of the collective bargaining unit that represents the largest number of employees in the children's administration;

(ix) A representative from the office of the family and children's ombuds;

(x) Four representatives from the Indian policy advisory committee convened by the department's office of Indian policy and support services;

(xi) Two currently elected or former superior court judges with significant experience in dependency matters, selected by the superior court judges' association;

(xii) One representative from partners for our children affiliated with the University of Washington school of social work;

(xiii) A member of the Washington state racial disproportionality advisory committee;

(xiv) A foster parent;

(xv) A youth currently in or a recent alumnus of the Washington state foster care system, to be designated by the cochairs of the committee; and

(xvi) A parent representative who has had personal experience with the dependency system.

(b) The president of the senate and the speaker of the house of representatives shall jointly appoint the members under (a)(ii), (xiv), and (xvi) of this subsection.

(c) The representative from partners for our children shall convene the initial meeting of the committee no later than June 15, 2009.

(d) The cochairs of the committee shall be the assistant secretary for the children's administration and another member selected by a majority vote of those members present at the initial meeting.

(2) The committee shall establish a transition plan containing recommendations to the legislature and the governor consistent with this section for the provision of child welfare services by supervising agencies pursuant to RCW 74.13.360.

(3) The plan shall include the following:

(a) A model or framework for performance-based contracts to be used by the department that clearly defines:

(i) The target population;

(ii) The referral and exit criteria for the services;

(iii) The child welfare services including the use of evidence-based services and practices to be provided by contractors;

(iv) The roles and responsibilities of public and private agency workers in key case decisions;

(v) Contract performance and outcomes, including those related to eliminating racial disparities in child outcomes;

(vi) That supervising agencies will provide culturally competent service;

(vii) How to measure whether each contractor has met the goals listed in RCW 74.13.360(4); and

(viii) Incentives to meet performance outcomes;

(b) A method or methods by which clients will access community-based services, how private supervising agencies will engage other services or form local service networks, develop subcontracts, and share information and supervision of children;

(c) Methods to address the effects of racial disproportionality, as identified in the 2008 Racial Disproportionality Advisory Committee Report published by the Washington state institute for public policy in June 2008;

(d) Methods for inclusion of the principles and requirements of the centennial accord executed in November 2001, executed between the state of Washington and federally recognized tribes in Washington state;

(e) Methods for assuring performance-based contracts adhere to the letter and intent of the federal Indian child welfare act;

(f) Contract monitoring and evaluation procedures that will ensure that children and families are receiving timely and quality services and that contract terms are being implemented;

(g) A method or methods by which to ensure that the children's administration has sufficiently trained and experienced staff to monitor and manage performance-based contracts;

(h) A process by which to expand the capacity of supervising and other private agencies to meet the service needs of children and families in a performance-based contractual arrangement;

(i) A method or methods by which supervising and other private agencies can expand services in underserved areas of the state;

(j) The appropriate amounts and procedures for the reimbursement of supervising agencies given the proposed services restructuring;

(k) A method by which to access and enhance existing data systems to include contract performance information;

(l) A financing arrangement for the contracts that examines:

(i) The use of case rates or performance-based fee-for-service contracts that include incentive payments or payment schedules that link reimbursement to outcomes; and

(ii) Ways to reduce a contractor's financial risk that could jeopardize the solvency of the contractor, including consideration of the use of a risk-reward corridor that limits risk of loss and potential profits or the establishment of a statewide risk pool;

(m) A description of how the transition will impact the state's ability to obtain federal funding and examine options to further maximize federal funding opportunities and increased flexibility;

(n) A review of whether current administrative staffing levels in the regions should be continued when the majority of child welfare services are being provided by supervising agencies;

(o) A description of the costs of the transition, the initial start-up costs and the mechanisms to periodically assess the overall adequacy of funds and the fiscal impact of the changes, and the feasibility of the plan and the impact of the plan on department employees during the transition; and

(p) Identification of any statutory and regulatory revisions necessary to accomplish the transition.

(4)(a) The committee, with the assistance of the department, shall select two demonstration sites within which to implement chapter 520, Laws of 2009. One site must be located on the eastern side of the state. The other site must be located on the western side of the state. Neither site must be wholly located in any of the department's administrative regions.

(b) The committee shall develop two sets of performance outcomes to be included in the performance-based contracts the department enters into with supervising agencies. The first set of outcomes shall be used for those cases transferred to a supervising agency over time. The second set of outcomes shall be used for new entrants to the child welfare system.

(c) The committee shall also identify methods for ensuring that comparison of performance between supervising agencies and the existing service delivery system takes into account the variation in the characteristics of the populations being served as well as historical trends in outcomes for those populations.

(5) The committee shall determine the appropriate size of the child and family populations to be provided services under performance-based contracts with supervising agencies. The committee shall also identify the time frame within which cases will be transferred to supervising agencies. The performance-based contracts entered into with supervising agencies shall encompass the provision of child welfare services to enough children and families in each demonstration site to allow for the assessment of whether there are meaningful differences, to be defined by the committee, between the outcomes achieved in the demonstration sites and the comparison sites or populations. To ensure adequate statistical power to assess these differences, the populations served shall be large enough to provide a probability greater than seventy percent that meaningful difference will be detected and a ninety-five percent probability that observed differences are not due to chance alone.

(6) The committee shall also prepare as part of the plan a recommendation as to how to implement chapter 520, Laws of 2009 so that full implementation of chapter 520, Laws of 2009 is achieved no later than December 30, 2015.

(7) The committee shall prepare the plan to manage the delivery of child welfare services in a manner that achieves coordination of the services and programs that deliver primary prevention services.

(8) Beginning June 30, 2009, the committee shall report quarterly to the governor and the legislative children's oversight committee established in RCW 44.04.220. From June 30, 2012, until December 30, 2015, the committee need only report twice a year. The committee shall report on its progress in meeting its duties under subsections (2) and (3) of this section and on any other matters the committee or the legislative children's oversight committee or the governor deems appropriate. The portion of the plan required in sub-

section (6) of this section shall be due to the legislative children's oversight committee on or before June 1, 2010. The reports shall be in written form.

(9) The committee, by majority vote, may establish advisory committees as it deems necessary.

(10) All state executive branch agencies and the agencies with whom the department contracts for child welfare services shall cooperate with the committee and provide timely information as the chair or cochairs may request. Cooperation by the children's administration must include developing and scheduling training for supervising agencies to access data and information necessary to implement and monitor the contracts.

(11) It is expected that the administrative costs for the committee will be supported through private funds.

(12) The committee is subject to chapters 42.30 (open public meetings act) and 42.52 (ethics in public service) RCW.

(13) This section expires July 1, 2016. [2013 c 23 § 208; 2012 c 205 § 10; 2010 c 291 § 2; 2009 c 520 § 8.]

Reviser's note: This section was amended by 2013 c 23 § 208 and suspended by 2013 c 205 § 5 until December 1, 2015.

Suspension—2013 c 205: "RCW 74.13.368 (Performance-based contracts—Child welfare transformation design committee) and 2012 c 205 s 10, 2010 c 291 s 2, & 2009 c 520 s 8 are each suspended as of July 28, 2013, until December 1, 2015." [2013 c 205 § 5.]

Findings—2010 c 291: "The legislature finds that, based upon the work of the child welfare transformation design committee established pursuant to 2SHB 2106 during the 2009 legislative session, several narrowly based amendments to that legislation need to be made, mainly for clarifying purposes. The legislature further finds that two deadlines need to be extended by six months, the first to allow the department of social and health services additional time to complete the conversion of its contracts to performance-based contracts and the second to allow the department additional time to gradually transfer existing cases to supervising agencies in the demonstration sites. The legislature finds that the addition of a foster youth on the child welfare transformation design committee will greatly assist the committee in its work.

The legislature recognizes that clarifying language regarding Indian tribes should be added regarding the government-to-government relationship the tribes have with the state. The legislature further recognizes that language is needed regarding the department's ability to receive federal funding based upon the recommendations made by the child welfare transformation design committee." [2010 c 291 § 1.]

Effective date—2009 c 520 § 8: "Section 8 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 18, 2009]." [2009 c 520 § 98.]

74.13.540 Independent living services. Independent living services include assistance in achieving basic educational requirements such as a high school equivalency certificate as provided in RCW 28B.50.536, enrollment in vocational and technical training programs offered at the community and vocational colleges, and obtaining and maintaining employment; and accomplishing basic life skills such as money management, nutrition, preparing meals, and cleaning house. A baseline skill level in ability to function productively and independently shall be determined at entry. Performance shall be measured and must demonstrate improvement from involvement in the program. Each recipient shall have a plan for achieving independent living skills by the time the recipient reaches age twenty-one. The plan shall be written within the first thirty days of placement and reviewed every ninety days. A recipient who fails to consistently

adhere to the elements of the plan shall be subject to reassessment by the professional staff of the program and may be declared ineligible to receive services. [2013 c 39 § 30; 2001 c 192 § 2.]

74.13.621 Kinship care oversight committee. (Expires June 30, 2015.) (1) Within existing resources, the department shall establish an oversight committee to monitor, guide, and report on kinship care recommendations and implementation activities. The committee shall:

(a) Draft a kinship care definition that is restricted to persons related by blood, marriage, or adoption, including marriages that have been dissolved, or for a minor defined as an "Indian child" under the federal Indian child welfare act (25 U.S.C. Sec. 1901 et seq.), the definition of "extended family member" under the federal Indian child welfare act, and a set of principles. If the committee concludes that one or more programs or services would be more efficiently and effectively delivered under a different definition of kin, it shall state what definition is needed, and identify the program or service in the report. It shall also provide evidence of how the program or service will be more efficiently and effectively delivered under the different definition. The department shall not adopt rules or policies changing the definition of kin without authorizing legislation;

(b) Monitor and provide consultation on the implementation of recommendations contained in the 2002 kinship care report, including but not limited to the recommendations relating to legal and respite care services and resources;

(c) Partner with nonprofit organizations and private sector businesses to guide a public education awareness campaign; and

(d) Assist with developing future recommendations on kinship care issues.

(2) The department shall consult with the oversight committee on its efforts to better collaborate and coordinate services to benefit kinship care families.

(3) The oversight committee must consist of a minimum of thirty percent kinship caregivers, who shall represent a diversity of kinship families. Statewide representation with geographic, ethnic, and gender diversity is required. Other members shall include representatives of the department, representatives of relevant state agencies, representatives of the private nonprofit and business sectors, child advocates, representatives of Washington state Indian tribes as defined under the federal Indian welfare act (25 U.S.C. Sec. 1901 et seq.), and representatives of the legal or judicial field. Birth parents, foster parents, and others who have an interest in these issues may also be included.

(4) To the extent funding is available, the department may reimburse nondepartmental members of the oversight committee for costs incurred in participating in the meetings of the oversight committee.

(5) The kinship care oversight committee shall update the legislature and governor annually on committee activities, with the first update due by January 1, 2006.

(6) This section expires June 30, 2015. [2013 2nd sp.s. c 4 § 996; (2011 1st sp.s. c 50 § 965 expired June 30, 2013); 2009 c 564 § 954; 2005 c 439 § 1.]

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

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

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

74.13.631 School-aged youth in out-of-home care—School placement options. (1) The department shall provide youth residing in out-of-home care the opportunity to remain enrolled in the school he or she was attending prior to out-of-home placement, unless the safety of the youth is jeopardized, or a relative or other suitable person placement approved by the department is secured for the youth, or it is determined not to be in the youth's best interest to remain enrolled in the school he or she was attending prior to out-of-home placement. If the parties in the dependency case disagree regarding which school the youth should be enrolled in, the youth may remain enrolled in the school of origin until the disagreement is resolved in court, unless the department determines that the youth is in immediate danger by remaining enrolled in the school of origin.

(2) Unless otherwise directed by the court, the educational responsibilities of the department for school-aged youth residing in out-of-home care are the following:

(a) To collaboratively discuss and document school placement options and plan necessary school transfers during the family team decision-making meeting;

(b) To notify the receiving school and the school of origin that a youth residing in foster care is transferring schools;

(c) To request and secure missing academic records or medical records required for school enrollment within ten business days;

(d) To document the request and receipt of academic records in the individual service and safety plan;

(e) To pay any unpaid fees or fines due by the youth to the school or school district;

(f) To notify all legal parties when a school disruption occurs; and

(g) To document factors that contributed to any school disruptions. [2013 c 182 § 6.]

Findings—2013 c 182: See note following RCW 13.34.030.

74.13.632 School-aged youth in out-of-home care—Educational experiences and progress—Reports. (1) A university-based child welfare research entity shall include in its reporting the educational experiences and progress of students in children's administration out-of-home care. This data must be disaggregated in the smallest units allowable by law that do not identify an individual student, in order to learn which children's administration offices and school districts are experiencing the greatest success and challenges in achieving quality educational outcomes with students in children's administration out-of-home care.

(2) By January 1, 2015 and annually thereafter, the university-based child welfare research entity must submit a report to the legislature. To the extent possible, the report should include, but is not limited to, information on the following measures for a youth who is a dependent pursuant to chapter 13.34 RCW:

(a) Aggregate scores from the Washington state kindergarten readiness assessment;

(b) Aggregate scores from the third grade statewide student assessment in reading;

(c) Number of youth graduating from high school with a documented plan for postsecondary education, employment, or military service;

(d) Number of youth completing one year of postsecondary education, the equivalent of first-year student credits, or achieving a postsecondary certificate; and

(e) Number of youth who complete an associate or bachelor's degree.

(3) The report must identify strengths and weaknesses in practice and recommend to the legislature strategy and needed resources for improvement. [2013 c 182 § 7.]

Findings—2013 c 182: See note following RCW 13.34.030.

74.13.640 Child fatality reviews. (1)(a) The department shall conduct a child fatality review in the event of a fatality suspected to be caused by child abuse or neglect of any minor who is in the care of the department or a supervising agency or receiving services described in this chapter or who has been in the care of the department or a supervising agency or received services described in this chapter within one year preceding the minor's death.

(b) The department shall consult with the office of the family and children's ombuds to determine if a child fatality review should be conducted in any case in which it cannot be determined whether the child's death is the result of suspected child abuse or neglect.

(c) The department shall ensure that the fatality review team is made up of individuals who had no previous involvement in the case, including individuals whose professional expertise is pertinent to the dynamics of the case.

(d) Upon conclusion of a child fatality review required pursuant to this section, the department shall within one hundred eighty days following the fatality issue a report on the results of the review, unless an extension has been granted by the governor. Reports must be distributed to the appropriate committees of the legislature, and the department shall create a public web site where all child fatality review reports required under this section must be posted and maintained. A child fatality review report completed pursuant to this section is subject to public disclosure and must be posted on the public web site, except that confidential information may be redacted by the department consistent with the requirements of RCW 13.50.100, 68.50.105, 74.13.500 through 74.13.525, chapter 42.56 RCW, and other applicable state and federal laws.

(e) The department shall develop and implement procedures to carry out the requirements of this section.

(2) In the event of a near fatality of a child who is in the care of or receiving services described in this chapter from the department or a supervising agency or who has been in the care of or received services described in this chapter from the department or a supervising agency within one year preceding the near fatality, the department shall promptly notify the office of the family and children's ombuds. The department may conduct a review of the near fatality at its discretion or at the request of the office of the family and children's ombuds.

(3) In any review of a child fatality or near fatality in which the child was placed with or received services from a supervising agency pursuant to a contract with the department, the department and the fatality review team shall have

access to all records and files regarding the child or otherwise relevant to the review that have been produced or retained by the supervising agency.

(4)(a) A child fatality or near fatality review completed pursuant to this section is subject to discovery in a civil or administrative proceeding, but may not be admitted into evidence or otherwise used in a civil or administrative proceeding except pursuant to this section.

(b) A department employee responsible for conducting a child fatality or near fatality review, or member of a child fatality or near fatality review team, may not be examined in a civil or administrative proceeding regarding (i) the work of the child fatality or near fatality review team, (ii) the incident under review, (iii) his or her statements, deliberations, thoughts, analyses, or impressions relating to the work of the child fatality or near fatality review team or the incident under review, or (iv) the statements, deliberations, thoughts, analyses, or impressions of any other member of the child fatality or near fatality review team, or any person who provided information to the child fatality or near fatality review team, relating to the work of the child fatality or near fatality review team or the incident under review.

(c) Documents prepared by or for a child fatality or near fatality review team are inadmissible and may not be used in a civil or administrative proceeding, except that any document that exists before its use or consideration in a child fatality or near fatality review, or that is created independently of such review, does not become inadmissible merely because it is reviewed or used by a child fatality or near fatality review team. A person is not unavailable as a witness merely because the person has been interviewed by or has provided a statement for a child fatality or near fatality review, but if called as a witness, a person may not be examined regarding the person's interactions with the child fatality or near fatality review including, without limitation, whether the person was interviewed during such review, the questions that were asked during such review, and the answers that the person provided during such review. This section may not be construed as restricting the person from testifying fully in any proceeding regarding his or her knowledge of the incident under review.

(d) The restrictions set forth in this section do not apply in a licensing or disciplinary proceeding arising from an agency's effort to revoke or suspend the license of any licensed professional based in whole or in part upon allegations of wrongdoing in connection with a minor's death or near fatality reviewed by a child fatality or near fatality review team. [2013 c 23 § 209; 2011 c 61 § 2; 2009 c 520 § 91; 2008 c 211 § 1; 2004 c 36 § 1.]

74.13.690 Child welfare measurements. (1) A university-based child welfare research entity and the department, in collaboration with other stakeholders, shall develop measurements in the areas of safety, permanency, and well-being, using existing and available data. Measurements must be calculated from data used in the routine work of the state agencies' data and information technology departments. Any new record linkage or data-matching activities required in fulfillment of this section may be performed by the research entity pursuant to agreements developed under subsection (6) of this section.

(2) For the purposes of this section, "state agencies" means any agency or subagency providing data used in the integrated client database maintained by the research and data analysis division of the department. Any exchange of data must be in accordance with applicable federal and state law.

(3) All measurements must use a methodology accepted by the scientific community. All measurements must address any disproportionate racial and ethnic inequality. The initial measurements must be developed by December 1, 2013.

(4) The measurements may not require the state agencies to revise their data collection systems, and may not require the state agencies to provide individually identifiable information.

(5) The state agencies shall provide the research entity with all measurement data related to the measurements developed under this section at least quarterly beginning July 1, 2014. The research entity shall make any nonidentifiable data publicly available. The research entity shall report on the data to the legislature and the governor annually starting December 31, 2014.

(6) By January 1, 2014, the state agencies shall execute agreements with the research entity to enable sharing of data pursuant to RCW 42.48.020 sufficient to comply with this section.

(7) The fact that the research entity has chosen to use a specific measure, use a specific baseline, or compare any measure to a baseline is not admissible as evidence of negligence by the department in a civil action. [2013 c 205 § 2.]

Findings—Reports—2013 c 205: "(1) The legislature recognizes that the goals of the child welfare system are to protect the safety, permanence, and well-being of the children it serves. The legislature further recognizes the importance of maintaining publicly accessible data that tracks the performance of the child welfare system, leading to transparency and public understanding of the system.

(2) The legislature believes it is important to measure safety, permanence, and well-being such that the public and the legislature may understand how the child welfare system is performing. This information will also serve the legislature in determining priorities for investment of public dollars as well as need for substantive legislative changes to facilitate improvement.

(3) The reports to the legislature under section 2 of this act will be used to provide feedback to the department of social and health services. The agencies referenced in section 2 of this act will not disclose individually identifiable private information except as allowable under federal and state law." [2013 c 205 § 1.]

74.13.700 Denial or delay of licensure or approval of unsupervised access to children. (1) In determining the character, suitability, and competence of an individual, the department may not:

(a) Deny or delay a license or approval of unsupervised access to children to an individual solely because of a crime or civil infraction involving the individual or entity revealed in the background check process that is not on the secretary's list of crimes and negative actions and is not related directly to child safety, permanence, or well-being; or

(b) Delay the issuance of a license or approval of unsupervised access to children by requiring the individual to obtain records relating to a crime or civil infraction revealed in the background check process that is not on the secretary's list of crimes and negative actions and is not related directly to child safety, permanence, or well-being and is not a permanent disqualifier pursuant to department rule.

(2) If the department determines that an individual does not possess the character, suitability, or competence to provide care or have unsupervised access to a child, it must provide the reasons for its decision in writing with copies of the records or documents related to its decision to the individual within ten days of making the decision.

(3) For purposes of this section, "individual" means a relative as defined in RCW 74.15.020(2)(a), an "other suitable person" under chapter 13.34 RCW, a person pursuing licensing as a foster parent, or a person employed or seeking employment by a business or organization licensed by the department or with whom the department has a contract to provide care, supervision, case management, or treatment of children in the care of the department. "Individual" does not include long-term care workers defined in RCW 74.39A.009(17)(a) whose background checks are conducted as provided in RCW 74.39A.056.

(4) The department or its officers, agents, or employees may not be held civilly liable based upon its decision to grant or deny unsupervised access to children if the background information it relied upon at the time the decision was made did not indicate that child safety, permanence, or well-being would be a concern. [2013 c 162 § 2.]

Findings—2013 c 162: "The legislature recognizes that the goals of the child welfare system are the safety, permanence, and well-being of the children it serves. The legislature further recognizes the importance of background checks conducted by the department of social and health services to assess an individual's character, suitability, and competence to determine whether an individual is appropriate to be provided a license under chapter 74.13 RCW or have unsupervised access to children. The legislature does not intend to change the current secretary of social and health services' list of crimes and negative actions. However, the legislature believes that either an unreasonable delay in a determination of whether to approve or deny a license under chapter 74.13 RCW or unsupervised access to children, when such unreasonable delay or denial is based solely on a crime or civil infraction not directly related to child safety, is not appropriate and is not in the best interest of the children being served by the child welfare system." [2013 c 162 § 1.]

Rules—2013 c 162: "The department of social and health services shall adopt all necessary rules to implement this act." [2013 c 162 § 8.]

74.13.705 Background checks—Out-of-state requests—Fees. The department shall charge a fee to process a request made by a person in another state for an individual's child abuse or neglect history in this state or other background history on the individual possessed by the department. All proceeds from the fees collected must go directly to aiding the cost associated with the department conducting background checks. [2013 c 162 § 3.]

Findings—Rules—2013 c 162: See notes following RCW 74.13.700.

Chapter 74.13A RCW ADOPTION SUPPORT

Sections

- 74.13A.025 Factors determining payments or adjustment in standards.
- 74.13A.040 Review of support payments.
- 74.13A.075 "Secretary" and "department" defined.

74.13A.025 Factors determining payments or adjustment in standards. The factors to be considered by the secretary in setting the amount of any payment or payments to be made pursuant to RCW 26.33.320 and 74.13A.005 through 74.13A.080 and in adjusting standards hereunder shall

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include: The size of the family including the adoptive child, the usual living expenses of the family, the special needs of any family member including education needs, the family income, the family resources and plan for savings, the medical and hospitalization needs of the family, the family's means of purchasing or otherwise receiving such care, and any other expenses likely to be needed by the child to be adopted. In setting the amount of any initial payment made pursuant to RCW 26.33.320 and 74.13A.005 through 74.13A.080, the secretary is authorized to establish maximum payment amounts that are reasonable and allow permanency planning goals related to adoption of children under RCW 13.34.145 to be achieved at the earliest possible date.

The amounts paid for the support of a child pursuant to RCW 26.33.320 and 74.13A.005 through 74.13A.080 may vary from family to family and from year to year. Due to changes in economic circumstances or the needs of the child such payments may be discontinued and later resumed.

Payments under RCW 26.33.320 and 74.13A.005 through 74.13A.080 may be continued by the secretary subject to review as provided for herein, if such parent or parents having such child in their custody establish their residence in another state or a foreign jurisdiction.

In fixing the standards to govern the amount and character of payments to be made for the support of adopted children pursuant to RCW 26.33.320 and 74.13A.005 through 74.13A.080 and before issuing rules and regulations to carry out the provisions of RCW 26.33.320 and 74.13A.005 through 74.13A.080, the secretary shall consider the comments and recommendations of the committee designated by the secretary to advise him or her with respect to child welfare. [2013 c 23 § 210; 1996 c 130 § 1; 1985 c 7 § 136; 1971 ex.s. c 63 § 5. Formerly RCW 74.13.112.]

74.13A.040 Review of support payments. (1) Any parent who is a party to an agreement under RCW 74.13A.005 through 74.13A.080 may at any time, in writing, request, for reasons set forth in such request, a review of the amount of any payment or the level of continuing payments. The review shall begin not later than thirty days from the receipt of such request. Any adjustment may be made retroactive to the date such request was received by the secretary. If such request is not acted on within thirty days after it has been received by the secretary, such parent may invoke his or her rights under the hearing provisions set forth in RCW 74.13A.055.

(2) The secretary may make adjustments in payments at the time of the review, or at other times, if the secretary finds that circumstances have changed and warrant an adjustment in payments. Changes in circumstances may include, but are not limited to, variations in medical opinions, prognosis, and costs. Appropriate adjustments in payments shall be made based upon changes in the needs of the child and/or changes in the adoptive parents' income, resources, and expenses for the care of such child or other members of the family, including medical and/or hospitalization expense not otherwise covered by or subject to reimbursement from insurance or other sources of financial assistance. [2013 c 23 § 211; 2009 c 527 § 1; 1995 c 270 § 2; 1985 c 7 § 138; 1971 ex.s. c 63 § 7. Formerly RCW 74.13.118.]

Finding—1995 c 270: "The legislature finds that it is in the best interest of the people of the state of Washington to support the adoption process in a variety of ways, including easing administrative burdens on adoptive parents receiving financial support, providing finality for adoptive placements and stable homes for children, and not delaying adoptions." [1995 c 270 § 1.]

74.13A.075 "Secretary" and "department" defined. As used in RCW 26.33.320 and 74.13A.005 through 74.13A.080 the following definitions shall apply:

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

(2) "Department" means the department of social and health services. [2013 c 23 § 212; 1985 c 7 § 145; 1971 ex.s. c 63 § 15. Formerly RCW 74.13.139.]

Chapter 74.13B RCW CHILD WELFARE SYSTEM— CONTRACTING FOR SERVICES

Sections

74.13B.020 Family support and related services—Performance-based contracting.

74.13B.020 Family support and related services—Performance-based contracting. (1) No later than July 1, 2014, the department shall enter into performance-based contracts for the provision of family support and related services. The department may enter into performance-based contracts for additional services, other than case management.

(2) The department shall conduct a procurement process to enter into performance-based contracts with one or more network administrators for family support and related services. As part of the procurement process, the department shall consult with department caseworkers, the exclusive bargaining representative for employees of the department, tribal representatives, parents who were formerly involved in the child welfare system, youth currently or previously in foster care, child welfare services researchers, and the Washington state institute for public policy to assist in identifying the categories of family support and related services that will be included in the procurement. The categories of family support and related services shall be defined no later than July 15, 2012. In identifying services, the department must review current data and research related to the effectiveness of family support and related services that mitigate child safety concerns and promote permanency, including reunification, and child well-being. Expenditures for family support and related services purchased under this section must remain within the levels appropriated in the operating budget.

(3)(a) Network administrators shall, directly or through subcontracts with service providers:

(i) Assist caseworkers in meeting their responsibility for implementation of case plans and individual service and safety plans; and

(ii) Provide the family support and related services within the categories of contracted services that are included in a child or family's case plan or individual service and safety plan within funds available under contract.

(b) While the department caseworker retains responsibility for case management, nothing in chapter 205, Laws of 2012 limits the ability of the department to continue to contract for the provision of case management services by child-

placing agencies, behavioral rehabilitation services agencies, or other entities that provided case management under contract with the department prior to July 1, 2005.

(4) In conducting the procurement, the department shall actively consult with other state agencies with relevant expertise, such as the health care authority, and with philanthropic entities with expertise in performance-based contracting for child welfare services. The director of the office of financial management must approve the request for proposal prior to its issuance.

(5) The procurement process must be developed and implemented in a manner that complies with applicable provisions of intergovernmental agreements between the state of Washington and tribal governments and must provide an opportunity for tribal governments to contract for service delivery through network administrators.

(6) The procurement and resulting contracts must include, but are not limited to, the following standards and requirements:

(a) The use of family engagement approaches to successfully motivate families to engage in services and training of the network's contracted providers to apply such approaches;

(b) The use of parents and youth who are successful veterans of the child welfare system to act as mentors through activities that include, but are not limited to, helping families navigate the system, facilitating parent engagement, and minimizing distrust of the child welfare system;

(c) The establishment of qualifications for service providers participating in provider networks, such as appropriate licensure or certification, education, and accreditation by professional accrediting entities;

(d) Adequate provider capacity to meet the anticipated service needs in the network administrator's contracted service area. The network administrator must be able to demonstrate that its provider network is culturally competent and has adequate capacity to address disproportionality, including utilization of tribal and other ethnic providers capable of serving children and families of color or who need language-appropriate services;

(e) Fiscal solvency of network administrators and providers participating in the network;

(f) The use of evidence-based, research-based, and promising practices, where appropriate, including fidelity and quality assurance provisions;

(g) Network administrator quality assurance activities, including monitoring of the performance of providers in their provider network, with respect to meeting measurable service outcomes;

(h) Network administrator data reporting, including data on contracted provider performance and service outcomes; and

(i) Network administrator compliance with applicable provisions of intergovernmental agreements between the state of Washington and tribal governments and the federal and Washington state Indian child welfare act.

(7) As part of the procurement process under this section, the department shall issue the request for proposals or request for information no later than December 31, 2013, shall begin implementation of performance-based contracting no later than July 1, 2014, and shall fully implement performance-based contracting no later than July 1, 2015.

(8) Performance-based payment methodologies must be used in network administrator contracting. Performance measures should relate to successful engagement by a child or parent in services included in their case plan, and resulting improvement in identified problem behaviors and interactions. For the initial three-year period of implementation of performance-based contracting, the department may transfer financial risk for the provision of services to network administrators only to the limited extent necessary to implement a performance-based payment methodology, such as phased payment for services. However, the department may develop a shared savings methodology through which the network administrator will receive a defined share of any savings that result from improved performance. If the department receives a Title IV-E waiver, the shared savings methodology must be consistent with the terms of the waiver. If a shared savings methodology is adopted, the network administrator shall reinvest the savings in enhanced services to better meet the needs of the families and children they serve.

(9) The department must actively monitor network administrator compliance with the terms of contracts executed under this section.

(10) The use of performance-based contracts under this section must be done in a manner that does not adversely affect the state's ability to continue to obtain federal funding for child welfare-related functions currently performed by the state and with consideration of options to further maximize federal funding opportunities and increase flexibility in the use of such funds, including use for preventive and in-home child welfare services. [2013 c 205 § 3; 2012 c 205 § 3.]

Findings—Reports—2013 c 205: See note following RCW 74.13.690.

Chapter 74.14B RCW CHILDREN'S SERVICES

Sections

74.14B.010 Children's services workers—Hiring and training.

74.14B.010 Children's services workers—Hiring and training. (1) Caseworkers employed in children services shall meet minimum standards established by the department of social and health services. Comprehensive training for caseworkers shall be completed before such caseworkers are assigned to case-carrying responsibilities without direct supervision. Intermittent, part-time, and standby workers shall be subject to the same minimum standards and training.

(2) Ongoing specialized training shall be provided for persons responsible for investigating child sexual abuse. Training participants shall have the opportunity to practice interview skills and receive feedback from instructors.

(3) The department, the criminal justice training commission, the Washington association of sheriffs and police chiefs, and the Washington association of prosecuting attorneys shall design and implement statewide training that contains consistent elements for persons engaged in the interviewing of children, including law enforcement, prosecution, and child protective services.

(4) The training shall: (a) Be based on research-based practices and standards; (b) minimize the trauma of all persons who are interviewed during abuse investigations; (c)

provide methods of reducing the number of investigative interviews necessary whenever possible; (d) assure, to the extent possible, that investigative interviews are thorough, objective, and complete; (e) recognize needs of special populations, such as persons with developmental disabilities; (f) recognize the nature and consequences of victimization; (g) require investigative interviews to be conducted in a manner most likely to permit the interviewed persons the maximum emotional comfort under the circumstances; (h) address record retention and retrieval; and (i) documentation of investigative interviews.

(5) The identification of domestic violence is critical in ensuring the safety of children in the child welfare system. As a result, ongoing domestic violence training and consultation shall be provided to caseworkers, including how to use the children's administration's practice guide to domestic violence. [2013 c 254 § 5; 1999 c 389 § 5; 1987 c 503 § 8.]

Chapter 74.15 RCW

CARE OF CHILDREN, EXPECTANT MOTHERS, PERSONS WITH DEVELOPMENTAL DISABILITIES

Sections

74.15.020	Definitions.
74.15.140	Action against licensed or unlicensed agencies authorized.
74.15.230	Responsible living skills programs—Established—Requirements.
74.15.311	Resource and assessment centers—License.

74.15.020 Definitions. The definitions in this section apply throughout this chapter and RCW 74.13.031 unless the context clearly requires otherwise.

(1) "Agency" means any person, firm, partnership, association, corporation, or facility which receives children, expectant mothers, or persons with developmental disabilities for control, care, or maintenance outside their own homes, or which places, arranges the placement of, or assists in the placement of children, expectant mothers, or persons with developmental disabilities for foster care or placement of children for adoption, and shall include the following irrespective of whether there is compensation to the agency or to the children, expectant mothers, or persons with developmental disabilities for services rendered:

(a) "Child-placing agency" means an agency which places a child or children for temporary care, continued care, or for adoption;

(b) "Community facility" means a group care facility operated for the care of juveniles committed to the department under RCW 13.40.185. A county detention facility that houses juveniles committed to the department under RCW 13.40.185 pursuant to a contract with the department is not a community facility;

(c) "Crisis residential center" means an agency which is a temporary protective residential facility operated to perform the duties specified in chapter 13.32A RCW, in the manner provided in RCW 74.13.032 through 74.13.036;

(d) "Emergency respite center" is an agency that may be commonly known as a crisis nursery, that provides emergency and crisis care for up to seventy-two hours to children who have been admitted by their parents or guardians to prevent abuse or neglect. Emergency respite centers may operate for up to twenty-four hours a day, and for up to seven days

a week. Emergency respite centers may provide care for children ages birth through seventeen, and for persons eighteen through twenty with developmental disabilities who are admitted with a sibling or siblings through age seventeen. Emergency respite centers may not substitute for crisis residential centers or HOPE centers, or any other services defined under this section, and may not substitute for services which are required under chapter 13.32A or 13.34 RCW;

(e) "Foster-family home" means an agency which regularly provides care on a twenty-four hour basis to one or more children, expectant mothers, or persons with developmental disabilities in the family abode of the person or persons under whose direct care and supervision the child, expectant mother, or person with a developmental disability is placed;

(f) "Group-care facility" means an agency, other than a foster-family home, which is maintained and operated for the care of a group of children on a twenty-four hour basis;

(g) "HOPE center" means an agency licensed by the secretary to provide temporary residential placement and other services to street youth. A street youth may remain in a HOPE center for thirty days while services are arranged and permanent placement is coordinated. No street youth may stay longer than thirty days unless approved by the department and any additional days approved by the department must be based on the unavailability of a long-term placement option. A street youth whose parent wants him or her returned to home may remain in a HOPE center until his or her parent arranges return of the youth, not longer. All other street youth must have court approval under chapter 13.34 or 13.32A RCW to remain in a HOPE center up to thirty days;

(h) "Maternity service" means an agency which provides or arranges for care or services to expectant mothers, before or during confinement, or which provides care as needed to mothers and their infants after confinement;

(i) "Resource and assessment center" means an agency that provides short-term emergency and crisis care for a period up to seventy-two hours, excluding Saturdays, Sundays, and holidays to children who have been removed from their parent's or guardian's care by child protective services or law enforcement;

(j) "Responsible living skills program" means an agency licensed by the secretary that provides residential and transitional living services to persons ages sixteen to eighteen who are dependent under chapter 13.34 RCW and who have been unable to live in his or her legally authorized residence and, as a result, the minor lived outdoors or in another unsafe location not intended for occupancy by the minor. Dependent minors ages fourteen and fifteen may be eligible if no other placement alternative is available and the department approves the placement;

(k) "Service provider" means the entity that operates a community facility.

(2) "Agency" shall not include the following:

(a) Persons related to the child, expectant mother, or person with developmental disability in the following ways:

(i) Any blood relative, including those of half-blood, and including first cousins, second cousins, nephews or nieces, and persons of preceding generations as denoted by prefixes of grand, great, or great-great;

(ii) Stepfather, stepmother, stepbrother, and stepsister;

(iii) A person who legally adopts a child or the child's parent as well as the natural and other legally adopted children of such persons, and other relatives of the adoptive parents in accordance with state law;

(iv) Spouses of any persons named in (a)(i), (ii), or (iii) of this subsection (2), even after the marriage is terminated;

(v) Relatives, as named in (a)(i), (ii), (iii), or (iv) of this subsection (2), of any half sibling of the child; or

(vi) Extended family members, as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent who provides care in the family abode on a twenty-four-hour basis to an Indian child as defined in 25 U.S.C. Sec. 1903(4);

(b) Persons who are legal guardians of the child, expectant mother, or persons with developmental disabilities;

(c) Persons who care for a neighbor's or friend's child or children, with or without compensation, where the parent and person providing care on a twenty-four-hour basis have agreed to the placement in writing and the state is not providing any payment for the care;

(d) A person, partnership, corporation, or other entity that provides placement or similar services to exchange students or international student exchange visitors or persons who have the care of an exchange student in their home;

(e) A person, partnership, corporation, or other entity that provides placement or similar services to international children who have entered the country by obtaining visas that meet the criteria for medical care as established by the United States citizenship and immigration services, or persons who have the care of such an international child in their home;

(f) Schools, including boarding schools, which are engaged primarily in education, operate on a definite school year schedule, follow a stated academic curriculum, accept only school-age children and do not accept custody of children;

(g) Hospitals licensed pursuant to chapter 70.41 RCW when performing functions defined in chapter 70.41 RCW, nursing homes licensed under chapter 18.51 RCW and assisted living facilities licensed under chapter 18.20 RCW;

(h) Licensed physicians or lawyers;

(i) Facilities approved and certified under chapter 71A.22 RCW;

(j) Any agency having been in operation in this state ten years prior to June 8, 1967, and not seeking or accepting moneys or assistance from any state or federal agency, and is supported in part by an endowment or trust fund;

(k) Persons who have a child in their home for purposes of adoption, if the child was placed in such home by a licensed child-placing agency, an authorized public or tribal agency or court or if a replacement report has been filed under chapter 26.33 RCW and the placement has been approved by the court;

(l) An agency operated by any unit of local, state, or federal government or an agency licensed by an Indian tribe pursuant to RCW 74.15.190;

(m) A maximum or medium security program for juvenile offenders operated by or under contract with the department;

(n) An agency located on a federal military reservation, except where the military authorities request that such agency be subject to the licensing requirements of this chapter.

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

(4) "Juvenile" means a person under the age of twenty-one who has been sentenced to a term of confinement under the supervision of the department under RCW 13.40.185.

(5) "Performance-based contracts" or "contracting" means the structuring of all aspects of the procurement of services around the purpose of the work to be performed and the desired results with the contract requirements set forth in clear, specific, and objective terms with measurable outcomes. Contracts may also include provisions that link the performance of the contractor to the level and timing of the reimbursement.

(6) "Probationary license" means a license issued as a disciplinary measure to an agency that has previously been issued a full license but is out of compliance with licensing standards.

(7) "Requirement" means any rule, regulation, or standard of care to be maintained by an agency.

(8) "Secretary" means the secretary of social and health services.

(9) "Street youth" means a person under the age of eighteen who lives outdoors or in another unsafe location not intended for occupancy by the minor and who is not residing with his or her parent or at his or her legally authorized residence.

(10) "Supervising agency" means an agency licensed by the state under RCW 74.15.090 or an Indian tribe under RCW 74.15.190 that has entered into a performance-based contract with the department to provide child welfare services.

(11) "Transitional living services" means at a minimum, to the extent funds are available, the following:

(a) Educational services, including basic literacy and computational skills training, either in local alternative or public high schools or in a high school equivalency program that leads to obtaining a high school equivalency degree;

(b) Assistance and counseling related to obtaining vocational training or higher education, job readiness, job search assistance, and placement programs;

(c) Counseling and instruction in life skills such as money management, home management, consumer skills, parenting, health care, access to community resources, and transportation and housing options;

(d) Individual and group counseling; and

(e) Establishing networks with federal agencies and state and local organizations such as the United States department of labor, employment and training administration programs including the workforce investment act which administers private industry councils and the job corps; vocational rehabilitation; and volunteer programs. [2013 c 105 § 2; 2012 c 10 § 61; 2009 c 520 § 13; 2007 c 412 § 1. Prior: 2006 c 265 § 401; 2006 c 90 § 1; 2006 c 54 § 7; prior: 2001 c 230 § 1; 2001 c 144 § 1; 2001 c 137 § 3; 1999 c 267 § 11; 1998 c 269 § 3; 1997 c 245 § 7; prior: 1995 c 311 § 18; 1995 c 302 § 3; 1994 c 273 § 21; 1991 c 128 § 14; 1988 c 176 § 912; 1987 c 170 § 12; 1982 c 118 § 5; 1979 c 155 § 83; 1977 ex.s. c 80 § 71; 1967 c 172 § 2.]

Findings—Intent—2013 c 105: See note following RCW 74.15.311.

Application—2012 c 10: See note following RCW 18.20.010.

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

Part headings not law—Severability—Conflict with federal requirements—Short title—2006 c 54: See RCW 41.56.911 through 41.56.914.

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

Intent—Finding—Effective date—1998 c 269: See notes following RCW 72.05.020.

Intent—1995 c 302: See note following RCW 74.15.010.

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

Additional notes found at www.leg.wa.gov

74.15.140 Action against licensed or unlicensed agencies authorized. Notwithstanding the existence or pursuit of any other remedy, the secretary may, in the manner provided by law, upon the advice of the attorney general, who shall represent the department in the proceeding, maintain an action in the name of the state for injunction or such other relief as he or she may deem advisable against any agency subject to licensing under the provisions of chapter 74.15 RCW and RCW 74.13.031 or against any such agency not having a license as heretofore provided in chapter 74.15 RCW and RCW 74.13.031. [2013 c 23 § 213; 1979 c 141 § 363; 1967 c 172 § 14.]

74.15.230 Responsible living skills programs—Established—Requirements. The secretary shall establish responsible living skills programs that provide no more than seventy-five beds across the state and may establish responsible living skills programs by contract, within funds appropriated by the legislature specifically for this purpose. Responsible living skills programs shall have the following:

(1) A license issued by the secretary;

(2) A professional with a master's degree in counseling, social work, or related field and at least one year of experience working with street youth available to serve residents or a bachelor of arts degree in social work or a related field and five years of experience working with street youth. The professional shall provide counseling services and interface with other relevant resources and systems to prepare the minor for adult living. Preference shall be given to those professionals cross-credentialed in mental health and chemical dependency;

(3) Staff trained in development needs of older adolescents eligible to participate in responsible living skills programs as determined by the secretary;

(4) Transitional living services and a therapeutic model of service delivery that provides necessary program supervision of residents and at the same time includes a philosophy, program structure, and treatment planning that emphasizes achievement of competency in independent living skills. Independent living skills include achieving basic educational requirements such as a high school equivalency certificate as provided in RCW 28B.50.536, enrollment in vocational and technical training programs offered at the community and vocational colleges, obtaining and maintaining employment; accomplishing basic life skills such as money management, nutrition, preparing meals, and cleaning house. A baseline skill level in ability to function productively and indepen-

dently shall be determined at entry. Performance shall be measured and must demonstrate improvement from involvement in the program. Each resident shall have a plan for achieving independent living skills by the time the resident leaves the placement. The plan shall be written within the first thirty days of placement and reviewed every ninety days. A resident who fails to consistently adhere to the elements of the plan shall be subject to reassessment by the professional staff of the program and may be placed outside the program; and

(5) A data collection system that measures outcomes for the population served, and enables research and evaluation that can be used for future program development and service delivery. Data collection systems must have confidentiality rules and protocols developed by the secretary.

(6) The department shall not award contracts for the operation of responsible living skills programs until HOPE center beds are operational. [2013 c 39 § 31; 1999 c 267 § 13.]

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

Additional notes found at www.leg.wa.gov

74.15.311 Resource and assessment centers—License. (1) The secretary is authorized to license resource and assessment centers if the agency meets the following requirements:

(a) There is a demonstrated need in the local community for a resource and assessment center;

(b) The resource and assessment center will be primarily staffed by trained volunteers; and

(c) The resource and assessment center demonstrates it is not financially dependent on reimbursement from the state to operate.

(2) The department may adopt rules to specify licensing requirements for resource and assessment centers. Rules adopted by the department shall allow:

(a) A sufficient number of trained volunteers to meet staffing requirements;

(b) Flexibility in hours of operation and not require the resource and assessment center to be open if there are no children in its care; and

(c) The ability to operate in a residential area.

(3) Resource and assessment centers licensed under this section may:

(a) Provide care for children ages birth through twelve, or for children ages thirteen through seventeen who have a sibling or siblings under thirteen years of age who are being admitted to the resource and assessment center; and

(b) Operate up to twenty-four hours per day, and for up to seven days per week.

(4) Resource and assessment centers may not be used to address placement disruptions for children who have been removed from a foster home because of behavior or safety concerns. [2013 c 105 § 3.]

Findings—Intent—2013 c 105: "The legislature finds that when a child is removed from his or her home due to suspected abuse or neglect it can take several hours or even days for placement plans to be made for the child during which time caseworkers have to care for the child while also trying to locate an appropriate placement for him or her. The legislature also finds that licensed foster homes are often unable to take a child into their home if his or her care needs have not been thoroughly assessed or he or she

is in immediate need of health care or social services. The legislature further finds that there are organizations in our state that are providing or wanting to provide short-term emergency and crisis care for children under the age of thirteen; however, there is currently no appropriate, cost-effective licensure category for organizations to provide these services. The legislature intends to create a resource and assessment center license for agencies to provide short-term emergency and crisis care for children ages birth through twelve, or for children ages thirteen through seventeen who have a sibling under thirteen years of age who have been removed from their homes by child protective services or law enforcement. The legislature further intends that resource and assessment centers be reimbursed at the same rate as foster family homes." [2013 c 105 § 1.]

Chapter 74.20 RCW

SUPPORT OF DEPENDENT CHILDREN

Sections

74.20.260 Financial statements by parent whose absence is basis of application for public assistance.

74.20.260 Financial statements by parent whose absence is basis of application for public assistance. Any parent in the state whose absence is the basis upon which an application is filed for public assistance on behalf of a child shall be required to complete a statement, under oath, of his or her current monthly income, his or her total income over the past twelve months, the number of dependents for whom he or she is providing support, the amount he or she is contributing regularly toward the support of all children for whom application for such assistance is made, his or her current monthly living expenses, and such other information as is pertinent to determining his or her ability to support his or her children. Such statement shall be provided upon demand made by the state department of social and health services or attorney general, and if assistance based upon such application is granted on behalf of such child, additional statements shall be filed annually thereafter with the state department of social and health services until such time as the child is no longer receiving such assistance. Failure to comply with this section shall constitute a misdemeanor. [2013 c 23 § 214; 1979 c 141 § 368; 1963 c 206 § 11.]

Chapter 74.20A RCW

SUPPORT OF DEPENDENT CHILDREN— ALTERNATIVE METHOD—1971 ACT

Sections

74.20A.040 Notice of support debt—Service or mailing—Contents—Action on, when.

74.20A.130 Distraint, seizure and sale of property subject to liens under RCW 74.20A.060—Procedure.

74.20A.150 Satisfaction of lien after foreclosure proceedings instituted—Redemption.

74.20A.040 Notice of support debt—Service or mailing—Contents—Action on, when. (1) The secretary may issue a notice of a support debt accrued and/or accruing based upon RCW 74.20A.030, assignment of a support debt or a request for support enforcement services under RCW 74.20.040 (2) or (3), to enforce and collect a support debt created by a superior court order or administrative order. The payee under the order shall be informed when a notice of support debt is issued under this section.

(2) The notice may be served upon the debtor in the manner prescribed for the service of a summons in a civil action

or be mailed to the debtor at his or her last known address by certified mail, return receipt requested, demanding payment within twenty days of the date of receipt.

(3) The notice of debt shall include:

(a) A statement of the support debt accrued and/or accruing, computable on the amount required to be paid under any superior court order to which the department is subrogated or is authorized to enforce and collect under RCW 74.20A.030, has an assigned interest, or has been authorized to enforce pursuant to RCW 74.20.040 (2) or (3);

(b) A statement that the property of the debtor is subject to collection action;

(c) A statement that the property is subject to lien and foreclosure, distraint, seizure and sale, or order to withhold and deliver; and

(d) A statement that the net proceeds will be applied to the satisfaction of the support debt.

(4) Action to collect a support debt by lien and foreclosure, or distraint, seizure and sale, or order to withhold and deliver shall be lawful after twenty days from the date of service upon the debtor or twenty days from the receipt or refusal by the debtor of said notice of debt.

(5) The secretary shall not be required to issue or serve such notice of support debt prior to taking collection action under this chapter when a responsible parent's support order:

(a) Contains language directing the parent to make support payments to the Washington state support registry; and

(b) Includes a statement that income-withholding action under this chapter may be taken without further notice to the responsible parent, as provided in RCW 26.23.050(1). [2013 c 23 § 215; 1989 c 360 § 8; 1985 c 276 § 2; 1973 1st ex.s. c 183 § 5; 1971 ex.s. c 164 § 4.]

74.20A.130 Distraint, seizure and sale of property subject to liens under RCW 74.20A.060—Procedure. Whenever a support lien has been filed pursuant to RCW 74.20A.060, the secretary may collect the support debt stated in said lien by the distraint, seizure, and sale of the property subject to said lien. Not less than ten days prior to the date of sale, the secretary shall cause a copy of the notice of sale to be transmitted by regular mail and by any form of mailing requiring a return receipt to the debtor and any person known to have or claim an interest in the property. Said notice shall contain a general description of the property to be sold and the time, date, and place of the sale. The notice of sale shall be posted in at least two public places in the county wherein the distraint has been made. The time of sale shall not be less than ten nor more than twenty days from the date of posting of such notices. Said sale shall be conducted by the secretary, who shall proceed to sell such property by parcel or by lot at a public auction, and who may set a minimum reasonable price to include the expenses of making a levy and of advertising the sale, and if the amount bid for such property at the sale is not equal to the price so fixed, the secretary may declare such property to be purchased by the department for such price, or may conduct another sale of such property pursuant to the provisions of this section. In the event of sale, the debtor's account shall be credited with the amount for which the property has been sold. Property acquired by the department as herein prescribed may be sold by the secretary at public or private sale, and the amount realized shall be placed

in the state general fund to the credit of the department of social and health services. In all cases of sale, as aforesaid, the secretary shall issue a bill of sale or a deed to the purchaser and said bill of sale or deed shall be prima facie evidence of the right of the secretary to make such sale and conclusive evidence of the regularity of his or her proceeding in making the sale, and shall transfer to the purchaser all right, title, and interest of the debtor in said property. The proceeds of any such sale, except in those cases wherein the property has been acquired by the department, shall be first applied by the secretary to reimbursement of the costs of distraint and sale, and thereafter in satisfaction of the delinquent account. Any excess which shall thereafter remain in the hands of the secretary shall be refunded to the debtor. Sums so refundable to a debtor may be subject to seizure or distraint by any taxing authority of the state or its political subdivisions or by the secretary for new sums due and owing subsequent to the subject proceeding. Except as specifically provided in this chapter, there shall be exempt from distraint, seizure, and sale under this chapter such property as is exempt therefrom under the laws of this state. [2013 c 23 § 216; 1987 c 435 § 32; 1973 1st ex.s. c 183 § 12; 1971 ex.s. c 164 § 13.]

Additional notes found at www.leg.wa.gov

74.20A.150 Satisfaction of lien after foreclosure proceedings instituted—Redemption. Any person owning real property, or any interest in real property, against which a support lien has been filed and foreclosure instituted, shall have the right to pay the amount due, together with expenses of the proceedings and reasonable attorneys' fees to the secretary and upon such payment the secretary shall restore said property to him or her and all further proceedings in the said foreclosure action shall cease. Said person shall also have the right within two hundred forty days after sale of property foreclosed under RCW 74.20A.140 to redeem said property by making payment to the purchaser in the amount paid by the purchaser plus interest thereon at the rate of six percent per annum. [2013 c 23 § 217; 1973 1st ex.s. c 183 § 14; 1971 ex.s. c 164 § 15.]

Chapter 74.34 RCW ABUSE OF VULNERABLE ADULTS

Sections

74.34.020	Definitions.
74.34.035	Reports—Mandated and permissive—Contents—Confidentiality.
74.34.067	Investigations—Interviews—Ongoing case planning—Agreements with tribes—Conclusion of investigation.
74.34.095	Confidential information—Disclosure.
74.34.200	Abandonment, abuse, financial exploitation, or neglect of a vulnerable adult—Cause of action for damages—Legislative intent.

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

(1) "Abandonment" means action or inaction by a person or entity with a duty of care for a vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

(2) "Abuse" means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or

punishment on a vulnerable adult. In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish. Abuse includes sexual abuse, mental abuse, physical abuse, and exploitation of a vulnerable adult, which have the following meanings:

(a) "Sexual abuse" means any form of nonconsensual sexual contact, including but not limited to unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual abuse includes any sexual contact between a staff person, who is not also a resident or client, of a facility or a staff person of a program authorized under chapter 71A.12 RCW, and a vulnerable adult living in that facility or receiving service from a program authorized under chapter 71A.12 RCW, whether or not it is consensual.

(b) "Physical abuse" means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, showing, prodding, or the use of chemical restraints or physical restraints unless the restraints are consistent with licensing requirements, and includes restraints that are otherwise being used inappropriately.

(c) "Mental abuse" means any willful action or inaction of mental or verbal abuse. Mental abuse includes, but is not limited to, coercion, harassment, inappropriately isolating a vulnerable adult from family, friends, or regular activity, and verbal assault that includes ridiculing, intimidating, yelling, or swearing.

(d) "Exploitation" means an act of forcing, compelling, or exerting undue influence over a vulnerable adult causing the vulnerable adult to act in a way that is inconsistent with relevant past behavior, or causing the vulnerable adult to perform services for the benefit of another.

(3) "Consent" means express written consent granted after the vulnerable adult or his or her legal representative has been fully informed of the nature of the services to be offered and that the receipt of services is voluntary.

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

(5) "Facility" means a residence licensed or required to be licensed under chapter 18.20 RCW, assisted living facilities; chapter 18.51 RCW, nursing homes; chapter 70.128 RCW, adult family homes; chapter 72.36 RCW, soldiers' homes; or chapter 71A.20 RCW, residential habilitation centers; or any other facility licensed or certified by the department.

(6) "Financial exploitation" means the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of the vulnerable adult by any person or entity for any person's or entity's profit or advantage other than for the vulnerable adult's profit or advantage. "Financial exploitation" includes, but is not limited to:

(a) The use of deception, intimidation, or undue influence by a person or entity in a position of trust and confidence with a vulnerable adult to obtain or use the property, income, resources, or trust funds of the vulnerable adult for the benefit of a person or entity other than the vulnerable adult;

(b) The breach of a fiduciary duty, including, but not limited to, the misuse of a power of attorney, trust, or a guardianship appointment, that results in the unauthorized appropriation, sale, or transfer of the property, income, resources, or trust funds of the vulnerable adult for the benefit of a person or entity other than the vulnerable adult; or

(c) Obtaining or using a vulnerable adult's property, income, resources, or trust funds without lawful authority, by a person or entity who knows or clearly should know that the vulnerable adult lacks the capacity to consent to the release or use of his or her property, income, resources, or trust funds.

(7) "Financial institution" has the same meaning as in RCW 30.22.040 and 30.22.041. For purposes of this chapter only, "financial institution" also means a "broker-dealer" or "investment adviser" as defined in RCW 21.20.005.

(8) "Incapacitated person" means a person who is at a significant risk of personal or financial harm under RCW 11.88.010(1) (a), (b), (c), or (d).

(9) "Individual provider" means a person under contract with the department to provide services in the home under chapter 74.09 or 74.39A RCW.

(10) "Interested person" means a person who demonstrates to the court's satisfaction that the person is interested in the welfare of the vulnerable adult, that the person has a good faith belief that the court's intervention is necessary, and that the vulnerable adult is unable, due to incapacity, undue influence, or duress at the time the petition is filed, to protect his or her own interests.

(11) "Mandated reporter" is an employee of the department; law enforcement officer; social worker; professional school personnel; individual provider; an employee of a facility; an operator of a facility; an employee of a social service, welfare, mental health, adult day health, adult day care, home health, home care, or hospice agency; county coroner or medical examiner; Christian Science practitioner; or health care provider subject to chapter 18.130 RCW.

(12) "Neglect" means (a) a pattern of conduct or inaction by a person or entity with a duty of care that fails to provide the goods and services that maintain physical or mental health of a vulnerable adult, or that fails to avoid or prevent physical or mental harm or pain to a vulnerable adult; or (b) an act or omission by a person or entity with a duty of care that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the vulnerable adult's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.42.100.

(13) "Permissive reporter" means any person, including, but not limited to, an employee of a financial institution, attorney, or volunteer in a facility or program providing services for vulnerable adults.

(14) "Protective services" means any services provided by the department to a vulnerable adult with the consent of the vulnerable adult, or the legal representative of the vulnerable adult, who has been abandoned, abused, financially exploited, neglected, or in a state of self-neglect. These services may include, but are not limited to case management, social casework, home care, placement, arranging for medical evaluations, psychological evaluations, day care, or referral for legal assistance.

(15) "Self-neglect" means the failure of a vulnerable adult, not living in a facility, to provide for himself or herself

the goods and services necessary for the vulnerable adult's physical or mental health, and the absence of which impairs or threatens the vulnerable adult's well-being. This definition may include a vulnerable adult who is receiving services through home health, hospice, or a home care agency, or an individual provider when the neglect is not a result of inaction by that agency or individual provider.

(16) "Social worker" means:

(a) A social worker as defined in RCW 18.320.010(2); or

(b) Anyone engaged in a professional capacity during the regular course of employment in encouraging or promoting the health, welfare, support, or education of vulnerable adults, or providing social services to vulnerable adults, whether in an individual capacity or as an employee or agent of any public or private organization or institution.

(17) "Vulnerable adult" includes a person:

(a) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself; or

(b) Found incapacitated under chapter 11.88 RCW; or

(c) Who has a developmental disability as defined under RCW 71A.10.020; or

(d) Admitted to any facility; or

(e) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW; or

(f) Receiving services from an individual provider; or

(g) Who self-directs his or her own care and receives services from a personal aide under chapter 74.39 RCW. [2013 c 263 § 1; 2012 c 10 § 62. Prior: 2011 c 170 § 1; 2011 c 89 § 18; 2010 c 133 § 2; 2007 c 312 § 1; 2006 c 339 § 109; 2003 c 230 § 1; 1999 c 176 § 3; 1997 c 392 § 523; 1995 1st sp.s. c 18 § 84; 1984 c 97 § 8.]

Application—2012 c 10: See note following RCW 18.20.010.

Effective date—2011 c 89: See note following RCW 18.320.005.

Findings—2011 c 89: See RCW 18.320.005.

Intent—Part headings not law—2006 c 339: See notes following RCW 70.96A.325.

Effective date—2003 c 230: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 12, 2003]." [2003 c 230 § 3.]

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392: See notes following RCW 74.39A.009.

Additional notes found at www.leg.wa.gov

74.34.035 Reports—Mandated and permissive—Contents—Confidentiality. (1) When there is reasonable cause to believe that abandonment, abuse, financial exploitation, or neglect of a vulnerable adult has occurred, mandated reporters shall immediately report to the department.

(2) When there is reason to suspect that sexual assault has occurred, mandated reporters shall immediately report to the appropriate law enforcement agency and to the department.

(3) When there is reason to suspect that physical assault has occurred or there is reasonable cause to believe that an act has caused fear of imminent harm:

(a) Mandated reporters shall immediately report to the department; and

(b) Mandated reporters shall immediately report to the appropriate law enforcement agency, except as provided in subsection (4) of this section.

(4) A mandated reporter is not required to report to a law enforcement agency, unless requested by the injured vulnerable adult or his or her legal representative or family member, an incident of physical assault between vulnerable adults that causes minor bodily injury and does not require more than basic first aid, unless:

(a) The injury appears on the back, face, head, neck, chest, breasts, groin, inner thigh, buttock, genital, or anal area;

(b) There is a fracture;

(c) There is a pattern of physical assault between the same vulnerable adults or involving the same vulnerable adults; or

(d) There is an attempt to choke a vulnerable adult.

(5) When there is reason to suspect that the death of a vulnerable adult was caused by abuse, neglect, or abandonment by another person, mandated reporters shall, pursuant to RCW 68.50.020, report the death to the medical examiner or coroner having jurisdiction, as well as the department and local law enforcement, in the most expeditious manner possible. A mandated reporter is not relieved from the reporting requirement provisions of this subsection by the existence of a previously signed death certificate. If abuse, neglect, or abandonment caused or contributed to the death of a vulnerable adult, the death is a death caused by unnatural or unlawful means, and the body shall be the jurisdiction of the coroner or medical examiner pursuant to RCW 68.50.010.

(6) Permissive reporters may report to the department or a law enforcement agency when there is reasonable cause to believe that a vulnerable adult is being or has been abandoned, abused, financially exploited, or neglected.

(7) No facility, as defined by this chapter, agency licensed or required to be licensed under chapter 70.127 RCW, or facility or agency under contract with the department to provide care for vulnerable adults may develop policies or procedures that interfere with the reporting requirements of this chapter.

(8) Each report, oral or written, must contain as much as possible of the following information:

(a) The name and address of the person making the report;

(b) The name and address of the vulnerable adult and the name of the facility or agency providing care for the vulnerable adult;

(c) The name and address of the legal guardian or alternate decision maker;

(d) The nature and extent of the abandonment, abuse, financial exploitation, neglect, or self-neglect;

(e) Any history of previous abandonment, abuse, financial exploitation, neglect, or self-neglect;

(f) The identity of the alleged perpetrator, if known; and

(g) Other information that may be helpful in establishing the extent of abandonment, abuse, financial exploitation, neglect, or the cause of death of the deceased vulnerable adult.

(9) Unless there is a judicial proceeding or the person consents, the identity of the person making the report under this section is confidential.

(10) In conducting an investigation of abandonment, abuse, financial exploitation, self-neglect, or neglect, the department or law enforcement, upon request, must have access to all relevant records related to the vulnerable adult that are in the possession of mandated reporters and their employees, unless otherwise prohibited by law. Records maintained under RCW 4.24.250, 18.20.390, 43.70.510, 70.41.200, 70.230.080, and 74.42.640 shall not be subject to the requirements of this subsection. Providing access to records relevant to an investigation by the department or law enforcement under this provision may not be deemed a violation of any confidential communication privilege. Access to any records that would violate attorney-client privilege shall not be provided without a court order unless otherwise required by court rule or caselaw. [2013 c 263 § 2; 2010 c 133 § 4; 2003 c 230 § 2; 1999 c 176 § 5.]

Effective date—2003 c 230: See note following RCW 74.34.020.

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

74.34.067 Investigations—Interviews—Ongoing case planning—Agreements with tribes—Conclusion of investigation. (1) Where appropriate, an investigation by the department may include a private interview with the vulnerable adult regarding the alleged abandonment, abuse, financial exploitation, neglect, or self-neglect.

(2) In conducting the investigation, the department shall interview the complainant, unless anonymous, and shall use its best efforts to interview the vulnerable adult or adults harmed, and, consistent with the protection of the vulnerable adult shall interview facility staff, any available independent sources of relevant information, including if appropriate the family members of the vulnerable adult.

(3) The department may conduct ongoing case planning and consultation with: (a) Those persons or agencies required to report under this chapter or submit a report under this chapter; (b) consultants designated by the department; and (c) designated representatives of Washington Indian tribes if client information exchanged is pertinent to cases under investigation or the provision of protective services. Information considered privileged by statute and not directly related to reports required by this chapter must not be divulged without a valid written waiver of the privilege.

(4) The department shall prepare and keep on file a report of each investigation conducted by the department for a period of time in accordance with policies established by the department.

(5) If the department has reason to believe that the vulnerable adult has suffered from abandonment, abuse, financial exploitation, neglect, or self-neglect, and lacks the ability or capacity to consent, and needs the protection of a guardian, the department may bring a guardianship action under chapter 11.88 RCW.

(6) For purposes consistent with this chapter, the department, the certified professional guardian board, and the office of public guardianship may share information contained in reports and investigations of the abuse, abandonment, neglect, self-neglect, and financial exploitation of vulnerable adults. This information may be used solely for (a) recruiting or appointing appropriate guardians and (b) monitoring, or when appropriate, disciplining certified professional or pub-

lic guardians. Reports of abuse, abandonment, neglect, self-neglect, and financial exploitation are confidential under RCW 74.34.095 and other laws, and secondary disclosure of information shared under this section is prohibited.

(7) When the investigation is completed and the department determines that an incident of abandonment, abuse, financial exploitation, neglect, or self-neglect has occurred, the department shall inform the vulnerable adult of their right to refuse protective services, and ensure that, if necessary, appropriate protective services are provided to the vulnerable adult, with the consent of the vulnerable adult. The vulnerable adult has the right to withdraw or refuse protective services.

(8) The department's adult protective services division may enter into agreements with federally recognized tribes to investigate reports of abandonment, abuse, financial exploitation, neglect, or self-neglect of vulnerable adults on property over which a federally recognized tribe has exclusive jurisdiction. If the department has information that abandonment, abuse, financial exploitation, or neglect is criminal or is placing a vulnerable adult on tribal property at potential risk of personal or financial harm, the department may notify tribal law enforcement or another tribal representative specified by the tribe. Upon receipt of the notification, the tribe may assume jurisdiction of the matter. Neither the department nor its employees may participate in the investigation after the tribe assumes jurisdiction. The department, its officers, and its employees are not liable for any action or inaction of the tribe or for any harm to the alleged victim, the person against whom the allegations were made, or other parties that occurs after the tribe assumes jurisdiction. Nothing in this section limits the department's jurisdiction and authority over facilities or entities that the department licenses or certifies under federal or state law.

(9) The department may photograph a vulnerable adult or their environment for the purpose of providing documentary evidence of the physical condition of the vulnerable adult or his or her environment. When photographing the vulnerable adult, the department shall obtain permission from the vulnerable adult or his or her legal representative unless immediate photographing is necessary to preserve evidence. However, if the legal representative is alleged to have abused, neglected, abandoned, or exploited the vulnerable adult, consent from the legal representative is not necessary. No such consent is necessary when photographing the physical environment.

(10) When the investigation is complete and the department determines that the incident of abandonment, abuse, financial exploitation, or neglect has occurred, the department shall inform the facility in which the incident occurred, consistent with confidentiality requirements concerning the vulnerable adult, witnesses, and complainants. [2013 c 263 § 3; 2011 c 170 § 2; 2007 c 312 § 2; 1999 c 176 § 9.]

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

74.34.095 Confidential information—Disclosure. (1) The following information is confidential and not subject to disclosure, except as provided in this section:

(a) A report of abandonment, abuse, financial exploitation, or neglect made under this chapter;

(b) The identity of the person making the report; and

(c) All files, reports, records, communications, and working papers used or developed in the investigation or provision of protective services.

(2) Information considered confidential may be disclosed only for a purpose consistent with this chapter or as authorized by chapter 18.20, 18.51, or 74.39A RCW, or as authorized by the long-term care ombuds programs under federal law or state law, chapter 43.190 RCW.

(3) A court or presiding officer in an administrative proceeding may order disclosure of confidential information only if the court, or presiding officer in an administrative proceeding, determines that disclosure is essential to the administration of justice and will not endanger the life or safety of the vulnerable adult or individual who made the report. The court or presiding officer in an administrative hearing may place restrictions on such disclosure as the court or presiding officer deems proper. [2013 c 23 § 218; 2000 c 87 § 4; 1999 c 176 § 17.]

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

74.34.200 Abandonment, abuse, financial exploitation, or neglect of a vulnerable adult—Cause of action for damages—Legislative intent. (1) In addition to other remedies available under the law, a vulnerable adult who has been subjected to abandonment, abuse, financial exploitation, or neglect either while residing in a facility or in the case of a person residing at home who receives care from a home health, hospice, or home care agency, or an individual provider, shall have a cause of action for damages on account of his or her injuries, pain and suffering, and loss of property sustained thereby. This action shall be available where the defendant is or was a corporation, trust, unincorporated association, partnership, administrator, employee, agent, officer, partner, or director of a facility, or of a home health, hospice, or home care agency licensed or required to be licensed under chapter 70.127 RCW, as now or subsequently designated, or an individual provider.

(2) It is the intent of the legislature, however, that where there is a dispute about the care or treatment of a vulnerable adult, the parties should use the least formal means available to try to resolve the dispute. Where feasible, parties are encouraged but not mandated to employ direct discussion with the health care provider, use of the long-term care ombuds or other intermediaries, and, when necessary, recourse through licensing or other regulatory authorities.

(3) In an action brought under this section, a prevailing plaintiff shall be awarded his or her actual damages, together with the costs of the suit, including a reasonable attorneys' fee. The term "costs" includes, but is not limited to, the reasonable fees for a guardian, guardian ad litem, and experts, if any, that may be necessary to the litigation of a claim brought under this section. [2013 c 23 § 219; 1999 c 176 § 15; 1995 1st sp.s. c 18 § 85.]

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

Additional notes found at www.leg.wa.gov

Chapter 74.36 RCW

FUNDING FOR COMMUNITY PROGRAMS FOR THE AGING

Sections

74.36.110	Community programs and projects for the aging—Allotments for—Purpose.
74.36.120	Community programs and projects for the aging—Standards for eligibility and approval—Informal hearing on denial of approval.
74.36.130	Community programs and projects for the aging—State funding, limitations—Payments, type.

74.36.110 Community programs and projects for the aging—Allotments for—Purpose. The secretary of the department of social and health services or his or her designee is authorized to allot for such purposes all or a portion of whatever state funds the legislature appropriates or are otherwise made available for the purpose of matching local funds dedicated to community programs and projects for the aging. The purpose of RCW 74.36.110 through 74.36.130 is to stimulate and assist local communities to obtain federal funds made available under the federal older Americans act of 1965 as amended. [2013 c 23 § 222; 1971 ex.s. c 169 § 10.]

Moneys in possession of secretary not subject to certain proceedings: RCW 74.13.070.

74.36.120 Community programs and projects for the aging—Standards for eligibility and approval—Informal hearing on denial of approval. (1) The secretary or his or her designee shall adopt and set forth standards for determining the eligibility and approval of community projects and priorities therefor, and shall have final authority to approve or deny such projects and funding requested under RCW 74.36.110 through 74.36.130.

(2) Only community project proposals submitted by local public agencies, by private nonprofit agencies or organizations, or by public or other nonprofit institutions of higher education, shall be eligible for approval.

(3) Any community project applicant whose application for approval is denied will be afforded an opportunity for an informal hearing before the secretary or his or her designee, but the administrative procedure act, chapter 34.05 RCW, shall not apply. [2013 c 23 § 223; 1971 ex.s. c 169 § 11.]

74.36.130 Community programs and projects for the aging—State funding, limitations—Payments, type. (1) State funds made available under RCW 74.36.110 through 74.36.130 for any project shall not exceed fifty per centum of the nonfederal share of the costs. To the extent that federal law permits, and the secretary or his or her designee deems appropriate, the local community share and/or the state share may be in the form of cash or in-kind resources.

(2) Payments made under RCW 74.36.110 through 74.36.130 may be made in advance or by way of reimbursement, and in such installments and on such conditions as the secretary or his or her designee may determine, including provisions for adequate accounting systems, reasonable record retention periods, and financial audits. [2013 c 23 § 224; 1971 ex.s. c 169 § 12.]

Moneys in possession of secretary not subject to certain proceedings: RCW 74.13.070.

Chapter 74.38 RCW

SENIOR CITIZENS SERVICES ACT

Sections

- 74.38.040 Scope and extent of community based services program.
 74.38.050 Availability of services for persons other than those of low income—Utilization of volunteers and public assistance recipients—Private agencies—Well-adult clinics—Fee schedule, exceptions.

74.38.040 Scope and extent of community based services program. The community based services for low-income eligible persons provided by the department or the respective area agencies may include:

(1) Access services designed to provide identification of eligible persons, assessment of individual needs, reference to the appropriate service, and follow-up service where required. These services shall include information and referral, outreach, transportation, and counseling;

(2) Day care offered on a regular, recurrent basis. General nursing, rehabilitation, personal care, nutritional services, social casework, mental health as provided pursuant to chapter 71.24 RCW, and/or limited transportation services may be made available within this program;

(3) In-home care for persons, including basic health care; performance of various household tasks and other necessary chores, or, a combination of these services;

(4) Counseling on death for the terminally ill and care and attendance at the time of death; except, that this is not to include reimbursement for the use of life-sustaining mechanisms;

(5) Health services which will identify health needs and which are designed to avoid institutionalization; assist in securing admission to medical institutions or other health related facilities when required; and, assist in obtaining health services from public or private agencies or providers of health services. These services shall include health screening and evaluation, in-home services, health education, and such health appliances which will further the independence and well-being of the person;

(6) The provision of low-cost, nutritionally sound meals in central locations or in the person's home in the instance of incapacity. Also, supportive services may be provided in nutritional education, shopping assistance, diet counseling, and other services to sustain the nutritional well-being of these persons;

(7) The provisions of services to maintain a person's home in a state of adequate repair, insofar as is possible, for their safety and comfort. These services shall be limited, but may include housing counseling, minor repair and maintenance, and moving assistance when such repair will not attain standards of health and safety, as determined by the department;

(8) Civil legal services, as limited by RCW 2.50.100, for counseling and representation in the areas of housing, consumer protection, public entitlements, property, and related fields of law;

(9) Long-term care ombuds programs for residents of all long-term care facilities. [2013 c 23 § 225; 1983 c 290 § 14; 1977 ex.s. c 321 § 3; 1975-'76 2nd ex.s. c 131 § 4.]

Additional notes found at www.leg.wa.gov

74.38.050 Availability of services for persons other than those of low income—Utilization of volunteers and public assistance recipients—Private agencies—Well-adult clinics—Fee schedule, exceptions. The services provided in RCW 74.38.040 may be provided to nonlow-income eligible persons: PROVIDED, That the department and the area agencies on aging shall utilize volunteer workers and public assistant recipients to the maximum extent possible to provide the services provided in RCW 74.38.040: PROVIDED, FURTHER, That the department and the area agencies shall utilize the bid procedure pursuant to chapter 43.19 RCW for providing such services to low-income and nonlow-income persons whenever the services to be provided are available through private agencies at a cost savings to the department. The department shall establish a fee schedule based on the ability to pay and graduated to full recovery of the cost of the service provided; except, that nutritional services, health screening, services under the long-term care ombuds program under chapter 43.190 RCW, and access services provided in RCW 74.38.040 shall not be based on need and no fee shall be charged; except further, notwithstanding any other provision of this chapter, that well-adult clinic services may be provided in lieu of health screening services if such clinics use the fee schedule established by this section. [2013 c 23 § 226; 1983 c 290 § 15; 1979 ex.s. c 147 § 1; 1977 ex.s. c 321 § 4; 1975-'76 2nd ex.s. c 131 § 5.]

Additional notes found at www.leg.wa.gov

Chapter 74.39A RCW

LONG-TERM CARE SERVICES
OPTIONS—EXPANSION

Sections

- 74.39A.060 Toll-free telephone number for complaints—Investigation and referral—Rules—Discrimination or retaliation prohibited.
 74.39A.090 Discharge planning—Contracts for case management services and reassessment and reauthorization—Assessment of case management roles and quality of in-home care services—Plan of care model language.
 74.39A.341 Continuing education requirements for long-term care workers.
 74.39A.380 Internal quality review and accountability program for residential care services—Quality assurance panel—Report.

74.39A.060 Toll-free telephone number for complaints—Investigation and referral—Rules—Discrimination or retaliation prohibited. (1) The aging and adult services administration of the department shall establish and maintain a toll-free telephone number for receiving complaints regarding a facility that the administration licenses or with which it contracts for long-term care services.

(2) All facilities that are licensed by, or that contract with the aging and adult services administration to provide chronic long-term care services shall post in a place and manner clearly visible to residents and visitors the department's toll-free complaint telephone number and the toll-free number and program description of the long-term care ombuds as provided by RCW 43.190.050.

(3) The aging and adult services administration shall investigate complaints if the subject of the complaint is within its authority unless the department determines that: (a) The complaint is intended to willfully harass a licensee or employee of the licensee; or (b) there is no reasonable basis

for investigation; or (c) corrective action has been taken as determined by the ombuds or the department.

(4) The aging and adult services administration shall refer complaints to appropriate state agencies, law enforcement agencies, the attorney general, the long-term care ombuds, or other entities if the department lacks authority to investigate or if its investigation reveals that a follow-up referral to one or more of these entities is appropriate.

(5) The department shall adopt rules that include the following complaint investigation protocols:

(a) Upon receipt of a complaint, the department shall make a preliminary review of the complaint, assess the severity of the complaint, and assign an appropriate response time. Complaints involving imminent danger to the health, safety, or well-being of a resident must be responded to within two days. When appropriate, the department shall make an on-site investigation within a reasonable time after receipt of the complaint or otherwise ensure that complaints are responded to.

(b) The complainant must be: Promptly contacted by the department, unless anonymous or unavailable despite several attempts by the department, and informed of the right to discuss the alleged violations with the inspector and to provide other information the complainant believes will assist the inspector; informed of the department's course of action; and informed of the right to receive a written copy of the investigation report.

(c) In conducting the investigation, the department shall interview the complainant, unless anonymous, and shall use its best efforts to interview the vulnerable adult or adults allegedly harmed, and, consistent with the protection of the vulnerable adult shall interview facility staff, any available independent sources of relevant information, including if appropriate the family members of the vulnerable adult.

(d) Substantiated complaints involving harm to a resident, if an applicable law or rule has been violated, shall be subject to one or more of the actions provided in RCW 74.39A.080 or 70.128.160. Whenever appropriate, the department shall also give consultation and technical assistance to the provider.

(e) After a department finding of a violation for which a stop placement has been imposed, the department shall make an on-site revisit of the provider within fifteen working days from the request for revisit, to ensure correction of the violation. For violations that are serious or recurring or uncorrected following a previous citation, and create actual or threatened harm to one or more residents' well-being, including violations of residents' rights, the department shall make an on-site revisit as soon as appropriate to ensure correction of the violation. Verification of correction of all other violations may be made by either a department on-site revisit or by written or photographic documentation found by the department to be credible. This subsection does not prevent the department from enforcing license or contract suspensions or revocations. Nothing in this subsection shall interfere with or diminish the department's authority and duty to ensure that the provider adequately cares for residents, including to make departmental on-site revisits as needed to ensure that the provider protects residents and to enforce compliance with this chapter.

(f) Substantiated complaints of neglect, abuse, exploitation, or abandonment of residents, or suspected criminal violations, shall also be referred by the department to the appropriate law enforcement agencies, the attorney general, and appropriate professional disciplining authority.

(6) The department may provide the substance of the complaint to the licensee or contractor before the completion of the investigation by the department unless such disclosure would reveal the identity of a complainant, witness, or resident who chooses to remain anonymous. Neither the substance of the complaint provided to the licensee or contractor nor any copy of the complaint or related report published, released, or made otherwise available shall disclose, or reasonably lead to the disclosure of, the name, title, or identity of any complainant, or other person mentioned in the complaint, except that the name of the provider and the name or names of any officer, employee, or agent of the department conducting the investigation shall be disclosed after the investigation has been closed and the complaint has been substantiated. The department may disclose the identity of the complainant if such disclosure is requested in writing by the complainant. Nothing in this subsection shall be construed to interfere with the obligation of the long-term care ombuds program or department staff to monitor the department's licensing, contract, and complaint investigation files for long-term care facilities.

(7) The resident has the right to be free of interference, coercion, discrimination, and reprisal from a facility in exercising his or her rights, including the right to voice grievances about treatment furnished or not furnished. A facility that provides long-term care services shall not discriminate or retaliate in any manner against a resident, employee, or any other person on the basis or for the reason that such resident or any other person made a complaint to the department, the attorney general, law enforcement agencies, or the long-term care ombuds, provided information, or otherwise cooperated with the investigation of such a complaint. Any attempt to discharge a resident against the resident's wishes, or any type of retaliatory treatment of a resident by whom or upon whose behalf a complaint substantiated by the department has been made to the department, the attorney general, law enforcement agencies, or the long-term care ombuds, within one year of the filing of the complaint, raises a rebuttable presumption that such action was in retaliation for the filing of the complaint. "Retaliatory treatment" means, but is not limited to, monitoring a resident's phone, mail, or visits; involuntary seclusion or isolation; transferring a resident to a different room unless requested or based upon legitimate management reasons; withholding or threatening to withhold food or treatment unless authorized by a terminally ill resident or his or her representative pursuant to law; or persistently delaying responses to a resident's request for service or assistance. A facility that provides long-term care services shall not willfully interfere with the performance of official duties by a long-term care ombuds. The department shall sanction and may impose a civil penalty of not more than three thousand dollars for a violation of this subsection. [2013 c 23 § 227; 2001 c 193 § 1; 1999 c 176 § 34; 1997 c 392 § 210; 1995 1st sp.s. c 18 § 13.]

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392: See notes following RCW 74.39A.009.

Additional notes found at www.leg.wa.gov

74.39A.090 Discharge planning—Contracts for case management services and reassessment and reauthorization—Assessment of case management roles and quality of in-home care services—Plan of care model language.

(1) The legislature intends that any staff reassigned by the department as a result of shifting of the reauthorization responsibilities by contract outlined in this section shall be dedicated for discharge planning and assisting with discharge planning and information on existing discharge planning cases. Discharge planning, as directed in this section, is intended for residents and patients identified for discharge to long-term care pursuant to RCW 70.41.320, 74.39A.040, and 74.42.058. The purpose of discharge planning is to protect residents and patients from the financial incentives inherent in keeping residents or patients in a more expensive higher level of care and shall focus on care options that are in the best interest of the patient or resident.

(2) The department shall contract with area agencies on aging:

(a) To provide case management services to consumers receiving home and community services in their own home; and

(b) To reassess and reauthorize home and community services in home or in other settings for consumers consistent with the intent of this section:

(i) Who have been initially authorized by the department to receive home and community services; and

(ii) Who, at the time of reassessment and reauthorization, are receiving home and community services in their own home.

(3) In the event that an area agency on aging is unwilling to enter into or satisfactorily fulfill a contract or an individual consumer's need for case management services will be met through an alternative delivery system, the department is authorized to:

(a) Obtain the services through competitive bid; and

(b) Provide the services directly until a qualified contractor can be found.

(4)(a) The department shall include, in its oversight and monitoring of area agency on aging performance, assessment of case management roles undertaken by area agencies on aging in this section. The scope of oversight and monitoring includes, but is not limited to, assessing the degree and quality of the case management performed by area agency on aging staff for elderly and persons with disabilities in the community.

(b) The department shall incorporate the expected outcomes and criteria to measure the performance of service coordination organizations into contracts with area agencies on aging as provided in chapter 70.320 RCW.

(5) Area agencies on aging shall assess the quality of the in-home care services provided to consumers who are receiving services under the medicaid personal care, community options programs entry system or chore services program through an individual provider or home care agency. Quality indicators may include, but are not limited to, home care con-

sumers satisfaction surveys, how quickly home care consumers are linked with home care workers, and whether the plan of care under RCW 74.39A.095 has been honored by the agency or the individual provider.

(6) The department shall develop model language for the plan of care established in RCW 74.39A.095. The plan of care shall be in clear language, and written at a reading level that will ensure the ability of consumers to understand the rights and responsibilities expressed in the plan of care. [2013 c 320 § 10; 2004 c 141 § 3; 1999 c 175 § 2; 1995 1st sp.s. c 18 § 38.]

Findings—1999 c 175: "(1) The legislature finds that the quality of long-term care services provided to, and protection of, Washington's low-income elderly and disabled residents is of great importance to the state. The legislature further finds that revised in-home care policies are needed to more effectively address concerns about the quality of these services.

(2) The legislature finds that consumers of in-home care services frequently are in contact with multiple health and long-term care providers in the public and private sector. The legislature further finds that better coordination between these health and long-term care providers, and case managers, can increase the consumer's understanding of their plan of care, maximize the health benefits of coordinated care, and facilitate cost efficiencies across health and long-term care systems." [1999 c 175 § 1.]

Additional notes found at www.leg.wa.gov

74.39A.341 Continuing education requirements for long-term care workers. (1) All long-term care workers shall complete twelve hours of continuing education training in advanced training topics each year. This requirement applies beginning July 1, 2012.

(2) Completion of continuing education as required in this section is a prerequisite to maintaining home care aide certification under chapter 18.88B RCW.

(3) Unless voluntarily certified as a home care aide under chapter 18.88B RCW, subsection (1) of this section does not apply to:

(a) An individual provider caring only for his or her biological, step, or adoptive child;

(b) Registered nurses and licensed practical nurses licensed under chapter 18.79 RCW;

(c) Before January 1, 2016, a long-term care worker employed by a community residential service business; or

(d) Before July 1, 2014, a person hired as an individual provider who provides twenty hours or less of care for one person in any calendar month.

(4) Only training curriculum approved by the department may be used to fulfill the training requirements specified in this section. The department shall only approve training curriculum that:

(a) Has been developed with input from consumer and worker representatives; and

(b) Requires comprehensive instruction by qualified instructors.

(5) Individual providers under RCW 74.39A.270 shall be compensated for training time required by this section.

(6) The department of health shall adopt rules to implement subsection (1) of this section.

(7) The department shall adopt rules to implement subsection (2) of this section. [2013 c 259 § 3; 2012 c 164 § 405; 2012 c 1 § 112 (Initiative Measure No. 1163, approved November 8, 2011).]

Reviser's note: The language of this section, as enacted by 2012 c 1 § 112, was identical to RCW 74.39A.340 as amended by 2009 c 580 § 12, which was repealed by 2012 c 1 § 115.

Finding—Intent—Rules—Effective date—2012 c 164: See notes following RCW 18.88B.010.

Intent—Findings—Performance audits—Spending limits—Contingent effective dates—Application—Construction—Effective date—Short title—2012 c 1 (Initiative Measure No. 1163): See notes following RCW 74.39A.056.

74.39A.380 Internal quality review and accountability program for residential care services—Quality assurance panel—Report. (1) Subject to funding provided for this specific purpose, the department of social and health services shall develop for phased-in implementation a statewide internal quality review and accountability program for residential care services. The program must be designed to enable the department to improve the accountability of staff and the consistent application of investigative activities across all long-term care settings, and must allow the systematic monitoring and evaluation of long-term care licensing and certification. The program must be designed to improve and standardize investigative outcomes for the vulnerable individuals at risk of abuse and neglect, and coordinate outcomes across the department to prevent perpetrators from changing settings and continuing to work with vulnerable adults.

(2) The department shall convene a quality assurance panel to review problems in the quality of care in adult family homes and to reduce incidents of abuse, neglect, abandonment, and financial exploitation. The state's long-term care ombuds shall chair the panel and identify appropriate stakeholders to participate. The panel must consider inspection, investigation, public complaint, and enforcement issues that relate to adult family homes. The panel must also focus on oversight issues to address de minimis violations, processes for handling unresolved citations, and better ways to oversee new providers. The panel shall meet at least quarterly, and provide a report with recommendations to the governor's office, the senate health and long-term care committee, and the house of representatives health and wellness committee by December 1, 2012. [2013 c 23 § 228; 2011 1st sp.s. c 3 § 502.]

Finding—Intent—2011 1st sp.s. c 3: See note following RCW 70.128.005.

Chapter 74.42 RCW

NURSING HOMES—RESIDENT CARE, OPERATING STANDARDS

Sections

- 74.42.450 Residents limited to those the facility qualified to care for—Transfer or discharge of residents—Appeal of department discharge decision—Reasonable accommodation.
74.42.640 Quality assurance committee.

74.42.450 Residents limited to those the facility qualified to care for—Transfer or discharge of residents—Appeal of department discharge decision—Reasonable accommodation. (1) The facility shall admit as residents only those individuals whose needs can be met by:

- (a) The facility;

(b) The facility cooperating with community resources;
or

(c) The facility cooperating with other providers of care affiliated or under contract with the facility.

(2) The facility shall transfer a resident to a hospital or other appropriate facility when a change occurs in the resident's physical or mental condition that requires care or service that the facility cannot provide. The resident, the resident's guardian, if any, the resident's next of kin, the attending physician, and the department shall be consulted at least fifteen days before a transfer or discharge unless the resident is transferred under emergency circumstances. The department shall use casework services or other means to insure that adequate arrangements are made to meet the resident's needs.

(3) A resident shall be transferred or discharged only for medical reasons, the resident's welfare or request, the welfare of other residents, or nonpayment. A resident may not be discharged for nonpayment if the discharge would be prohibited by the medicaid program.

(4) If a resident chooses to remain in the nursing facility, the department shall respect that choice, provided that if the resident is a medicaid recipient, the resident continues to require a nursing facility level of care.

(5) If the department determines that a resident no longer requires a nursing facility level of care, the resident shall not be discharged from the nursing facility until at least thirty days after written notice is given to the resident, the resident's surrogate decision maker and, if appropriate, a family member or the resident's representative. A form for requesting a hearing to appeal the discharge decision shall be attached to the written notice. The written notice shall include at least the following:

- (a) The reason for the discharge;
(b) A statement that the resident has the right to appeal the discharge; and
(c) The name, address, and telephone number of the state long-term care ombuds.

(6) If the resident appeals a department discharge decision, the resident shall not be discharged without the resident's consent until at least thirty days after a final order is entered upholding the decision to discharge the resident.

(7) Before the facility transfers or discharges a resident, the facility must first attempt through reasonable accommodations to avoid the transfer or discharge unless the transfer or discharge is agreed to by the resident. The facility shall admit or retain only individuals whose needs it can safely and appropriately serve in the facility with available staff or through the provision of reasonable accommodations required by state or federal law. "Reasonable accommodations" has the meaning given to this term under the federal Americans with disabilities act of 1990, 42 U.S.C. Sec. 12101 et seq. and other applicable federal or state antidiscrimination laws and regulations. [2013 c 23 § 229; 1997 c 392 § 216; 1995 1st sp.s. c 18 § 64; 1979 ex.s. c 211 § 45.]

Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392: See notes following RCW 74.39A.009.

Additional notes found at www.leg.wa.gov

74.42.640 Quality assurance committee. (1) To ensure the proper delivery of services and the maintenance and improvement in quality of care through self-review, each facility may maintain a quality assurance committee that, at a minimum, includes:

- (a) The director of nursing services;
- (b) A physician designated by the facility; and
- (c) Three other members from the staff of the facility.

(2) When established, the quality assurance committee shall meet at least quarterly to identify issues that may adversely affect quality of care and services to residents and to develop and implement plans of action to correct identified quality concerns or deficiencies in the quality of care provided to residents.

(3) To promote quality of care through self-review without the fear of reprisal, and to enhance the objectivity of the review process, the department shall not require, and the long-term care ombuds program shall not request, disclosure of any quality assurance committee records or reports, unless the disclosure is related to the committee's compliance with this section, if:

- (a) The records or reports are not maintained pursuant to statutory or regulatory mandate; and
- (b) The records or reports are created for and collected and maintained by the committee.

(4) The department may request only information related to the quality assurance committee that may be necessary to determine whether a facility has a quality assurance committee and that it is operating in compliance with this section.

(5) Good faith attempts by the committee to identify and correct quality deficiencies shall not be used as a basis for imposing sanctions.

(6) If the facility offers the department documents generated by, or for, the quality assurance committee as evidence of compliance with nursing facility requirements, the documents are protected as quality assurance committee documents under subsections (7) and (9) of this section when in the possession of the department. The department is not liable for an inadvertent disclosure, a disclosure related to a required federal or state audit, or disclosure of documents incorrectly marked as quality assurance committee documents by the facility.

(7) Information and documents, including the analysis of complaints and incident reports, created specifically for, and collected and maintained by, a quality assurance committee are not subject to discovery or introduction into evidence in any civil action, and no person who was in attendance at a meeting of such committee or who participated in the creation, collection, or maintenance of information or documents specifically for the committee shall be permitted or required to testify in any civil action as to the content of such proceedings or the documents and information prepared specifically for the committee. This subsection does not preclude: (a) In any civil action, the discovery of the identity of persons involved in the care that is the basis of the civil action whose involvement was independent of any quality improvement committee activity; and (b) in any civil action, the testimony of any person concerning the facts which form the basis for the institution of such proceedings of which the person had personal knowledge acquired independently of their participation in the quality assurance committee activities.

(8) A quality assurance committee under subsection (1) of this section, RCW 18.20.390, 70.41.200, 4.24.250, or 43.70.510 may share information and documents, including the analysis of complaints and incident reports, created specifically for, and collected and maintained by, the committee, with one or more other quality assurance committees created under subsection (1) of this section, RCW 18.20.390, 70.41.200, 4.24.250, or 43.70.510 for the improvement of the quality of care and services rendered to nursing facility residents. Information and documents disclosed by one quality assurance committee to another quality assurance committee and any information and documents created or maintained as a result of the sharing of information and documents shall not be subject to the discovery process and confidentiality shall be respected as required by subsections (7) and (9) of this section, RCW 18.20.390 (6) and (8), 43.70.510(4), 70.41.200(3), and 4.24.250(1). The privacy protections of chapter 70.02 RCW and the federal health insurance portability and accountability act of 1996 and its implementing regulations apply to the sharing of individually identifiable patient information held by a coordinated quality improvement program. Any rules necessary to implement this section shall meet the requirements of applicable federal and state privacy laws.

(9) Information and documents, including the analysis of complaints and incident reports, created specifically for, and collected and maintained by, a quality assurance committee are exempt from disclosure under chapter 42.56 RCW.

(10) Notwithstanding any records created for the quality assurance committee, the facility shall fully set forth in the resident's records, available to the resident, the department, and others as permitted by law, the facts concerning any incident of injury or loss to the resident, the steps taken by the facility to address the resident's needs, and the resident outcome.

(11) A facility operated as part of a hospital licensed under chapter 70.41 RCW may maintain a quality assurance committee in accordance with this section which shall be subject to the provisions of subsections (1) through (10) of this section or may conduct quality improvement activities for the facility through a quality improvement committee under RCW 70.41.200 which shall be subject to the provisions of RCW 70.41.200(9). [2013 c 23 § 230; 2006 c 209 § 13; 2005 c 33 § 3.]

Effective date—2006 c 209: See RCW 42.56.903.

Findings—2005 c 33: See note following RCW 18.20.390.

Chapter 74.46 RCW NURSING FACILITY MEDICAID PAYMENT SYSTEM

(Formerly: Nursing home auditing and cost reimbursement act of 1980)

Sections

74.46.431	Nursing facility medicaid payment rate allocations—Components—Minimum wage—Rules.
74.46.501	Average case mix indexes determined quarterly—Facility average case mix index—Medicaid average case mix index.

74.46.431 Nursing facility medicaid payment rate allocations—Components—Minimum wage—Rules. (1) Nursing facility medicaid payment rate allocations shall be facility-specific and shall have six components: Direct care,

therapy care, support services, operations, property, and financing allowance. The department shall establish and adjust each of these components, as provided in this section and elsewhere in this chapter, for each medicaid nursing facility in this state.

(2) Component rate allocations in therapy care and support services for all facilities shall be based upon a minimum facility occupancy of eighty-five percent of licensed beds, regardless of how many beds are set up or in use. Component rate allocations in operations, property, and financing allowance for essential community providers shall be based upon a minimum facility occupancy of eighty-seven percent of licensed beds, regardless of how many beds are set up or in use. Component rate allocations in operations, property, and financing allowance for small nonessential community providers shall be based upon a minimum facility occupancy of ninety-two percent of licensed beds, regardless of how many beds are set up or in use. Component rate allocations in operations, property, and financing allowance for large nonessential community providers shall be based upon a minimum facility occupancy of ninety-five percent of licensed beds, regardless of how many beds are set up or in use. For all facilities, the component rate allocation in direct care shall be based upon actual facility occupancy. The median cost limits used to set component rate allocations shall be based on the applicable minimum occupancy percentage. In determining each facility's therapy care component rate allocation under RCW 74.46.511, the department shall apply the applicable minimum facility occupancy adjustment before creating the array of facilities' adjusted therapy costs per adjusted resident day. In determining each facility's support services component rate allocation under RCW 74.46.515(3), the department shall apply the applicable minimum facility occupancy adjustment before creating the array of facilities' adjusted support services costs per adjusted resident day. In determining each facility's operations component rate allocation under RCW 74.46.521(3), the department shall apply the minimum facility occupancy adjustment before creating the array of facilities' adjusted general operations costs per adjusted resident day.

(3) Information and data sources used in determining medicaid payment rate allocations, including formulas, procedures, cost report periods, resident assessment instrument formats, resident assessment methodologies, and resident classification and case mix weighting methodologies, may be substituted or altered from time to time as determined by the department.

(4)(a) Direct care component rate allocations shall be established using adjusted cost report data covering at least six months. Effective July 1, 2009, the direct care component rate allocation shall be rebased, so that adjusted cost report data for calendar year 2007 is used for July 1, 2009, through June 30, 2015. Beginning July 1, 2015, the direct care component rate allocation shall be rebased biennially during every odd-numbered year thereafter using adjusted cost report data from two years prior to the rebase period, so adjusted cost report data for calendar year 2013 is used for July 1, 2015, through June 30, 2017, and so forth.

(b) Direct care component rate allocations established in accordance with this chapter shall be adjusted annually for economic trends and conditions by a factor or factors defined

in the biennial appropriations act. The economic trends and conditions factor or factors defined in the biennial appropriations act shall not be compounded with the economic trends and conditions factor or factors defined in any other biennial appropriations acts before applying it to the direct care component rate allocation established in accordance with this chapter. When no economic trends and conditions factor or factors for either fiscal year are defined in a biennial appropriations act, no economic trends and conditions factor or factors defined in any earlier biennial appropriations act shall be applied solely or compounded to the direct care component rate allocation established in accordance with this chapter.

(5)(a) Therapy care component rate allocations shall be established using adjusted cost report data covering at least six months. Effective July 1, 2009, the therapy care component rate allocation shall be cost rebased, so that adjusted cost report data for calendar year 2007 is used for July 1, 2009, through June 30, 2015. Beginning July 1, 2015, the therapy care component rate allocation shall be rebased biennially during every odd-numbered year thereafter using adjusted cost report data from two years prior to the rebase period, so adjusted cost report data for calendar year 2013 is used for July 1, 2015, through June 30, 2017, and so forth.

(b) Therapy care component rate allocations established in accordance with this chapter shall be adjusted annually for economic trends and conditions by a factor or factors defined in the biennial appropriations act. The economic trends and conditions factor or factors defined in the biennial appropriations act shall not be compounded with the economic trends and conditions factor or factors defined in any other biennial appropriations acts before applying it to the therapy care component rate allocation established in accordance with this chapter. When no economic trends and conditions factor or factors for either fiscal year are defined in a biennial appropriations act, no economic trends and conditions factor or factors defined in any earlier biennial appropriations act shall be applied solely or compounded to the therapy care component rate allocation established in accordance with this chapter.

(6)(a) Support services component rate allocations shall be established using adjusted cost report data covering at least six months. Effective July 1, 2009, the support services component rate allocation shall be cost rebased, so that adjusted cost report data for calendar year 2007 is used for July 1, 2009, through June 30, 2015. Beginning July 1, 2015, the support services component rate allocation shall be rebased biennially during every odd-numbered year thereafter using adjusted cost report data from two years prior to the rebase period, so adjusted cost report data for calendar year 2013 is used for July 1, 2015, through June 30, 2017, and so forth.

(b) Support services component rate allocations established in accordance with this chapter shall be adjusted annually for economic trends and conditions by a factor or factors defined in the biennial appropriations act. The economic trends and conditions factor or factors defined in the biennial appropriations act shall not be compounded with the economic trends and conditions factor or factors defined in any other biennial appropriations acts before applying it to the support services component rate allocation established in

accordance with this chapter. When no economic trends and conditions factor or factors for either fiscal year are defined in a biennial appropriations act, no economic trends and conditions factor or factors defined in any earlier biennial appropriations act shall be applied solely or compounded to the support services component rate allocation established in accordance with this chapter.

(7)(a) Operations component rate allocations shall be established using adjusted cost report data covering at least six months. Effective July 1, 2009, the operations component rate allocation shall be cost rebased, so that adjusted cost report data for calendar year 2007 is used for July 1, 2009, through June 30, 2015. Beginning July 1, 2015, the operations care component rate allocation shall be rebased biennially during every odd-numbered year thereafter using adjusted cost report data from two years prior to the rebase period, so adjusted cost report data for calendar year 2013 is used for July 1, 2015, through June 30, 2017, and so forth.

(b) Operations component rate allocations established in accordance with this chapter shall be adjusted annually for economic trends and conditions by a factor or factors defined in the biennial appropriations act. The economic trends and conditions factor or factors defined in the biennial appropriations act shall not be compounded with the economic trends and conditions factor or factors defined in any other biennial appropriations acts before applying it to the operations component rate allocation established in accordance with this chapter. When no economic trends and conditions factor or factors for either fiscal year are defined in a biennial appropriations act, no economic trends and conditions factor or factors defined in any earlier biennial appropriations act shall be applied solely or compounded to the operations component rate allocation established in accordance with this chapter.

(8) Total payment rates under the nursing facility medicare payment system shall not exceed facility rates charged to the general public for comparable services.

(9) The department shall establish in rule procedures, principles, and conditions for determining component rate allocations for facilities in circumstances not directly addressed by this chapter, including but not limited to: Inflation adjustments for partial-period cost report data, newly constructed facilities, existing facilities entering the medicare program for the first time or after a period of absence from the program, existing facilities with expanded new bed capacity, existing medicare facilities following a change of ownership of the nursing facility business, facilities temporarily reducing the number of set-up beds during a remodel, facilities having less than six months of either resident assessment, cost report data, or both, under the current contractor prior to rate setting, and other circumstances.

(10) The department shall establish in rule procedures, principles, and conditions, including necessary threshold costs, for adjusting rates to reflect capital improvements or new requirements imposed by the department or the federal government. Any such rate adjustments are subject to the provisions of RCW 74.46.421.

(11) Effective July 1, 2010, there shall be no rate adjustment for facilities with banked beds. For purposes of calculating minimum occupancy, licensed beds include any beds banked under chapter 70.38 RCW.

(12) Facilities obtaining a certificate of need or a certificate of need exemption under chapter 70.38 RCW after June 30, 2001, must have a certificate of capital authorization in order for (a) the depreciation resulting from the capitalized addition to be included in calculation of the facility's property component rate allocation; and (b) the net invested funds associated with the capitalized addition to be included in calculation of the facility's financing allowance rate allocation. [2013 2nd sp.s. c 3 § 1; 2011 1st sp.s. c 7 § 1; 2010 1st sp.s. c 34 § 3; 2009 c 570 § 1; 2008 c 263 § 2; 2007 c 508 § 2; 2006 c 258 § 2; 2005 c 518 § 944; 2004 c 276 § 913; 2001 1st sp.s. c 8 § 5; 1999 c 353 § 4; 1998 c 322 § 19.]

Comparative analysis—2013 2nd sp.s. c 3: "(1) For fiscal years 2014 and 2015 and subject to appropriation, the department of social and health services shall do a comparative analysis of the facility-based payment rates calculated on July 1, 2013, using the payment methodology defined in chapter 74.46 RCW, to the facility-based payment rates in effect June 30, 2010. If the facility-based payment rate calculated on July 1, 2013, is smaller than the facility-based payment rate on June 30, 2010, the difference shall be provided to the individual nursing facilities as an add-on payment per medicare resident day.

(2) During the comparative analysis performed in subsection (1) of this section, if it is found that the direct care rate for any facility calculated under chapter 74.46 RCW is greater than the direct care rate in effect on June 30, 2010, then the facility shall receive a ten percent direct care rate add-on to compensate that facility for taking on more acute clients than they have in the past.

(3) The rate add-ons provided in subsection (2) of this section are subject to the reconciliation and settlement process provided in RCW 74.46.022(6)." [2013 2nd sp.s. c 3 § 3.]

Effective date—2013 2nd sp.s. c 3: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2013." [2013 2nd sp.s. c 3 § 4.]

Analysis—2011 1st sp.s. c 7: "(1) For fiscal years 2012 and 2013 and subject to appropriation, the department of social and health services shall do a comparative analysis of the facility-based payment rates calculated on July 1, 2011, using the payment methodology defined in chapter 74.46 RCW as modified by RCW 74.46.431, 74.46.435, 74.46.437, 74.46.485, 74.46.496, 74.46.501, 74.46.506, 74.46.515, and 74.46.521, to the facility-based payment rates in effect June 30, 2010. If the facility-based payment rate calculated on July 1, 2011, is smaller than the facility-based payment rate on June 30, 2010, the difference shall be provided to the individual nursing facilities as an add-on payment per medicare resident day.

(2) During the comparative analysis performed in subsection (1) of this section, if it is found that the direct care rate for any facility calculated under RCW 74.46.431, 74.46.435, 74.46.437, 74.46.485, 74.46.496, 74.46.501, 74.46.506, 74.46.515, and 74.46.521 is greater than the direct care rate in effect on June 30, 2010, then the facility shall receive a ten percent direct care rate add-on to compensate that facility for taking on more acute clients than they have in the past.

(3) The rate add-ons provided in subsection (2) of this section are subject to the reconciliation and settlement process provided in RCW 74.46.022(6)." [2011 1st sp.s. c 7 § 11.]

Purpose—Findings—Intent—Severability—Effective date—2011 1st sp.s. c 7: See RCW 74.48.005, 74.48.900, and 74.48.901.

Effective date—2010 1st sp.s. c 34: See note following RCW 74.46.010.

Effective date—2009 c 570: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 19, 2009]." [2009 c 570 § 3.]

Effective date—2007 c 508: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2007." [2007 c 508 § 8.]

Effective date—2006 c 258: See note following RCW 74.46.020.

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

Severability—Effective date—2004 c 276: See notes following RCW 43.330.167.

Additional notes found at www.leg.wa.gov

74.46.501 Average case mix indexes determined quarterly—Facility average case mix index—Medicaid average case mix index. (1) From individual case mix weights for the applicable quarter, the department shall determine two average case mix indexes for each medicaid nursing facility, one for all residents in the facility, known as the facility average case mix index, and one for medicaid residents, known as the medicaid average case mix index.

(2)(a) In calculating a facility's two average case mix indexes for each quarter, the department shall include all residents or medicaid residents, as applicable, who were physically in the facility during the quarter in question based on the resident assessment instrument completed by the facility and the requirements and limitations for the instrument's completion and transmission (January 1st through March 31st, April 1st through June 30th, July 1st through September 30th, or October 1st through December 31st).

(b) The facility average case mix index shall exclude all default cases as defined in this chapter. However, the medicaid average case mix index shall include all default cases.

(3) Both the facility average and the medicaid average case mix indexes shall be determined by multiplying the case mix weight of each resident, or each medicaid resident, as applicable, by the number of days, as defined in this section and as applicable, the resident was at each particular case mix classification or group, and then averaging.

(4) In determining the number of days a resident is classified into a particular case mix group, the department shall determine a start date for calculating case mix grouping periods as specified by rule.

(5) The cutoff date for the department to use resident assessment data, for the purposes of calculating both the facility average and the medicaid average case mix indexes, and for establishing and updating a facility's direct care component rate, shall be one month and one day after the end of the quarter for which the resident assessment data applies.

(6)(a) Although the facility average and the medicaid average case mix indexes shall both be calculated quarterly, the cost-rebasing period facility average case mix index will be used throughout the applicable cost-rebasing period in combination with cost report data as specified by RCW 74.46.431 and 74.46.506, to establish a facility's allowable cost per case mix unit. To allow for the transition to minimum data set 3.0 and implementation of resource utilization group IV for July 1, 2013, through June 30, 2015, the department shall calculate rates using the medicaid average case mix scores effective for January 1, 2013, rates adjusted under RCW 74.46.485(1)(a), and the scores shall be increased each six months during the transition period by one-half of one percent. The July 1, 2015, direct care cost per case mix unit shall be calculated by utilizing 2013 direct care costs, patient days, and 2013 facility average case mix indexes based on the minimum data set 3.0 resource utilization group IV grouper 57. Otherwise, a facility's medicaid average case mix index shall be used to update a nursing facility's direct care component rate semiannually.

(b) The facility average case mix index used to establish each nursing facility's direct care component rate shall be based on an average of calendar quarters of the facility's average case mix indexes from the four calendar quarters occurring during the cost report period used to rebase the direct care component rate allocations as specified in RCW 74.46.431.

(c) The medicaid average case mix index used to update or recalibrate a nursing facility's direct care component rate semiannually shall be from the calendar six-month period commencing nine months prior to the effective date of the semiannual rate. For example, July 1, 2010, through December 31, 2010, direct care component rates shall utilize case mix averages from the October 1, 2009, through March 31, 2010, calendar quarters, and so forth. [2013 2nd sp.s. c 3 § 2; 2011 1st sp.s. c 7 § 6; 2010 1st sp.s. c 34 § 11; 2006 c 258 § 5; 2001 1st sp.s. c 8 § 9; 1998 c 322 § 24.]

Comparative analysis—Effective date—2013 2nd sp.s. c 3: See notes following RCW 74.46.431.

Purpose—Findings—Intent—Severability—Effective date—2011 1st sp.s. c 7: See RCW 74.48.005, 74.48.900, and 74.48.901.

Analysis—2011 1st sp.s. c 7: See note following RCW 74.46.431.

Effective date—2010 1st sp.s. c 34: See note following RCW 74.46.010.

Effective date—2006 c 258: See note following RCW 74.46.020.

Additional notes found at www.leg.wa.gov

Chapter 74.60 RCW

HOSPITAL SAFETY NET ASSESSMENT

Sections

74.60.005	Purpose—Findings—Intent. (<i>Expires July 1, 2017.</i>)
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74.60.900	Severability—2010 1st sp.s. c 30. (<i>Expires July 1, 2017.</i>)
74.60.901	Expiration date—2010 1st sp.s. c 30.

74.60.005 Purpose—Findings—Intent. (*Expires July 1, 2017.*) (1) The purpose of this chapter is to provide for a safety net assessment on certain Washington hospitals, which will be used solely to augment funding from all other sources and thereby support additional payments to hospitals for medicaid services as specified in this chapter.

(2) The legislature finds that federal health care reform will result in an expansion of medicaid enrollment in this state and an increase in federal financial participation. As a result, the hospital safety net assessment and hospital safety net assessment fund created in this chapter will begin phasing down over a four-year period beginning in fiscal year 2016 as

federal medicaid expansion is fully implemented. The state will end its reliance on the assessment and the fund by the end of fiscal year 2019.

(3) In adopting this chapter, it is the intent of the legislature:

(a) To impose a hospital safety net assessment to be used solely for the purposes specified in this chapter;

(b) To generate approximately four hundred forty-six million three hundred thirty-eight thousand dollars per state fiscal year in fiscal years 2014 and 2015, and then phasing down in equal increments to zero by the end of fiscal year 2019, in new state and federal funds by disbursing all of that amount to pay for medicaid hospital services and grants to certified public expenditure hospitals, except costs of administration as specified in this chapter, in the form of additional payments to hospitals and managed care plans, which may not be a substitute for payments from other sources;

(c) To generate one hundred ninety-nine million eight hundred thousand dollars in the 2013-2015 biennium, phasing down to zero by the end of the 2017-2019 biennium, in new funds to be used in lieu of state general fund payments for medicaid hospital services;

(d) That the total amount assessed not exceed the amount needed, in combination with all other available funds, to support the payments authorized by this chapter; and

(e) To condition the assessment on receiving federal approval for receipt of additional federal financial participation and on continuation of other funding sufficient to maintain aggregate payment levels to hospitals for inpatient and outpatient services covered by medicaid, including fee-for-service and managed care, at least at the levels the state paid for those services on July 1, 2009, as adjusted for current enrollment and utilization, but without regard to payment increases resulting from chapter 30, Laws of 2010 1st sp. sess. [2013 2nd sp.s. c 17 § 1; 2010 1st sp.s. c 30 § 1.]

Effective date—2013 2nd sp.s. c 17: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 30, 2013]." [2013 2nd sp.s. c 17 § 20.]

74.60.010 Definitions. (Expires July 1, 2017.) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Authority" means the health care authority.

(2) "Base year" for medicaid payments for state fiscal year 2014 is state fiscal year 2011. For each following year's calculations, the base year must be updated to the next following year.

(3) "Bordering city hospital" means a hospital as defined in WAC 182-550-1050 and bordering cities as described in WAC 182-501-0175, or successor rules.

(4) "Certified public expenditure hospital" means a hospital participating in or that at any point from June 30, 2013, to July 1, 2019, has participated in the authority's certified public expenditure payment program as described in WAC 182-550-4650 or successor rule. For purposes of this chapter any such hospital shall continue to be treated as a certified public expenditure hospital for assessment and payment purposes through the date specified in RCW 74.60.901. The eligibility of such hospitals to receive grants under RCW 74.60.090 solely from funds generated under this chapter

must not be affected by any modification or termination of the federal certified public expenditure program, or reduced by the amount of any federal funds no longer available for that purpose.

(5) "Critical access hospital" means a hospital as described in RCW 74.09.5225.

(6) "Director" means the director of the health care authority.

(7) "Eligible new prospective payment hospital" means a prospective payment hospital opened after January 1, 2009, for which a full year of cost report data as described in RCW 74.60.030(2) and a full year of medicaid base year data required for the calculations in RCW 74.60.120(3) are available.

(8) "Fund" means the hospital safety net assessment fund established under RCW 74.60.020.

(9) "Hospital" means a facility licensed under chapter 70.41 RCW.

(10) "Long-term acute care hospital" means a hospital which has an average inpatient length of stay of greater than twenty-five days as determined by the department of health.

(11) "Managed care organization" means an organization having a certificate of authority or certificate of registration from the office of the insurance commissioner that contracts with the authority under a comprehensive risk contract to provide prepaid health care services to eligible clients under the authority's medicaid managed care programs, including the healthy options program.

(12) "Medicaid" means the medical assistance program as established in Title XIX of the social security act and as administered in the state of Washington by the authority.

(13) "Medicare cost report" means the medicare cost report, form 2552, or successor document.

(14) "Nonmedicare hospital inpatient day" means total hospital inpatient days less medicare inpatient days, including medicare days reported for medicare managed care plans, as reported on the medicare cost report, form 2552, or successor forms, excluding all skilled and nonskilled nursing facility days, skilled and nonskilled swing bed days, nursery days, observation bed days, hospice days, home health agency days, and other days not typically associated with an acute care inpatient hospital stay.

(15) "Outpatient" means services provided classified as ambulatory payment classification services or successor payment methodologies as defined in WAC 182-550-7050 or successor rule and applies to fee-for-service payments and managed care encounter data.

(16) "Prospective payment system hospital" means a hospital reimbursed for inpatient and outpatient services provided to medicaid beneficiaries under the inpatient prospective payment system and the outpatient prospective payment system as defined in WAC 182-550-1050 or successor rule. For purposes of this chapter, prospective payment system hospital does not include a hospital participating in the certified public expenditure program or a bordering city hospital located outside of the state of Washington and in one of the bordering cities listed in WAC 182-501-0175 or successor rule.

(17) "Psychiatric hospital" means a hospital facility licensed as a psychiatric hospital under chapter 71.12 RCW.

(18) "Rehabilitation hospital" means a medicare-certified freestanding inpatient rehabilitation facility.

(19) "Small rural disproportionate share hospital payment" means a payment made in accordance with WAC 182-550-5200 or successor rule.

(20) "Upper payment limit" means the aggregate federal upper payment limit on the amount of the medicaid payment for which federal financial participation is available for a class of service and a class of health care providers, as specified in 42 C.F.R. Part 47, as separately determined for inpatient and outpatient hospital services. [2013 2nd sp.s. c 17 § 2; 2010 1st sp.s. c 30 § 2.]

Effective date—2013 2nd sp.s. c 17: See note following RCW 74.60.005.

74.60.020 Hospital safety net assessment fund. (Expires July 1, 2017.) (1) A dedicated fund is hereby established within the state treasury to be known as the hospital safety net assessment fund. The purpose and use of the fund shall be to receive and disburse funds, together with accrued interest, in accordance with this chapter. Moneys in the fund, including interest earned, shall not be used or disbursed for any purposes other than those specified in this chapter. Any amounts expended from the fund that are later recouped by the authority on audit or otherwise shall be returned to the fund.

(a) Any unexpended balance in the fund at the end of a fiscal biennium shall carry over into the following biennium and shall be applied to reduce the amount of the assessment under RCW 74.60.050(1)(c).

(b) Any amounts remaining in the fund after July 1, 2019, shall be refunded to hospitals, pro rata according to the amount paid by the hospital since July 1, 2013, subject to the limitations of federal law.

(2) All assessments, interest, and penalties collected by the authority under RCW 74.60.030 and 74.60.050 shall be deposited into the fund.

(3) Disbursements from the fund are conditioned upon appropriation and the continued availability of other funds sufficient to maintain aggregate payment levels to hospitals for inpatient and outpatient services covered by medicaid, including fee-for-service and managed care, at least at the levels the state paid for those services on July 1, 2009, as adjusted for current enrollment and utilization, but without regard to payment increases resulting from chapter 30, Laws of 2010 1st sp. sess.

(4) Disbursements from the fund may be made only:

(a) To make payments to hospitals and managed care plans as specified in this chapter;

(b) To refund erroneous or excessive payments made by hospitals pursuant to this chapter;

(c) For one million dollars per biennium for payment of administrative expenses incurred by the authority in performing the activities authorized by this chapter;

(d) For one hundred ninety-nine million eight hundred thousand dollars in the 2013-2015 biennium, phasing down to zero by the end of the 2017-2019 biennium to be used in lieu of state general fund payments for medicaid hospital services, provided that if the full amount of the payments required under RCW 74.60.120 and 74.60.130 cannot be dis-

tributed in a given fiscal year, this amount must be reduced proportionately;

(e) To repay the federal government for any excess payments made to hospitals from the fund if the assessments or payment increases set forth in this chapter are deemed out of compliance with federal statutes and regulations in a final determination by a court of competent jurisdiction with all appeals exhausted. In such a case, the authority may require hospitals receiving excess payments to refund the payments in question to the fund. The state in turn shall return funds to the federal government in the same proportion as the original financing. If a hospital is unable to refund payments, the state shall develop either a payment plan, or deduct moneys from future medicaid payments, or both;

(f) Beginning in state fiscal year 2015, to pay an amount sufficient, when combined with the maximum available amount of federal funds necessary to provide a one percent increase in medicaid hospital inpatient rates to hospitals eligible for quality improvement incentives under RCW 74.09.611. [2013 2nd sp.s. c 17 § 3; 2011 1st sp.s. c 35 § 1; 2010 1st sp.s. c 30 § 3.]

Effective date—2013 2nd sp.s. c 17: See note following RCW 74.60.005.

Expiration date—2011 1st sp.s. c 35: "Sections 1 and 2 of this act expire July 1, 2013." [2011 1st sp.s. c 35 § 3.]

Effective date—2011 1st sp.s. c 35: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2011." [2011 1st sp.s. c 35 § 4.]

74.60.030 Assessments. (Expires July 1, 2017.) (1)(a) Upon satisfaction of the conditions in RCW 74.60.150(1), and so long as the conditions in RCW 74.60.150(2) have not occurred, an assessment is imposed as set forth in this subsection, effective July 1, 2013. The authority shall calculate the amount due annually and shall issue assessments quarterly for one-fourth of the annual amount due from each hospital. Initial assessment notices must be sent to each hospital not earlier than thirty days after satisfaction of the conditions in RCW 74.60.150(1) and must include all amounts due from and after July 1, 2013. Payment is due not sooner than thirty days thereafter. Subsequent notices must be sent on or about thirty days prior to the end of each subsequent quarter and payment is due thirty days thereafter.

(b) Beginning July 1, 2013, and except as provided in RCW 74.60.050:

(i) Each prospective payment system hospital, except psychiatric and rehabilitation hospitals, shall pay a quarterly assessment. Each quarterly assessment shall be one quarter of three hundred forty-four dollars for each annual nonmedicare hospital inpatient day, up to a maximum of fifty-four thousand days per year. For each nonmedicare hospital inpatient day in excess of fifty-four thousand days, each prospective payment system hospital shall pay an assessment of one quarter of seven dollars for each such day;

(ii) Each critical access hospital shall pay a quarterly assessment of one quarter of ten dollars for each annual nonmedicare hospital inpatient day;

(iii) Each psychiatric hospital shall pay a quarterly assessment of one quarter of sixty-seven dollars for each annual nonmedicare hospital inpatient day; and

(iv) Each rehabilitation hospital shall pay a quarterly assessment of one quarter of sixty-seven dollars for each annual nonmedicare hospital inpatient day.

(2) The authority shall determine each hospital's annual nonmedicare hospital inpatient days by summing the total reported nonmedicare hospital inpatient days for each hospital that is not exempt from the assessment under RCW 74.60.040, taken from the hospital's 2552 cost report data file or successor data file available through the centers for medicare and medicaid services, as of a date to be determined by the authority. For state fiscal year 2014, the authority shall use cost report data for hospitals' fiscal years ending in 2010. For subsequent years, the hospitals' next succeeding fiscal year cost report data must be used.

(a) With the exception of a prospective payment system hospital commencing operations after January 1, 2009, for any hospital without a cost report for the relevant fiscal year, the authority shall work with the affected hospital to identify appropriate supplemental information that may be used to determine annual nonmedicare hospital inpatient days.

(b) A prospective payment system hospital commencing operations after January 1, 2009, must be assessed in accordance with this section after becoming an eligible new prospective payment system hospital as defined in RCW 74.60.010. [2013 2nd sp.s. c 17 § 4; 2010 1st sp.s. c 30 § 4.]

Effective date—2013 2nd sp.s. c 17: See note following RCW 74.60.005.

74.60.050 Administration and collection. (Expires July 1, 2017.) (1) The authority, in cooperation with the office of financial management, shall develop rules for determining the amount to be assessed to individual hospitals, notifying individual hospitals of the assessed amount, and collecting the amounts due. Such rule making shall specifically include provision for:

(a) Transmittal of notices of assessment by the authority to each hospital informing the hospital of its nonmedicare hospital inpatient days and the assessment amount due and payable;

(b) Interest on delinquent assessments at the rate specified in RCW 82.32.050; and

(c) Adjustment of the assessment amounts in accordance with subsections (2) and (3) of this section.

(2) For state fiscal year 2015, the assessment amounts established under RCW 74.60.030 must be adjusted as follows:

(a) If sufficient other funds, including federal funds, are available to make the payments required under this chapter and fund the state portion of the quality incentive payments under RCW 74.09.611 and 74.60.020(4)(f) without utilizing the full assessment under RCW 74.60.030, the authority shall reduce the amount of the assessment to the minimum levels necessary to support those payments;

(b) If the total amount of inpatient or outpatient supplemental payments under RCW 74.60.120 is in excess of the upper payment limit and the entire excess amount cannot be disbursed by additional payments to managed care organizations under RCW 74.60.130, the authority shall proportionately reduce future assessments on prospective payment hospitals to the level necessary to generate additional payments to hospitals that are consistent with the upper payment limit

plus the maximum permissible amount of additional payments to managed care organizations under RCW 74.60.130;

(c) If the amount of payments to managed care organizations under RCW 74.60.130 cannot be distributed because of failure to meet federal actuarial soundness or utilization requirements or other federal requirements, the authority shall apply the amount that cannot be distributed to reduce future assessments to the level necessary to generate additional payments to managed care organizations that are consistent with federal actuarial soundness or utilization requirements or other federal requirements;

(d) If required in order to obtain federal matching funds, the maximum number of nonmedicare inpatient days at the higher rate provided under RCW 74.60.030(1)(b)(i) may be adjusted in order to comply with federal requirements;

(e) If the number of nonmedicare inpatient days applied to the rates provided in RCW 74.60.030 will not produce sufficient funds to support the payments required under this chapter and the state portion of the quality incentive payments under RCW 74.09.611 and 74.60.020(4)(f), the assessment rates provided in RCW 74.60.030 may be increased proportionately by category of hospital to amounts no greater than necessary in order to produce the required level of funds needed to make the payments specified in this chapter and the state portion of the quality incentive payments under RCW 74.09.611 and 74.60.020(4)(f); and

(f) Any actual or estimated surplus remaining in the fund at the end of the fiscal year must be applied to reduce the assessment amount for the subsequent fiscal year.

(3) For each fiscal year after June 30, 2015, the assessment amounts established under RCW 74.60.030 must be adjusted as follows:

(a) In order to support the payments required in this chapter, the assessment amounts must be reduced in approximately equal yearly increments each fiscal year by category of hospital until the assessment amount is zero by July 1, 2019;

(b) If sufficient other funds, including federal funds, are available to make the payments required under this chapter and fund the state portion of the quality incentive payments under RCW 74.09.611 and 74.60.020(4)(f) without utilizing the full assessment under RCW 74.60.030, the authority shall reduce the amount of the assessment to the minimum levels necessary to support those payments;

(c) If in any fiscal year the total amount of inpatient or outpatient supplemental payments under RCW 74.60.120 is in excess of the upper payment limit and the entire excess amount cannot be disbursed by additional payments to managed care organizations under RCW 74.60.130, the authority shall proportionately reduce future assessments on prospective payment hospitals to the level necessary to generate additional payments to hospitals that are consistent with the upper payment limit plus the maximum permissible amount of additional payments to managed care organizations under RCW 74.60.130;

(d) If the amount of payments to managed care organizations under RCW 74.60.130 cannot be distributed because of failure to meet federal actuarial soundness or utilization requirements or other federal requirements, the authority shall apply the amount that cannot be distributed to reduce future assessments to the level necessary to generate addi-

tional payments to managed care organizations that are consistent with federal actuarial soundness or utilization requirements or other federal requirements;

(e) If required in order to obtain federal matching funds, the maximum number of nonmedicare inpatient days at the higher rate provided under RCW 74.60.030(1)(b)(i) may be adjusted in order to comply with federal requirements;

(f) If the number of nonmedicare inpatient days applied to the rates provided in RCW 74.60.030 will not produce sufficient funds to support the payments required under this chapter and the state portion of the quality incentive payments under RCW 74.09.611 and 74.60.020(4)(f), the assessment rates provided in RCW 74.60.030 may be increased proportionately by category of hospital to amounts no greater than necessary in order to produce the required level of funds needed to make the payments specified in this chapter and the state portion of the quality incentive payments under RCW 74.09.611 and 74.60.020(4)(f); and

(g) Any actual or estimated surplus remaining in the fund at the end of the fiscal year must be applied to reduce the assessment amount for the subsequent fiscal year.

(4)(a) Any adjustment to the assessment amounts pursuant to this section, and the data supporting such adjustment, including, but not limited to, relevant data listed in (b) of this subsection, must be submitted to the Washington state hospital association for review and comment at least sixty calendar days prior to implementation of such adjusted assessment amounts. Any review and comment provided by the Washington state hospital association does not limit the ability of the Washington state hospital association or its members to challenge an adjustment or other action by the authority that is not made in accordance with this chapter.

(b) The authority shall provide the following data to the Washington state hospital association sixty days before implementing any revised assessment levels, detailed by fiscal year, beginning with fiscal year 2011 and extending to the most recent fiscal year, except in connection with the initial assessment under this chapter:

(i) The fund balance;

(ii) The amount of assessment paid by each hospital;

(iii) The state share, federal share, and total annual medicaid fee-for-service payments for inpatient hospital services made to each hospital under RCW 74.60.120, and the data used to calculate the payments to individual hospitals under that section;

(iv) The state share, federal share, and total annual medicaid fee-for-service payments for outpatient hospital services made to each hospital under RCW 74.60.120, and the data used to calculate annual payments to individual hospitals under that section;

(v) The annual state share, federal share, and total payments made to each hospital under each of the following programs: Grants to certified public expenditure hospitals under RCW 74.60.090, for critical access hospital payments under RCW 74.60.100; and disproportionate share programs under RCW 74.60.110;

(vi) The data used to calculate annual payments to individual hospitals under (b)(v) of this subsection; and

(vii) The amount of payments made to managed care plans under RCW 74.60.130, including the amount representing additional premium tax, and the data used to calculate

those payments. [2013 2nd sp.s. c 17 § 5; 2010 1st sp.s. c 30 § 6.]

Effective date—2013 2nd sp.s. c 17: See note following RCW 74.60.005.

74.60.070 Assessment part of operating overhead. (Expires July 1, 2017.) The incidence and burden of assessments imposed under this chapter shall be on hospitals and the expense associated with the assessments shall constitute a part of the operating overhead of hospitals. Hospitals shall not increase charges or billings to patients or third-party payers as a result of the assessments under this chapter. The authority may require hospitals to submit certified statements by their chief financial officers or equivalent officials attesting that they have not increased charges or billings as a result of the assessments. [2013 2nd sp.s. c 17 § 6; 2010 1st sp.s. c 30 § 8.]

Effective date—2013 2nd sp.s. c 17: See note following RCW 74.60.005.

74.60.080 Disbursements from hospital safety net assessment fund. (Expires July 1, 2017.) In each fiscal year and upon satisfaction of the conditions in RCW 74.60.150(1), after deducting or reserving amounts authorized to be disbursed under RCW 74.60.020(4) (d), (e), and (f), disbursements from the fund must be made as follows:

(1) For grants to certified public expenditure hospitals in accordance with RCW 74.60.090;

(2) For payments to critical access hospitals in accordance with RCW 74.60.100;

(3) For small rural disproportionate share payments in accordance with RCW 74.60.110;

(4) For payments to hospitals under RCW 74.60.120; and

(5) For payments to managed care organizations under RCW 74.60.130 for the provision of hospital services. [2013 2nd sp.s. c 17 § 7; 2010 1st sp.s. c 30 § 9.]

Effective date—2013 2nd sp.s. c 17: See note following RCW 74.60.005.

74.60.090 Grants to certified public expenditure hospitals. (Expires July 1, 2017.) (1) In each fiscal year commencing upon satisfaction of the applicable conditions in RCW 74.60.150(1), funds must be disbursed from the fund and the authority shall make grants to certified public expenditure hospitals, which shall not be considered payments for hospital services, as follows:

(a) University of Washington medical center: Three million three hundred thousand dollars per state fiscal year in fiscal years 2014 and 2015, and then reduced in approximately equal increments per fiscal year until the grant amount is zero by July 1, 2019;

(b) Harborview medical center: Seven million six hundred thousand dollars per state fiscal year in fiscal years 2014 and 2015, and then reduced in approximately equal increments per fiscal year until the grant amount is zero by July 1, 2019;

(c) All other certified public expenditure hospitals: Four million seven hundred thousand dollars per state fiscal year in fiscal years 2014 and 2015, and then reduced in approximately equal increments per fiscal year until the grant

amount is zero by July 1, 2019. The amount of payments to individual hospitals under this subsection must be determined using a methodology that provides each hospital with a proportional allocation of the group's total amount of medicaid and state children's health insurance program payments determined from claims and encounter data using the same general methodology set forth in RCW 74.60.120 (3) and (4).

(2) Payments must be made quarterly, taking the total disbursement amount and dividing by four to calculate the quarterly amount. The initial payment, which must include all amounts due from and after July 1, 2013, to the date of the initial payment, must be made within thirty days after satisfaction of the conditions in RCW 74.60.150(1). The authority shall provide a quarterly report of such payments to the Washington state hospital association. [2013 2nd sp.s. c 17 § 8; 2011 1st sp.s. c 35 § 2; 2010 1st sp.s. c 30 § 10.]

Effective date—2013 2nd sp.s. c 17: See note following RCW 74.60.005.

Expiration date—Effective date—2011 1st sp.s. c 35: See notes following RCW 74.60.020.

74.60.100 Critical access hospital payments. (Expires July 1, 2017.) In each fiscal year commencing upon satisfaction of the conditions in RCW 74.60.150(1), the authority shall make access payments to critical access hospitals that do not qualify for or receive a small rural disproportionate share hospital payment in a given fiscal year in the total amount of five hundred twenty thousand dollars from the fund. The amount of payments to individual hospitals under this section must be determined using a methodology that provides each hospital with a proportional allocation of the group's total amount of medicaid and state children's health insurance program payments determined from claims and encounter data using the same general methodology set forth in RCW 74.60.120 (3) and (4). Payments must be made after the authority determines a hospital's payments under RCW 74.60.110. These payments shall be in addition to any other amount payable with respect to services provided by critical access hospitals and shall not reduce any other payments to critical access hospitals. The authority shall provide a report of such payments to the Washington state hospital association within thirty days after payments are made. [2013 2nd sp.s. c 17 § 9; 2010 1st sp.s. c 30 § 11.]

Effective date—2013 2nd sp.s. c 17: See note following RCW 74.60.005.

74.60.110 Small rural disproportionate share hospital payments. (Expires July 1, 2017.) In each fiscal year commencing upon satisfaction of the applicable conditions in RCW 74.60.150(1), one million nine hundred nine thousand dollars must be distributed from the fund and, with available federal matching funds, paid to hospitals eligible for small rural disproportionate share payments under WAC 182-550-4900 or successor rule. Payments must be made directly to hospitals by the authority in accordance with that regulation. The authority shall provide a report of such payments to the Washington state hospital association within thirty days after payments are made. [2013 2nd sp.s. c 17 § 10; 2010 1st sp.s. c 30 § 12.]

Effective date—2013 2nd sp.s. c 17: See note following RCW 74.60.005.

74.60.120 Direct supplemental payments to hospitals. (Expires July 1, 2017.) (1) Beginning in state fiscal year 2014, commencing thirty days after satisfaction of the applicable conditions in RCW 74.60.150(1), and for the period of state fiscal years 2014 through 2019, the authority shall make supplemental payments directly to Washington hospitals, separately for inpatient and outpatient fee-for-service medicaid services, as follows:

(a) For inpatient fee-for-service payments for prospective payment hospitals other than psychiatric or rehabilitation hospitals, twenty-nine million two hundred twenty-five thousand dollars per state fiscal year in fiscal years 2014 and 2015, and then amounts reduced in equal increments per fiscal year until the supplemental payment amount is zero by July 1, 2019, from the fund, plus federal matching funds;

(b) For outpatient fee-for-service payments for prospective payment hospitals other than psychiatric or rehabilitation hospitals, thirty million dollars per state fiscal year in fiscal years 2014 and 2015, and then amounts reduced in equal increments per fiscal year until the supplemental payment amount is zero by July 1, 2019, from the fund, plus federal matching funds;

(c) For inpatient fee-for-service payments for psychiatric hospitals, six hundred twenty-five thousand dollars per state fiscal year in fiscal years 2014 and 2015, and then amounts reduced in equal increments per fiscal year until the supplemental payment amount is zero by July 1, 2019, from the fund, plus federal matching funds;

(d) For inpatient fee-for-service payments for rehabilitation hospitals, one hundred fifty thousand dollars per state fiscal year in fiscal years 2014 and 2015, and then amounts reduced in equal increments per fiscal year until the supplemental payment amount is zero by July 1, 2019, from the fund, plus federal matching funds;

(e) For inpatient fee-for-service payments for border hospitals, two hundred fifty thousand dollars per state fiscal year in fiscal years 2014 and 2015, and then amounts reduced in equal increments per fiscal year until the supplemental payment amount is zero by July 1, 2019, from the fund, plus federal matching funds; and

(f) For outpatient fee-for-service payments for border hospitals, two hundred fifty thousand dollars per state fiscal year in fiscal years 2014 and 2015, and then amounts reduced in equal increments per fiscal year until the supplemental payment amount is zero by July 1, 2019, from the fund, plus federal matching funds.

(2) If the amount of inpatient or outpatient payments under subsection (1) of this section, when combined with federal matching funds, exceeds the upper payment limit, payments to each category of hospital must be reduced proportionately to a level where the total payment amount is consistent with the upper payment limit. Funds under this chapter unable to be paid to hospitals under this section because of the upper payment limit must be paid to managed care organizations under RCW 74.60.130, subject to the limitations in this chapter.

(3) The amount of such fee-for-service inpatient payments to individual hospitals within each of the categories identified in subsection (1)(a), (c), (d), and (e) of this section must be determined by:

(a) Applying the medicaid fee-for-service rates in effect on July 1, 2009, without regard to the increases required by chapter 30, Laws of 2010 1st sp. sess. to each hospital's inpatient fee-for-services claims and medicaid managed care encounter data for the base year;

(b) Applying the medicaid fee-for-service rates in effect on July 1, 2009, without regard to the increases required by chapter 30, Laws of 2010 1st sp. sess. to all hospitals' inpatient fee-for-services claims and medicaid managed care encounter data for the base year; and

(c) Using the amounts calculated under (a) and (b) of this subsection to determine an individual hospital's percentage of the total amount to be distributed to each category of hospital.

(4) The amount of such fee-for-service outpatient payments to individual hospitals within each of the categories identified in subsection (1)(b) and (f) of this section must be determined by:

(a) Applying the medicaid fee-for-service rates in effect on July 1, 2009, without regard to the increases required by chapter 30, Laws of 2010 1st sp. sess. to each hospital's outpatient fee-for-services claims and medicaid managed care encounter data for the base year;

(b) Applying the medicaid fee-for-service rates in effect on July 1, 2009, without regard to the increases required by chapter 30, Laws of 2010 1st sp. sess. to all hospitals' outpatient fee-for-services claims and medicaid managed care encounter data for the base year; and

(c) Using the amounts calculated under (a) and (b) of this subsection to determine an individual hospital's percentage of the total amount to be distributed to each category of hospital.

(5) Thirty days before the initial payments and sixty days before the first payment in each subsequent fiscal year, the authority shall provide each hospital and the Washington state hospital association with an explanation of how the amounts due to each hospital under this section were calculated.

(6) Payments must be made in quarterly installments on or about the last day of every quarter, except that the initial payment must be made within thirty days after satisfaction of the conditions in RCW 74.60.150(1) and must include all amounts due from July 1, 2013, to the date of the initial payment.

(7) A prospective payment system hospital commencing operations after January 1, 2009, is eligible to receive payments in accordance with this section after becoming an eligible new prospective payment system hospital as defined in RCW 74.60.010.

(8) Payments under this section are supplemental to all other payments and do not reduce any other payments to hospitals. [2013 2nd sp.s. c 17 § 11; 2010 1st sp.s. c 30 § 13.]

Effective date—2013 2nd sp.s. c 17: See note following RCW 74.60.005.

74.60.130 Managed care capitation payments. (Expires July 1, 2017.) (1) For state fiscal year 2014, commencing within thirty days after satisfaction of the conditions in RCW 74.60.150(1) and subsection (6) of this section, and for the period of state fiscal years 2014 through 2019, the authority shall increase capitation payments to managed care

organizations by an amount at least equal to the amount available from the fund after deducting disbursements authorized by RCW 74.60.020(4) (c) through (f) and payments required by RCW 74.60.080 through 74.60.120. The capitation payment under this subsection must be no less than one hundred fifty-three million one hundred thirty-one thousand six hundred dollars per state fiscal year in fiscal years 2014 and 2015, and then the increased capitation payment amounts are reduced in equal increments per fiscal year until the increased capitation payment amount is zero by July 1, 2019, plus the maximum available amount of federal matching funds. The initial payment following satisfaction of the conditions in RCW 74.60.150(1) must include all amounts due from July 1, 2013. Subsequent payments shall be made quarterly.

(2) In fiscal years 2015, 2016, and 2017, the authority shall use any additional federal matching funds for the increased managed care capitation payments under subsection (1) of this section available from medicaid expansion under the federal patient protection and affordable care act to substitute for assessment funds which otherwise would have been used to pay managed care plans under this section.

(3) Payments to individual managed care organizations shall be determined by the authority based on each organization's or network's enrollment relative to the anticipated total enrollment in each program for the fiscal year in question, the anticipated utilization of hospital services by an organization's or network's medicaid enrollees, and such other factors as are reasonable and appropriate to ensure that purposes of this chapter are met.

(4) If the federal government determines that total payments to managed care organizations under this section exceed what is permitted under applicable medicaid laws and regulations, payments must be reduced to levels that meet such requirements, and the balance remaining must be applied as provided in RCW 74.60.050. Further, in the event a managed care organization is legally obligated to repay amounts distributed to hospitals under this section to the state or federal government, a managed care organization may recoup the amount it is obligated to repay under the medicaid program from individual hospitals by not more than the amount of overpayment each hospital received from that managed care organization.

(5) Payments under this section do not reduce the amounts that otherwise would be paid to managed care organizations: PROVIDED, That such payments are consistent with actuarial soundness certification and enrollment.

(6) Before making such payments, the authority shall require medicaid managed care organizations to comply with the following requirements:

(a) All payments to managed care organizations under this chapter must be expended for hospital services provided by Washington hospitals, which for purposes of this section includes psychiatric and rehabilitation hospitals, in a manner consistent with the purposes and provisions of this chapter, and must be equal to all increased capitation payments under this section received by the organization or network, consistent with actuarial certification and enrollment, less an allowance for any estimated premium taxes the organization is required to pay under Title 48 RCW associated with the payments under this chapter;

(b) Before the end of the quarter in which funds are paid to them, managed care organizations shall expend the increased capitation payments under this section in a manner consistent with the purposes of this chapter;

(c) Providing that any delegation or attempted delegation of an organization's or network's obligations under agreements with the authority do not relieve the organization or network of its obligations under this section and related contract provisions.

(7) No hospital or managed care organizations may use the payments under this section to gain advantage in negotiations.

(8) No hospital has a claim or cause of action against a managed care organization for monetary compensation based on the amount of payments under subsection (6) of this section.

(9) If funds cannot be used to pay for services in accordance with this chapter the managed care organization or network must return the funds to the authority which shall return them to the hospital safety net assessment fund. [2013 2nd sp.s. c 17 § 12; 2010 1st sp.s. c 30 § 14.]

Effective date—2013 2nd sp.s. c 17: See note following RCW 74.60.005.

74.60.140 Multihospital locations, new hospitals, and changes in ownership. (Expires July 1, 2017.) (1) If an entity owns or operates more than one hospital subject to assessment under this chapter, the entity shall pay the assessment for each hospital separately. However, if the entity operates multiple hospitals under a single medicaid provider number, it may pay the assessment for the hospitals in the aggregate.

(2) Notwithstanding any other provision of this chapter, if a hospital subject to the assessment imposed under this chapter ceases to conduct hospital operations throughout a state fiscal year, the assessment for the quarter in which the cessation occurs shall be adjusted by multiplying the assessment computed under RCW 74.60.030 by a fraction, the numerator of which is the number of days during the year which the hospital conducts, operates, or maintains the hospital and the denominator of which is three hundred sixty-five. Immediately prior to ceasing to conduct, operate, or maintain a hospital, the hospital shall pay the adjusted assessment for the fiscal year to the extent not previously paid.

(3) Notwithstanding any other provision of this chapter, if a hospital previously subject to assessment is sold or transferred to another entity and remains subject to assessment, the assessment for that hospital shall be computed based upon the cost report data previously submitted by that hospital. The assessment shall be allocated between the transferor and transferee based on the number of days within the assessment period that each owned, operated, or maintained the hospital. [2013 2nd sp.s. c 17 § 14; 2010 1st sp.s. c 30 § 16.]

Effective date—2013 2nd sp.s. c 17: See note following RCW 74.60.005.

74.60.150 Conditions. (Expires July 1, 2017.) (1) The assessment, collection, and disbursement of funds under this chapter shall be conditional upon:

(a) Final approval by the centers for medicare and medicaid services of any state plan amendments or waiver

requests that are necessary in order to implement the applicable sections of this chapter including, if necessary, waiver of the broad-based or uniformity requirements as specified under section 1903(w)(3)(E) of the federal social security act and 42 C.F.R. 433.68(e);

(b) To the extent necessary, amendment of contracts between the authority and managed care organizations in order to implement this chapter; and

(c) Certification by the office of financial management that appropriations have been adopted that fully support the rates established in this chapter for the upcoming fiscal year.

(2) This chapter does not take effect or ceases to be imposed, and any moneys remaining in the fund shall be refunded to hospitals in proportion to the amounts paid by such hospitals, if and to the extent that any of the following conditions occur:

(a) The federal department of health and human services and a court of competent jurisdiction makes a final determination, with all appeals exhausted, that any element of this chapter, other than RCW 74.60.100, cannot be validly implemented;

(b) Funds generated by the assessment for payments to prospective payment hospitals or managed care organizations are determined to be not eligible for federal match;

(c) Other funding sufficient to maintain aggregate payment levels to hospitals for inpatient and outpatient services covered by medicaid, including fee-for-service and managed care, at least at the levels the state paid for those services on July 1, 2009, as adjusted for current enrollment and utilization, but without regard to payment increases resulting from chapter 30, Laws of 2010 1st sp. sess., is not appropriated or available;

(d) Payments required by this chapter are reduced, except as specifically authorized in this chapter, or payments are not made in substantial compliance with the time frames set forth in this chapter; or

(e) The fund is used as a substitute for or to supplant other funds, except as authorized by RCW 74.60.020. [2013 2nd sp.s. c 17 § 15; 2010 1st sp.s. c 30 § 17.]

Effective date—2013 2nd sp.s. c 17: See note following RCW 74.60.005.

74.60.160 Contracting with health care authority. (Expires July 1, 2017.) (1) The legislature intends to provide the hospitals with an opportunity to contract with the authority each fiscal biennium to protect the hospitals from future legislative action during the biennium that could result in hospitals receiving less from supplemental payments, increased managed care payments, disproportionate share hospital payments, or access payments than the hospitals expected to receive in return for the assessment based on the biennial appropriations and assessment legislation.

(2) Each odd-numbered year after enactment of the biennial omnibus operating appropriations act, the authority shall offer to enter into a contract for the period of the fiscal biennium beginning July 1st with a hospital that is required to pay the assessment under this chapter. The contract must include the following terms:

(a) The authority must agree not to do any of the following:

(i) Increase the assessment from the level set by the authority pursuant to this chapter on the first day of the contract period for reasons other than those allowed under RCW 74.60.050(3);

(ii) Reduce aggregate payment levels to hospitals for inpatient and outpatient services covered by medicaid, including fee-for-service and managed care, allowing for variations due to budget-neutral rebasing and adjusting for changes in enrollment and utilization, from the levels the state paid for those services on the first day of the contract period;

(iii) For critical access hospitals only, reduce the levels of disproportionate share hospital payments under RCW 74.60.110 or access payments under RCW 74.60.100 for all critical access hospitals below the levels specified in those sections on the first day of the contract period;

(iv) For prospective payment system, psychiatric, and rehabilitation hospitals only, reduce the levels of supplemental payments under RCW 74.60.120 for all prospective payment system hospitals below the levels specified in that section on the first day of the contract period unless the supplemental payments are reduced under RCW 74.60.120(2);

(v) For prospective payment system, psychiatric, and rehabilitation hospitals only, reduce the increased capitation payments to managed care organizations under RCW 74.60.130 below the levels specified in that section on the first day of the contract period unless the managed care payments are reduced under RCW 74.60.130(4); or

(vi) Except as specified in this chapter, use assessment revenues for any other purpose than to secure federal medicaid matching funds to support payments to hospitals for medicaid services; and

(b) As long as payment levels are maintained as required under this chapter, the hospital must agree not to challenge the authority's reduction of hospital reimbursement rates to July 1, 2009, levels, which results from the elimination of assessment supported rate restorations and increases, under 42 U.S.C. Sec. 1396a(a)(30)(a) either through administrative appeals or in court during the period of the contract.

(3) If a court finds that the authority has breached an agreement with a hospital under subsection (2)(a) of this section, the authority:

(a) Must immediately refund any assessment payments made subsequent to the breach by that hospital upon receipt; and

(b) May discontinue supplemental payments, increased managed care payments, disproportionate share hospital payments, and access payments made subsequent to the breach for the hospital that are required under this chapter.

(4) The remedies provided in this section are not exclusive of any other remedies and rights that may be available to the hospital whether provided in this chapter or otherwise in law, equity, or statute. [2013 2nd sp.s. c 17 § 17.]

Effective date—2013 2nd sp.s. c 17: See note following RCW 74.60.005.

74.60.900 Severability—2010 1st sp.s. c 30. (Expires July 1, 2017.) (1) The provisions of this chapter are not severable: If the conditions in RCW 74.60.150(1) are not satisfied or if any of the circumstances in RCW 74.60.150(2)

should occur, this entire chapter shall have no effect from that point forward.

(2) In the event that any portion of this chapter shall have been validly implemented and the entire chapter is later rendered ineffective under this section, prior assessments and payments under the validly implemented portions shall not be affected. [2013 2nd sp.s. c 17 § 16; 2010 1st sp.s. c 30 § 18.]

Effective date—2013 2nd sp.s. c 17: See note following RCW 74.60.005.

74.60.901 Expiration date—2010 1st sp.s. c 30. This chapter expires July 1, 2017. [2013 2nd sp.s. c 17 § 19; 2010 1st sp.s. c 30 § 21.]

Effective date—2013 2nd sp.s. c 17: See note following RCW 74.60.005.

Chapter 74.62 RCW

AGED, BLIND, OR DISABLED ASSISTANCE PROGRAM—PREGNANT WOMEN ASSISTANCE PROGRAM—ESSENTIAL NEEDS AND HOUSING SUPPORT PROGRAM

Sections

- 74.62.030 Assistance programs—Eligibility criteria. (*Effective January 1, 2014, until July 1, 2015.*)
- 74.62.030 Assistance programs—Eligibility criteria. (*Effective July 1, 2015.*)

74.62.030 Assistance programs—Eligibility criteria. (Effective January 1, 2014, until July 1, 2015.) (1)(a) Effective November 1, 2011, the aged, blind, or disabled assistance program shall provide financial grants to persons in need who:

(i) Are not eligible to receive federal aid assistance, other than basic food benefits transferred electronically and medical assistance;

(ii) Meet the eligibility requirements of subsection (3) of this section; and

(iii) Are aged, blind, or disabled. For purposes of determining eligibility for assistance for the aged, blind, or disabled assistance program, the following definitions apply:

(A) "Aged" means age sixty-five or older.

(B) "Blind" means statutorily blind as defined for the purpose of determining eligibility for the federal supplemental security income program.

(C) "Disabled", until June 30, 2015, means a bodily or mental infirmity that will (I) likely continue for a minimum of nine months; (II) prevent the individual from currently performing work that the individual was able to perform as a substantial gainful activity within the prior ten years; and (III) is otherwise likely to meet the federal supplemental security income disability standard as determined by the department. In making this determination, the department should give full consideration to the cumulative impact of an applicant's multiple impairments, an applicant's age, and vocational and educational history.

In determining whether a person is disabled, the department may rely on, but is not limited to, the following:

(1) A previous disability determination by the social security administration or the disability determination service entity within the department; or

(2) A determination that an individual is eligible to receive optional categorically needy medicaid as a disabled person under the federal regulations at 42 C.F.R. Parts 435, Secs. 201(a)(3) and 210.

(b) The following persons are not eligible for the aged, blind, or disabled assistance program:

(i) Persons who are not able to engage in gainful employment due primarily to alcohol or drug addiction. These persons shall be referred to appropriate assessment, treatment, shelter, or supplemental security income referral services as authorized under chapter 74.50 RCW. Referrals shall be made at the time of application or at the time of eligibility review. This subsection may not be construed to prohibit the department from granting aged, blind, or disabled assistance benefits to alcoholics and drug addicts who are incapacitated due to other physical or mental conditions that meet the eligibility criteria for the aged, blind, or disabled assistance program; or

(ii) Persons for whom there has been a final determination of ineligibility for federal supplemental security income benefits.

(c) Persons may receive aged, blind, or disabled assistance benefits pending application for federal supplemental security income benefits. The monetary value of any aged, blind, or disabled assistance benefit that is subsequently duplicated by the person's receipt of supplemental security income for the same period shall be considered a debt due the state and shall by operation of law be subject to recovery through all available legal remedies.

(2) Effective November 1, 2011, the pregnant women assistance program shall provide financial grants to persons who:

(a) Are not eligible to receive federal aid assistance other than basic food benefits or medical assistance; and

(b) Are pregnant and in need, based upon the current income and resource standards of the federal temporary assistance for needy families program, but are ineligible for federal temporary assistance for needy families benefits for a reason other than failure to cooperate in program requirements; and

(c) Meet the eligibility requirements of subsection (3) of this section.

(3) To be eligible for the aged, blind, or disabled assistance program under subsection (1) of this section or the pregnant women assistance program under subsection (2) of this section, a person must:

(a) Be a citizen or alien lawfully admitted for permanent residence or otherwise residing in the United States under color of law;

(b) Meet the income and resource standards described in RCW 74.04.805(1) (d) and (e);

(c) Have furnished the department his or her social security number. If the social security number cannot be furnished because it has not been issued or is not known, an application for a number shall be made prior to authorization of benefits, and the social security number shall be provided to the department upon receipt;

(d) Not have refused or failed without good cause to participate in drug or alcohol treatment if an assessment by a certified chemical dependency counselor indicates a need for such treatment. Good cause must be found to exist when a

person's physical or mental condition, as determined by the department, prevents the person from participating in drug or alcohol dependency treatment, when needed outpatient drug or alcohol treatment is not available to the person in the county of his or her residence or when needed inpatient treatment is not available in a location that is reasonably accessible for the person; and

(e) Not have refused or failed to cooperate in obtaining federal aid assistance, without good cause.

(4) Effective November 1, 2011, referrals for essential needs and housing support under RCW 43.185C.220 shall be provided to persons found eligible under RCW 74.04.805.

(5) No person may be considered an eligible individual for benefits under this section with respect to any month if during that month the person:

(a) Is fleeing to avoid prosecution of, or to avoid custody or confinement for conviction of, a felony, or an attempt to commit a felony, under the laws of the state of Washington or the place from which the person flees; or

(b) Is violating a condition of probation, community supervision, or parole imposed under federal or state law for a felony or gross misdemeanor conviction. [2013 2nd sp.s. c 10 § 1; 2011 1st sp.s. c 36 § 3.]

Effective date—2013 2nd sp.s. c 10: "Except for section 2 of this act, this act takes effect January 1, 2014." [2013 2nd sp.s. c 10 § 9.]

Effective date—2011 1st sp.s. c 36: See note following RCW 74.62.005.

74.62.030 Assistance programs—Eligibility criteria. (Effective July 1, 2015.) (1)(a) Effective November 1, 2011, the aged, blind, or disabled assistance program shall provide financial grants to persons in need who:

(i) Are not eligible to receive federal aid assistance, other than basic food benefits transferred electronically and medical assistance;

(ii) Meet the eligibility requirements of subsection (3) of this section; and

(iii) Are aged, blind, or disabled. For purposes of determining eligibility for assistance for the aged, blind, or disabled assistance program, the following definitions apply:

(A) "Aged" means age sixty-five or older.

(B) "Blind" means statutorily blind as defined for the purpose of determining eligibility for the federal supplemental security income program.

(C) "Disabled" means likely to meet the federal supplemental security income disability standard. In making this determination, the department should give full consideration to the cumulative impact of an applicant's multiple impairments, an applicant's age, and vocational and educational history.

In determining whether a person is disabled, the department may rely on, but is not limited to, the following:

(I) A previous disability determination by the social security administration or the disability determination service entity within the department; or

(II) A determination that an individual is eligible to receive optional categorically needy medicaid as a disabled person under the federal regulations at 42 C.F.R. Parts 435, Secs. 201(a)(3) and 210.

(b) The following persons are not eligible for the aged, blind, or disabled assistance program:

(i) Persons who are not able to engage in gainful employment due primarily to alcohol or drug addiction. These persons shall be referred to appropriate assessment, treatment, shelter, or supplemental security income referral services as authorized under chapter 74.50 RCW. Referrals shall be made at the time of application or at the time of eligibility review. This subsection may not be construed to prohibit the department from granting aged, blind, or disabled assistance benefits to alcoholics and drug addicts who are incapacitated due to other physical or mental conditions that meet the eligibility criteria for the aged, blind, or disabled assistance program; or

(ii) Persons for whom there has been a final determination of ineligibility for federal supplemental security income benefits.

(c) Persons may receive aged, blind, or disabled assistance benefits pending application for federal supplemental security income benefits. The monetary value of any aged, blind, or disabled assistance benefit that is subsequently duplicated by the person's receipt of supplemental security income for the same period shall be considered a debt due the state and shall by operation of law be subject to recovery through all available legal remedies.

(2) Effective November 1, 2011, the pregnant women assistance program shall provide financial grants to persons who:

(a) Are not eligible to receive federal aid assistance other than basic food benefits or medical assistance; and

(b) Are pregnant and in need, based upon the current income and resource standards of the federal temporary assistance for needy families program, but are ineligible for federal temporary assistance for needy families benefits for a reason other than failure to cooperate in program requirements; and

(c) Meet the eligibility requirements of subsection (3) of this section.

(3) To be eligible for the aged, blind, or disabled assistance program under subsection (1) of this section or the pregnant women assistance program under subsection (2) of this section, a person must:

(a) Be a citizen or alien lawfully admitted for permanent residence or otherwise residing in the United States under color of law;

(b) Meet the income and resource standards described in RCW 74.04.805(1) (d) and (e);

(c) Have furnished the department his or her social security number. If the social security number cannot be furnished because it has not been issued or is not known, an application for a number shall be made prior to authorization of benefits, and the social security number shall be provided to the department upon receipt;

(d) Not have refused or failed without good cause to participate in drug or alcohol treatment if an assessment by a certified chemical dependency counselor indicates a need for such treatment. Good cause must be found to exist when a person's physical or mental condition, as determined by the department, prevents the person from participating in drug or alcohol dependency treatment, when needed outpatient drug or alcohol treatment is not available to the person in the county of his or her residence or when needed inpatient treat-

ment is not available in a location that is reasonably accessible for the person; and

(e) Not have refused or failed to cooperate in obtaining federal aid assistance, without good cause.

(4) Effective November 1, 2011, referrals for essential needs and housing support under RCW 43.185C.220 shall be provided to persons found eligible under RCW 74.04.805.

(5) No person may be considered an eligible individual for benefits under this section with respect to any month if during that month the person:

(a) Is fleeing to avoid prosecution of, or to avoid custody or confinement for conviction of, a felony, or an attempt to commit a felony, under the laws of the state of Washington or the place from which the person flees; or

(b) Is violating a condition of probation, community supervision, or parole imposed under federal or state law for a felony or gross misdemeanor conviction. [2013 2nd sp.s. c 10 § 2; 2013 2nd sp.s. c 10 § 1; 2011 1st sp.s. c 36 § 3.]

Effective date—2013 2nd sp.s. c 10 § 2: "Section 2 of this act takes effect July 1, 2015." [2013 2nd sp.s. c 10 § 10.]

Effective date—2011 1st sp.s. c 36: See note following RCW 74.62.005.

Title 76

FORESTS AND FOREST PRODUCTS

Chapters

76.09 Forest practices.

76.14 Forest rehabilitation.

76.36 Marks and brands.

76.42 Wood debris—Removal from navigable waters.

76.48 Specialized forest products.

76.52 Cooperative forest management services act.

Chapter 76.09 RCW

FOREST PRACTICES

Sections

76.09.100 Failure to comply with water quality protection—Department of ecology authorized to petition appeals board—Action on petition.

76.09.320 Implementation of hazard-reduction program—Cost sharing by department—Limitations.

76.09.100 Failure to comply with water quality protection—Department of ecology authorized to petition appeals board—Action on petition. If the department of ecology determines that a person has failed to comply with the forest practices regulations relating to water quality protection, and that the department of natural resources has not issued a stop work order or notice to comply, the department of ecology shall inform the department thereof. If the department of natural resources fails to take authorized enforcement action within twenty-four hours under RCW 76.09.080, 76.09.090, 76.09.120, or 76.09.130, the department of ecology may petition to the chair of the appeals board, who shall, within forty-eight hours, either deny the petition or direct the department of natural resources to immediately issue a stop work order or notice to comply, or to impose a penalty. No civil or criminal penalties shall be imposed for past actions or omissions if such actions or omissions were conducted pursu-

ant to an approval or directive of the department of natural resources. [2013 c 23 § 220; 1975 1st ex.s. c 200 § 7; 1974 ex.s. c 137 § 10.]

76.09.320 Implementation of hazard-reduction program—Cost sharing by department—Limitations. (1) Subject to the availability of appropriated funds, the department shall pay fifty percent of the cost of implementing the hazard-reduction program, except as provided in subsection (2) of this section.

(2) In the event department funds described in subsection (1) of this section are not available for all or a portion of a forest landowner's property, the landowner may request application of the hazard-reduction program to the owner's lands, provided the landowner funds one hundred percent of the cost of implementation of the department's recommended actions on his or her property.

(3) No cost-sharing funds may be made available for sites where the department determines that the hazardous condition results from a violation of then-prevailing standards as established by statute or rule. [2013 c 23 § 231; 1987 c 95 § 6.]

Chapter 76.14 RCW FOREST REHABILITATION

Sections

76.14.080	Fire protection projects—Assessments—Payment.
76.14.090	Fire protection projects—Notice—Hearing.
76.14.100	Fire protection projects—Collection of assessments.
76.14.110	Fire protection projects—Credit on assessment for private expenditure.

76.14.080 Fire protection projects—Assessments—Payment. The department shall develop fire protection projects within the high hazard forest area and shall determine the boundaries thereof in accordance with the lands benefited thereby and shall assess one-sixth of the cost of such projects equally upon all forest lands within the project on an acreage basis. Such assessment shall not, however, exceed twenty-five cents per acre annually nor more than one dollar and fifty cents per acre in the aggregate and shall constitute a lien upon any forest products harvested therefrom. The landowner may by written notice to the department elect to pay his or her assessment on a deferred basis at a rate of ten cents per thousand board feet and/or one cent per Christmas tree when these products are harvested from the lands for commercial use until the assessment plus two percent interest from the date of completion of each project has been paid for each acre. Payments under the deferred plan shall be credited by forty acre tracts and shall be first applied to payment of the assessment against the forty acre tract from which the funds were derived and secondly to other forty acre tracts held and designated by the payor. In the event total ownership is less than forty acres, then payment shall be applied on an undivided basis to the entire areas as to which the assessment remains unpaid. The landowner who elects to pay on deferred basis may pay any unpaid assessment and interest at any time. [2013 c 23 § 232; 1988 c 128 § 43; 1955 c 171 § 5.]

76.14.090 Fire protection projects—Notice—Hearing. Notice of each project, the estimated assessment per

acre, and a description of the boundaries thereof shall be given by publication in a local newspaper of general circulation thirty days in advance of commencing work. Any person owning land within the project may within ten days after publication of notice demand a hearing before the department in Olympia and present any reasons why he or she feels the assessment should not be made upon his or her land. Thereafter, the department may change the boundaries of said project to eliminate land from the project which it determines in its discretion will not be benefited by the project. [2013 c 23 § 233; 1988 c 128 § 44; 1955 c 171 § 6.]

76.14.100 Fire protection projects—Collection of assessments. Except when the owner has notified the department in writing that he or she will make payment on the deferred plan, the assessment shall be collected by the department reporting the same to the county assessor of the county in which the property is situated upon completion of the work in that project and the assessor shall annually extend the amounts upon the tax rolls covering the property, and the amounts shall be collected in the same manner, by the same procedure, and with the same penalties attached as the next general state and county taxes on the same property are collected. Errors in assessments may be corrected at any time by the department by certifying them to the treasurer of the county in which the land involved is situated. Upon the collection of such assessments, the county treasurer shall transmit them to the department. Payment on the deferred plan shall be made directly to the department. Such payment must be made by January 31st for any timber or Christmas trees harvested during the previous calendar year and must be accompanied by a statement of the amount of timber or number of Christmas trees harvested and the legal description of the property from which they were harvested. Whenever an owner paying on the deferred plan desires to pay any unpaid balance or portion thereof, he or she may make direct payment to the department. [2013 c 23 § 234; 1988 c 128 § 45; 1955 c 171 § 7.]

Collection of taxes: Chapter 84.56 RCW.

76.14.110 Fire protection projects—Credit on assessment for private expenditure. Where the department finds that a portion of the work in any project, except road building, has been done by private expenditures for fire protection purposes only and that the work was not required by other forestry laws having general application, then the department shall appraise the work on the basis of what it would have cost the state and shall credit the amount of the appraisal toward payment of any sums assessed against lands contained in the project and owned by the person or his or her predecessors in title making the expenditure. Such appraisal shall be added to the cost of the project for purposes of determining the general assessment. [2013 c 23 § 235; 1988 c 128 § 46; 1955 c 171 § 8.]

Chapter 76.36 RCW MARKS AND BRANDS

Sections

76.36.100	Right of entry to retake branded products.
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76.36.100 Right of entry to retake branded products.

The owner of any mark or brand registered as herein provided, by himself or herself or his or her duly authorized agent or representative, shall have a lawful right, at any time and in any peaceable manner, to enter into or upon any tidelands, marshes, and beaches of this state and any mill, mill yard, mill boom, rafting, or storage grounds and any forest products or raft or boom thereof, for the purpose of searching for any forest products and booming equipment having impressed thereupon or cut therein a registered mark or brand belonging to him or her and to retake any forest products and booming equipment so found by him or her. [2013 c 23 § 221; 1925 ex.s. c 154 § 10; RRS § 8381-10. Prior: 1901 c 123 § 4.]

Chapter 76.42 RCW**WOOD DEBRIS—
REMOVAL FROM NAVIGABLE WATERS**

Sections

76.42.030 Removal of wood debris—Authorized.

76.42.030 Removal of wood debris—Authorized.

The department of natural resources may by contract, license, or permit, or other arrangements, cause such wood debris to be removed by private contractors, department of natural resources employees, or by other public bodies. Nothing contained in this chapter shall prohibit any individual from using any nonmerchandise wood debris for his or her own personal use. [2013 c 23 § 236; 1994 c 163 § 3; 1973 c 136 § 4.]

Chapter 76.48 RCW**SPECIALIZED FOREST PRODUCTS**

Sections

76.48.121 Display of business license.

76.48.121 Display of business license. Every first or secondary specialized forest products buyer purchasing specialty wood and every specialty wood processor must prominently display the business license issued under RCW 19.02.070 and endorsed with the respective licenses or registrations or a copy of the business license at each location where the buyer or processor receives specialty wood if the first or secondary specialized forest products buyer or specialty wood processor is required to possess a license incorporated into the business licensing system created in chapter 19.02 RCW. [2013 c 144 § 49; 2011 c 298 § 34; 2009 c 245 § 13; 2005 c 401 § 9; 1995 c 366 § 9; 1979 ex.s. c 94 § 11; 1977 ex.s. c 147 § 13. Formerly RCW 76.48.098.]

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

Finding—Intent—2009 c 245: See note following RCW 76.48.011.

Additional notes found at www.leg.wa.gov

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**Chapter 76.52 RCW
COOPERATIVE FOREST MANAGEMENT
SERVICES ACT**

Sections

76.52.020 Contracts with landowners.

76.52.020 Contracts with landowners. The department of natural resources may, by agreement, make available to forest landowners, equipment, materials, and personnel for the purpose of more intensively managing or protecting the land when the department determines that such services are not otherwise available at a cost which would encourage the landowner to so avail himself or herself, and that the use of department equipment, materials, or personnel will not jeopardize the management of state lands or other programs of the department. The department shall enter into a contractual agreement with the landowner for services rendered and shall recover the costs thereof. [2013 c 23 § 237; 1979 c 100 § 2.]

Title 77**FISH AND WILDLIFE
(Formerly: Game and game fish)****Chapters**

- 77.04 Department of fish and wildlife.**
- 77.12 Powers and duties.**
- 77.15 Fish and wildlife enforcement code.**
- 77.32 Licenses.**
- 77.36 Wildlife damage.**
- 77.60 Shellfish.**
- 77.65 Food fish and shellfish—Commercial licenses.**
- 77.85 Salmon recovery.**
- 77.95 Salmon enhancement program.**

Chapter 77.04 RCW**DEPARTMENT OF FISH AND WILDLIFE
(Formerly: Department of wildlife)**

Sections

77.04.060 Commission—Meetings—Officers—Compensation, travel expenses.

77.04.060 Commission—Meetings—Officers—Compensation, travel expenses. The commission shall hold at least one regular meeting during the first two months of each calendar quarter, and special meetings when called by the chair and by five members. Five members constitute a quorum for the transaction of business.

The commission at a meeting in each odd-numbered year shall elect one of its members as chair and another member as vice chair, each of whom shall serve for a term of two years or until a successor is elected and qualified.

Members of the commission shall be compensated in accordance with RCW 43.03.250. In addition, members are allowed their travel expenses incurred while absent from their usual places of residence in accordance with RCW 43.03.050 and 43.03.060. [2013 c 23 § 238; 1993 sp.s. c 2 § 63. Prior: 1987 c 506 § 8; 1987 c 114 § 1; 1984 c 287 § 110; 1980 c 78 § 6; 1977 c 75 § 89; 1975-'76 2nd ex.s. c 34 § 175; 1961 c 307 § 9; 1955 c 352 § 1; 1955 c 36 § 77.04.060; prior: 1949 c 205 § 1; 1947 c 275 § 6; Rem. Supp. 1949 § 5992-16.]

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

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

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

Additional notes found at www.leg.wa.gov

**Chapter 77.12 RCW
POWERS AND DUTIES**

Sections

- 77.12.201 Counties may elect to receive an amount in lieu of taxes—County to record collections for violations of law or rules—Deposit.
- 77.12.203 In lieu payments authorized—Procedure—Game lands defined.
- 77.12.370 Withdrawal of state land from lease—County procedures, approval, hearing.
- 77.12.620 Check stations—Stopping for inspection.
- 77.12.732 Transfer of ownership of department-owned vessel—Review of vessel's physical condition.
- 77.12.734 Transfer of ownership of department-owned vessel—Further requirements.
- 77.12.760 Steelhead trout fishery.
- 77.12.879 Aquatic invasive species prevention account—Aquatic invasive species prevention program for recreational and commercial watercraft—Enforcement program—Check stations—Training—Report to the legislature.

77.12.201 Counties may elect to receive an amount in lieu of taxes—County to record collections for violations of law or rules—Deposit. The legislative authority of a county may elect, by giving written notice to the director and the treasurer prior to January 1st of any year, to obtain for the following year an amount in lieu of real property taxes on game lands as provided in RCW 77.12.203. Upon the election, the county shall keep a record of all fines, forfeitures, reimbursements, and costs assessed and collected, in whole or in part, under this title for violations of law or rules adopted pursuant to this title, with the exception of the 2011-2013 and 2013-2015 fiscal biennia, and shall monthly remit an amount equal to the amount collected to the state treasurer for deposit in the state general fund. The election shall continue until the department is notified differently prior to January 1st of any year. [2013 2nd sp.s. c 4 § 998; 2012 2nd sp.s. c 7 § 923; 2009 c 479 § 63; 1987 c 506 § 29. Prior: 1984 c 258 § 335; 1984 c 214 § 1; 1980 c 78 § 36; 1977 ex.s. c 59 § 1; 1965 ex.s. c 97 § 2.]

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

Effective date—2012 2nd sp.s. c 7: See note following RCW 2.68.020.

Effective date—2009 c 479: See note following RCW 2.56.030.

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

Intent—1984 c 258: See note following RCW 3.34.130.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

Additional notes found at www.leg.wa.gov

77.12.203 In lieu payments authorized—Procedure—Game lands defined. (1) Except as provided in subsection (5) of this section and notwithstanding RCW 84.36.010 or other statutes to the contrary, the director shall pay by April 30th of each year on game lands in each county, if requested by an election under RCW 77.12.201, an amount

in lieu of real property taxes equal to that amount paid on similar parcels of open space land taxable under chapter 84.34 RCW or the greater of seventy cents per acre per year or the amount paid in 1984 plus an additional amount for control of noxious weeds equal to that which would be paid if such lands were privately owned. This amount shall not be assessed or paid on department buildings, structures, facilities, game farms, fish hatcheries, tidelands, or public fishing areas of less than one hundred acres.

(2) "Game lands," as used in this section and RCW 77.12.201, means those tracts one hundred acres or larger owned in fee by the department and used for wildlife habitat and public recreational purposes. All lands purchased for wildlife habitat, public access or recreation purposes with federal funds in the Snake River drainage basin shall be considered game lands regardless of acreage.

(3) This section shall not apply to lands transferred after April 23, 1990, to the department from other state agencies.

(4) The county shall distribute the amount received under this section in lieu of real property taxes to all property taxing districts except the state in appropriate tax code areas the same way it would distribute local property taxes from private property. The county shall distribute the amount received under this section for weed control to the appropriate weed district.

(5) For the 2011-2013 and 2013-2015 fiscal biennia, the director shall pay by April 30th of each year on game lands in each county, if requested by an election under RCW 77.12.201, an amount in lieu of real property taxes and shall be distributed as follows:

County

Adams	1,909
Asotin	36,123
Chelan	24,757
Columbia	7,795
Ferry	6,781
Garfield	4,840
Grant	37,443
Kittitas	143,974
Klickitat	21,906
Lincoln	13,535
Okanogan	151,402
Pend Oreille	3,309
Yakima	126,225

These amounts shall not be assessed or paid on department buildings, structures, facilities, game farms, fish hatcheries, tidelands, or public fishing areas of less than one hundred acres. [2013 2nd sp.s. c 4 § 999; 2012 2nd sp.s. c 7 § 924; 2005 c 303 § 14; 1990 1st ex.s. c 15 § 11; 1984 c 214 § 2; 1980 c 78 § 37; 1965 ex.s. c 97 § 3.]

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

Effective date—2012 2nd sp.s. c 7: See note following RCW 2.68.020.

Effective date—2005 c 303 §§ 1-14: See note following RCW 79A.15.010.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

Additional notes found at www.leg.wa.gov

77.12.370 Withdrawal of state land from lease—County procedures, approval, hearing. Prior to the forwarding of a request needing endorsement under RCW 77.12.360, the director shall present the request to the legislative authority of the county in which the lands are located for its approval. The legislative authority, before acting on the request, may call a public hearing. The hearing shall take place within thirty days after presentation of the request to the legislative authority.

The director shall publish notice of the public hearing called by the legislative authority in a newspaper of general circulation within the county at least once a week for two successive weeks prior to the hearing. The notice shall contain a copy of the request and the time and place of the hearing.

The chair of the county legislative authority shall preside at the public hearing. The proceedings shall be informal and all persons shall have a reasonable opportunity to be heard.

Within ten days after the hearing, the county legislative authority shall endorse its decision on the request for withdrawal. The decision is final and not subject to appeal. [2013 c 23 § 239; 1987 c 506 § 43; 1980 c 78 § 55; 1955 c 36 § 77.12.370. Prior: 1947 c 130 § 2; Rem. Supp. 1947 § 8136-11.]

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

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.620 Check stations—Stopping for inspection. The department is authorized to require hunters and fishers occupying a motor vehicle approaching or entering a check station to stop and produce for inspection: (1) Any wildlife, fish, shellfish, or seaweed in their possession; (2) licenses, permits, tags, stamps, or catch record cards, required under Title 77 RCW, or rules adopted thereunder. For these purposes, the department is authorized to operate check stations which shall be plainly marked by signs, operated by at least one uniformed fish and wildlife officer, and operated in a safe manner. [2013 c 23 § 240; 2000 c 107 § 226; 1982 c 155 § 2.]

77.12.732 Transfer of ownership of department-owned vessel—Review of vessel's physical condition. (1) Prior to transferring ownership of a department-owned vessel, the department shall conduct a thorough review of the physical condition of the vessel, the vessel's operating capability, and any containers and other materials that are not fixed to the vessel.

(2) If the department determines that the vessel is in a state of advanced deterioration or poses a reasonably imminent threat to human health or safety, including a threat of environmental contamination, the department may: (a) Not transfer the vessel until the conditions identified under this subsection have been corrected; or (b) permanently dispose of the vessel by landfill, deconstruction, or other related method.

(3) Vessels taken into custody under chapter 79.100 RCW are not subject to this section or RCW 77.12.734. [2013 c 291 § 9.]

77.12.734 Transfer of ownership of department-owned vessel—Further requirements. (1) Following the

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inspection required under RCW 77.12.732 and prior to transferring ownership of a department-owned vessel, the department shall obtain the following from the transferee:

(a) The purposes for which the transferee intends to use the vessel; and

(b) Information demonstrating the prospective owner's intent to obtain legal moorage following the transfer, in the manner determined by the department.

(2)(a) The department shall remove any containers or other materials that are not fixed to the vessel and contain hazardous substances, as defined under RCW 70.105D.020.

(b) However, the department may transfer a vessel with:

(i) Those containers or materials described under (a) of this subsection where the transferee demonstrates to the department's satisfaction that the container's or material's presence is consistent with the anticipated use of the vessel; and

(ii) A reasonable amount of fuel as determined by the department, based on factors including the vessel's size, condition, and anticipated use of the vessel, including initial destination following transfer.

(c) The department may consult with the department of ecology in carrying out the requirements of this subsection.

(3) Prior to sale, and unless the vessel has a title or valid marine document, the department is required to apply for a certificate of title for the vessel under RCW 88.02.510 and register the vessel under RCW 88.02.550. [2013 c 291 § 10.]

77.12.760 Steelhead trout fishery. Steelhead trout shall be managed solely as a recreational fishery for non-Indian fishers under the rule-setting authority of the fish and wildlife commission.

Commercial non-Indian steelhead fisheries are not authorized. [2013 c 23 § 241; 1993 sp.s. c 2 § 78.]

Additional notes found at www.leg.wa.gov

77.12.879 Aquatic invasive species prevention account—Aquatic invasive species prevention program for recreational and commercial watercraft—Enforcement program—Check stations—Training—Report to the legislature. (1) The aquatic invasive species prevention account is created in the state treasury. Moneys directed to the account from *RCW 88.02.640(3)(a)(i) must be deposited in the account. Expenditures from the account may only be used as provided in this section. Moneys in the account may be spent only after appropriation.

(2) Funds in the aquatic invasive species prevention account may be appropriated to the department to develop an aquatic invasive species prevention program for recreational and commercial watercraft. Funds must be expended as follows:

(a) To inspect recreational and commercial watercraft;

(b) To educate general law enforcement officers on how to enforce state laws relating to preventing the spread of aquatic invasive species;

(c) To evaluate and survey the risk posed by recreational and commercial watercraft in spreading aquatic invasive species into Washington state waters;

(d) To evaluate the risk posed by float planes in spreading aquatic invasive species into Washington state waters; and

(e) To implement an aquatic invasive species early detection and rapid response plan. The plan must address the treatment and immediate response to the introduction to Washington waters of aquatic invasive species. Agency and public review of the plan must be conducted under chapter 43.21C RCW, the state environmental policy act. If the implementation measures or actions would have a probable significant adverse environmental impact, a detailed statement under chapter 43.21C RCW must be prepared on the plan.

(3) Funds in the aquatic invasive species enforcement account created in RCW 43.43.400 may be appropriated to the department and Washington state patrol to develop an aquatic invasive species enforcement program for recreational and commercial watercraft.

(a) The department shall provide training to Washington state patrol employees working at port of entry weigh stations, and other local law enforcement employees, on how to inspect recreational and commercial watercraft for the presence of aquatic invasive species.

(b) A person who enters Washington by road transporting any commercial or recreational watercraft that has been used outside of Washington must have in his or her possession documentation that the watercraft is free of aquatic invasive species. The department must develop and maintain rules to implement this subsection (3)(b), including specifying allowable forms of documentation.

(c) The department is authorized to require persons transporting recreational and commercial watercraft to stop at check stations. Check stations must be plainly marked by signs, operated by at least one uniformed fish and wildlife officer, and operated in a safe manner.

(d) Any person stopped at a check station who possesses a recreational or commercial watercraft that is contaminated with aquatic invasive species, must bear the expense for any necessary impoundment, transportation, cleaning, and decontamination of the watercraft.

(e) Any person stopped at a check station who possesses a recreational or commercial watercraft that is contaminated with aquatic invasive species, is exempt from the criminal penalties found in RCW 77.15.253 and 77.15.290, and forfeiture under RCW 77.15.070, if that person complies with all department directives for the proper decontamination of the watercraft.

(4) The department shall submit a biennial report to the appropriate legislative committees describing the actions taken to implement this section along with suggestions on how to better fulfill the intent of chapter 464, Laws of 2005. [2013 c 307 § 1. Prior: 2011 c 171 § 113; 2011 c 169 § 4; 2009 c 333 § 22; 2007 c 350 § 3; 2005 c 464 § 3.]

***Reviser's note:** RCW 88.02.640 was amended by 2013 c 291 § 1, changing subsection (3)(a)(i) to subsection (3)(a).

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Findings—Intent—2005 c 464: See note following RCW 88.02.560.

Chapter 77.15 RCW

FISH AND WILDLIFE ENFORCEMENT CODE

Sections

77.15.160 Infractions.

77.15.570 Participation of non-Indians in Indian fishery forbidden—Exceptions, definitions, penalty.

77.15.670 Suspension of department privileges—Violation—Penalty—Violations of child support-based suspensions.

77.15.160 Infractions. The following acts are infractions and must be cited and punished as provided under chapter 7.84 RCW:

(1) Fishing and shellfishing infractions:

(a) Barbed hooks: Fishing for personal use with barbed hooks in violation of any department rule.

(b) Catch recording: Failing to immediately record a catch of fish or shellfish on a catch record card as required by RCW 77.32.430 or department rule.

(c) Catch reporting: Failing to return a catch record card to the department for other than Puget Sound Dungeness crab, as required by department rule.

(d) Recreational fishing: Fishing for fish or shellfish and, without yet possessing fish or shellfish, the person:

(i) Owns, but fails to have in the person's possession the license or the catch record card required by chapter 77.32 RCW for such an activity; or

(ii) Violates any department rule regarding seasons, closed areas, closed times, or any other rule addressing the manner or method of fishing for fish or shellfish. This subsection does not apply to use of a net to take fish under RCW 77.15.580 or the unlawful use of shellfish gear for personal use under RCW 77.15.382.

(e) Seaweed: Taking, possessing, or harvesting less than two times the daily possession limit of seaweed:

(i) While owning, but not having in the person's possession, the license required by chapter 77.32 RCW; or

(ii) In violation of any rule of the department or the department of natural resources regarding seasons, closed areas, closed times, or any other rule addressing the manner or method of taking, possessing, or harvesting of seaweed.

(f) Unclassified fish or shellfish: Taking unclassified fish or shellfish in violation of any department rule by killing, fishing, taking, holding, possessing, or maliciously injuring or harming fish or shellfish that is not classified as game fish, food fish, shellfish, protected fish, or endangered fish.

(g) Wasting fish or shellfish: Killing, taking, or possessing fish or shellfish having a value of less than two hundred fifty dollars and allowing the fish or shellfish to be wasted.

(2) Hunting infractions:

(a) Eggs or nests: Maliciously, and without permit authorization, destroying, taking, or harming the eggs or active nests of a wild bird not classified as endangered or protected. For purposes of this subsection, "active nests" means nests that contain eggs or fledglings.

(b) Unclassified wildlife: Taking unclassified wildlife in violation of any department rule by killing, hunting, taking, holding, possessing, or maliciously injuring or harming wildlife that is not classified as big game, game animals, game birds, protected wildlife, or endangered wildlife.

(c) Wasting wildlife: Killing, taking, or possessing wildlife that is not classified as big game and has a value of less than two hundred fifty dollars, and allowing the wildlife to be wasted.

(d) Wild animals: Hunting for wild animals not classified as big game and, without yet possessing the wild ani-

mals, the person owns, but fails to have in the person's possession, all licenses, tags, or permits required by this title.

(e) Wild birds: Hunting for and, without yet possessing a wild bird or birds, the person:

(i) Owns, but fails to have in the person's possession, all licenses, tags, stamps, and permits required under this title; or

(ii) Violates any department rule regarding seasons, closed areas, closed times, or any other rule addressing the manner or method of hunting wild birds.

(3) Trapping, taxidermy, fur dealing, and wildlife meat cutting infractions:

(a) Recordkeeping and reporting: If a person is a taxidermist, fur dealer, or wildlife meat cutter who is processing, holding, or storing wildlife for commercial purposes, failing to:

(i) Maintain records as required by department rule; or

(ii) Report information from these records as required by department rule.

(b) Trapper's report: Failing to report trapping activity as required by department rule.

(4) Aquatic invasive species infraction: Entering Washington by road and transporting a recreational or commercial watercraft that has been used outside of Washington without meeting documentation requirements as provided under RCW 77.12.879.

(5) Other infractions:

(a) Contests: Conducting, holding, or sponsoring a hunting contest, a fishing contest involving game fish, or a competitive field trial using live wildlife.

(b) Other rules: Violating any other department rule that is designated by rule as an infraction.

(c) Posting signs: Posting signs preventing hunting or fishing on any land not owned or leased by the person doing the posting, or without the permission of the person who owns, leases, or controls the land posted.

(d) Scientific permits: Using a scientific permit issued by the director for fish, shellfish, or wildlife, but not including big game or big game parts, and the person:

(i) Violates any terms or conditions of the scientific permit; or

(ii) Violates any department rule applicable to the issuance or use of scientific permits.

(e) Transporting aquatic plants: Transporting aquatic plants on any state or public road, including forest roads. However:

(i) This subsection does not apply to plants that are:

(A) Being transported to the department or to another destination designated by the director, in a manner designated by the department, for purposes of identifying a species or reporting the presence of a species;

(B) Legally obtained for aquarium use, wetland or lake-shore restoration, or ornamental purposes;

(C) Located within or on a commercial aquatic plant harvester that is being transported to a suitable location to remove aquatic plants;

(D) Being transported in a manner that prevents their unintentional dispersal, to a suitable location for disposal, research, or educational purposes; or

(E) Being transported in such a way as the commission may otherwise prescribe; and

(ii) This subsection does not apply to a person who:

(A) Is stopped at an aquatic invasive species check station and possesses a recreational or commercial watercraft that is contaminated with an aquatic invasive plant species if that person complies with all department directives for the proper decontamination of the watercraft and equipment; or

(B) Has voluntarily submitted a recreational or commercial watercraft for inspection by the department or its designee and has received a receipt verifying that the watercraft has not been contaminated since its last use. [2013 c 307 § 2; 2012 c 176 § 15; 2000 c 107 § 237; 1998 c 190 § 17.]

77.15.570 Participation of non-Indians in Indian fishery forbidden—Exceptions, definitions, penalty.

(1) Except as provided in subsection (3) of this section, it is unlawful for a person who is not a treaty Indian fisher to participate in the taking of fish or shellfish in a treaty Indian fishery, or to be on board a vessel, or associated equipment, operating in a treaty Indian fishery. A violation of this subsection is a gross misdemeanor.

(2) A person who violates subsection (1) of this section with the intent of acting for commercial purposes, including any sale of catch, control of catch, profit from catch, or payment for fishing assistance, is guilty of a class C felony. Upon conviction, the department shall order revocation of any license and a one-year suspension of all commercial fishing privileges requiring a license under chapter 77.65 or 77.70 RCW.

(3)(a) The spouse, forebears, siblings, children, and grandchildren of a treaty Indian fisher may assist the fisher in exercising treaty Indian fishing rights when the treaty Indian fisher is present at the fishing site.

(b) Other treaty Indian fishers with off-reservation treaty fishing rights in the same usual and accustomed places, whether or not the fishers are members of the same tribe or another treaty tribe, may assist a treaty Indian fisher in exercising treaty Indian fishing rights when the treaty Indian fisher is present at the fishing site.

(c) Biologists approved by the department may be on board a vessel operating in a treaty Indian fishery.

(4) For the purposes of this section:

(a) "Treaty Indian fisher" means a person who may exercise treaty Indian fishing rights as determined under *United States v. Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), or *Sohappy v. Smith*, 302 F. Supp. 899 (D. Oregon 1969), and post-trial orders of those courts;

(b) "Treaty Indian fishery" means a fishery open to only treaty Indian fishers by tribal or federal regulation;

(c) "To participate" and its derivatives mean an effort to operate a vessel or fishing equipment, provide immediate supervision in the operation of a vessel or fishing equipment, or otherwise assist in the fishing operation, to claim possession of a share of the catch, or to represent that the catch was lawfully taken in an Indian fishery.

(5) A violation of this section constitutes illegal fishing and is subject to the suspensions provided for commercial fishing violations. [2013 c 23 § 242; 2000 c 107 § 251; 1998 c 190 § 49; 1983 1st ex.s. c 46 § 63; 1982 c 197 § 1. Formerly RCW 75.12.320.]

77.15.670 Suspension of department privileges—Violation—Penalty—Violations of child support-based

suspensions. (1) A person is guilty of violating a suspension of department privileges in the second degree if the person engages in any activity that is licensed by the department and the person's privileges to engage in that activity were revoked or suspended by any court or the department.

(2) A person is guilty of violating a suspension of department privileges in the first degree if the person commits the act described by subsection (1) of this section and:

(a) The suspension of privileges that was violated was a permanent suspension;

(b) The person takes or possesses more than two hundred fifty dollars' worth of unlawfully taken food fish, wildlife, game fish, seaweed, or shellfish; or

(c) The violation involves the hunting, taking, or possession of fish or wildlife classified as endangered or threatened or big game.

(3)(a) Violating a suspension of department privileges in the second degree is a gross misdemeanor. Except for violations of child support-based suspensions, which are covered in (c) of this subsection, a conviction under this subsection requires the department to order a permanent suspension of the person's privileges to engage in the hunting or fishing activities that he or she was engaged in when he or she violated a suspension of department privileges in the second degree.

(b) Violating a suspension of department privileges in the first degree is a class C felony. Except for violations of child support-based suspensions, which are covered in (c) of this subsection, a conviction under this subsection requires the department to order a permanent suspension of all of the person's privileges to hunt, fish, trap, or take wildlife, food fish, game fish, or shellfish.

(c) Suspension periods for violations of child support-based suspensions are as follows:

(i) If the suspension that the person violated in the second degree was based on noncompliance with child support and was ordered under RCW 74.20A.322 or 77.32.014, then the department must order a suspension of all of the person's privileges to hunt, fish, trap, or take wildlife, food fish, game fish, or shellfish for a period of two years. This suspension is in addition to any suspension required by the statute for the underlying fish or wildlife violation.

(ii) If the suspension that the person violated in the first degree was based on noncompliance with child support and was ordered under RCW 74.20A.322 or 77.32.014, then the department must order a suspension of all of the person's privileges to hunt, fish, trap, or take wildlife, food fish, game fish, or shellfish for a period of four years. This suspension is in addition to any suspension required by the statute for the underlying fish or wildlife violation.

(iii) Suspensions pursuant to (c)(i) and (ii) of this subsection do not affect any underlying hunting and fishing privilege suspensions based on noncompliance with child support and ordered under RCW 74.20A.322 or 77.32.014. If a person who is suspended pursuant to (c)(i) and (ii) of this subsection completes the period of suspension ordered under this section but is still suspended for child support noncompliance, the person is prohibited from hunting, fishing, or engaging in any activity regulated by the department until he or she obtains a release from the department of social and

health services and provides a copy of the release to the department.

(4) As used in this section, hunting includes trapping with a trapping license. [2013 c 102 § 1; 1999 c 258 § 11; 1998 c 190 § 60.]

Chapter 77.32 RCW

LICENSES

Sections

77.32.155	Hunter education training program—Certificate—Deferral—Adoption of rules—Fee.
77.32.480	Reduced rate licenses. (<i>Effective February 1, 2014.</i>)

77.32.155 Hunter education training program—Certificate—Deferral—Adoption of rules—Fee. (1)(a) When purchasing any hunting license, persons under the age of eighteen shall present certification of completion of a course of instruction of at least ten hours in the safe handling of firearms, safety, conservation, and sporting/hunting behavior. All persons purchasing any hunting license for the first time, if born after January 1, 1972, shall present such certification.

(b)(i) The director may establish a program for training persons in the safe handling of firearms, conservation, and sporting/hunting behavior and shall prescribe the type of instruction and the qualifications of the instructors. The director shall, as part of establishing the training program, exempt members of the United States military from the firearms skills portion of any instruction course completed over the internet.

(ii) The director may cooperate with the national rifle association, organized sports/outdoor enthusiasts' groups, or other public or private organizations when establishing the training program.

(c) Upon the successful completion of a course established under this section, the trainee shall receive a hunter education certificate signed by an authorized instructor. The certificate is evidence of compliance with this section.

(d) The director may accept certificates from other states that persons have successfully completed firearm safety, hunter education, or similar courses as evidence of compliance with this section.

(2)(a) The director may authorize a once in a lifetime, one license year deferral of hunter education training for individuals who are accompanied by a nondeferred Washington-licensed hunter who has held a Washington hunting license for the prior three years and is over eighteen years of age. The commission shall adopt rules for the administration of this subsection to avoid potential fraud and abuse.

(b) The director is authorized to collect an application fee, not to exceed twenty dollars, for obtaining the once in a lifetime, one license year deferral of hunter education training from the department. This fee must be deposited into the fish and wildlife enforcement reward account and must be used exclusively to administer the deferral program created in this subsection.

(c) For the purposes of this subsection, "accompanied" means to go along with another person while staying within a range of the other person that permits continual unaided visual and auditory communication.

(3) To encourage the participation of an adequate number of instructors for the training program, the commission shall develop nonmonetary incentives available to individuals who commit to serving as an instructor. The incentives may include additional hunting opportunities for instructors. [2013 c 23 § 243; 2009 c 269 § 1; 2007 c 163 § 1; 2006 c 23 § 1; 1998 c 191 § 17; 1993 c 85 § 1; 1987 c 506 § 81; 1981 c 310 § 21; 1980 c 78 § 104; 1957 c 17 § 1. Formerly RCW 77.32.015.]

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

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

Additional notes found at www.leg.wa.gov

77.32.480 Reduced rate licenses. (Effective February 1, 2014.) (1) Upon written application, a combination fishing license shall be issued at the reduced rate of five dollars and all hunting licenses shall be issued at the reduced rate of a youth hunting license fee for the following individuals:

(a) A resident sixty-five years old or older who is an honorably discharged veteran of the United States armed forces having a service-connected disability;

(b) A resident who is an honorably discharged veteran of the United States armed forces with a thirty percent or more service-connected disability;

(c) A resident with a disability who permanently uses a wheelchair;

(d) A resident who is blind or visually impaired; and

(e) A resident with a developmental disability as defined in RCW 71A.10.020 with documentation of the disability certified by a physician licensed to practice in this state.

(2) Upon department verification of eligibility, a non-state resident veteran with a disability who otherwise satisfies the criteria of subsection (1)(a) and (b) of this section must be issued a combination fishing license or any hunting license at the same cost charged to a nondisabled Washington resident for the same license. [2013 c 101 § 1; 2007 c 254 § 3; 1998 c 191 § 18.]

Effective date—2013 c 101: "This act takes effect February 1, 2014." [2013 c 101 § 2.]

Additional notes found at www.leg.wa.gov

Chapter 77.36 RCW WILDLIFE DAMAGE

Sections

77.36.010	Definitions.
77.36.100	Payment of claims for damage to commercial crops or livestock—Noncash compensation—Offer of materials or services to offset or prevent wildlife interactions—Appeal of decisions—Adoption of rules.
77.36.130	Limit on cash compensation—Burden of proof.
77.36.170	Limit on amount paid for injury or loss of livestock caused by wolves—Exceptions.
77.36.180	Wolf-livestock conflict account.

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

[2013 RCW Supp—page 896]

(1) "Claim" means an application to the department for compensation under this chapter.

(2) "Commercial crop" means a horticultural or agricultural product, including the growing or harvested product. For the purposes of this chapter all parts of horticultural trees shall be considered a commercial crop and shall be eligible for claims.

(3) "Compensation" means a cash payment, materials, or service.

(4) "Damage" means economic losses caused by wildlife interactions.

(5) "Immediate family member" means spouse, state registered domestic partner, brother, sister, grandparent, parent, child, or grandchild.

(6) "Livestock" means cattle, sheep, and horses.

(7) "Owner" means a person who has a legal right to commercial crops, livestock, or other property that was damaged during a wildlife interaction.

(8) "Wildlife interaction" means the negative interaction and the resultant damage between wildlife and commercial crops, livestock, or other property. [2013 c 329 § 1. Prior: 2009 c 521 § 184; 2009 c 333 § 54; 1996 c 54 § 2; (2001 c 274 § 2 expired June 30, 2004).]

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

Effective date—2009 c 333 §§ 53-66: "Sections *53 through 66 of this act take effect July 1, 2010." [2009 c 333 § 69.]

***Reviser's note:** Section 53, chapter 333, Laws of 2009 was vetoed by the governor.

Application—2009 c 333 §§ 53-66: "Sections *53 through 66 of this act apply prospectively only and not retroactively. Sections *53 through 66 of this act apply only to claims that arise on or after July 1, 2010. Claims under chapter 77.36 RCW that arise prior to July 1, 2010, must be adjudicated under chapter 77.36 RCW as it existed prior to July 1, 2010." [2009 c 333 § 67.]

***Reviser's note:** Section 53, chapter 333, Laws of 2009 was vetoed by the governor.

Additional notes found at www.leg.wa.gov

77.36.100 Payment of claims for damage to commercial crops or livestock—Noncash compensation—Offer of materials or services to offset or prevent wildlife interactions—Appeal of decisions—Adoption of rules. (1)(a) Except as limited by RCW 77.36.070, 77.36.080, 77.36.170, and 77.36.180, the department shall offer to distribute money appropriated to pay claims to the owner of commercial crops for damage caused by wild deer or elk or to the owners of livestock that has been killed by bears, wolves, or cougars, or injured by bears, wolves, or cougars to such a degree that the market value of the livestock has been diminished. Payments for claims for damage to livestock are not subject to the limitations of RCW 77.36.070 and 77.36.080, but may not, except as provided in RCW 77.36.170 and 77.36.180, exceed the total amount specifically appropriated therefor.

(b) Owners of commercial crops or livestock are only eligible for a claim under this subsection if:

(i) The commercial crop owner satisfies the definition of "eligible farmer" in RCW 82.08.855;

(ii) The conditions of RCW 77.36.110 have been satisfied; and

(iii) The damage caused to the commercial crop or livestock satisfies the criteria for damage established by the commission under (c) of this subsection.

(c) The commission shall adopt and maintain by rule criteria that clarifies the damage to commercial crops and livestock qualifying for compensation under this subsection. An owner of a commercial crop or livestock must satisfy the criteria prior to receiving compensation under this subsection. The criteria for damage adopted under this subsection must include, but not be limited to, a required minimum economic loss to the owner of the commercial crop or livestock, which may not be set at a value of less than five hundred dollars.

(2)(a) Subject to the availability of nonstate funds, nonstate resources other than cash, or amounts appropriated for this specific purpose, the department may offer to provide compensation to offset wildlife interactions to a person who applies to the department for compensation for damage to property other than commercial crops or livestock that is the result of a mammalian or avian species of wildlife on a case-specific basis if the conditions of RCW 77.36.110 have been satisfied and if the damage satisfies the criteria for damage established by the commission under (b) of this subsection.

(b) The commission shall adopt and maintain by rule criteria for damage to property other than a commercial crop or livestock that is damaged by wildlife and may be eligible for compensation under this subsection, including criteria for filing a claim for compensation under this subsection.

(3)(a) To prevent or offset wildlife interactions, the department may offer materials or services to a person who applies to the department for assistance in providing mitigating actions designed to reduce wildlife interactions if the actions are designed to address damage that satisfies the criteria for damage established by the commission under this section.

(b) The commission shall adopt and maintain by rule criteria for mitigating actions designed to address wildlife interactions that may be eligible for materials and services under this section, including criteria for submitting an application under this section.

(4) An owner who files a claim under this section may appeal the decision of the department pursuant to rules adopted by the commission if the claim:

(a) Is denied; or

(b) Is disputed by the owner and the owner disagrees with the amount of compensation determined by the department.

(5) The commission shall adopt rules setting limits and conditions for the department's expenditures on claims and assessments for commercial crops, livestock, other property, and mitigating actions. [2013 c 329 § 4; 2009 c 333 § 55.]

Effective date—Application—2009 c 333 §§ 53-66: See notes following RCW 77.36.010.

77.36.130 Limit on cash compensation—Burden of proof. (1) Except as otherwise provided in this section and as limited by RCW 77.36.100, 77.36.070, 77.36.080, 77.36.170, and 77.36.180, the cash compensation portion of each claim by the department under this chapter is limited to the lesser of:

(a) The value of the damage to the property by wildlife, reduced by the amount of compensation provided to the claimant by any nonprofit organizations that provide compensation to private property owners due to financial losses caused by wildlife interactions. The value of killed or injured livestock may be no more than the market value of the lost livestock subject to the conditions and criteria established by rule of the commission; or

(b) Ten thousand dollars.

(2) The department may offer to pay a claim for an amount in excess of ten thousand dollars to the owners of commercial crops or livestock filing a claim under RCW 77.36.100 only if the outcome of an appeal filed by the claimant under RCW 77.36.100 determines a payment higher than ten thousand dollars.

(3) All payments of claims by the department under this chapter must be paid to the owner of the damaged property and may not be assigned to a third party.

(4) The burden of proving all property damage, including damage to commercial crops and livestock, belongs to the claimant. [2013 c 329 § 5; 2009 c 333 § 58.]

Effective date—Application—2009 c 333 §§ 53-66: See notes following RCW 77.36.010.

77.36.170 Limit on amount paid for injury or loss of livestock caused by wolves—Exceptions. (1) The department may pay no more than fifty thousand dollars per fiscal year from the state wildlife account created in RCW 77.12.170 for claims and assessment costs for injury or loss of livestock caused by wolves submitted under RCW 77.36.100.

(2) Notwithstanding other provisions of this chapter, the department may also accept and expend money from other sources to address injury or loss of livestock or other property caused by wolves consistent with the requirements on that source of funding.

(3) If any wildlife account expenditures authorized under subsection (1) of this section are unspent as of June 30th of a fiscal year, the state treasurer shall transfer the unspent amount to the wolf-livestock conflict account created in RCW 77.36.180. [2013 c 329 § 2.]

(4) If any wildlife account expenditures authorized under subsection (1) of this section are unspent as of June 30th of a fiscal year, the state treasurer shall transfer the unspent amount to the wolf-livestock conflict account created in RCW 77.36.180. [2013 c 329 § 2.]

77.36.180 Wolf-livestock conflict account. (1) The wolf-livestock conflict account is created in the custody of the state treasurer. Any transfers under RCW 77.36.170 must be deposited in the account. The department may also deposit into the account any grants, gifts, or donations to the state for the purposes of providing compensation for injury or loss of livestock caused by wolves. Consistent with this chapter, expenditures from the account may be used only for mitigation, assessment, and payments for injury or loss of livestock caused by wolves. Only the director or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(2)(a) The department must maintain a list of claims submitted under RCW 77.36.100, organized chronologically by the date wolf predation is confirmed, for injury or loss of livestock caused by wolves that have been approved for payment but not yet been fully paid by the department. As funding

becomes available to the department under this section, RCW 77.36.170, or any other source, the department must pay claims in the chronologic order they appear on the list. The department must maintain, and is authorized to pay, claims that appear on the list due to injury or loss that occurred in a previous fiscal biennium.

(b) The payment of a claim included on the list maintained by the department under this section is conditional on the availability of specific funding for this purpose and is not a guarantee of reimbursement. [2013 c 329 § 3.]

Chapter 77.60 RCW SHELLFISH

Sections

77.60.130 Repealed.

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

Chapter 77.65 RCW FOOD FISH AND SHELLFISH— COMMERCIAL LICENSES

Sections

77.65.100 Vessel designation.
77.65.130 Vessel operation—License designation—Alternate operator license required.
77.65.280 Wholesale fish dealer's license—Fees—Exemption.
77.65.340 Fish buyer's license—Fees.
77.65.370 Food fish guide license.
77.65.410 Geoduck diver license—Fee—Expiration—Safety program.
77.65.480 Taxidermist, fur dealer, game fish guide, game farmer, anadromous game fish buyer—Licenses—Fees—Fish stocking and game contest permits.
77.65.550 Revocation of geoduck diver license.
77.65.560 Application for food fish guide license/game fish guide license—Required information.

77.65.100 Vessel designation. (1) This section applies to all commercial fishery licenses, delivery licenses, and charter licenses.

(2) An applicant for a license subject to this section may designate a vessel to be used with the license. Except for emergency salmon delivery licenses, the director may issue a license regardless of whether the applicant designates a vessel. An applicant may designate no more than one vessel on a license subject to this section.

(3) A license for a fishery that requires a vessel authorizes no taking or delivery of food fish or shellfish unless a vessel is designated on the license. A delivery license authorizes no delivery of food fish or shellfish unless a vessel is designated on the license.

(4) No vessel may be designated on more than one commercial fishery license unless the licenses are for different fisheries, except:

(a) The same vessel may be designated on two of the following licenses, provided the licenses are owned by the same licensee:

- (i) Shrimp pot-Puget Sound fishery license;
- (ii) Sea cucumber dive fishery license; and
- (iii) Sea urchin dive fishery license.

(b) Subject to the provisions of RCW 77.65.130, the same vessel may be designated on three Puget Sound Dungeness crab fishery licenses issued pursuant to RCW 77.70.110.

(5) No vessel may be designated on more than one delivery license, on more than one salmon charter license, or on more than one nonsalmon charter license. [2013 c 288 § 1; 2005 c 82 § 1; 2001 c 105 § 3; 1998 c 190 § 94; 1993 c 340 § 7. Formerly RCW 75.28.045.]

Finding, intent—Captions not law—Effective date—Severability—1993 c 340: See notes following RCW 77.65.010.

77.65.130 Vessel operation—License designation—Alternate operator license required. (1) A person who holds a commercial fishery license or a delivery license may operate the vessel designated on the license. A person who is not the license holder may operate the vessel designated on the license only if:

(a) The person holds an alternate operator license issued by the director; and

(b) The person is designated as an alternate operator on the underlying commercial fishery license or delivery license under RCW 77.65.110.

(2) Only an individual at least sixteen years of age may hold an alternate operator license.

(3) No individual may hold more than one alternate operator license. An individual who holds an alternate operator license may be designated as an alternate operator on an unlimited number of commercial fishery licenses or delivery licenses under RCW 77.65.110.

(4) An individual who holds multiple Dungeness crab—Puget Sound fishery licenses issued pursuant to RCW 77.70.110 may operate the licenses on one vessel if the license holder or alternate operator is on the vessel. The department shall allow a license holder to operate up to one hundred crab pots for each license.

(5) Two persons owning separate Dungeness crab—Puget Sound fishery licenses may operate their licenses on one vessel if the license holders or their alternate operators are on the vessel.

(6) As used in this section, to "operate" means to control the deployment or removal of fishing gear from state waters while aboard a vessel or to operate a vessel delivering food fish or shellfish taken in offshore waters to a port within the state. [2013 c 288 § 2; 2005 c 82 § 2; 2000 c 107 § 34; 1998 c 267 § 4; 1997 c 233 § 2; 1993 c 340 § 25. Formerly RCW 75.28.048.]

Finding, intent—Captions not law—Effective date—Severability—1993 c 340: See notes following RCW 77.65.010.

Additional notes found at www.leg.wa.gov

77.65.280 Wholesale fish dealer's license—Fees—Exemption. A wholesale fish dealer's license is required for:

(1) A business in the state to engage in the commercial processing of food fish or shellfish, including custom canning or processing of personal use food fish or shellfish.

(2) A business in the state to engage in the wholesale selling, buying, or brokering of food fish or shellfish. A wholesale fish dealer's license is not required of those businesses which buy exclusively from Washington licensed wholesale dealers and sell solely at retail.

(3) Fishers who land and sell their catch or harvest in the state to anyone other than a licensed wholesale dealer within or outside the state, unless the fisher has a direct retail endorsement.

(4) A business to engage in the commercial manufacture or preparation of fertilizer, oil, meal, caviar, fish bait, or other by-products from food fish or shellfish.

(5) A business employing a fish buyer as defined under RCW 77.65.340.

The annual license fee for a wholesale dealer is two hundred fifty dollars. The application fee is one hundred five dollars. A wholesale fish dealer's license is not required for persons engaged in the processing, wholesale selling, buying, or brokering of private sector cultured aquatic products as defined in RCW 15.85.020. However, if a means of identifying such products is required by rules adopted under RCW 15.85.060, the exemption from licensing requirements established by this subsection applies only if the aquatic products are identified in conformance with those rules. [2013 c 23 § 244; 2011 c 339 § 25; 2002 c 301 § 5; 2000 c 107 § 48; 1993 sp.s. c 17 § 43; 1989 c 316 § 16. Prior: 1985 c 457 § 20; 1985 c 248 § 1; 1983 1st ex.s. c 46 § 132; 1979 c 66 § 1; 1965 ex.s. c 28 § 1; 1955 c 212 § 11; 1955 c 12 § 75.28.300; prior: 1951 c 271 § 28; 1949 c 112 § 72(1); Rem. Supp. 1949 § 5780-510(1). Formerly RCW 75.28.300.]

Effective date—2011 c 339: See note following RCW 43.84.092.

Finding—Effective date—2002 c 301: See notes following RCW 77.65.510.

Finding—Contingent effective date—Severability—1993 sp.s. c 17: See notes following RCW 77.32.520.

Additional notes found at www.leg.wa.gov

77.65.340 Fish buyer's license—Fees. (1) A fish buyer's license is required of and shall be carried by each individual engaged by a wholesale fish dealer to purchase food fish or shellfish from a licensed commercial fisher. A fish buyer may represent only one wholesale fish dealer.

(2) The annual fee for a fish buyer's license is ninety-five dollars. The application fee is one hundred five dollars. [2013 c 23 § 245; 2011 c 339 § 26; 2000 c 107 § 50; 1993 sp.s. c 17 § 46; 1989 c 316 § 17; 1985 c 248 § 2. Formerly RCW 75.28.340.]

Effective date—2011 c 339: See note following RCW 43.84.092.

Finding—Contingent effective date—Severability—1993 sp.s. c 17: See notes following RCW 77.32.520.

Additional notes found at www.leg.wa.gov

77.65.370 Food fish guide license. (1) A person shall not offer or perform the services of a food fish guide without a food fish guide license in the taking of food fish for personal use in freshwater rivers and streams, except that a charter boat license is required to operate a vessel from which a person may for a fee fish for food fish in state waters listed in RCW 77.65.150(4)(b).

(2) Only an individual at least sixteen years of age may hold a food fish guide license. No individual may hold more than one food fish guide license.

(3) An application for a food fish guide license must include the information required in RCW 77.65.560. [2013 c 314 § 3; 2009 c 333 § 8; 1998 c 190 § 98; 1993 c 340 § 26; 1991 c 362 § 2. Formerly RCW 75.28.710.]

Finding, intent—Captions not law—Effective date—Severability—1993 c 340: See notes following RCW 77.65.010.

77.65.410 Geoduck diver license—Fee—Expiration—Safety program. (1)(a) Every diver engaged in the commercial harvest of subtidal geoduck clams shall obtain a geoduck diver license. An individual may only own one license and all geoduck harvesting performed under the license must be done personally by the actual license holder.

(b) The licensing requirement created in this section does not apply to divers engaged in activities related to the cultivation of geoduck clams as private sector cultured aquatic products as defined in RCW 15.85.020.

(c) The geoduck diver license is a nontransferable license.

(2) Beginning January 1, 2015, the director may not issue more than seventy-seven geoduck diver licenses in any one year.

(3) The annual geoduck diver license fee is as provided in RCW 77.65.440.

(4) A geoduck diver license expires on December 31st of each year. Prior to the license's expiration, a license holder may apply to renew the license holder's geoduck diver license only if the license holder is included on a department of natural resources' geoduck harvest agreement plan of operation during the applicable current calendar year.

(5) Beginning January 1, 2015, each person applying for or renewing a geoduck diver license under this section must complete the geoduck diver safety program established in RCW 43.30.560 prior to being issued a license. [2013 c 204 § 1; 1993 c 340 § 24; 1990 c 163 § 6; 1989 c 316 § 13; 1983 1st ex.s. c 46 § 130; 1979 ex.s. c 141 § 4; 1969 ex.s. c 253 § 4. Formerly RCW 75.28.750, 75.28.287.]

Rule-making authority—2013 c 204 §§ 1-3: "The department of fish and wildlife may adopt any rules deemed necessary to implement sections 1 through 3 of this act." [2013 c 204 § 7.]

Finding, intent—Captions not law—Effective date—Severability—1993 c 340: See notes following RCW 77.65.010.

Designation of aquatic lands for geoduck harvesting: RCW 79.135.220.

Geoducks, harvesting for commercial purposes—License: RCW 77.60.070.

Additional notes found at www.leg.wa.gov

77.65.480 Taxidermist, fur dealer, game fish guide, game farmer, anadromous game fish buyer—Licenses—Fees—Fish stocking and game contest permits. (1) A taxidermy license allows the holder to practice taxidermy for commercial purposes, as that term is defined in RCW 77.15.110. The fee for this license is one hundred eighty dollars. The application fee is seventy dollars.

(2) A fur dealer's license allows the holder to purchase, receive, or resell raw furs for commercial purposes, as that term is defined in RCW 77.15.110. The fee for this license is one hundred eighty dollars. The application fee is seventy dollars.

(3) A game fish guide license allows the holder to offer or perform the services of a game fish guide in the taking of game fish. The fee for this license is one hundred eighty dollars for a resident and six hundred dollars for a nonresident. The application fee is seventy dollars. An application for a game fish guide license must include the information required in RCW 77.65.560.

(4) A game farm license allows the holder to operate a game farm to acquire, breed, grow, keep, and sell wildlife under conditions prescribed by the rules adopted pursuant to this title. The fee for this license is seventy-two dollars for the first year and forty-eight dollars for each following year. The application fee is seventy dollars.

(5) A game fish stocking permit allows the holder to release game fish into the waters of the state as prescribed by rule of the commission. The fee for this permit is twenty-four dollars. The application fee is seventy dollars.

(6) A fishing or field trial permit allows the holder to promote, conduct, hold, or sponsor a fishing or field trial contest in accordance with rules of the commission. The fee for a fishing contest permit is twenty-four dollars. The fee for a field trial contest permit is twenty-four dollars. The application fee is seventy dollars.

(7)(a) An anadromous game fish buyer's license allows the holder to purchase or sell steelhead trout and other anadromous game fish harvested by Indian fishers lawfully exercising fishing rights reserved by federal statute, treaty, or executive order, under conditions prescribed by rule of the director. The fee for this license is one hundred eighty dollars. The application fee is one hundred five dollars.

(b) An anadromous game fish buyer's license is not required for those businesses that buy steelhead trout and other anadromous game fish from Washington licensed game fish dealers and sell solely at retail. [2013 c 314 § 2; 2011 c 339 § 30; 2009 c 333 § 11; 1991 sp.s. c 7 § 4; 1987 c 506 § 83; 1985 c 464 § 5; 1983 c 284 § 3; 1981 c 310 § 25; 1980 c 78 § 115; 1975 1st ex.s. c 15 § 30. Formerly RCW 77.32.211.]

Effective date—2011 c 339: See note following RCW 43.84.092.

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

Findings—Intent—1983 c 284: See note following RCW 82.27.020.

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

Additional notes found at www.leg.wa.gov

77.65.550 Revocation of geoduck diver license. The department must revoke a geoduck diver license issued under RCW 77.65.410, and the licensee must surrender the license, if the licensee is found in violation of a department of natural resources' geoduck harvest agreement two or more times. The person surrendering the geoduck diver license may not hold another geoduck diver license for a period of one calendar year from the date the license is surrendered. [2013 c 204 § 3.]

Rule-making authority—2013 c 204 §§ 1-3: See note following RCW 77.65.410.

77.65.560 Application for food fish guide license/game fish guide license—Required information.

(1) Any application for a food fish guide license under RCW 77.65.370 or game fish guide license under RCW 77.65.480 must include:

(a) The applicant's driver's license or other government-issued identification card number and the jurisdiction of issuance;

(b) The applicant's unified business identifier number under a master license issued under *RCW 19.02.070;

(c) Proof of current certification in first aid and cardiopulmonary resuscitation;

(d) A certificate of insurance demonstrating that the applicant has commercial liability coverage of at least three hundred thousand dollars; and

(e) If applicable, an original or notarized copy of a valid license issued by the United States coast guard to the applicant that authorizes the holder to carry passengers for hire.

(2) The requirements of this section related to licensure by the United States coast guard apply only to applicants intending to carry passengers for hire with a motorized vessel on federally recognized navigable waters. The license issued by the United States coast guard must be valid in the waters where the game fish guide or food fish guide license applicant will be carrying passengers for hire in a motorized vessel.

(3) The requirements in this section are in addition to the requirements of RCW 77.65.050. [2013 c 314 § 1.]

***Reviser's note:** RCW 19.02.070 was amended by 2013 c 144 § 19, changing the term "master license" to "business license."

Chapter 77.85 RCW SALMON RECOVERY

Sections

77.85.050 Habitat project lists.

77.85.050 Habitat project lists. (1)(a) Counties, cities, and tribal governments must jointly designate, by resolution or by letters of support, the area for which a habitat project list is to be developed and the lead entity that is to be responsible for submitting the habitat project list. No project included on a habitat project list shall be considered mandatory in nature and no private landowner may be forced or coerced into participation in any respect. The lead entity may be a county, city, conservation district, special district, tribal government, regional recovery organization, or other entity.

(b) The lead entity shall establish a committee that consists of representative interests of counties, cities, conservation districts, tribes, environmental groups, business interests, landowners, citizens, volunteer groups, regional fish enhancement groups, and other habitat interests. The purpose of the committee is to provide a citizen-based evaluation of the projects proposed to promote salmon habitat.

(c) The committee shall compile a list of habitat projects, establish priorities for individual projects, define the sequence for project implementation, and submit these activities as the habitat project list. The committee shall also identify potential federal, state, local, and private funding sources.

(2) The area covered by the habitat project list must be based, at a minimum, on a WRIA, combination of WRIsAs, or any other area as agreed to by the counties, cities, and tribes in resolutions or in letters of support meeting the requirements of this subsection. Preference will be given to projects in an area that contain a salmon species that is listed or proposed for listing under the federal endangered species act.

(3) The lead entity shall submit the habitat project list to the salmon recovery funding board in accordance with procedures adopted by the board.

(4) The recreation and conservation office shall administer funding to support the functions of lead entities.

(5) A landowner whose land is used for a habitat project that is included on a habitat project list, and who has received notice from the project sponsor that the conditions of this section have been met, may not be held civilly liable for any property damages resulting from the habitat project regardless of whether or not the project was funded by the salmon recovery funding board. This subsection is subject to the following conditions:

(a) The project was designed by a licensed professional engineer (PE) or a licensed geologist (LG, LEG, or LHG) with experience in riverine restoration;

(b) The project is designed to withstand one hundred year floods;

(c) The project is not located within one-quarter mile of an established downstream boat launch;

(d) The project is designed to allow adequate response time for in-river boaters to safely evade in-stream structures; and

(e) If the project includes large wood placement, each individual root wad and each log larger than ten feet long and one foot in diameter must be visibly tagged with a unique numerical identifier that will withstand typical river conditions for at least three years. [2013 c 194 § 1. Prior: 2009 c 345 § 3; 2009 c 333 § 25; 2005 c 309 § 6; 1999 sp.s. c 13 § 11; 1998 c 246 § 7. Formerly RCW 75.46.060.]

Finding—Intent—2009 c 345: See notes following RCW 77.85.030.

Additional notes found at www.leg.wa.gov

Chapter 77.95 RCW

SALMON ENHANCEMENT PROGRAM

Sections

77.95.030	Salmon enhancement plan—Enhancement projects.
77.95.320	Program utilizing department-partnership agreements to operate and manage certain hatcheries—Selection of partners—Partnership agreements.
77.95.322	Report to the legislature—Implementation of RCW 77.95.320. (Expires July 31, 2017.)

77.95.030 Salmon enhancement plan—Enhancement projects. (1) The commission shall develop a detailed salmon enhancement plan with proposed enhancement projects. The plan and the regional policy statements shall be submitted to the secretary of the senate and chief clerk of the house of representatives for legislative distribution by June 30, 1986. The enhancement plan and regional policy statements shall be provided by June 30, 1986, to the natural resources committees of the house of representatives and the senate. The commission shall provide a maximum opportunity for the public to participate in the development of the salmon enhancement plan. To insure full participation by all interested parties, the commission shall solicit and consider enhancement project proposals from Indian tribes, sports fishers, commercial fishers, private aquaculturists, and other interested groups or individuals for potential inclusion in the salmon enhancement plan. Joint or cooperative enhancement projects shall be considered for funding.

(2) The following criteria shall be used by the commission in formulating the project proposals:

(a) Compatibility with the long-term policy statement;

(b) Benefit/cost analysis;

(c) Needs of all fishing interests;

(d) Compatibility with regional plans, including harvest management plans;

(e) Likely increase in resource productivity;

(f) Direct applicability of any research;

(g) Salmon advisory council recommendations;

(h) Compatibility with federal court orders;

(i) Coordination with the salmon and steelhead advisory commission program;

(j) Economic impact to the state;

(k) Technical feasibility; and

(l) Preservation of native salmon runs.

(3) The commission shall not approve projects that serve as replacement funding for projects that exist prior to May 21, 1985, unless no other sources of funds are available.

(4) The commission shall prioritize various projects and establish a recommended implementation time schedule. [2013 c 23 § 246; 1995 1st sp.s. c 2 § 35 (Referendum Bill No. 45, approved November 7, 1995); 1985 c 458 § 3. Formerly RCW 75.50.030.]

Additional notes found at www.leg.wa.gov

77.95.320 Program utilizing department-partnership agreements to operate and manage certain hatcheries—Selection of partners—Partnership agreements.

(1) The department shall establish a program that utilizes department-partner agreements for the resumption or continued operation and management of state-owned salmonid hatcheries that are located in the Hood Canal basin. To implement the program, the department shall accept and review applications to determine the appropriateness of the partner to manage and operate selected salmonid hatcheries. The department shall accelerate the application process relating to any hatchery currently in operation to avoid cessation of ongoing salmon production.

(2)(a) To select a partner, the department shall develop and apply criteria identifying the appropriateness of a potential partner. The criteria must seek to ensure that the partner has a long-range business plan, which may include the sale of hatchery surplus salmon, including eggs and carcasses, to ensure the long-range future solvency of the partnership. The business plan may also allow the partner to harvest hatchery chum salmon in a designated area through persons under contract with the partner as provided under a permit from the department or by rule of the commission. All chum salmon harvested must be sold at prices commensurate with the current market and all funds must be utilized by the partner to operate the hatchery.

(b) Partners under this section must be:

(i) Qualified under section 501(c)(3) of the internal revenue code;

(ii) A for-profit private entity; or

(iii) A federally recognized tribe.

(3) The department shall place a higher priority on applications from partners that provide for the maximum resumption or continuation of existing hatchery production in a manner consistent with the mandate contained in RCW 77.04.012

to maintain the economic well-being and stability of the fishing industry.

(4)(a) Agreements entered into with partners under this section must be consistent with existing federally recognized tribal rights, state laws, agency rules, collective bargaining agreements, hatchery management policy involving species listed under the federal endangered species act, or, in the case of a tribal partner, any applicable tribal hatchery management policy or recreational and commercial harvest policy.

(b) Agreements under this section must also require that partners give preference to retaining classified employees whenever possible. In circumstances where it is not possible, partners conducting hatchery operations must maintain staff with comparable qualifications to those identified in the class specifications for the department's fish hatchery personnel.

(5) All partnership agreements entered into under this section must contain a provision that requires the partner to hold harmless the department and the state for any civil liability arising from the partner's participation in the agreement or activities at the subject hatchery or hatcheries.

(6) All partnership agreements entered into under this section must identify any maintenance or improvements to be made to the hatchery facility, and the source of funding for such maintenance or improvements. If funding for the maintenance or improvements is to come from state funds or revenue sources previously received by the department, the work must be performed either by employees in the classified service or in compliance with the contracting procedures set forth in RCW 41.06.142. [2013 c 93 § 1; 2009 c 340 § 2.]

Findings—2009 c 340: "The legislature finds: (1) The full utilization of state salmonid hatcheries is vital to the recreational and commercial fisheries and related economic development and employment; and (2) effective measures are necessary to maintain all hatchery operations that are consistent with conservation of wild salmon populations and support sustainable fisheries." [2009 c 340 § 1.]

77.95.322 Report to the legislature—Implementation of RCW 77.95.320. (Expires July 31, 2017.) (1) The department of fish and wildlife shall prepare and submit a report to the legislature summarizing any actions taken in the implementation of RCW 77.95.320, including the types and number of fish released, lessons learned, and suggestions for future program refinement.

(2) The report required by this section must be submitted consistent with RCW 43.01.036 by October 31, 2016.

(3) This section expires July 31, 2017. [2013 c 93 § 2.]

Title 78

MINES, MINERALS, AND PETROLEUM

Chapters

- 78.04 Mining corporations.
- 78.08 Location of mining claims.
- 78.12 Abandoned shafts and excavations.
- 78.16 Mineral and petroleum leases on county lands.
- 78.52 Oil and gas conservation.
- 78.60 Geothermal resources.

Chapter 78.04 RCW MINING CORPORATIONS

Sections

- 78.04.030 No stock subscription necessary.

78.04.030 No stock subscription necessary. In incorporations already formed, or which may hereafter be formed under *this chapter, where the amount of the capital stock of such corporation consists of the aggregate valuation of the whole number of feet, shares, or interest in any mining claim in this state, for the working and development of which such corporation shall be or have been formed, no actual subscription to the capital stock of such corporation shall be necessary; but each owner in said mining claim shall be deemed to have subscribed such an amount to the capital stock of such corporation as under its bylaws will represent the value of so much of his or her interest in said mining claim, the legal title to which he or she may by deed, deed of trust, or other instrument vest, or have vested in such corporation for mining purposes; such subscription to be deemed to have been made on the execution and delivery to such corporation of such deed, deed of trust, or other instrument; nor shall the validity of any assessment levied by the board of trustees of such corporation be affected by the reason of the fact that the full amount of the capital stock of such corporation, as mentioned in its certificate of incorporation, shall not have been subscribed as provided in this section: PROVIDED, That the greater portion of said amount of capital stock shall have been so subscribed: AND, PROVIDED FURTHER, That this section shall not be so construed as to prohibit the stockholders of any corporation formed, or which may be formed, for mining purposes as provided in this section, from regulating the mode of making subscriptions to its capital stock and calling in the same by bylaws or express contract. [2013 c 23 § 247; Code 1881 § 2446; 1873 p 407 § 26; 1869 p 339 § 28; 1866 p 65 § 28; RRS § 8611.]

***Reviser's note:** The two remaining sections of "this chapter" (Code 1881 c CLXXXV) are codified in RCW 78.04.030 above and RCW 90.16.010.

Chapter 78.08 RCW LOCATION OF MINING CLAIMS

Sections

- 78.08.080 Amended certificate of location.
- 78.08.100 Location of placer claims.

78.08.080 Amended certificate of location. If at any time the locator of any quartz or lode mining claim heretofore or hereafter located, or his or her assigns, shall learn that his or her original certificate was defective or that the requirements of the law had not been complied with before filing, or shall be desirous of changing his or her surface boundaries or of taking in any additional ground which is subject to location, or in any case the original certificate was made prior to the *passage of this law, and he or she shall be desirous of securing the benefits of RCW 78.08.050 through 78.08.115, such locator or his or her assigns may file an amended certificate of location, subject to the provisions of RCW 78.08.050 through 78.08.115, regarding the making of new locations.

[2013 c 23 § 248; 1983 c 3 § 198; 1899 c 45 § 5; RRS § 8626.]

*Reviser's note: "passage of this law": 1899 c 45 (H.B. 272) passed the house, February 27, 1899; passed the senate, March 7, 1899, and was approved by the governor March 8, 1899.

78.08.100 Location of placer claims. The discoverer of placers or other forms of deposits subject to location and appropriation under mining laws applicable to placers shall locate his or her claim in the following manner:

First. He or she must immediately post in a conspicuous place at the point of discovery thereon, a notice or certificate of location thereof, containing (1) the name of the claim; (2) the name of the locator or locators; (3) the date of discovery and posting of the notice hereinbefore provided for, which shall be considered as the date of the location; (4) a description of the claim by reference to legal subdivisions of sections, if the location is made in conformity with the public surveys, otherwise, a description with reference to some natural object or permanent monuments as will identify the claim; and where such claim is located by legal subdivisions of the public surveys, such location shall, notwithstanding that fact, be marked by the locator upon the ground the same as other locations.

Second. Within thirty days from the date of such discovery, he or she must record such notice or certificate of location in the office of the auditor of the county in which such discovery is made, and so distinctly mark his or her location on the ground that its boundaries may be readily traced.

Third. Within sixty days from the date of discovery, the discoverer shall perform labor upon such location or claim in developing the same to an amount which shall be equivalent in the aggregate to at least ten dollars worth of such labor for each twenty acres, or fractional part thereof, contained in such location or claim: PROVIDED, HOWEVER, That nothing in this subdivision shall be held to apply to lands located under the laws of the United States as placer claims for the purpose of the development of petroleum and natural gas and other natural oil products.

Fourth. Such locator shall, upon the performance of such labor, file with the auditor of the county an affidavit showing such performance and generally the nature and kind of work so done. [2013 c 23 § 249; 1901 c 137 § 1; 1899 c 45 § 10; RRS § 8631.]

Chapter 78.12 RCW

ABANDONED SHAFTS AND EXCAVATIONS

Sections

78.12.070 Damage actions preserved.

78.12.070 Damage actions preserved. Nothing contained in this chapter shall be so construed as to prevent recovery being had in a suit for damages for injuries sustained by the party so injured, or his or her heirs or administrator or administratrix, or anyone else now competent to sue in an action of such character. [2013 c 23 § 250; 1890 p 123 § 9; RRS § 8865.]

Chapter 78.16 RCW MINERAL AND PETROLEUM LEASES ON COUNTY LANDS

Sections

78.16.030 Sale and conveyance.
78.16.040 Option to surrender lands.

78.16.030 Sale and conveyance. Upon payment of the full purchase price, in cases where an option to purchase is given, a conveyance shall be executed to the purchaser by the chair of the board of county commissioners. Such conveyance shall refer to the order of the board authorizing such leasing with the option to purchase, and shall be deemed to convey all the estate, right, title and interest of the county in and to the property sold; and such conveyance, when executed, shall be conclusive evidence of the regularity and validity of all proceedings hereunder. [2013 c 23 § 251; 1907 c 38 § 3; RRS § 11314.]

78.16.040 Option to surrender lands. The lessee under any such petroleum lease shall have the option of surrendering any of the lands included in said lease at any time, and shall thereby be relieved of all liability with respect to such lands except the payment of accrued royalties as provided in said lease. Upon such surrender, the lessee shall have the right for a period of one hundred twenty days following the date of such surrender, to remove all improvements placed by him or her on the lands which have been surrendered. [2013 c 23 § 252; 1945 c 93 § 2; Rem. Supp. 1945 § 11314-1.]

Chapter 78.52 RCW OIL AND GAS CONSERVATION

Sections

78.52.550 Violations—Penalty.

78.52.550 Violations—Penalty. Every person who shall violate or knowingly aid and abet the violation of this chapter or any valid orders, rules, and regulations issued thereunder, or who fails to perform any act which is herein made his or her duty to perform, shall be guilty of a gross misdemeanor. [2013 c 23 § 253; 1951 c 146 § 58.]

Chapter 78.60 RCW GEOTHERMAL RESOURCES

Sections

78.60.030 Definitions.
78.60.040 Geothermal resources deemed sui generis.
78.60.060 Scope of chapter.
78.60.110 Suspension of drilling, shut-in or removal of equipment for authorized period—Unlawful abandonment.
78.60.170 Designation of resident agent for service of process.
78.60.250 Violations—Modification of permit, when necessary—Departmental order—Issuance—Appeal.

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

(1) "By-product" means any mineral or minerals, not including oil, hydrocarbon gas, or helium, which are found in

solution or in association with geothermal steam and that have a value of less than seventy-five percent of the value of the geothermal resource or are not, because of quantity, quality, or technical difficulties in extraction and production, of sufficient value to warrant extraction and production by themselves.

(2) A "completed well" is a well that has been drilled to its total depth, has been adequately cased, and is ready to be either plugged and abandoned, shut-in, or put into production.

(3) "Core holes" are holes drilled or excavations made expressly for the acquisition of geological or geophysical data for the purpose of finding and delineating a favorable geothermal area prior to the drilling of a well.

(4) "Department" means the department of natural resources.

(5) "Energy transfer system" means the structures and enclosed fluids which facilitate the utilization of geothermal energy. The system includes the geothermal wells, cooling towers, reinjection wells, equipment directly involved in converting the heat energy associated with geothermal resources to mechanical or electrical energy or in transferring it to another fluid, the closed piping between such equipment, wells and towers and that portion of the earth which facilitates the transfer of a fluid from reinjection wells to geothermal wells: PROVIDED, That the system shall not include any geothermal resources which have escaped into or have been released into the nongeothermal ground or surface waters from either man-made containers or through leaks in the structure of the earth caused by or to which access was made possible by any drilling, redrilling, reworking or operating of a geothermal or reinjection well.

(6) "Geothermal area" means any land that is, or reasonably appears to be, underlain by geothermal resources.

(7)(a) "Geothermal resources" includes the natural heat of the earth, the energy, in whatever form, below the surface of the earth present in, resulting from, or created by, or that may be extracted from, the natural heat, and all minerals in solution or other products obtained from naturally heated fluids, brines, associated gases and steam, in whatever form, found below the surface of the earth, exclusive of helium or oil, hydrocarbon gas or other hydrocarbon substances, but including, specifically:

(i) All products of geothermal processes, including indigenous steam, and hot water and hot brines;

(ii) Steam and other bases, hot water and hot brines resulting from water, gas, or other fluids artificially introduced into geothermal formations;

(iii) Heat or other associated energy found in geothermal formations; and

(iv) Any by-product derived from them.

(b) "Geothermal resources" does not include heat energy used in ground source heat exchange systems for ground source heat pumps.

(8) "Operator" means the person supervising or in control of the operation of a geothermal resource well, whether or not such person is the owner of the well.

(9) "Owner" means the person who possesses the legal right to drill, convert or operate any well or other facility subject to the provisions of this chapter.

(10) "Person" means any individual, corporation, company, association of individuals, joint venture, partnership, receiver, trustee, guardian, executor, administrator, personal representative, or public agency that is the subject of legal rights and duties.

(11) "Plug and abandon" means to place permanent plugs in the well in such a way and at such intervals as are necessary to prevent future leakage of fluid from the well to the surface or from one zone in the well to the other, and to remove all drilling and production equipment from the site, and to restore the surface of the site to its natural condition or contour or to such condition as may be prescribed by the department.

(12) "Pollution" means any damage or injury to ground or surface waters, soil or air resulting from the unauthorized loss, escape, or disposal of any substances at any well subject to the provisions of this chapter.

(13) "Shut-in" means to adequately cap or seal a well to control the contained geothermal resources for an interim period.

(14) "Waste," in addition to its ordinary meaning, shall mean "physical waste" as that term is generally understood and shall include:

(a) The inefficient, excessive, or improper use of, or unnecessary dissipation of, reservoir energy; or the locating, spacing, drilling, equipping, operating or producing of any geothermal energy well in a manner which results, or tends to result, in reducing the quantity of geothermal energy to be recovered from any geothermal area in this state;

(b) The inefficient above-ground transporting or storage of geothermal energy; or the locating, spacing, drilling, equipping, operating, or producing of any geothermal well in a manner causing, or tending to cause, unnecessary excessive surface loss or destruction of geothermal energy;

(c) The escape into the open air, from a well of steam or hot water, in excess of what is reasonably necessary in the efficient development or production of a geothermal well.

(15) "Well" means any excavation made for the discovery or production of geothermal resources, or any special facility, converted producing facility, or reactivated or converted abandoned facility used for the reinjection of geothermal resources, or the residue thereof underground. [2013 c 274 § 2; 1974 ex.s. c 43 § 3. Formerly RCW 79.76.030.]

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

Findings—Intent—2013 c 274: "The legislature finds that:

(1) Because related geothermal resources may be present on contiguous private, state, and federal lands within the state, there is a need to provide greater conformity with the state's geothermal resources statutes and the federal statutes defining geothermal resources and clarify that ownership of geothermal resources resides with the surface owner unless the interest is otherwise reserved or conveyed.

(2) It is in the public interest to encourage and foster the development of geothermal resources in the state, and the legislature intends to align the state statutes defining geothermal resources with current federal law with which developers are familiar, and clarify the respective regulatory roles of state agencies.

(3) Geothermal resources suitable for energy development are located at much greater depths than the aquifers relied upon for other beneficial uses, but in the event that a geothermal well draws from the same source as other uses, a coordinated and streamlined permitting of geothermal development can better ensure that any interference with existing water uses will be addressed and eliminated. It is the intent of this act that no water uses associated with a geothermal well impair any water use authorized through appropriation under Title 90 RCW.

(4) Changes to federal law in 2005 require a distribution of a portion of geothermal energy revenues from leases on federal land directly to the county in which the lease activity occurs, and therefore it is appropriate that the additional distribution to the state be provided for statewide uses relating to geothermal energy assessment, exploration, and production." [2013 c 274 § 1.]

78.60.040 Geothermal resources deemed sui generis.

Notwithstanding any other provision of law, geothermal resources are found and hereby determined to be sui generis, being neither a mineral resource nor a water resource and as such are declared to be the private property of the holder of the title to the surface land above the resource, unless the geothermal resources have been otherwise reserved by or conveyed to another person or entity. Nothing in this section divests the people of the state of any rights, title, or interest in geothermal resources owned by the state. [2013 c 274 § 3; 1979 ex.s. c 2 § 1; 1974 ex.s. c 43 § 4. Formerly RCW 79.76.040.]

Findings—Intent—2013 c 274: See note following RCW 78.60.030.

Additional notes found at www.leg.wa.gov

78.60.060 Scope of chapter. (1) This chapter is intended to preempt local regulation of the drilling and operation of wells for geothermal resources but shall not be construed to permit the locating of any well or drilling when such well or drilling is prohibited under state or local land use law or regulations promulgated thereunder. Geothermal resources, by-products, or waste products which have escaped or been released from the energy transfer system or a mineral recovery process shall be subject to provisions of state law relating to the pollution of ground or surface waters (Title 90 RCW), provisions of the state fisheries law and the state game laws (Title 77 RCW), and any other state environmental pollution control laws.

(2) Authorization for a consumptive or nonconsumptive use of water associated with a geothermal well, for purposes including but not limited to power production, greenhouse heating, warm water fish propagation, space heating plants, irrigation, swimming pools, and hot springs baths, shall be subject to the appropriation procedure as provided in Title 90 RCW, except for the following:

(a) Water that is removed from an aquifer or geothermal reservoir to develop and obtain geothermal resources if the water is returned to or reinjected into the same aquifer or reservoir; or

(b) The reasonable loss of water:

(i) During a test of a geothermal well; or

(ii) From the temporary failure of all or part of a system that removes water from an aquifer or geothermal reservoir, transfers the heat from that water, and reinjects that water into the same aquifer or reservoir.

(3) The department and the department of ecology shall cooperate to avoid duplication and to promote efficiency in issuing permits and other approvals for these uses.

(4) Nothing in chapter 274, Laws of 2013 shall affect or operate to impair any existing water rights. [2013 c 274 § 4; 2003 c 39 § 40; 1974 ex.s. c 43 § 6. Formerly RCW 79.76.060.]

Findings—Intent—2013 c 274: See note following RCW 78.60.030.

78.60.110 Suspension of drilling, shut-in or removal of equipment for authorized period—Unlawful abandonment.

(1) The department may authorize the operator to suspend drilling operations, shut-in a completed well, or remove equipment from a well for the period stated in the department's written authorization. The period of suspension may be extended by the department upon the operator showing good cause for the granting of such extension.

(2) If drilling operations are not resumed by the operator, or the well is not put into production, upon expiration of the suspension or shut-in permit, an intention to unlawfully abandon shall be presumed.

(3) A well shall also be deemed unlawfully abandoned if, without written approval from the department, drilling equipment is removed.

(4) An unlawful abandonment under this chapter shall be entered in the department records and written notice thereof shall be mailed by registered mail both to such operator at his or her last known address as disclosed by records of the department and to the operator's surety. The department may thereafter proceed against the operator and his or her surety. [2013 c 23 § 254; 1974 ex.s. c 43 § 11. Formerly RCW 79.76.110.]

78.60.170 Designation of resident agent for service of process.

Each owner or operator of a well shall designate a person who resides in this state as his or her agent upon whom may be served all legal processes, orders, notices, and directives of the department or any court. [2013 c 23 § 255; 1974 ex.s. c 43 § 17. Formerly RCW 79.76.170.]

78.60.250 Violations—Modification of permit, when necessary—Departmental order—Issuance—Appeal.

Whenever it appears with probable cause to the department that:

(1) A violation of any provision of this chapter, regulation adopted pursuant thereto, or condition of a permit issued pursuant to this chapter has occurred or is about to occur, or

(2) That a modification of a permit is deemed necessary to carry out the purpose of this chapter,

the department shall issue a written order in person to the operator or his or her employees or agents, or by certified mail, concerning the drilling, testing, or other operation conducted with respect to any well drilled, in the process of being drilled, or in the process of being abandoned or in the process of reclamation or restoration, and the operator, owner, or designated agent of either shall comply with the terms of the order and may appeal from the order in the manner provided for in RCW 78.60.280. When the department deems necessary, the order may include a shutdown order to remain in effect until the deficiency is corrected. [2013 c 23 § 256; 1974 ex.s. c 43 § 25. Formerly RCW 79.76.250.]

Title 79

PUBLIC LANDS

Chapters

- 79.02 Public lands management—General.**
- 79.10 Land management authorities and policies.**
- 79.14 Mineral, coal, oil, and gas leases.**

- 79.15 Sale of valuable materials.
- 79.17 Land transfers.
- 79.22 Acquisition, management, and disposition of state forest lands.
- 79.24 Capitol building lands.
- 79.44 Assessments and charges against lands of the state.
- 79.64 Funds for managing and administering lands.
- 79.100 Derelict vessels.
- 79.105 Aquatic lands—General.
- 79.135 Aquatic lands—Oysters, geoducks, shellfish, other aquacultural uses, and marine aquatic plants.
- 79.155 Community forest trusts.

Chapter 79.02 RCW

PUBLIC LANDS MANAGEMENT—GENERAL

Sections

- 79.02.150 Selection to complete uncompleted grants.

79.02.150 Selection to complete uncompleted grants.

So long as any grant of lands by the United States to the state of Washington, for any purpose, or as lieu or indemnity lands therefor, remains incomplete, the commissioner of public lands shall, from time to time, cause the records in his or her office and in the United States land offices, to be examined for the purpose of ascertaining what of the unappropriated lands of the United States are open to selection, and whether any thereof may be of sufficient value and so situated as to warrant their selection as state lands, and in that case may cause the same to be inspected and appraised by one or more state land inspectors, and a full report made thereon by the smallest legal subdivisions of forty acres each, classifying such lands into grazing, farming, and timbered lands, and estimating the value of each tract inspected and the quantity and value of all valuable material thereon, and in the case of timbered lands the amount and value of the standing timber thereon, and the estimated value of such lands after the timber is removed, which report shall be made as amply and expeditiously as possible on blanks to be furnished by the commissioner of public lands for that purpose, under the oath of the inspector to the effect that he or she has personally examined the tracts mentioned in each forty acres thereof, and that said report and appraisal is made from such personal examination, and is, to the best of affiant's knowledge and belief, true and correct, and that the lands are not occupied by any bona fide settler.

The commissioner of public lands shall select such unappropriated lands as he or she shall deem advisable, and do all things necessary under the laws of the United States to vest title thereto in the state, and shall assign lands of equal value, as near as may be, to the various uncompleted grants. [2013 c 23 § 257; 1927 c 255 § 19; RRS § 7797-19. Prior: 1897 c 89 §§ 5, 7, 9, 10. Formerly RCW 79.01.076, 79.08.050.]

Lieu lands: Chapter 79.02 RCW.

Chapter 79.10 RCW

LAND MANAGEMENT AUTHORITIES AND POLICIES

Sections

- 79.10.130 Scope of department's authorized activities.

79.10.130 Scope of department's authorized activities. (1) The department is hereby authorized to carry out all activities necessary to achieve the purposes of RCW 79.10.060, 79.10.070, 79.10.100 through 79.10.120, 79.10.130, 79.10.200 through 79.10.330, 79.44.003, and 79.105.050 including, but not limited to:

(a) Planning, construction, and operation of conservation, recreational sites, areas, roads, and trails, by itself or in conjunction with any public agency, nonprofit organization, volunteer, or volunteer organization, including entering cooperative agreements for these purposes;

(b) Planning, construction, and operation of special facilities for educational, scientific, conservation, or experimental purposes by itself or in conjunction with any other public or private agency, including entering cooperative agreements for these purposes;

(c) Improvement of any lands to achieve the purposes of RCW 79.10.060, 79.10.070, 79.10.100 through 79.10.120, 79.10.130, 79.10.200 through 79.10.330, 79.44.003, and 79.105.050, including entering cooperative agreements with public agencies, nonprofit organizations, volunteers, and volunteer organizations for these purposes;

(d) Entering cooperative agreements with public agencies, nonprofit organizations, volunteers, and volunteer organizations regarding the use of lands managed by the department for the purpose of providing a benefit to lands managed by the department, including but not limited to the following benefits: The utilization of such lands for watershed purposes; carrying out restoration and enhancement projects on such lands, such as improving, restoring, or enhancing habitat that provides for plant or animal species protection; improving, restoring, or enhancing watershed conditions; removing nonnative vegetation and providing vegetation management to restore, enhance, or maintain properly functioning conditions of the local ecosystem; and other similar projects on these lands that provide long-term environmental and other land management benefits, provided that the cooperative agreements are consistent with land management obligations;

(e) Authorizing individual volunteers and volunteer organizations to conduct restoration and enhancement projects on lands managed by the department through cooperative agreements authorized in this section or other arrangements that are consistent with land management obligations and that do not require the volunteers to pay a fee for the cooperative agreement purpose;

(f) Authorizing the receipt of gifts of personal property, services, and other items of value for the purposes of this section, as well as the exchange of consideration in cooperative agreements authorized under this section;

(g) The authority to make such leases, contracts, agreements, or other arrangements as are necessary to accomplish the purposes of RCW 79.10.060, 79.10.070, 79.10.100 through 79.10.120, 79.10.130, 79.10.200 through 79.10.330, 79.44.003, and 79.105.050. However, nothing in this section

shall affect any existing requirements for public bidding or auction with private agencies or parties, except that agreements or other arrangements may be made with public schools, colleges, universities, governmental agencies, non-profit organizations, volunteers, and volunteer organizations. In addition, nothing in this section is intended to conflict with the department's trust obligations.

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

(a) "Nonprofit organization" means: (i) Any organization described in section 501(c)(3) of the internal revenue code of 1986 (26 U.S.C. Sec. 501(c)(3)) and exempt from tax under section 501(a) of the internal revenue code; or (ii) any not-for-profit organization that is organized and conducted for public benefit and operated primarily for charitable, civic, educational, religious, welfare, or health purposes.

(b) "Volunteer" or "volunteer organization" means an individual or entity performing services for a nonprofit organization or a governmental entity who does not receive compensation, other than reasonable reimbursement or allowances for expenses actually incurred, or any other thing of value, in excess of five hundred dollars per year. "Volunteer" includes a volunteer serving as a director, officer, trustee, or direct service volunteer. [2013 c 15 § 1; 2003 c 334 § 540; 1987 c 472 § 12; 1971 ex.s. c 234 § 7. Formerly RCW 79.68.070.]

Intent—2003 c 334: See note following RCW 79.02.010.

Additional notes found at www.leg.wa.gov

Chapter 79.14 RCW

MINERAL, COAL, OIL, AND GAS LEASES

(Formerly: Oil and gas leases on state lands)

Sections

79.14.060 Surrender of lease—Liability.

79.14.060 Surrender of lease—Liability. Every lessee shall have the option of surrendering his or her lease as to all or any portion or portions of the land covered thereby at any time and shall be relieved of all liability thereunder with respect to the land so surrendered except for monetary payments theretofore accrued and except for physical damage to the premises embraced by his or her lease which have been occasioned by his or her operations. [2013 c 23 § 258; 1955 c 131 § 6. Prior: 1937 c 161 §§ 8, 10. Formerly RCW 78.28.330.]

Chapter 79.15 RCW

SALE OF VALUABLE MATERIALS

Sections

79.15.510 Contract harvesting—Program established. (*Effective until January 1, 2019.*)

79.15.510 Contract harvesting—Program established. (*Effective January 1, 2019.*)

79.15.510 Contract harvesting—Program established. (*Effective until January 1, 2019.*) (1) The department may establish a contract harvesting program for directly contracting for the removal of timber and other valuable

materials from state lands and for conducting silvicultural treatments consistent with RCW 79.15.540.

(2) The contract requirements must be compatible with the office of financial management's guide to public service contracts.

(3) The department may not use contract harvesting for more than twenty percent of the total annual volume of timber offered for sale. However, volume removed primarily to address an identified forest health issue under RCW 79.15.540 may not be included in calculating the annual limit of contract harvesting sales. Forest biomass resulting from harvesting to address an identified forest health issue under RCW 79.15.540 may be utilized in accordance with chapter 79.150 RCW. [2010 c 126 § 11; 2009 c 418 § 2; 2004 c 218 § 6; 2003 c 313 § 3.]

Expiration date—2013 c 255; 2010 c 126 § 11: "Section 11 of this act expires January 1, 2019." [2013 c 255 § 2; 2010 c 126 § 15.]

Findings—Intent—2009 c 418: "The legislature finds that it is in the best interest of the trust beneficiaries to capture additional revenues while providing for additional environmental protection and improving forest health on state trust lands. Further, the legislature finds that contract harvesting is one method to achieve these desired outcomes while also providing the department of natural resources with the ability to offer opportunities to merchandise high value wood. The legislature intends that the department of natural resources should have the ability to expand their contract sales in areas where other sales do not generate as much revenue or provide resource management benefits. The legislature further intends that the department of natural resources distribute the increased contract harvest authority across all trusts and markets." [2009 c 418 § 1.]

Expiration date—2013 c 255; 2009 c 418: "This act expires January 1, 2019." [2013 c 255 § 1; 2009 c 418 § 7.]

Effective date—2004 c 218: See note following RCW 76.06.140.

Findings—Severability—2003 c 313: See notes following RCW 79.15.500.

79.15.510 Contract harvesting—Program established. (*Effective January 1, 2019.*) (1) The department may establish a contract harvesting program for directly contracting for the removal of timber and other valuable materials from state lands and for conducting silvicultural treatments consistent with RCW 79.15.540.

(2) The contract requirements must be compatible with the office of financial management's guide to public service contracts.

(3) The department may not use contract harvesting for more than ten percent of the total annual volume of timber offered for sale. However, volume removed primarily to address an identified forest health issue under RCW 79.15.540 may not be included in calculating the annual limit of contract harvesting sales. Forest biomass resulting from harvesting to address an identified forest health issue under RCW 79.15.540 may be utilized in accordance with chapter 79.150 RCW. [2010 c 126 § 12; 2004 c 218 § 6; 2003 c 313 § 3.]

Effective date—2013 c 255; 2010 c 126 § 12: "Section 12 of this act takes effect January 1, 2019." [2013 c 255 § 3; 2010 c 126 § 16.]

Effective date—2004 c 218: See note following RCW 76.06.140.

Findings—Severability—2003 c 313: See notes following RCW 79.15.500.

Chapter 79.17 RCW
LAND TRANSFERS

Sections

79.17.010	Exchange of state lands—Purposes—Conditions.
79.17.020	Exchange of lands to consolidate and block up holdings or obtain lands having commercial recreational leasing potential—Consultation with interested parties.
79.17.210	Real property asset base—Natural resources real property replacement account.

79.17.010 Exchange of state lands—Purposes—Conditions. (1) The department, with the approval of the board, may exchange any state land and any timber thereon for any land of equal value in order to:

- (a) Facilitate the marketing of forest products of state lands;
- (b) Consolidate and block-up state lands;
- (c) Acquire lands having commercial recreational leasing potential;
- (d) Acquire county-owned lands;
- (e) Acquire urban property which has greater income potential or which could be more efficiently managed by the department in exchange for state urban lands as defined in RCW 79.19.100; or
- (f) Acquire any other lands when such exchange is determined by the board to be in the best interest of the trust for which the state land is held.

(2) Land exchanged under this section shall not be used to reduce the publicly owned forest land base.

(3) The board shall determine that each land exchange is in the best interest of the trust for which the land is held prior to authorizing the land exchange.

(4)(a) During the biennium ending June 30, 2013, for the purposes of maintaining working farm and forest landscapes or acquiring natural resource lands at risk of development, the department, with approval of the board of natural resources, may exchange any state land and any timber thereon for any land and proceeds of equal value, when it can be demonstrated that the trust fiduciary obligations can be better fulfilled after an exchange is completed. Proceeds may be in the form of cash or services in order to achieve the purposes established in this section. Any cash received as part of an exchange transaction shall be deposited in the resource management cost account to pay for administrative expenses incurred in carrying out an exchange transaction. These administrative expenses include road maintenance and abandonment expenses. The amount of proceeds received from the exchange partner may not exceed five percent of the total value of the exchange. The receipt of proceeds shall not change the character of the transaction from an exchange to a sale.

(b) During the biennium ending June 30, 2015, for the purposes of maintaining working farm and forest landscapes or acquiring natural resource lands at risk of development, the department, with approval of the board of natural resources, may exchange any state land and any timber thereon for any land and proceeds of equal value, when it can be demonstrated that the trust fiduciary obligations can be better fulfilled after an exchange is completed. Proceeds may be in the form of cash or services in order to achieve the purposes established in this section. Any cash received as part of an exchange transaction shall be deposited in the resource

management cost account to pay for administrative expenses incurred in carrying out an exchange transaction. These administrative expenses include road maintenance and abandonment expenses. The amount of proceeds received from the exchange partner may not exceed five percent of the total value of the exchange. The receipt of proceeds shall not change the character of the transaction from an exchange to a sale.

(5) Prior to executing an exchange under this section, and in addition to the public notice requirements set forth in RCW 79.17.050, the department shall consult with legislative members, other state and federal agencies, local governments, tribes, local stakeholders, conservation groups, and any other interested parties to identify and address cultural resource issues and the potential of the state lands proposed for exchange to be used for open space, park, school, or critical habitat purposes. [2013 2nd sp.s. c 19 § 7034; 2012 2nd sp.s. c 2 § 6006; 2009 c 497 § 6024; 2008 c 328 § 6012. Prior: 2003 1st sp.s. c 25 § 939; 2003 c 334 § 452; 1987 c 113 § 1; 1983 c 261 § 1; 1973 1st ex.s. c 50 § 2; 1961 c 77 § 4; 1957 c 290 § 1. Formerly RCW 79.08.180.]

Effective date—2013 2nd sp.s. c 19: See note following RCW 43.34.080.

Effective date—2012 2nd sp.s. c 2: See note following RCW 43.155.050.

Effective date—2009 c 497: See note following RCW 28B.15.210.

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

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

Intent—2003 c 334: See note following RCW 79.02.010.

Exchange to block up holdings: RCW 79.17.020, 79.17.060.

79.17.020 Exchange of lands to consolidate and block up holdings or obtain lands having commercial recreational leasing potential—Consultation with interested parties.

(1) The board of county commissioners of any county and/or the mayor and city council or city commission of any city or town and/or the board shall have authority to exchange, each with the other, or with the federal forest service, the federal government or any proper agency thereof and/or with any private landowner, county land of any character, land owned by municipalities of any character, and state forest land owned by the state under the jurisdiction of the department, for real property of equal value for the purpose of consolidating and blocking up the respective land holdings of any county, municipality, the federal government, or the state of Washington or for the purpose of obtaining lands having commercial recreational leasing potential.

(2)(a) During the biennium ending June 30, 2013, for the purposes of maintaining working farm and forest landscapes or acquiring natural resource lands at risk of development, the department, with approval of the board of natural resources, may exchange any state land and any timber thereon for any land and proceeds of equal value, when it can be demonstrated that the trust fiduciary obligations can be better fulfilled after an exchange is completed. Proceeds may be in the form of cash or services in order to achieve the purposes established in this section. Any cash received as part of an exchange transaction shall be deposited in the forest development account to pay for administrative expenses

incurred in carrying out an exchange transaction. These administrative expenses include road maintenance and abandonment expenses. The amount of proceeds received from the exchange partner may not exceed five percent of the total value of the exchange. The receipt of proceeds shall not change the character of the transaction from an exchange to a sale.

(b) During the biennium ending June 30, 2015, for the purposes of maintaining working farm and forest landscapes or acquiring natural resource lands at risk of development, the department, with approval of the board of natural resources, may exchange any state land and any timber thereon for any land and proceeds of equal value, when it can be demonstrated that the trust fiduciary obligations can be better fulfilled after an exchange is completed. Proceeds may be in the form of cash or services in order to achieve the purposes established in this section. Any cash received as part of an exchange transaction shall be deposited in the forest development account to pay for administrative expenses incurred in carrying out an exchange transaction. These administrative expenses include road maintenance and abandonment expenses. The amount of proceeds received from the exchange partner may not exceed five percent of the total value of the exchange. The receipt of proceeds shall not change the character of the transaction from an exchange to a sale.

(3) Prior to executing an exchange under this section, and in addition to the public notice requirements set forth in RCW 79.17.050, the department shall consult with legislative members, other state and federal agencies, local governments, tribes, local stakeholders, conservation groups, and any other interested parties to identify and address cultural resource issues, and the potential of the state lands proposed for exchange to be used for open space, park, school, or critical habitat purposes. [2013 2nd sp.s. c 19 § 7035; 2012 2nd sp.s. c 2 § 6007; 2009 c 497 § 6025; 2008 c 328 § 6013. Prior: 2003 1st sp.s. c 25 § 937; 2003 c 334 § 209; 1973 1st ex.s. c 50 § 1; 1961 c 77 § 1; 1937 c 77 § 1; RRS § 5812-3e. Formerly RCW 76.12.050.]

Effective date—2013 2nd sp.s. c 19: See note following RCW 43.34.080.

Effective date—2012 2nd sp.s. c 2: See note following RCW 43.155.050.

Effective date—2009 c 497: See note following RCW 28B.15.210.

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

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

Intent—2003 c 334: See note following RCW 79.02.010.

79.17.210 Real property asset base—Natural resources real property replacement account. (1) The legislature finds that the department has a need to maintain the real property asset base it manages and needs an accounting mechanism to complete transactions without reducing the real property asset base.

(2) The natural resources real property replacement account is created in the state treasury. This account shall consist of funds transferred or paid for the disposal or transfer of real property by the department under RCW 79.17.200 and the transfer of state lands or state forest lands into community

forest trust lands under RCW 79.155.040. The funds in this account shall be used solely for the acquisition of replacement real property and may be spent only when, and as, authorized by legislative appropriation. During the 2013-2015 fiscal biennium, funds in the account may also be appropriated for the land purchase in section 3245, chapter 19, Laws of 2013 2nd sp. sess. under the provisions of section 3245, chapter 19, Laws of 2013 2nd sp. sess. and chapter 11, Laws of 2013 2nd sp. sess. [2013 2nd sp.s. c 19 § 7041; 2011 c 216 § 13; 2003 c 334 § 118; 1992 c 167 § 1. Formerly RCW 43.30.265.]

Effective date—2013 2nd sp.s. c 19: See note following RCW 43.34.080.

Intent—2003 c 334: See note following RCW 79.02.010.

Chapter 79.22 RCW ACQUISITION, MANAGEMENT, AND DISPOSITION OF STATE FOREST LANDS

Sections

79.22.120 Reconveyance to county of certain leased lands.

79.22.120 Reconveyance to county of certain leased lands. If the board of natural resources determines that any forest lands deeded to the board or the state pursuant to this chapter, which are leased to any county for uses which have as one permitted use a sanitary landfill and/or transfer station, are no longer appropriate for management by the board, the board may reconvey all of the lands included within any such lease to that county. Reconveyance shall be by quitclaim deed executed by the chair of the board. Upon execution of such deed, full legal and equitable title to such lands shall be vested in that county, and any leases on such lands shall terminate. A county that receives any such reconveyed lands shall indemnify and hold the state of Washington harmless from any liability or expense arising out of the reconveyed lands. [2013 c 23 § 259; 1991 c 10 § 1. Formerly RCW 76.12.067.]

Chapter 79.24 RCW CAPITOL BUILDING LANDS

Sections

79.24.030 Employment of assistants—Payment of expenses.
79.24.150 Bonds as security and legal investment.
79.24.660 Bonds as security and legal investment.

79.24.030 Employment of assistants—Payment of expenses. The board of natural resources and the department of natural resources may employ such cruisers, drafters, engineers, architects, or other assistants as may be necessary for the best interests of the state in carrying out the provisions of RCW 79.24.010 through 79.24.085, and all expenses incurred by the board and department, and all claims against the capitol building construction account shall be audited by the department and presented in vouchers to the state treasurer, who shall draw a warrant therefor against the capitol building construction account as herein provided or out of any appropriation made for such purpose. [2013 c 23 § 260; 1988 c 128 § 62; 1985 c 57 § 76; 1973 c 106 § 37; 1959 c 257 § 43; 1911 c 59 § 12; 1909 c 69 § 7; RRS § 7903.]

Additional notes found at www.leg.wa.gov

79.24.150 Bonds as security and legal investment.

Bonds authorized by RCW 79.24.100 through 79.24.160 shall be accepted by the state, counties, cities, towns, school districts, and other political subdivisions as security for the deposit of any of their funds in any banking institution. Any officer of this state, or any county, city, town, school district, or other political subdivision may invest surplus funds, which he or she or it is authorized to invest in securities, and where such authorization is not limited or restricted as to the class of securities in which he or she or it may invest, in bonds issued under RCW 79.24.100 through 79.24.160. [2013 c 23 § 261; 1947 c 186 § 6; Rem. Supp. 1947 § 7921-15.]

79.24.660 Bonds as security and legal investment.

Bonds authorized by RCW 79.24.650 through 79.24.668 shall be accepted by the state, counties, cities, towns, school districts, and other political subdivisions as security for the deposit of any of their funds in any banking institution. Any officer of this state, or any county, city, town, school district, or other political subdivision may invest surplus funds, which he or she or it is authorized to invest in securities, and where such authorization is not limited or restricted as to the class of securities in which he or she or it may invest, in bonds issued under RCW 79.24.650 through 79.24.668. [2013 c 23 § 262; 1969 ex.s. c 272 § 6.]

Chapter 79.44 RCW

ASSESSMENTS AND CHARGES AGAINST LANDS OF THE STATE

Sections

79.44.050	Certification of roll—Penalties, interest.
79.44.100	Assignment of lease or contract to purchaser at foreclosure sale.

79.44.050 Certification of roll—Penalties, interest.

Upon the approval and confirmation of the assessment roll ordered by the proper authorities of any assessing district, the treasurer of such assessing district shall certify and forward to the chief administrative officer of the agency of state government occupying, using, or having jurisdiction over the lands, a statement of all the lots or parcels of land held or owned by the state and charged on such assessment roll, separately describing each such lot or parcel of the state's land, with the amount of the local assessment charged against it, or the proportionate amount assessed against the fee simple interest of the state, in case the land has been leased. The chief administrative officer upon receipt of such statement shall cause a proper record to be made in his or her office of the cost of such assessment upon the lands occupied, used, or under the jurisdiction of his or her agency.

No penalty shall be provided or enforced against the state, and the interest upon such assessments shall be computed and paid at the rate paid by other property situated in the same assessing district. [2013 c 23 § 263; 2002 c 260 § 3; 1989 c 243 § 15; 1979 c 151 § 178; 1963 c 20 § 5; 1933 c 108 § 1; 1919 c 164 § 5; RRS § 8129. Cf. 1909 c 154 § 6; 1907 c 74 §§ 1, 2, 4, 5.]

[2013 RCW Supp—page 910]

79.44.100 Assignment of lease or contract to purchaser at foreclosure sale. Whenever any such tide, state, school, granted, or other lands situated within the limits of any assessing district, has been included within any local improvement district by such assessing district, and the contract, leasehold, or other interest of any individual has been sold to satisfy the lien of such assessment for local improvement, the purchaser of such interest at such sale shall be entitled to receive from the state of Washington, on demand, an assignment of the contract, leasehold, or other interest purchased by him or her, and shall assume, subject to the terms and conditions of the contract or lease, the payment to the state of the amount of the balance which his or her predecessor in interest was obligated to pay. [2013 c 23 § 264; 1963 c 20 § 10; 1919 c 164 § 10; RRS § 8134. Cf. 1909 c 154 § 10.]

Chapter 79.64 RCW FUNDS FOR MANAGING AND ADMINISTERING LANDS

Sections

79.64.020	Resource management cost account—Use.
79.64.040	Deductions from proceeds of all transactions authorized—Limitations.

79.64.020 Resource management cost account—Use.

A resource management cost account in the state treasury is created to be used solely for the purpose of defraying the costs and expenses necessarily incurred by the department in managing and administering state lands, community forest trust lands, and aquatic lands and the making and administering of leases, sales, contracts, licenses, permits, easements, and rights-of-way as authorized under the provisions of this title. Appropriations from the resource management cost account to the department shall be expended for no other purposes. Funds in the resource management cost account may be appropriated or transferred by the legislature for the benefit of all of the trusts from which the funds were derived. During the 2013-2015 fiscal biennium, the legislature may transfer from the aquatics revenues in the resources management cost account to the marine resources stewardship trust account for the purposes of chapter 43.372 RCW. [2013 2nd sp.s. c 4 § 1000; 2011 c 216 § 15; 2008 c 328 § 6004; 2004 c 199 § 226; 2003 c 334 § 520; 1993 c 460 § 1; 1985 c 57 § 80; 1981 c 4 § 2; 1961 c 178 § 2.]

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

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

Part headings not law—2004 c 199: See note following RCW 79.02.010.

Intent—2003 c 334: See note following RCW 79.02.010.

Additional notes found at www.leg.wa.gov

79.64.040 Deductions from proceeds of all transactions authorized—Limitations. (1) The board shall determine the amount deemed necessary in order to achieve the purposes of this chapter and shall provide by rule for the deduction of this amount from the moneys received from all leases, sales, contracts, licenses, permits, easements, and rights-of-way issued by the department and affecting state lands, community forest trust lands, and aquatic lands, pro-

vided that no deduction shall be made from the proceeds from agricultural college lands.

(2) Moneys received as deposits from successful bidders, advance payments, and security under RCW 79.15.100, 79.15.080, and 79.11.150 prior to December 1, 1981, which have not been subjected to deduction under this section are not subject to deduction under this section.

(3) Except as otherwise provided in subsections (4) and (6) of this section, the deductions authorized under this section shall not exceed twenty-five percent of the moneys received by the department in connection with any one transaction pertaining to state lands and aquatic lands other than second-class tide and shore lands and the beds of navigable waters, and fifty percent of the moneys received by the department pertaining to second-class tide and shore lands and the beds of navigable waters.

(4) Deductions authorized under this section for transactions pertaining to community forest trust lands must be established at a level sufficient to defray over time the management costs for activities prescribed in a parcel's management plan adopted pursuant to RCW 79.155.080, and, if deemed appropriate by the board consistent with RCW 79.155.090, to reimburse the state and any local entities' eligible financial contributions for acquisition of the parcel.

(5) In the event that the department sells logs using the contract harvesting process described in RCW 79.15.500 through 79.15.530, the moneys received subject to this section are the net proceeds from the contract harvesting sale.

(6) During the 2011-2013 and 2013-2015 fiscal biennia, the twenty-five percent limitation on deductions set in subsection (3) of this section may be increased up to thirty percent by the board. [2013 2nd sp.s. c 4 § 1001; 2012 2nd sp.s. c 7 § 927. Prior: 2011 1st sp.s. c 50 § 966; 2011 c 216 § 16; 2009 c 564 § 957; 2007 c 522 § 958; 2005 c 518 § 945; 2004 c 199 § 227; prior: 2003 c 334 § 522; 2003 c 313 § 8; 2001 c 250 § 16; 1999 c 279 § 2; 1981 2nd ex.s. c 4 § 3; 1971 ex.s. c 224 § 2; 1967 ex.s. c 63 § 2; 1961 c 178 § 4.]

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

Effective date—2012 2nd sp.s. c 7: See note following RCW 2.68.020.

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

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

Severability—Effective date—2007 c 522: See notes following RCW 15.64.050.

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

Part headings not law—2004 c 199: See note following RCW 79.02.010.

Intent—2003 c 334: See note following RCW 79.02.010.

Findings—Severability—2003 c 313: See notes following RCW 79.15.500.

Additional notes found at www.leg.wa.gov

Chapter 79.100 RCW DERELICT VESSELS

Sections

79.100.040 Obtaining custody of vessel.
79.100.060 Reimbursement for costs.
79.100.100 Derelict vessel removal account.

79.100.120 Contesting an authorized public entity's decision to take temporary custody or possession of a vessel—Contesting the amount of reimbursement.
79.100.130 Private moorage facility owner may contract with a local government—Contract requirements.
79.100.140 Authority to board a vessel—Administrative search warrant.
79.100.150 Transfer of certain vessels—Inspection required—Secondary liability. (*Effective July 1, 2014.*)
79.100.160 Voluntary vessel turn-in program.

79.100.040 Obtaining custody of vessel. (1) Prior to exercising the authority granted in RCW 79.100.030, the authorized public entity must first obtain custody of the vessel. To do so, the authorized public entity must:

(a) Mail notice of its intent to obtain custody, at least twenty days prior to taking custody, to the last known address of the previous owner to register the vessel in any state or with the federal government and to any lien holders or secured interests on record. A notice need not be sent to the purported owner or any other person whose interest in the vessel is not recorded with a state or federal agency;

(b) Post notice of its intent clearly on the vessel for thirty days and publish its intent at least once, more than ten days but less than twenty days prior to taking custody, in a newspaper of general circulation for the county in which the vessel is located; and

(c) Post notice of its intent on the department's internet web site on a page specifically designated for such notices. If the authorized public entity is not the department, the department must facilitate the internet posting.

(2) All notices sent, posted, or published in accordance with this section must, at a minimum, explain the intent of the authorized public entity to take custody of the vessel, the rights of the authorized public entity after taking custody of the vessel as provided in RCW 79.100.030, the procedures the owner must follow in order to avoid custody being taken by the authorized public entity, the procedures the owner must follow in order to reclaim possession after custody is taken by the authorized public entity, and the financial liabilities that the owner may incur as provided for in RCW 79.100.060.

(3)(a) Any authorized public entity may tow, beach, or otherwise take temporary possession of a vessel if the owner of the vessel cannot be located or is unwilling or unable to assume immediate responsibility for the vessel and if the vessel:

(i) Is in immediate danger of sinking, breaking up, or blocking navigational channels; or

(ii) Poses a reasonably imminent threat to human health or safety, including a threat of environmental contamination.

(b) Before taking temporary possession of the vessel, the authorized public entity must make reasonable attempts to consult with the department or the United States coast guard to ensure that other remedies are not available. The basis for taking temporary possession of the vessel must be set out in writing by the authorized public entity within seven days of taking action and be submitted to the owner, if known, as soon thereafter as is reasonable. If the authorized public entity has not already provided the required notice, immediately after taking possession of the vessel, the authorized public entity must initiate the notice provisions in subsection (1) of this section. The authorized public entity must complete the notice requirements of subsection (1) of this section

before using or disposing of the vessel as authorized in RCW 79.100.050.

(4) An authorized public entity may invite the department of ecology to use the authority granted to it under RCW 90.56.410 prior to, or concurrently with, obtaining custody of a vessel under this section. However, this is not a necessary prerequisite to an authorized public entity obtaining custody. [2013 c 291 § 37; 2007 c 342 § 2; 2006 c 153 § 3; 2002 c 286 § 5.]

79.100.060 Reimbursement for costs. (1) The owner of an abandoned or derelict vessel, or any person or entity that has incurred secondary liability under RCW 79.100.150, is responsible for reimbursing an authorized public entity for all reasonable and auditable costs associated with the removal or disposal of the owner's vessel under this chapter. These costs include, but are not limited to, costs incurred exercising the authority granted in RCW 79.100.030, all administrative costs incurred by the authorized public entity during the procedure set forth in RCW 79.100.040, removal and disposal costs, and costs associated with environmental damages directly or indirectly caused by the vessel. An authorized public entity that has taken temporary possession of a vessel may require that all reasonable and auditable costs associated with the removal of the vessel be paid before the vessel is released to the owner.

(2) Reimbursement for costs may be sought from an owner, or any person or entity that has incurred secondary liability under RCW 79.100.150, who is identified subsequent to the vessel's removal and disposal.

(3) If the full amount of all costs due to the authorized public entity under this chapter is not paid to the authorized public entity within thirty days after first notifying the responsible parties of the amounts owed, the authorized public entity or the department may bring an action in any court of competent jurisdiction to recover the costs, plus reasonable attorneys' fees and costs incurred by the authorized public entity. [2013 c 291 § 40; 2006 c 153 § 4; 2002 c 286 § 7.]

79.100.100 Derelict vessel removal account. (1)(a) The derelict vessel removal account is created in the state treasury. All receipts from RCW 79.100.050 and 79.100.060 and those moneys specified in RCW 88.02.640 must be deposited into the account. The account is authorized to receive fund transfers and appropriations from the general fund, deposits from the derelict vessel removal surcharge under RCW 88.02.640(4), as well as gifts, grants, and endowments from public or private sources as may be made from time to time, in trust or otherwise, for the use and benefit of the purposes of this chapter and expend the same or any income according to the terms of the gifts, grants, or endowments provided those terms do not conflict with any provisions of this section or any guidelines developed to prioritize reimbursement of removal projects associated with this chapter.

(b) Moneys in the account may only be spent after appropriation. Expenditures from the account may only be used by the department for developing and administering the vessel turn-in program created in RCW 79.100.160 and to reimburse authorized public entities for up to ninety percent of the total reasonable and auditable administrative, removal, dis-

posal, and environmental damage costs of abandoned or derelict vessels when the previous owner is either unknown after a reasonable search effort or insolvent. Reimbursement may not be made unless the department determines that the public entity has made reasonable efforts to identify and locate the party responsible for the vessel, or any other person or entity that has incurred secondary liability under RCW 79.100.150, regardless of the title of owner of the vessel.

(c) Funds in the account resulting from transfers from the general fund or from the deposit of funds from the watercraft excise tax as provided for under RCW 82.49.030 must be used to reimburse one hundred percent of costs and should be prioritized for the removal of large vessels.

(d) Costs associated with the removal and disposal of an abandoned or derelict vessel under the authority granted in RCW 53.08.320 also qualify for reimbursement from the derelict vessel removal account.

(e) In each biennium, up to twenty percent of the expenditures from the derelict vessel removal account may be used for administrative expenses of the department of licensing and department of natural resources in implementing this chapter.

(2) Priority for use of this account is for the removal of derelict and abandoned vessels that are in danger of sinking, breaking up, or blocking navigation channels, or that present environmental risks such as leaking fuel or other hazardous substances. The department must develop criteria, in the form of informal guidelines, to prioritize removal projects associated with this chapter, but may not consider whether the applicant is a state or local entity when prioritizing. The guidelines must also include guidance to the authorized public entities as to what removal activities and associated costs are reasonable and eligible for reimbursement.

(3) The department must keep all authorized public entities apprised of the balance of the derelict vessel removal account and the funds available for reimbursement. The guidelines developed by the department must also be made available to the other authorized public entities. This subsection (3) must be satisfied by utilizing the least costly method, including maintaining the information on the department's internet web site, or any other cost-effective method.

(4) An authorized public entity may contribute its ten percent of costs that are not eligible for reimbursement by using in-kind services, including the use of existing staff, equipment, and volunteers.

(5) This chapter does not guarantee reimbursement for an authorized public entity. Authorized public entities seeking certainty in reimbursement prior to taking action under this chapter may first notify the department of their proposed action and the estimated total costs. Upon notification by an authorized public entity, the department must make the authorized public entity aware of the status of the fund and the likelihood of reimbursement being available. The department may offer technical assistance and assure reimbursement for up to two years following the removal action if an assurance is appropriate given the balance of the fund and the details of the proposed action. [2013 c 291 § 2; 2010 c 161 § 1161; 2007 c 342 § 4; 2006 c 153 § 6; 2002 c 286 § 11.]

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

79.100.120 Contesting an authorized public entity's decision to take temporary custody or possession of a vessel—Contesting the amount of reimbursement. (1) A person seeking to contest an authorized public entity's decision to take temporary possession or custody of a vessel under this chapter, or to contest the amount of reimbursement owed to an authorized public entity under this chapter, may request a hearing in accordance with this section.

(2)(a) If the contested decision or action was undertaken by a state agency, a written request for a hearing related to the decision or action must be filed with the pollution control hearings board and served on the state agency in accordance with RCW 43.21B.230 (2) and (3) within thirty days of the date the authorized public entity acquires custody of the vessel under RCW 79.100.040, or if the vessel is redeemed before the authorized public entity acquires custody, the date of redemption, or the right to a hearing is deemed waived and the vessel's owner is liable for any costs owed the authorized public entity. In the event of litigation, the prevailing party is entitled to reasonable attorneys' fees and costs.

(b) Upon receipt of a timely hearing request, the pollution control hearings board shall proceed to hear and determine the validity of the decision to take the vessel into temporary possession or custody and the reasonableness of any towing, storage, or other charges permitted under this chapter. Within five business days after the request for a hearing is filed, the pollution control hearings board shall notify the vessel owner requesting the hearing and the authorized public entity of the date, time, and location for the hearing. Unless the vessel is redeemed before the request for hearing is filed, the pollution control hearings board shall set the hearing on a date that is within ten business days of the filing of the request for hearing. If the vessel is redeemed before the request for a hearing is filed, the pollution control hearings board shall set the hearing on a date that is within sixty days of the filing of the request for hearing.

(c) Consistent with RCW 43.21B.305, a proceeding brought under this subsection may be heard by one member of the pollution control hearings board, whose decision is the final decision of the board.

(3)(a) If the contested decision or action was undertaken by a metropolitan park district, port district, city, town, or county, which has adopted rules or procedures for contesting decisions or actions pertaining to derelict or abandoned vessels, those rules or procedures must be followed in order to contest a decision to take temporary possession or custody of a vessel, or to contest the amount of reimbursement owed.

(b) If the metropolitan park district, port district, city, town, or county has not adopted rules or procedures for contesting decisions or actions pertaining to derelict or abandoned vessels, then a person requesting a hearing under this section must follow the procedure established in subsection (2) of this section. [2013 c 291 § 32; 2010 c 210 § 34; 2006 c 153 § 5.]

Intent—Effective dates—Application—Pending cases and rules—2010 c 210: See notes following RCW 43.21B.001.

79.100.130 Private moorage facility owner may contract with a local government—Contract requirements. (1) A private moorage facility owner, as those terms are defined in RCW 88.26.010, may contract with a local govern-

ment for the purpose of participating in the derelict vessel removal program.

(2) If a contract is completed under this section, the local government shall serve as the authorized public entity for the removal of a derelict or abandoned vessel from the property of the private moorage facility owner. The contract must provide for the private moorage facility owner to be financially responsible for the removal and disposal costs that are not reimbursed by the department as provided under RCW 79.100.100, and any additional reasonable administrative costs incurred by the local government during the removal of the derelict or abandoned vessel.

(3) Prior to the commencement of any removal which will seek reimbursement from the derelict vessel removal program, the contract and the proposed vessel removal shall be submitted to the department for review and approval. The local government shall use the procedure specified under RCW 79.100.100(6).

(4) If the private moorage facility owner has already seized the vessel under chapter 88.26 RCW and title has reverted to the moorage facility, the moorage facility is not considered the owner under this chapter for purposes of cost recovery for actions taken under this section. [2013 c 291 § 4; 2011 c 247 § 2; 2007 c 342 § 3.]

79.100.140 Authority to board a vessel—Administrative search warrant. (1) An officer or employee of an authorized public entity, or the department of ecology at the request of an authorized public entity, may, consistent with subsection (2) of this section, board any vessel at any reasonable time for the purpose of:

(a) Administering this chapter, including identifying ownership of a vessel, assessing the structural integrity of a vessel, and assessing whether a vessel meets the criteria described under RCW 79.100.040(3); or

(b) For the department of ecology only, mitigating a potential threat to health, safety, or the environment under the authority provided in chapter 90.56 RCW.

(2)(a) Prior to boarding any vessel under the authority of this section, an officer or employee of an authorized public entity or the department of ecology must apply for and obtain an administrative search warrant in either Thurston county superior court or the superior court in the county where the vessel is located, unless a warrant is not otherwise required by law. The court may issue an administrative search warrant where the court has reasonable cause to believe it is necessary to achieve the purposes of this section.

(b) Prior to requesting an administrative search warrant under this subsection, the officer or employee must make a reasonable effort to contact the owner or the owner's designee and obtain consent to board the vessel.

(3) Nothing in this section affects an authorized public entity's authority to carry out actions under RCW 79.100.040 or any agency's existing authority to enter onto vessels under any other statute. [2013 c 291 § 35.]

79.100.150 Transfer of certain vessels—Inspection required—Secondary liability. (Effective July 1, 2014.) (1) A vessel owner must obtain a vessel inspection under this section prior to transferring a vessel that is:

(a) More than sixty-five feet in length and more than forty years old; and

(b) Either:

(i) Is registered or required to be registered under chapter 88.02 RCW; or

(ii) Is listed or required to be listed under chapter 84.40 RCW.

(2) Where required under subsection (1) of this section, a vessel owner must provide a copy of the vessel inspection documentation to the transferee and, if the department did not conduct the inspection, to the department prior to the transfer.

(3) Failure to comply with the requirements of subsections (1) and (2) of this section will result in the transferor having secondary liability under RCW 79.100.060 if the vessel is later abandoned by the transferee or becomes derelict prior to a subsequent ownership transfer. [2013 c 291 § 38.]

Effective date—2013 c 291 § 38: "Section 38 of this act takes effect July 1, 2014." [2013 c 291 § 48.]

79.100.160 Voluntary vessel turn-in program. (1) The department may develop and administer a voluntary vessel turn-in program.

(2) The purpose of the vessel turn-in program is to allow the department to dismantle and dispose of vessels that pose a high risk of becoming a derelict vessel or abandoned vessel, but that do not yet meet the definition of those terms. The department shall design the program with the goal of dismantling and disposing of as many vessels as available resources allow, particularly those vessels posing the greatest risk of becoming abandoned or derelict in the future.

(3) The department shall disseminate information about the vessel turn-in program, including information about the application process, on its internet site and through appropriate agency publications and information sources as determined by the department. The department shall disseminate this information for a reasonable time as determined by the department prior to accepting applications.

(4) The department shall accept and review vessel turn-in program applications from eligible vessel owners, including private marinas that have gained legal title to a vessel in an advanced state of disrepair, during the time period or periods identified by the department. In order to be eligible for the vessel turn-in program, an applicant must demonstrate to the department's satisfaction that the applicant:

(a) Is a Washington resident or business;

(b) Owns a vessel that is in an advanced state of disrepair, has minimal or no value, and has a high likelihood of becoming an abandoned or derelict vessel; and

(c) Has insufficient resources to properly dispose of the vessel outside of the vessel turn-in program.

(5) Decisions regarding program eligibility and whether to accept a vessel for dismantling and disposal under the turn-in program are within the sole discretion of the department.

(6) The department may take other actions not inconsistent with this section in order to develop and administer the vessel turn-in program.

(7) The department may not spend more than two hundred thousand dollars in any one biennium on the program established in this section. [2013 c 291 § 42.]

Chapter 79.105 RCW AQUATIC LANDS—GENERAL

Sections

79.105.150 Deposit, use of proceeds from sale or lease of aquatic lands or valuable materials therefrom—Aquatic lands enhancement project grant requirements—Aquatic lands enhancement account.

79.105.150 Deposit, use of proceeds from sale or lease of aquatic lands or valuable materials therefrom—Aquatic lands enhancement project grant requirements—Aquatic lands enhancement account. (1) After deduction for management costs as provided in RCW 79.64.040 and payments to towns under RCW 79.115.150(2), all moneys received by the state from the sale or lease of state-owned aquatic lands and from the sale of valuable material from state-owned aquatic lands shall be deposited in the aquatic lands enhancement account which is hereby created in the state treasury. After appropriation, these funds shall be used solely for aquatic lands enhancement projects; for the purchase, improvement, or protection of aquatic lands for public purposes; for providing and improving access to the lands; and for volunteer cooperative fish and game projects. During the 2013-2015 fiscal biennium, the aquatic lands enhancement account may be used to support the shellfish program, the ballast water program, hatcheries, the Puget Sound toxic sampling program at the department of fish and wildlife, the knotweed program at the department of agriculture, actions at the University of Washington for reducing ocean acidification, which may include the creation of a center on ocean acidification, and the Puget SoundCorps program. During the 2013-2015 fiscal biennium, the legislature may transfer from the aquatic lands enhancement account to the geoduck aquaculture research account for research related to shellfish aquaculture.

(2) In providing grants for aquatic lands enhancement projects, the recreation and conservation funding board shall:

(a) Require grant recipients to incorporate the environmental benefits of the project into their grant applications;

(b) Utilize the statement of environmental benefits, consideration, except as provided in RCW 79.105.610, of whether the applicant is a Puget Sound partner, as defined in RCW 90.71.010, whether a project is referenced in the action agenda developed by the Puget Sound partnership under RCW 90.71.310, and except as otherwise provided in RCW 79.105.630, and effective one calendar year following the development and statewide availability of model evergreen community management plans and ordinances under RCW 35.105.050, whether the applicant is an entity that has been recognized, and what gradation of recognition was received, in the evergreen community recognition program created in RCW 35.105.030 in its prioritization and selection process; and

(c) Develop appropriate outcome-focused performance measures to be used both for management and performance assessment of the grants.

(3) To the extent possible, the department should coordinate its performance measure system with other natural resource-related agencies as defined in RCW 43.41.270.

(4) The department shall consult with affected interest groups in implementing this section.

Aquatic Lands—Oysters, Geoducks, Shellfish, Other Aquacultural Uses, and Marine Aquatic Plants

(5) After January 1, 2010, any project designed to address the restoration of Puget Sound may be funded under this chapter only if the project is not in conflict with the action agenda developed by the Puget Sound partnership under RCW 90.71.310. [2013 2nd sp.s. c 4 § 1002. Prior: 2012 2nd sp.s. c 7 § 929; 2012 2nd sp.s. c 2 § 6008; 2011 2nd sp.s. c 9 § 911; 2011 1st sp.s. c 50 § 967; 2010 1st sp.s. c 37 § 949; 2009 c 564 § 959; 2008 c 299 § 28; 2007 c 341 § 32; prior: 2005 c 518 § 946; 2005 c 155 § 121; 2004 c 276 § 914; 2002 c 371 § 923; 2001 c 227 § 7; 1999 c 309 § 919; 1997 c 149 § 913; 1995 2nd sp.s. c 18 § 923; 1994 c 219 § 12; 1993 sp.s. c 24 § 927; 1987 c 350 § 1; 1985 c 57 § 79; 1984 c 221 § 24; 1982 2nd ex.s. c 8 § 4; 1969 ex.s. c 273 § 12; 1967 ex.s. c 105 § 3; 1961 c 167 § 9. Formerly RCW 79.90.245, 79.24.580.]

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

Effective date—2012 2nd sp.s. c 7: See note following RCW 2.68.020.

Effective date—2012 2nd sp.s. c 2: See note following RCW 43.155.050.

Effective dates—2011 2nd sp.s. c 9: See note following RCW 28B.50.837.

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

Effective date—2010 1st sp.s. c 37: See note following RCW 13.06.050.

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

Short title—2008 c 299: See note following RCW 35.105.010.

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

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

Severability—Effective date—2004 c 276: See notes following RCW 43.330.167.

Findings—Intent—2001 c 227: See note following RCW 43.41.270.

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

Additional notes found at www.leg.wa.gov

Chapter 79.135 RCW

AQUATIC LANDS—OYSTERS, GEODUCKS, SHELLFISH, OTHER AQUACULTURAL USES, AND MARINE AQUATIC PLANTS

Sections

79.135.210 Geoduck harvesting—Agreements, regulation—Geoduck diver safety program.

79.135.210 Geoduck harvesting—Agreements, regulation—Geoduck diver safety program. (1) Except as provided in RCW 79.135.040, geoducks shall be sold as valuable materials under the provisions of *chapter 79.90 RCW. After confirmation of the sale, the department may enter into an agreement with the purchaser for the harvesting of geoducks. The department may place terms and conditions in the harvesting agreements as the department deems necessary. The department may enforce the provisions of any harvesting agreement by suspending or canceling the harvesting agreement or through any other means contained in the harvesting agreement. Any geoduck harvester may terminate a harvesting agreement entered into pursuant to this subsection if actions of a governmental agency, beyond the control of the harvester, its agents, or its employees, prohibit harvesting, for

a period exceeding thirty days during the term of the harvesting agreement, except as provided within the agreement. Upon termination of the agreement by the harvester, the harvester shall be reimbursed by the department for the cost paid to the department on the agreement, less the value of the harvest already accomplished by the harvester under the agreement.

(2) Harvesting agreements under this title for the purpose of harvesting geoducks shall require the harvester and the harvester's agent or representatives to comply with all applicable commercial diving safety standards and regulations promulgated and implemented by the federal occupational safety and health administration established under the federal occupational safety and health act of 1970 as the law exists or as amended (84 Stat. 1590 et seq.; 29 U.S.C. Sec. 651 et seq.). However, for the purposes of this section and RCW 77.60.070, all persons who dive for geoducks are deemed to be employees as defined by the federal occupational safety and health act. All harvesting agreements shall provide that failure to comply with these standards is cause for suspension or cancellation of the harvesting agreement. Further, for the purposes of this subsection if the harvester contracts with another person or entity for the harvesting of geoducks, the harvesting agreement shall not be suspended or canceled if the harvester terminates its business relationship with such an entity until compliance with this subsection is secured.

(3) Beginning January 1, 2015, geoduck divers licensed under RCW 77.65.410 must annually complete the geoduck diver safety program established in RCW 43.30.560 in order to be maintained on a department of natural resources' harvest agreement plan of operation. [2013 c 204 § 6. Prior: 2005 c 155 § 708; 2005 c 113 § 3; 2003 c 39 § 43; 1990 c 163 § 4; 1982 1st ex.s. c 21 § 141. Formerly RCW 79.96.080.]

***Reviser's note:** Chapter 79.90 RCW was recodified and/or repealed in its entirety by 2005 c 155.

Chapter 79.155 RCW COMMUNITY FOREST TRUSTS

Sections

79.155.140 Distribution of an amount in lieu of real property taxes.

79.155.140 Distribution of an amount in lieu of real property taxes. The state treasurer, on behalf of the department, must distribute to counties for all lands acquired from private landowners for the purposes of this chapter an amount in lieu of real property taxes equal to the amount of tax that would be due if the land were taxable as open space land under chapter 84.34 RCW except taxes levied for any state purpose, plus an additional amount equal to the amount of weed control assessment that would be due if such lands were privately owned. The county assessor and county legislative authority shall assist in determining the appropriate calculation of the amount of tax that would be due. The county shall distribute the amount received under this section in lieu of real property taxes to all property taxing districts except the state in appropriate tax code areas the same way it would distribute local property taxes from private property. The county shall distribute the amount received under this section for weed control to the appropriate weed district. [2013 2nd sp.s. c 11 § 14.]

Title 79A

PUBLIC RECREATIONAL LANDS

Chapters

- 79A.05 Parks and recreation commission.**
79A.25 Recreation and conservation funding board.
79A.30 Washington state horse park.
79A.60 Regulation of recreational vessels.
79A.65 Commission moorage facilities.
79A.80 Access to recreational lands.

Chapter 79A.05 RCW

PARKS AND RECREATION COMMISSION

Sections

- 79A.05.085 Lease of park lands for television stations—Lease rental rates, terms—Attachment of antennae.
 79A.05.105 Withdrawal of granted lands on public highways.
 79A.05.187 Transfer of ownership of commission-owned vessel—Review of vessel's physical condition.
 79A.05.189 Transfer of ownership of commission-owned vessel—Further requirements.
 79A.05.215 State parks renewal and stewardship account. (*Effective until June 30, 2017.*)
 79A.05.700 Declaration.

79A.05.085 Lease of park lands for television stations—Lease rental rates, terms—Attachment of antennae. The commission shall determine the fair market value for television station leases based upon independent appraisals and existing leases for television stations shall be extended at said fair market rental for at least one period of not more than twenty years: PROVIDED, That the rates in said leases shall be renegotiated at five year intervals: PROVIDED FURTHER, That said stations shall permit the attachment of antennae of publicly operated broadcast and microwave stations where electronically practical to combine the towers: PROVIDED FURTHER, That notwithstanding any term to the contrary in any lease, this section shall not preclude the commission from prescribing new and reasonable lease terms relating to the modification, placement, or design of facilities operated by or for a station, and any extension of a lease granted under this section shall be subject to this proviso: PROVIDED FURTHER, That notwithstanding any other provision of law the director in his or her discretion may waive any requirement that any environmental impact statement or environmental assessment be submitted as to any lease negotiated and signed between January 1, 1974, and December 31, 1974. [2013 c 23 § 265; 1974 ex.s. c 151 § 1. Formerly RCW 43.51.063.]

79A.05.105 Withdrawal of granted lands on public highways. Inasmuch as the value of land with standing timber is increasing and will continue to increase from year to year and no loss will be caused to the common school fund or other fund into which the proceeds of the sale of any land held by the state would be paid by postponing the sale thereof, the commissioner of public lands may, upon his or her own motion, and shall, when directed so to do by the state parks and recreation commission, withdraw from sale any land held by the state abutting on any public highway and certify to the commission that such land is withheld from sale pursuant to the terms of this section.

Such lands shall not be sold until directed by the legislature, and shall in the meantime be under the care, charge, control, and supervision of the commission. [2013 c 23 § 266; 1965 c 8 § 43.51.100. Prior: 1921 c 149 § 4; RRS § 10944. Formerly RCW 43.51.100.]

79A.05.187 Transfer of ownership of commission-owned vessel—Review of vessel's physical condition. (1) Prior to transferring ownership of a commission-owned vessel, the commission shall conduct a thorough review of the physical condition of the vessel, the vessel's operating capability, and any containers and other materials that are not fixed to the vessel.

(2) If the commission determines the vessel is in a state of advanced deterioration or poses a reasonably imminent threat to human health or safety, including a threat of environmental contamination, that the commission may: (a) Not transfer the vessel until the conditions identified under this subsection have been corrected; or (b) permanently dispose of the vessel by landfill, deconstruction, or other related method.

(3) Vessels taken into custody under chapter 79.100 RCW are not subject to this section or RCW 79A.05.189. [2013 c 291 § 11.]

79A.05.189 Transfer of ownership of commission-owned vessel—Further requirements. (1) Following the inspection required under RCW 79A.05.187 and prior to transferring ownership of a commission-owned vessel, the commission shall obtain the following from the transferee:

(a) The purposes for which the transferee intends to use the vessel; and

(b) Information demonstrating the prospective owner's intent to obtain legal moorage following the transfer, in the manner determined by the commission.

(2)(a) The commission shall remove any containers or other materials that are not fixed to the vessel and contain hazardous substances, as defined under RCW 70.105D.020.

(b) However, the commission may transfer a vessel with:

(i) Those containers or materials described under (a) of this subsection where the transferee demonstrates to the commission's satisfaction that the container's or material's presence is consistent with the anticipated use of the vessel; and

(ii) A reasonable amount of fuel as determined by the commission, based on factors including the vessel's size, condition, and anticipated use of the vessel, including initial destination following transfer.

(c) The commission may consult with the department of ecology in carrying out the requirements of this subsection.

(3) Prior to sale, and unless the vessel has a title or valid marine document, the commission is required to apply for a certificate of title for the vessel under RCW 88.02.510 and register the vessel under RCW 88.02.550. [2013 c 291 § 12.]

79A.05.215 State parks renewal and stewardship account. (*Effective until June 30, 2017.*) The state parks renewal and stewardship account is created in the state treasury. Except as otherwise provided in this chapter, all receipts from user fees, concessions, leases, donations collected under RCW 46.16A.090(3), and other state park-based activities shall be deposited into the account. The proceeds

from the recreation access pass account created in RCW 79A.80.090 and amounts received under RCW 82.19.040 may only be used for the purpose of operating and maintaining state parks. Expenditures from the account may be used for operating state parks, developing and renovating park facilities, undertaking deferred maintenance, enhancing park stewardship, and other state park purposes. Expenditures from the account may be made only after appropriation by the legislature. [2013 2nd sp.s. c 15 § 7; 2011 c 320 § 22; 2010 c 161 § 1164; 2007 c 340 § 2; 1995 c 211 § 7. Formerly RCW 43.51.275.]

Effective date—Expiration date—2013 2nd sp.s. c 15 §§ 5-7: See notes following RCW 82.19.040.

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

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

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Findings—Intent—Effective date—Severability—1995 c 211: See notes following RCW 79A.05.070.

79A.05.700 Declaration. The Green River Gorge, between the town of Kanasket and the Kummer bridge in King county, is a twelve mile spectacularly winding gorge with steep to overhanging rock walls reaching heights of from one hundred fifty to three hundred feet. The beauty and natural features of the gorge are generally confined within the canyon rim. This twelve mile gorge area contains many examples of unique biological and geological features for educational and recreational interpretation, almost two miles of Eocene sediment rocks and fossils are exposed revealing one of the most complete stratigraphic sections to be found in the region. The area, a unique recreational attraction with more than one million seven hundred thousand people living within an hour's driving time, is presently used by hikers, geologists, fishers, kayakers and canoeists, picnickers and swimmers, and those seeking the solitude offered by this unique area. Abutting and adjacent landowners generally have kept the gorge lands in their natural state; however, economic and urbanization pressures for development are rapidly increasing. Local and state outdoor recreation plans show a regional need for resources and facilities which could be developed in this area. A twelve-mile strip incorporating the visual basins of the Green river from the Kummer bridge to Palmer needs to be acquired and developed as a conservation area to preserve this unique area for the recreational needs of the region. [2013 c 23 § 267; 1969 ex.s. c 162 § 1. Formerly RCW 43.51.900.]

Chapter 79A.25 RCW

RECREATION AND CONSERVATION FUNDING BOARD

(Formerly: Interagency committee for outdoor recreation)

Sections

- 79A.25.010 Definitions. (*Effective July 1, 2015.*)
 79A.25.040 Marine fuel tax refund account—Moneys derived from tax on marine fuel—Refunding and placement in account—Exception. (*Effective July 1, 2015.*)
 79A.25.050 Marine fuel tax refund account—Claims for refunds paid from. (*Effective July 1, 2015.*)

79A.25.010 Definitions. (*Effective July 1, 2015.*) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Board" means the recreation and conservation funding board.

(2) "Council" means the Washington invasive species council created in RCW 79A.25.310.

(3) "Director" means the director of the recreation and conservation office.

(4) "Marine recreation land" means any land with or without improvements which (a) provides access to, or in whole or in part borders on, fresh or salt water suitable for recreational use by watercraft, or (b) may be used to create, add to, or make more usable, bodies of water, waterways, or land, for recreational use by watercraft.

(5) "Office," "recreation and conservation office," or "the office of recreation and conservation" means the state agency responsible for administration of programs and activities of the recreation and conservation funding board, the salmon recovery funding board, the invasive species council, and such other duties or boards, councils, or advisory groups as are or may be established or directed for administrative placement in the agency.

(6) "Public body" means any county, city, town, port district, park and recreation district, metropolitan park district, or other municipal corporation which is authorized to acquire or improve public outdoor recreation land, and also means Indian tribes now or hereafter recognized as such by the federal government for participation in the land and water conservation program.

(7) "Tax on marine fuel" means motor vehicle fuel tax which is (a) tax on fuel used in, or sold or distributed for use in, any watercraft, (b) refundable pursuant to chapter 82.38 RCW, and (c) paid to the director of licensing with respect to taxable sales, distributions, or uses occurring on or after December 3, 1964.

(8) "Watercraft" means any boat, vessel, or other craft used for navigation on or through water. [2013 c 225 § 636; 2007 c 241 § 40; 2006 c 152 § 9; 1989 c 237 § 2; 1979 c 158 § 108; 1972 ex.s. c 56 § 1; 1965 c 5 § 2 (Initiative Measure No. 215, approved November 3, 1964). Formerly RCW 43.99.020.]

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

Effective date—2013 c 225: See note following RCW 82.38.010.

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

Additional notes found at www.leg.wa.gov

79A.25.040 Marine fuel tax refund account—Moneys derived from tax on marine fuel—Refunding and placement in account—Exception. (*Effective July 1, 2015.*) There is created the marine fuel tax refund account in the state treasury. The director of licensing must request the state treasurer to refund monthly from the motor vehicle fund an amount equal to one percent of the motor vehicle fuel tax moneys collected during that period. The state treasurer must refund such amounts and place them in the marine fuel tax refund account to be held for those entitled thereto pursuant to chapter 82.38 RCW and RCW 79A.25.050, except that the treasurer may not refund and place in the marine fuel tax

refund account more than the greater of the following amounts: (1) An amount equal to two percent of all moneys paid to the treasurer as motor vehicle fuel tax for such period, (2) an amount necessary to meet all approved claims for refund of tax on marine fuel for such period. [2013 c 225 § 637; 2010 c 23 § 2; 2000 c 11 § 71; 1995 c 166 § 2; 1991 sp.s. c 13 § 42; 1985 c 57 § 53; 1979 c 158 § 110; 1965 c 5 § 4 (Initiative Measure No. 215, approved November 3, 1964). Formerly RCW 43.99.040.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Additional notes found at www.leg.wa.gov

79A.25.050 Marine fuel tax refund account—Claims for refunds paid from. (*Effective July 1, 2015.*) Claims submitted pursuant to chapter 82.38 RCW for refund of tax on marine fuel which has been placed in the marine fuel tax refund account must, if approved, be paid from that account. [2013 c 225 § 638; 1965 c 5 § 5 (Initiative Measure No. 215, approved November 3, 1964). Formerly RCW 43.99.050.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Chapter 79A.30 RCW

WASHINGTON STATE HORSE PARK

Sections

79A.30.030 Washington state horse park authority—Formation—Powers—Articles of incorporation—Board.

79A.30.030 Washington state horse park authority—Formation—Powers—Articles of incorporation—Board.

(1) A nonprofit corporation may be formed under the nonprofit corporation provisions of chapter 24.03 RCW to carry out the purposes of this chapter. Except as provided in RCW 79A.30.040, the corporation shall have all the powers and be subject to the same restrictions as are permitted or prescribed to nonprofit corporations and shall exercise those powers only for carrying out the purposes of this chapter and those purposes necessarily implied therefrom. The nonprofit corporation shall be known as the Washington state horse park authority. The articles of incorporation shall provide that it is the responsibility of the authority to develop, promote, operate, manage, and maintain the Washington state horse park. The articles of incorporation shall provide for appointment of directors and other conduct of business consistent with the requirements of this chapter.

(2)(a) The articles of incorporation shall provide for an eleven-member board of directors for the authority, all appointed by the commission. Board members shall serve three-year terms, except that two of the original appointees shall serve one-year terms, and two of the original appointees shall serve two-year terms. Of the board members appointed pursuant to chapter 31, Laws of 2013, one shall serve an initial one-year term, one shall serve an initial two-year term, and two shall serve an initial term of three years. A board member may serve consecutive terms.

(b) The articles of incorporation shall provide that the commission appoint board members as follows:

(i) One board member shall represent the interests of the commission;

(ii) One board member shall represent the interests of the county in which the park is located. In making this appoint-

ment, the commission shall solicit recommendations from the county legislative authority; and

(iii) Nine board members shall represent the geographic and sports discipline diversity of equestrian interests in the state, and at least three of these members shall have business experience relevant to the organization of horse shows or operation of a horse show facility. In making these appointments, the commission shall solicit recommendations from a variety of active horse-related organizations in the state.

(3) The articles of incorporation shall include a policy that provides for the preferential use of a specific area of the horse park facilities at nominal cost for horse groups associated with youth groups and individuals with disabilities.

(4) The commission shall make appointments to fill board vacancies for positions authorized under subsection (2) of this section, upon additional solicitation of recommendations from the board of directors.

(5) The board of directors shall perform their duties in the best interests of the authority, consistent with the standards applicable to directors of nonprofit corporations under RCW 24.03.127. [2013 c 31 § 2; 2011 1st sp.s. c 21 § 32; 2000 c 11 § 85; 1995 c 200 § 4. Formerly RCW 67.18.030.]

Findings—2013 c 31: "The legislature finds that the Washington state horse park authority is a unique public-private partnership for providing equestrian recreational opportunities. Because the authority is a statutorily created nonprofit corporation, its growth as an organization requires statutory authorization. The legislature finds that expanding membership of the authority's board will: Allow additional board representation for the geographic and sports discipline diversity of equestrian interests; add relevant business experience to the board; and avoid duplicating efforts of other organizations." [2013 c 31 § 1.]

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

Chapter 79A.60 RCW

REGULATION OF RECREATIONAL VESSELS

Sections

- 79A.60.040 Operation of vessel in a reckless manner—Operation of a vessel under the influence of intoxicating liquor, marijuana, or any drug—Consent to breath or blood test—Penalty.
- 79A.60.150 Failure of vessel to contain safety equipment—Owner/operator may be cited for applicable infraction or crime.
- 79A.60.700 Refusal to submit to certain tests—Not admissible as evidence—Penalty.
- 79A.60.710 Vessels for hire—Requirements—Application of section—Penalty.

79A.60.040 Operation of vessel in a reckless manner—Operation of a vessel under the influence of intoxicating liquor, marijuana, or any drug—Consent to breath or blood test—Penalty. (1) It is unlawful for any person to operate a vessel in a reckless manner.

(2) It is unlawful for a person to operate a vessel while under the influence of intoxicating liquor, marijuana, or any drug. A person is considered to be under the influence of intoxicating liquor, marijuana, or any drug if, within two hours of operating a vessel:

(a) The person has an alcohol concentration of 0.08 or higher as shown by analysis of the person's breath or blood made under RCW 46.61.506; or

(b) The person has a THC concentration of 5.00 or higher as shown by analysis of the person's blood made under RCW 46.61.506; or

(c) The person is under the influence of or affected by intoxicating liquor, marijuana, or any drug; or

(d) The person is under the combined influence of or affected by intoxicating liquor, marijuana, and any drug.

(3) The fact that any person charged with a violation of this section is or has been entitled to use such drug under the laws of this state shall not constitute a defense against any charge of violating this section.

(4) Any person who operates a vessel within this state is deemed to have given consent, subject to the provisions of RCW 46.61.506, to a test or tests of the person's breath or blood for the purpose of determining the alcohol concentration, THC concentration, or presence of any drug in the person's breath or blood if arrested for any offense where, at the time of the arrest, the arresting officer has reasonable grounds to believe the person was operating a vessel while under the influence of intoxicating liquor, marijuana, or any drug. Neither consent nor this section precludes a police officer from obtaining a search warrant for a person's breath or blood. An arresting officer may administer field sobriety tests when circumstances permit.

(5) The test or tests of breath must be administered pursuant to RCW 46.20.308. Where the officer has reasonable grounds to believe that the person is under the influence of a drug, or where the person is incapable due to physical injury, physical incapacity, or other physical limitation, of providing a breath sample, or where the person is being treated in a hospital, clinic, doctor's office, emergency medical vehicle, ambulance, or other similar facility, a blood test must be administered by a qualified person as provided in RCW 46.61.506(5). The officer shall warn the person that if the person refuses to take the test, the person will be issued a class 1 civil infraction under RCW 7.80.120.

(6) A violation of subsection (1) of this section is a misdemeanor. A violation of subsection (2) of this section is a gross misdemeanor. In addition to the statutory penalties imposed, the court may order the defendant to pay restitution for any damages or injuries resulting from the offense. [2013 c 278 § 1; 1998 c 213 § 7; 1993 c 244 § 8. Prior: 1990 c 231 § 3; 1990 c 31 § 1; 1987 c 373 § 6; 1986 c 153 § 6; 1985 c 267 § 2. Formerly RCW 88.12.025, 88.12.100, and 88.02.095.]

Intent—1993 c 244: See note following RCW 79A.60.010.

Legislative finding, purpose—Severability—1987 c 373: See notes following RCW 46.61.502.

Additional notes found at www.leg.wa.gov

79A.60.150 Failure of vessel to contain safety equipment—Owner/operator may be cited for applicable infraction or crime. If a vessel does not contain the safety equipment required under this chapter and the rules of the commission, and the operator is not the owner of the vessel but is operating the vessel with the express or implied permission of the owner, then either the owner or the operator, or both, may be cited for the applicable infraction or charged with the applicable crime. [2013 c 278 § 6; 1993 c 244 § 13. Formerly RCW 88.12.105.]

Intent—1993 c 244: See note following RCW 79A.60.010.

79A.60.700 Refusal to submit to certain tests—Not admissible as evidence—Penalty. (1) The refusal of a person to submit to a test of the alcohol concentration, THC con-

centration, or presence of any drug in the person's blood or breath is not admissible into evidence at a subsequent criminal trial.

(2) A person's refusal to submit to a test or tests pursuant to RCW 79A.60.040 constitutes a class 1 civil infraction under RCW 7.80.120. [2013 c 278 § 2.]

79A.60.710 Vessels for hire—Requirements—Application of section—Penalty. (1) No person who has vessels for hire, or the agent or employee thereof, shall rent, lease, charter, or otherwise permit the use of a vessel, unless the person:

(a) Displays the vessel registration numbers and a valid decal on the vessel hull as required by RCW 88.02.550(1);

(b) Keeps a copy of the vessel registration certificate aboard the vessel, in compliance with RCW 88.02.340;

(c) Displays a carbon monoxide decal on the vessel as required by RCW 88.02.390(2) if the vessel is motor-driven and is not a personal watercraft;

(d) Provides a copy of the rental agreement to be kept aboard during the rental, lease, charter, or use period for vessels required under chapter 88.02 RCW to be registered;

(e) Ensures that the vessel, if motor-propelled, meets the muffler or underwater exhaust system requirement in RCW 79A.60.130;

(f) Outfits the vessel with the quantity and type of personal flotation devices required by RCW 79A.60.140 and 79A.60.160 for the number and ages of the people who will use the vessel;

(g) Explains the personal flotation device requirements to the person renting, leasing, chartering, or otherwise using the vessel;

(h) Equips the vessel with a skier-down flag, and explains observer and personal flotation requirements of RCW 79A.60.170, if the persons renting, leasing, chartering, or otherwise using the vessel will be waterskiing;

(i) If the vessel is a personal watercraft, provides a personal flotation device and a lanyard attached to an engine cutoff switch for the operator to wear at all times when operating the personal watercraft, as required by RCW 79A.60.190;

(j) Reviews with the person operating the vessel, and all other persons who the operator may permit to operate the vessel, all the information contained in the motor vessel safety operating and equipment checklist prescribed by the Washington state parks and recreation commission and required under RCW 79A.60.640(6); and

(k) Provides all other safety equipment required by RCW 79A.60.110 and referenced in the motor vessel safety operating and equipment checklist prescribed by the Washington state parks and recreation commission and required under RCW 79A.60.640(6).

(2) This section does not apply to fishing guides and charter boat operators who have a United States coast guard operator's license and are operating on navigable waters, and people who act in the capacity of a paid whitewater river outfitter or guide, or who operate a vessel carrying passengers for hire on whitewater rivers in this state.

(3) As provided in RCW 79A.60.020, a violation of this section is a civil infraction punishable under chapter 7.84 RCW, unless:

(a) The violation is a violation of RCW 88.02.550, which is punished as a class 2 civil infraction; or

(b) The current violation is the person's third violation of the same provision of this chapter during the past three hundred sixty-five days. If it is the person's third violation, then it must be punished as a misdemeanor under RCW 9.92.030. [2013 c 278 § 5.]

Chapter 79A.65 RCW

COMMISSION MOORAGE FACILITIES

Sections

79A.65.020 Securing unauthorized vessels—Notice—Claiming vessels—Abandoned vessels—Derelict vessel removal account.

79A.65.020 Securing unauthorized vessels—Notice—Claiming vessels—Abandoned vessels—Derelict vessel removal account. (1) The commission may take reasonable measures, including but not limited to the use of anchors, chains, ropes, and locks, or removal from the water, to secure unauthorized vessels located at or on a commission facility so that the unauthorized vessels are in the possession and control of the commission. At least ten days before securing any unauthorized registered vessel, the commission shall send notification by registered mail to the last registered owner or registered owners of the vessel at their last known address or addresses.

(2) The commission may take reasonable measures, including but not limited to the use of anchors, chains, ropes, locks, or removal from the water, to secure any vessel if the vessel, in the opinion of the commission, is a nuisance, is in danger of sinking or creating other damage to a commission facility, or is otherwise a threat to the health, safety, or welfare of the public or environment at a commission facility. The costs of any such procedure shall be paid by the vessel's owner.

(3) At the time of securing any vessel under subsection (1) or (2) of this section, the commission shall attach to the vessel a readily visible notice or, when practicable, shall post such notice in a conspicuous location at the commission facility in the event the vessel is removed from the premises. The notice shall be of a reasonable size and shall contain the following information:

(a) The date and time the notice was attached or posted;

(b) A statement that the vessel has been secured by the commission and that if the commission's charges, if any, are not paid and the vessel is not removed by (the thirty-fifth consecutive day following the date of attachment or posting of the notice), the vessel will be considered abandoned and will be sold at public auction to satisfy the charges;

(c) The address and telephone number where additional information may be obtained concerning the securing of the vessel and conditions for its release; and

(d) A description of the owner's or secured party's rights under this chapter.

(4) With respect to registered vessels: Within five days of the date that notice is attached or posted under subsection (3) of this section, the commission shall send such notice, by registered mail, to each registered owner.

(5) If a vessel is secured under subsection (1) or (2) of this section, the owner, or any person with a legal right to possess the vessel, may claim the vessel by:

(a) Making arrangements satisfactory to the commission for the immediate removal of the vessel from the commission's control or for authorized storage or moorage; and

(b) Making payment to the commission of all reasonable charges incurred by the commission in securing the vessel under subsections (1) and (2) of this section and of all moorage fees owed to the commission.

(6) A vessel is considered abandoned if, within the thirty-five day period following the date of attachment or posting of notice in subsection (3) of this section, the vessel has not been claimed under subsection (5) of this section.

(7) If the owner or owners of a vessel are unable to reimburse the commission for all reasonable charges under subsections (1) and (2) of this section within a reasonable time, the commission may seek reimbursement of ninety percent of all reasonable and auditable costs from the derelict vessel removal account established in RCW 79.100.100. [2013 c 291 § 3; 2002 c 286 § 21; 1994 c 51 § 2. Formerly RCW 88.27.020.]

Additional notes found at www.leg.wa.gov

Chapter 79A.80 RCW

ACCESS TO RECREATIONAL LANDS

Sections

79A.80.010 Definitions.

79A.80.020 Discover pass.

79A.80.030 Day-use permit.

79A.80.080 Pass/permit requirements—Penalty.

79A.80.110 Discounted passes—Bulk sales.

79A.80.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Agency" or "agencies" means the department of fish and wildlife, the department of natural resources, and the parks and recreation commission.

(2) "Annual natural investment permit" means the annual permit issued by the parks and recreation commission for the purpose of launching boats from the designated state parks boat launch sites.

(3) "Camper registration" means proof of payment of a camping fee on recreational lands managed by the parks and recreation commission.

(4) "Day-use permit" means the permit created in RCW 79A.80.030.

(5) "Discover pass" means the annual pass created in RCW 79A.80.020.

(6) "Motor vehicle" has the same meaning as defined in RCW 46.04.320 and which are required to be registered under chapter 46.16A RCW. "Motor vehicle" does not include those motor vehicles exempt from registration under RCW 46.16A.080, wheeled all-terrain vehicles registered for use under RCW 46.09.442, and state and publicly owned motor vehicles as provided in RCW 46.16A.170.

(7) "Recreation site or lands" means a state park, state lands and state forest lands as those terms are defined in RCW 79.02.010, natural resources conservation areas as that term is defined in RCW 79.71.030, natural area preserves as

that term is defined in RCW 79.70.020, and fish and wildlife conservation sites including water access areas, boat ramps, wildlife areas, parking areas, roads, and trailheads.

(8) "Sno-park seasonal permit" means the seasonal permit issued by the parks and recreation commission for providing access to winter recreational facilities for the period of November 1st through March 31st.

(9) "Vehicle access pass" means the pass created in RCW 79A.80.040. [2013 2nd sp.s. c 23 § 22; 2012 c 261 § 1; 2011 c 320 § 2.]

Finding—Intent—2013 2nd sp.s. c 23: See note following RCW 46.09.442.

Effective date—2013 2nd sp.s. c 23: See note following RCW 46.09.310.

Effective date—2012 c 261: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 30, 2012]." [2012 c 261 § 14.]

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

79A.80.020 Discover pass. (1) Except as otherwise provided in this chapter, a discover pass is required for any motor vehicle to:

- (a) Park at any recreation site or lands; or
- (b) Operate on any recreation site or lands.

(2) Except as provided in RCW 79A.80.110, the cost of a discover pass is thirty dollars. Every four years the office of financial management must review the cost of the discover pass and, if necessary, recommend to the legislature an adjustment to the cost of the discover pass to account for inflation.

(3) A discover pass is valid for one year beginning from the date that the discover pass is marked for activation. The activation date may differ from the purchase date pursuant to any policies developed by the agencies.

(4) Sales of discover passes must be consistent with RCW 79A.80.100.

(5) The discover pass must contain space for two motor vehicle license plate numbers. A discover pass is valid only for those vehicle license plate numbers written on the pass. However, the agencies may offer for sale a family discover pass that is fully transferable among vehicles and does not require the placement of a license plate number on the pass to be valid. The agencies must collectively set a price for the sale of a family discover pass that is no more than fifty dollars. A discover pass is valid only for use with one motor vehicle at any one time.

(6) One complimentary discover pass must be provided to a volunteer who performed twenty-four hours of service on agency-sanctioned volunteer projects in a year. The agency must provide vouchers to volunteers identifying the number of volunteer hours they have provided for each project. The vouchers may be brought to an agency to be redeemed for a discover pass. [2013 2nd sp.s. c 15 § 1; 2012 c 261 § 2; 2011 c 320 § 3.]

Effective date—2012 c 261: See note following RCW 79A.80.010.

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

79A.80.030 Day-use permit. (1) A person may purchase a day-use permit to meet the requirements of RCW 79A.80.080. Except as provided in RCW 79A.80.110, a day-

use permit is ten dollars per day and must be available for purchase from each agency. A day-use permit is valid for one calendar day.

(2) The agencies may provide short-term parking under RCW 79A.80.070 where a day-use permit is not required.

(3) Every four years the office of financial management must review the cost of the day-use permit and, if necessary, recommend to the legislature an adjustment to the cost of the day-use permit to account for inflation.

(4) Sales of day-use permits must be consistent with RCW 79A.80.100. [2013 2nd sp.s. c 15 § 2; 2012 c 261 § 3; 2011 c 320 § 4.]

Effective date—2012 c 261: See note following RCW 79A.80.010.

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

79A.80.080 Pass/permit requirements—Penalty. (1)

A discover pass, vehicle access pass, or day-use permit must be visibly displayed in the front windshield, or otherwise in a prominent location for motor vehicles without a windshield, of any motor vehicle:

- (a) Operating on any recreation site or lands; or
- (b) Parking at any recreation site or lands.

(2) The discover pass, the vehicle access pass, or the day-use permit is not required:

(a) On private lands, state-owned aquatic lands other than water access areas, or at agency offices, hatcheries, or other facilities where public business is conducted;

(b) For persons who use, possess, or enter lands owned or managed by the agencies for nonrecreational purposes consistent with a written authorization from the agency, including but not limited to leases, contracts, and easements;

(c) On department of fish and wildlife lands only, for persons possessing a current vehicle access pass pursuant to RCW 79A.80.040; or

(d) When operating on a road managed by the department of natural resources or the department of fish and wildlife, including a forest or land management road, that is not blocked by a gate.

(3)(a) An agency may waive the requirements of this section for any person who has secured the ability to access specific recreational land through the provision of monetary consideration to the agency or for any person attending an event or function that required the provision of monetary compensation to the agency.

(b) Special events and group activities are core recreational activities and major public service opportunities within state parks. When waiving the requirements of this section for special events, the state parks and recreation commission must consider the direct and indirect costs and benefits to the state, local market rental rates, the public service functions of the event sponsor, and other public interest factors when setting appropriate fees for each event or activity.

(4) Failure to comply with subsection (1) of this section is a natural resource infraction under chapter 7.84 RCW. An agency is authorized to issue a notice of infraction to any person who fails to comply with subsection (1)(a) of this section or to any motor vehicle that fails to comply with subsection (1)(b) of this section.

(5) The penalty for failure to comply with the requirements of this section is ninety-nine dollars. This penalty must be reduced to fifty-nine dollars if an individual provides

proof of purchase of a discover pass to the court within fifteen days after the issuance of the notice of violation. [2013 2nd sp.s. c 15 § 3; 2012 c 261 § 7; 2011 c 320 § 9.]

Effective date—2012 c 261: See note following RCW 79A.80.010.

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

79A.80.110 Discounted passes—Bulk sales. (1) By mutual agreement, the agencies may sell discounted discover passes at a rate below that established under RCW 79A.80.020 or discounted day-use permits at a rate below that established under RCW 79A.80.030 for purposes of bulk sales to retailers, agency license and permit product bundling, and partnership opportunities to expand accessibility and visibility of the discover pass and recreational opportunities on agency-managed lands.

(2) In exercising this authority, the agencies must prioritize opportunities for discounted sales that result in a net revenue gain. [2013 2nd sp.s. c 15 § 4.]

Title 80 PUBLIC UTILITIES

Chapters

- 80.01 Utilities and transportation commission.**
- 80.04 Regulations—General.**
- 80.08 Securities.**
- 80.32 Electric franchises and rights-of-way.**
- 80.36 Telecommunications.**
- 80.50 Energy facilities—Site locations.**

Chapter 80.01 RCW

UTILITIES AND TRANSPORTATION COMMISSION

Sections

- 80.01.020 Commissioners—Oath, bond, and qualifications—Persons excluded from office and employment.
- 80.01.100 Duties of attorney general.

80.01.020 Commissioners—Oath, bond, and qualifications—Persons excluded from office and employment. Each commissioner shall, before entering upon the duties of his or her office, take and subscribe the constitutional oath of office, and furnish bond to the state in the sum of twenty thousand dollars conditioned for the faithful discharge of the duties of his or her office and for the proper accounting for all funds that may come into his or her possession by virtue of his or her office. Each commissioner shall be a qualified elector of this state and no person in the employ of or holding any official relation to any corporation or person, which corporation or person is subject in whole or in part to regulation by the commission, and no person owning stocks or bonds of any such corporation or who is in any manner pecuniarily interested therein shall be appointed or hold the office of commissioner or be appointed or employed by the commission: PROVIDED, That if any such person shall become the owner of such stocks or bonds or become pecuniarily interested in such corporation otherwise than voluntarily, he or she shall within a reasonable time divest himself or herself of such ownership or interest, and failing to do so his or her office or employment shall become vacant. [2013 c 23 § 268;

[2013 RCW Supp—page 922]

1961 c 14 § 80.01.020. Prior: 1949 c 117 § 2; Rem. Supp. 1949 § 10964-115-2. Formerly RCW 43.53.020 and 43.53.030.]

80.01.100 Duties of attorney general. It shall be the duty of the attorney general to represent and appear for the people of the state of Washington and the commission in all actions and proceedings involving any question under this title or Title 81 RCW, or under or in reference to any act or order of the commission; and it shall be the duty of the attorney general generally to see that all laws affecting any of the persons or corporations herein enumerated are complied with, and that all laws, the enforcement of which devolves upon the commission, are enforced, and to that end he or she is authorized to institute, prosecute, and defend all necessary actions and proceedings. [2013 c 23 § 269; 1961 c 14 § 80.01.100. Prior: 1911 c 117 § 5; RRS § 10341.]

Chapter 80.04 RCW REGULATIONS—GENERAL

Sections

- 80.04.020 Procedure before commission and courts.
- 80.04.040 Witness fees and mileage.
- 80.04.050 Protection against self-incrimination.
- 80.04.070 Inspection of books, papers, and documents.
- 80.04.120 Hearing—Order—Record.
- 80.04.170 Review of orders.
- 80.04.280 Purchase and sale of stock by employees.
- 80.04.460 Investigation of accidents.
- 80.04.470 Commission to enforce public service laws—Employees as peace officers.
- 80.04.510 Duties of attorney general.

80.04.020 Procedure before commission and courts.

Each commissioner shall have power to administer oaths, certify to all official acts, and to issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents, and testimony in any inquiry, investigation, hearing, or proceeding in any part of the state.

The superior court of the county in which any such inquiry, investigation, hearing, or proceeding may be had, shall have power to compel the attendance of witnesses and the production of papers, books, accounts, documents, and testimony as required by such subpoena. The commission or the commissioner before which the testimony is to be given or produced, in case of the refusal of any witness to attend or testify or produce any papers required by the subpoena, shall report to the superior court in and for the county in which the proceeding is pending by petition, setting forth that due notice has been given of the time and place of attendance of said witnesses, or the production of said papers, and that the witness has been summoned in the manner prescribed in this chapter, and that the fees and mileage of the witness have been paid or tendered to the witness for his or her attendance and testimony, and that the witness has failed and refused to attend or produce the papers required by the subpoena, before the commission, in the cause or proceedings named in the notice and subpoena, or has refused to answer questions propounded to him or her in the course of such proceeding, and ask an order of said court, compelling the witness to attend and testify before the commission. The court, upon the petition of the commission, shall enter an order directing the wit-

ness to appear before said court at a time and place to be fixed by the court in such order, and then and there show cause why he or she has not responded to said subpoena. A copy of said order shall be served upon said witness. If it shall appear to the court that said subpoena was regularly issued by the commission, the court shall thereupon enter an order that said witness appear before the commission at said time and place as fixed in said order, and testify or produce the required papers, and upon failing to obey said order, said witness shall be dealt with as for contempt of court. [2013 c 23 § 270; 1961 c 14 § 80.04.020. Prior: 1911 c 117 § 75, part; RRS § 10413, part.]

80.04.040 Witness fees and mileage. Each witness who shall appear under subpoena shall receive for his or her attendance four dollars per day and ten cents per mile traveled by the nearest practicable route in going to and returning from the place of hearing. No witness shall be entitled to fees or mileage from the state when summoned at the instance of the public service companies affected. [2013 c 23 § 271; 1961 c 14 § 80.04.040. Prior: 1955 c 79 § 1; 1911 c 117 § 76, part; RRS 10414, part.]

80.04.050 Protection against self-incrimination. The claim by any witness that any testimony sought to be elicited may tend to incriminate him or her shall not excuse such witness from testifying, but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding, excepting in a prosecution for perjury. The commissioner shall have power to compel the attendance of witnesses at any place within the state. [2013 c 23 § 272; 1961 c 14 § 80.04.050. Prior: 1911 c 117 § 76, part; RRS 10414, part.]

Powers of each commissioner to compel attendance of witnesses: RCW 80.04.020.

80.04.070 Inspection of books, papers, and documents. The commission and each commissioner, or any person employed by the commission, shall have the right, at any and all times, to inspect the accounts, books, papers, and documents of any public service company, and the commission, or any commissioner, may examine under oath any officer, agent, or employee of such public service company in relation thereto, and with reference to the affairs of such company: PROVIDED, That any person other than a commissioner who shall make any such demand shall produce his or her authority from the commission to make such inspection. [2013 c 23 § 273; 1961 c 14 § 80.04.070. Prior: 1911 c 117 § 77; RRS § 10415.]

80.04.120 Hearing—Order—Record. At the time fixed for the hearing mentioned in RCW 80.04.110, the complainant and the person or corporation complained of shall be entitled to be heard and introduce such evidence as he or she or it may desire. The commission shall issue process to enforce the attendance of all necessary witnesses. At the conclusion of such hearing, the commission shall make and render findings concerning the subject matter and facts inquired into and enter its order based thereon. A copy of such order, certified under the seal of the commission, shall be served upon the person or corporation complained of, or his or her or its attorney, which order shall, of its own force, take effect

and become operative twenty days after the service thereof, except as otherwise provided. Where an order cannot, in the judgment of the commission, be complied with within twenty days, the commission may prescribe such additional time as in its judgment is reasonably necessary to comply with the order, and may, on application and for good cause shown, extend the time for compliance fixed in its order. A full and complete record of all proceedings had before the commission, or any member thereof, on any formal hearing had, and all testimony shall be taken down by a stenographer appointed by the commission, and the parties shall be entitled to be heard in person or by attorney. In case of an action to review any order of the commission, a transcript of such testimony, together with all exhibits introduced, and of the record and proceedings in the cause, shall constitute the record of the commission. [2013 c 23 § 274; 1961 c 14 § 80.04.120. Prior: 1911 c 117 § 81; RRS § 10423.]

80.04.170 Review of orders. Any complainant or any public service company affected by any findings or order of the commission, and deeming such findings or order to be contrary to law, may, within thirty days after the service of the findings or order upon him or her or it, apply to the superior court of Thurston county for a writ of review, for the purpose of having the reasonableness and lawfulness of such findings or order inquired into and determined. Such writ shall be made returnable not later than thirty days from and after the date of the issuance thereof, unless upon notice to all parties affected further time be allowed by the court, and shall direct the commission to certify its record in the case to the court. Such cause shall be heard by the court without the intervention of a jury on the evidence and exhibits introduced before the commission and certified to by it. Upon such hearing, the superior court shall enter judgment either affirming or setting aside or remanding for further action the findings or order of the commission under review. The reasonable cost of preparing the transcript of testimony taken before the commission shall be assessable as part of the statutory court costs, and the amount thereof, if collected by the commission, shall be deposited in the public service revolving fund. In case such findings or order be set aside, or reversed and remanded, the court shall make specific findings based upon evidence in the record indicating clearly all respects in which the commission's findings or order are erroneous. [2013 c 23 § 275; 1961 c 14 § 80.04.170. Prior: 1937 c 169 § 3; 1911 c 117 § 86; RRS § 10428.]

80.04.280 Purchase and sale of stock by employees. No public service company shall permit any employee to sell, offer for sale, or solicit the purchase of any security of any other person or corporation during such hours as such employee is engaged to perform any duty of such public service company; nor shall any public service company by any means or device require any employee to purchase or contract to purchase any of its securities or those of any other person or corporation; nor shall any public service company require any employee to permit the deduction from his or her wages or salary of any sum as a payment or to be applied as a payment of any purchase or contract to purchase any security of such public service company or of any other person or corpo-

ration. [2013 c 23 § 276; 1961 c 14 § 80.04.280. Prior: 1933 c 165 § 9; RRS § 10458-3.]

80.04.460 Investigation of accidents. Every public service company shall give immediate notice to the commission of every accident resulting in death or injury to any person occurring in its plant or system, in such manner as the commission may prescribe. Such notice shall not be admitted as evidence or used for any purpose against the company giving it in any action for damages growing out of any matter mentioned in the notice.

The commission may investigate any accident resulting in death or injury to any person occurring in connection with the plant or system of any public service company. Notice of the investigation shall be given in all cases for a sufficient length of time to enable the company affected to participate in the hearing and may be given orally or in writing, in such manner as the commission may prescribe.

Such witnesses may be examined as the commission deems necessary and proper to thoroughly ascertain the cause of the accident and fix the responsibility therefor. The examination and investigation may be conducted by an inspector or deputy inspector, and he or she may administer oaths, issue subpoenas, and compel the attendance of witnesses, and when the examination is conducted by an inspector or deputy inspector, he or she shall make a full and complete report thereof to the commission. [2013 c 23 § 277; 1961 c 14 § 80.04.460. Prior: 1953 c 104 § 2; prior: 1911 c 117 § 63, part; RRS § 10399, part.]

80.04.470 Commission to enforce public service laws—Employees as peace officers. It shall be the duty of the commission to enforce the provisions of this title and all other acts of this state affecting public service companies, the enforcement of which is not specifically vested in some other officer or tribunal. Any employee of the commission may, without a warrant, arrest any person found violating in his or her presence any provision of this title, or any rule or regulation adopted by the commission: PROVIDED, That each such employee shall be first specifically designated in writing by the commission or a member thereof as having been found to be a fit and proper person to exercise such authority. Upon being so designated, such person shall be a peace officer and a police officer for the purposes herein mentioned. [2013 c 23 § 278; 1961 c 173 § 1; 1961 c 14 § 80.04.470. Prior: 1911 c 117 § 101; RRS § 10450.]

80.04.510 Duties of attorney general. It shall be the duty of the attorney general to represent and appear for the people of the state of Washington and the commission in all actions and proceedings involving any question under this title, or under or in reference to any act or order of the commission; and it shall be the duty of the attorney general generally to see that all laws affecting any of the persons or corporations herein enumerated are complied with, and that all laws, the enforcement of which devolves upon the commission, are enforced, and to that end he or she is authorized to institute, prosecute, and defend all necessary actions and proceedings. [2013 c 23 § 279; 1961 c 14 § 80.04.510. Prior: 1911 c 117 § 5; RRS § 10341.]

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Chapter 80.08 RCW SECURITIES

Sections

80.08.110 Penalty against companies.

80.08.110 Penalty against companies. Every public service company which, directly or indirectly, issues or causes to be issued, any stock or stock certificate or other evidence of interest or ownership, or bond, note, or other evidence of indebtedness, in nonconformity with the provisions of this chapter, or which applies the proceeds from the sale thereof, or any part thereof, to any purpose other than the purpose or purposes allowed by this chapter, shall be subject to a penalty of not more than one thousand dollars for each offense. Every violation shall be a separate and distinct offense and in case of a continuing violation every day's continuance thereof shall be deemed to be a separate and distinct offense.

The act, omission, or failure of any officer, agent, or employee of any public service company acting within the scope of his or her official duties or employment, shall in every case be deemed to be the act, omission, or failure of such public service company. [2013 c 23 § 280; 1994 c 251 § 3; 1961 c 14 § 80.08.110. Prior: 1933 c 151 § 11; RRS § 10439-11.]

Chapter 80.32 RCW

ELECTRIC FRANCHISES AND RIGHTS-OF-WAY

Sections

80.32.100 Remedy for violations.

80.32.100 Remedy for violations. In the event of the violation of any of the requirements of RCW 80.32.080 and 80.32.090 by any corporation availing itself of its provisions, an appropriate suit may be maintained in the name of the state upon the relation of the attorney general, or, if he or she shall refuse or neglect to act, upon the relation of any individual aggrieved by the violation, or violations, complained of, to compel such corporation to comply with the requirements of RCW 80.32.080 and 80.32.090. A violation of RCW 80.32.080 and 80.32.090 shall cause the forfeiture of the corporate franchise if the corporation refuses or neglects to comply with the orders with respect thereto made in the suit herein provided for. [2013 c 23 § 281; 1961 c 14 § 80.32.100. Prior: 1907 c 159 § 3; RRS § 5434.]

Chapter 80.36 RCW

TELECOMMUNICATIONS

Sections

80.36.420 Washington telephone assistance program—Availability, components.
80.36.430 Washington telephone assistance program—Excise tax—Expenses of community service voice mail.
80.36.450 Washington telephone assistance program—Limitation.
80.36.460 Washington telephone assistance program—Deposit waivers, connection fee discounts.
80.36.470 Washington telephone assistance program—Eligibility.
80.36.600 Repealed.
80.36.610 Universal service program—Authority of commission—Rules—Fees. (*Effective July 1, 2014, until July 1, 2020.*)

- 80.36.630 State universal communications services program—Definitions. (*Effective July 1, 2014, until July 1, 2020.*)
- 80.36.650 State universal communications services program—Established. (*Effective July 1, 2014, until July 1, 2020.*)
- 80.36.660 State universal communications services program—Rules. (*Effective July 1, 2014, until July 1, 2020.*)
- 80.36.670 State universal communications services program—Penalties. (*Effective July 1, 2014, until July 1, 2020.*)
- 80.36.680 State universal communications services program—Administration. (*Effective July 1, 2014, until July 1, 2020.*)
- 80.36.690 State universal communications services program—Account created. (*Effective July 1, 2014, until July 1, 2020.*)
- 80.36.700 State universal communications services program—Program expiration. (*Effective July 1, 2014, until July 1, 2020.*)

80.36.420 Washington telephone assistance program—Availability, components. The Washington telephone assistance program may be available to participants of programs set forth in RCW 80.36.470. Within funds specifically appropriated by the legislature for the Washington telephone assistance program, assistance may consist of the following components:

(1) A discount on service connection fees of fifty percent or more as set forth in RCW 80.36.460.

(2) A waiver of deposit requirements on local exchange service, as set forth in RCW 80.36.460.

(3) A discounted flat rate service for local exchange service, which is subject to the following conditions:

(a) The commission must establish a single telephone assistance rate for all local exchange companies operating in the state of Washington. The telephone assistance rate must include any federal end user charges and any other charges necessary to obtain local exchange service.

(b) The commission must, in establishing the telephone assistance rate, consider all charges for local exchange service, including federal end user charges, mileage charges, extended area service, and any other charges necessary to obtain local exchange service.

(c) The telephone assistance rate is only available to eligible customers subscribing to the lowest priced local exchange flat rate service, where the lowest priced local exchange flat rate service, including any federal end user charges and any other charges necessary to obtain local exchange service, is greater than the telephone assistance rate.

(d) The cost of providing the service must be paid, to the maximum extent possible, by a waiver of all or part of federal end user charges and, to the extent necessary, from the available appropriated funds.

(4) A discount on a community service voice mailbox that provides recipients with (a) an individually assigned telephone number; (b) the ability to record a personal greeting; and (c) a secure private security code to retrieve messages. [2013 2nd sp.s. c 8 § 115; 2003 c 134 § 3; 1990 c 170 § 2; 1987 c 229 § 4.]

Findings—Intent—Effective dates—2013 2nd sp.s. c 8: See notes following RCW 82.14B.040.

Effective date—2003 c 134: See note following RCW 80.36.005.

80.36.430 Washington telephone assistance program—Excise tax—Expenses of community service voice mail. Subject to the enactment into law of the 2013 amendments to RCW 82.14B.040 in section 103, chapter 8, Laws of 2013 2nd sp. sess., the 2013 amendments to RCW 82.14B.042 in section 104, chapter 8, Laws of 2013 2nd sp.

sess., the 2013 amendments to RCW 82.14B.030 in section 105, chapter 8, Laws of 2013 2nd sp. sess., the 2013 amendments to RCW 82.14B.200 in section 106, chapter 8, Laws of 2013 2nd sp. sess., and the 2013 amendments to RCW 82.08.0289 in section 107, chapter 8, Laws of 2013 2nd sp. sess.:

(1) The Washington telephone assistance program is funded by the legislature by means of a biennial general fund appropriation to the department and by funds from any federal government or other programs for this purpose.

(2) Local exchange companies must bill the department for their expenses incurred in offering the telephone assistance program, including administrative and program expenses. The department must disburse the money to the local exchange companies. The department is exempted from having to conclude a contract with local exchange companies in order to effect this reimbursement. The department must recover its administrative costs. The department may specify by rule the range and extent of administrative and program expenses that will be reimbursed to local exchange companies.

(3) The department must enter into an agreement with the department of commerce for an amount not to exceed eight percent of the prior fiscal year's total revenue for the administrative and program expenses of providing community service voice mail services. The community service voice mail service may include toll-free lines in community action agencies through which recipients can access their community service voice mailboxes at no charge.

(4) The department shall enter into an agreement with the Washington information network 211 organization for operational support, subject to the availability of amounts appropriated for this purpose. [2013 2nd sp.s. c 8 § 108; 2011 1st sp.s. c 50 § 968; 2011 c 5 § 919; 2010 1st sp.s. c 37 § 951; 2009 c 564 § 960; 2004 c 254 § 2; 2003 c 134 § 4; 1990 c 170 § 3; 1987 c 229 § 5.]

Findings—Intent—Effective dates—2013 2nd sp.s. c 8: See notes following RCW 82.14B.040.

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

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

Effective date—2010 1st sp.s. c 37: See note following RCW 13.06.050.

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

Responsibility for collection of tax—Implementation—2004 c 254: See notes following RCW 43.20A.725.

Effective date—2004 c 254: See note following RCW 82.72.010.

Effective date—2003 c 134: See note following RCW 80.36.005.

80.36.450 Washington telephone assistance program—Limitation. Within funds specifically appropriated by the legislature for the Washington telephone assistance program, the Washington telephone assistance program must limit reimbursement to one residential switched access line per eligible household, or one discounted community service voice mailbox per eligible person. [2013 2nd sp.s. c 8 § 116; 2003 c 134 § 6; 1993 c 249 § 2; 1987 c 229 § 7.]

Findings—Intent—Effective dates—2013 2nd sp.s. c 8: See notes following RCW 82.14B.040.

Effective date—2003 c 134: See note following RCW 80.36.005.

Additional notes found at www.leg.wa.gov

80.36.460 Washington telephone assistance program—Deposit waivers, connection fee discounts. Local exchange companies must waive deposits on local exchange service for eligible subscribers and provide a fifty percent discount on the company's customary charge for commencing telecommunications service for eligible subscribers. The commission or other appropriate agency must make timely application for any available federal funds. The remaining portion of the connection fee to be paid by the subscriber must be expressly payable by installment fees spread over a period of months. A subscriber may, however, choose to pay the connection fee in a lump sum. Costs associated with the waiver and discount must be accounted for separately and recovered from the telephone assistance appropriation. [2013 2nd sp.s. c 8 § 117; 2003 c 134 § 7; 1990 c 170 § 5; 1987 c 229 § 8.]

Findings—Intent—Effective dates—2013 2nd sp.s. c 8: See notes following RCW 82.14B.040.

Effective date—2003 c 134: See note following RCW 80.36.005.

80.36.470 Washington telephone assistance program—Eligibility. (1) Adult recipients of department-administered programs for the financially needy which provide continuing financial or medical assistance, food stamps, or supportive services to persons in their own homes are eligible for participation in the telephone assistance program. The department must notify the participants of their eligibility.

(2) Participants in community service voice mail programs are eligible for participation in services available under RCW 80.36.420 (1), (2), and (3) after completing use of community service voice mail services. Eligibility must be for a period including the remainder of the current service year and the following service year. Community agencies must notify the department of participants eligible under this subsection.

(3) Enrollment in the Washington telephone assistance program may not result in expenditures that exceed the total amount of funds made available by the legislature for the Washington telephone assistance program. When the department finds that there is a danger of an overexpenditure of appropriated funds, the department must close the Washington telephone assistance program enrollment until the department finds the danger no longer exists. [2013 2nd sp.s. c 8 § 118; 2003 c 134 § 8; 2002 c 104 § 3; 1990 c 170 § 6; 1987 c 229 § 9.]

Findings—Intent—Effective dates—2013 2nd sp.s. c 8: See notes following RCW 82.14B.040.

Effective date—2003 c 134: See note following RCW 80.36.005.

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

80.36.610 Universal service program—Authority of commission—Rules—Fees. (Effective July 1, 2014, until July 1, 2020.) The commission is authorized to take actions, conduct proceedings, and enter orders as permitted or contemplated for a state commission under the telecommunications act of 1996. The commission may establish by rule fees to be paid by persons seeking commission action under the telecommunications act of 1996, and by parties to proceed-

ings under that act, to offset in whole or part the commission's expenses that are not otherwise recovered through fees in implementing the act. [2013 2nd sp.s. c 8 § 209; 1998 c 337 § 2.]

Expiration date—2013 2nd sp.s. c 8 § 209: "Section 209 of this act expires July 1, 2020." [2013 2nd sp.s. c 8 § 303.]

Findings—Intent—Effective date—State universal communications services program—Advisory board—Timely rule adoption—Utilities and transportation commission report—2013 2nd sp.s. c 8: See notes following RCW 80.36.650.

Additional notes found at www.leg.wa.gov

80.36.630 State universal communications services program—Definitions. (Effective July 1, 2014, until July 1, 2020.) (1) The definitions in this section apply throughout this section and RCW 80.36.650 through 80.36.690 and 80.36.610 unless the context clearly requires otherwise.

(a) "Basic residential service" means those services set out in 47 C.F.R. Sec. 54.101(a)(2011) and mandatory extended area service approved by the commission.

(b) "Basic telecommunications services" means the following services:

- (i) Single-party service;
- (ii) Voice grade access to the public switched network;
- (iii) Support for local usage;
- (iv) Dual tone multifrequency signaling (touch-tone);
- (v) Access to emergency services (911);
- (vi) Access to operator services;
- (vii) Access to interexchange services;
- (viii) Access to directory assistance; and
- (ix) Toll limitation services.

(c) "Communications provider" means a provider of communications services that assigns a working telephone number to a final consumer for intrastate wireline or wireless communications services or interconnected voice over internet protocol service, and includes local exchange carriers.

(d) "Communications services" includes telecommunications services and information services and any combination thereof.

(e) "Incumbent local exchange carrier" has the same meaning as set forth in 47 U.S.C. Sec. 251(h).

(f) "Incumbent public network" means the network established by incumbent local exchange carriers for the delivery of communications services to customers that is used by communications providers for origination or termination of communications services by or to customers.

(g) "Interconnected voice over internet protocol service" means an interconnected voice over internet protocol service that: (a) [(i)] Enables real-time, two-way voice communications; (b) [(ii)] requires a broadband connection from the user's location; (c) [(iii)] requires internet protocol-compatible customer premises equipment; and (d) [(iv)] permits users generally to receive calls that originate on the public network and to terminate calls to the public network.

(h) "Program" means the state universal communications services program created in RCW 80.36.650.

(i) "Telecommunications" has the same meaning as defined in 47 U.S.C. Sec. 153(43).

(j) "Telecommunications act of 1996" means the telecommunications act of 1996 (P.L. 104-104, 110 Stat. 56).

(k) "Working telephone number" means a north American numbering plan telephone number, or successor dialing protocol, that is developed for use in placing calls to or from the public network, that enables a consumer to make or receive calls.

(2) This section expires July 1, 2020. [2013 2nd sp.s. c 8 § 202.]

Findings—Intent—Effective date—State universal communications services program—Advisory board—Timely rule adoption—Utilities and transportation commission report—2013 2nd sp.s. c 8: See notes following RCW 80.36.650.

80.36.650 State universal communications services program—Established. (Effective July 1, 2014, until July 1, 2020.) (1) A state universal communications services program is established. The program is established to protect public safety and welfare under the authority of the state to regulate telecommunications under Article XII, section 19 of the state Constitution. The purpose of the program is to support continued provision of basic telecommunications services under rates, terms, and conditions established by the commission during the time over which incumbent communications providers in the state are adapting to changes in federal universal service fund and intercarrier compensation support.

(2) Under the program, eligible communications providers may receive distributions from the universal communications services account created in RCW 80.36.690 in exchange for the affirmative agreement to provide continued services under the rates, terms, and conditions established by the commission under this chapter for the period covered by the distribution. The commission must implement and administer the program under terms and conditions established in RCW 80.36.630 through 80.36.690. Expenditures for the program may not exceed five million dollars per fiscal year.

(3) A communications provider is eligible to receive distributions from the account if:

(a) The communications provider is: (i) An incumbent local exchange carrier serving fewer than forty thousand access lines in the state; or (ii) a radio communications service company providing wireless two-way voice communications service to less than the equivalent of forty thousand access lines in the state. For purposes of determining the access line threshold in this subsection, the access lines or equivalents of all affiliates must be counted as a single threshold, if the lines or equivalents are located in Washington;

(b) The customers of the communications provider are at risk of rate instability or service interruptions or cessations absent a distribution to the provider that will allow the provider to maintain rates reasonably close to the benchmark; and

(c) The communications provider meets any other requirements established by the commission pertaining to the provision of communications services, including basic telecommunications services.

(4)(a) Distributions to eligible communications providers are based on a benchmark established by the commission. The benchmark is the rate the commission determines to be a reasonable amount customers should pay for basic residential

service provided over the incumbent public network. However, if an incumbent local exchange carrier is charging rates above the benchmark for the basic residential service, that provider may not seek distributions from the fund for the purpose of reducing those rates to the benchmark.

(b) To receive a distribution under the program, an eligible communications provider must affirmatively consent to continue providing communications services to its customers under rates, terms, and conditions established by the commission pursuant to this chapter for the period covered by the distribution.

(5) The program is funded from amounts deposited by the legislature in the universal communications services account established in RCW 80.36.690. The commission must operate the program within amounts appropriated for this purpose and deposited in the account.

(6) The commission must periodically review the accounts and records of any communications provider that receives distributions under the program to ensure compliance with the program and monitor the providers' use of the funds.

(7) The commission must establish an advisory board, consisting of a reasonable balance of representatives from different types of communications providers and consumers, to advise the commission on any rules and policies governing the operation of the program.

(8) The program terminates on June 30, 2019, and no distributions may be made after that date.

(9) This section expires July 1, 2020. [2013 2nd sp.s. c 8 § 203.]

Findings—Intent—2013 2nd sp.s. c 8: "(1) The legislature finds that:

(a) The benefit that all consumers and communications providers derive from connection to the legacy public telephone network is enhanced by a universal service program that enables as many consumers to be connected to the public network as possible; and

(b) Consumers in all areas of the state should continue to have access to communications services at reasonable rates.

(2) The state has long relied on incumbent local exchange carriers to provide a ubiquitous incumbent public network as carriers of last resort. Significant changes are occurring in the communications marketplace, including: (a) The migration from customer reliance on access lines for voice service to the use of broadband for a number of communications applications; and (b) changes in federal regulations governing: How communications providers compensate other providers for the use of the network; and eligibility for federal universal service funds. These changes are adversely affecting the ability of some communications providers to continue to offer communications services in rural areas of the state of Washington at rates that are comparable to those prevailing in urban areas. These changes, absent explicit federal and state universal service support for such communications providers, may lead, in the short term, to unreasonable telephone service rate increases or cessation of service for some Washington consumers. Therefore, it is in the best interest of the state to ensure that incumbent local exchange carriers are able to continue to provide services as the carrier of last resort.

(3) As a result of the foregoing and to enable all consumers in Washington to access and benefit from a ubiquitous public network, the legislature intends to create a targeted and temporary universal service program that supports the legacy public telephone network of Washington's smaller incumbent communications providers and ensures access to the network during this transition to broadband services, is operated in a transparent manner pursuant to rules adopted by the utilities and transportation commission, and advances universal service in a manner not inconsistent with the requirements of 47 U.S.C. Sec. 254, the federal telecommunications act of 1996." [2013 2nd sp.s. c 8 § 201.]

Effective date—2013 2nd sp.s. c 8: "Sections 201 through 206, 208, 209, and 211 of this act take effect July 1, 2014." [2013 2nd sp.s. c 8 § 302.]

State universal communications services program—Advisory board—Timely rule adoption—2013 2nd sp.s. c 8: "(1) To ensure that this act is implemented in a timely manner, the utilities and transportation commission must adopt rules under section 204 of this act prior to July 1, 2014. To ensure timely implementation of this act, the utilities and transportation commission may initiate efforts to establish an advisory board and other actions under sections 203 and 204 of this act prior to July 1, 2014.

(2) This section expires July 1, 2020." [2013 2nd sp.s. c 8 § 207.]

Utilities and transportation commission report—2013 2nd sp.s. c 8: "By December 1, 2017, and in compliance with RCW 43.01.036, the Washington utilities and transportation commission must report to the appropriate committees of the legislature, on the following: (1) Whether funding levels for each small telecommunications company have been adequate to maintain reliable universal service; (2) the future impacts on small telecommunications companies from the elimination of funding under this act; (3) the impacts on customer rates from the current level of funding and the future impacts when the funding terminates under this act; and (4) the impacts on line and service delivery investments when the funding is terminated under this act." [2013 2nd sp.s. c 8 § 212.]

80.36.660 State universal communications services program—Rules. (Effective July 1, 2014, until July 1, 2020.) (1) To implement the program, the commission must adopt rules for the following purposes:

(a) Operation of the program, including criteria for: Eligibility for distributions; use of the funds; identification of any reports or data that must be filed with the commission, including, but not limited to, how a communication provider used the distributed funds; and the communications provider's infrastructure;

(b) Operation of the universal communications services account established in RCW 80.36.690;

(c) Establishment of the benchmark used to calculate distributions; and

(d) Readoption, amendment, or repeal of any existing rules adopted pursuant to RCW 80.36.610 and 80.36.620 as necessary to be consistent with RCW 80.36.630 through 80.36.690 and 80.36.610.

(2) This section expires July 1, 2020. [2013 2nd sp.s. c 8 § 204.]

Findings—Intent—Effective date—State universal communications services program—Advisory board—Timely rule adoption—Utilities and transportation commission report—2013 2nd sp.s. c 8: See notes following RCW 80.36.650.

80.36.670 State universal communications services program—Penalties. (Effective July 1, 2014, until July 1, 2020.) (1) In addition to any other penalties prescribed by law, the commission may impose penalties for failure to make or delays in making or filing any reports required by the commission for administration of the program. In addition, the commission may recover amounts determined to have been improperly distributed under RCW 80.36.650. For the purposes of this section, the provisions of RCW 80.04.380 through 80.04.405, inclusive, apply to all companies that receive support from the universal communications services account created in RCW 80.36.690.

(2) Any action taken under this section must be taken only after providing the affected communications provider with notice and an opportunity for a hearing, unless otherwise provided by law.

(3) Any amounts recovered under this section must be deposited in the universal communications services account created in RCW 80.36.690.

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(4) This section expires July 1, 2020. [2013 2nd sp.s. c 8 § 205.]

Findings—Intent—Effective date—State universal communications services program—Advisory board—Timely rule adoption—Utilities and transportation commission report—2013 2nd sp.s. c 8: See notes following RCW 80.36.650.

80.36.680 State universal communications services program—Administration. (Effective July 1, 2014, until July 1, 2020.) (1) The commission may delegate to the commission secretary or other staff the authority to resolve disputes and make other administrative decisions necessary to the administration and supervision of the program consistent with the relevant statutes and commission rules.

(2) This section expires July 1, 2020. [2013 2nd sp.s. c 8 § 206.]

Findings—Intent—Effective date—State universal communications services program—Advisory board—Timely rule adoption—Utilities and transportation commission report—2013 2nd sp.s. c 8: See notes following RCW 80.36.650.

80.36.690 State universal communications services program—Account created. (Effective July 1, 2014, until July 1, 2020.) (1) The universal communications services account is created in the custody of the state treasurer. Revenues to the account consist of moneys deposited in the account by the legislature and any penalties or other recoveries received pursuant to RCW 80.36.670. Expenditures from the account may be used only for the purposes of the universal communications services program established in RCW 80.36.650. Only the secretary of the commission or the secretary's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(2) This section expires July 1, 2020. [2013 2nd sp.s. c 8 § 208.]

Findings—Intent—Effective date—State universal communications services program—Advisory board—Timely rule adoption—Utilities and transportation commission report—2013 2nd sp.s. c 8: See notes following RCW 80.36.650.

80.36.700 State universal communications services program—Program expiration. (Effective July 1, 2014, until July 1, 2020.) (1) The universal communications services program established in RCW 80.36.630 through 80.36.690 terminates on June 30, 2019.

(2) This section expires July 1, 2020. [2013 2nd sp.s. c 8 § 211.]

Findings—Intent—Effective date—State universal communications services program—Advisory board—Timely rule adoption—Utilities and transportation commission report—2013 2nd sp.s. c 8: See notes following RCW 80.36.650.

Chapter 80.50 RCW

ENERGY FACILITIES—SITE LOCATIONS

Sections

80.50.080 Counsel for the environment.
80.50.150 Enforcement of compliance—Penalties.

80.50.080 Counsel for the environment. After the council has received a site application, the attorney general

shall appoint an assistant attorney general as a counsel for the environment. The counsel for the environment shall represent the public and its interest in protecting the quality of the environment. Costs incurred by the counsel for the environment in the performance of these duties shall be charged to the office of the attorney general, and shall not be a charge against the appropriation to the energy facility site evaluation council. He or she shall be accorded all the rights, privileges, and responsibilities of an attorney representing a party in a formal action. This section shall not be construed to prevent any person from being heard or represented by counsel in accordance with the other provisions of this chapter. [2013 c 23 § 282; 1977 ex.s. c 371 § 6; 1970 ex.s. c 45 § 8.]

80.50.150 Enforcement of compliance—Penalties.

(1) The courts are authorized to grant such restraining orders, and such temporary and permanent injunctive relief as is necessary to secure compliance with this chapter and/or with a site certification agreement issued pursuant to this chapter or a national pollutant discharge elimination system (hereafter in this section, NPDES) permit issued by the council pursuant to chapter 90.48 RCW or any permit issued pursuant to RCW 80.50.040(14). The court may assess civil penalties in an amount not less than one thousand dollars per day nor more than twenty-five thousand dollars per day for each day of construction or operation in material violation of this chapter, or in material violation of any site certification agreement issued pursuant to this chapter, or in violation of any NPDES permit issued by the council pursuant to chapter 90.48 RCW, or in violation of any permit issued pursuant to RCW 80.50.040(14). The court may charge the expenses of an enforcement action relating to a site certification agreement under this section, including, but not limited to, expenses incurred for legal services and expert testimony, against any person found to be in material violation of the provisions of such certification: PROVIDED, That the expenses of a person found not to be in material violation of the provisions of such certification, including, but not limited to, expenses incurred for legal services and expert testimony, may be charged against the person or persons bringing an enforcement action or other action under this section.

(2) Willful violation of any provision of this chapter shall be a gross misdemeanor.

(3) Willful or criminally negligent, as defined in RCW 9A.08.010(1)(d), violation of any provision of an NPDES permit issued by the council pursuant to chapter 90.48 RCW or any permit issued by the council pursuant to RCW 80.50.040(14) or any emission standards promulgated by the council in order to implement the federal clean air act and the state implementation plan with respect to energy facilities under the jurisdiction provisions of this chapter shall be deemed a crime, and upon conviction thereof shall be punished by a fine of up to twenty-five thousand dollars per day and costs of prosecution. Any violation of this subsection shall be a gross misdemeanor.

(4) Any person knowingly making any false statement, representation, or certification in any document in any NPDES form, notice, or report required by an NPDES permit or in any form, notice, or report required for or by any permit issued pursuant to *RCW 80.50.090(14) shall be deemed guilty of a crime, and upon conviction thereof shall be pun-

ished by a fine of up to ten thousand dollars and costs of prosecution.

(5) Every person who violates the provisions of certificates and permits issued or administered by the council shall incur, in addition to any other penalty as provided by law, a penalty in an amount of up to five thousand dollars a day for every such violation. Each and every such violation shall be a separate and distinct offense, and in case of a continuing violation, every day's continuance shall be and be deemed to be a separate and distinct violation. Every act of commission or omission which procures, aids, or abets in the violation shall be considered a violation under the provisions of this section and subject to the penalty provided in this section. The penalty provided in this section shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the same from the council describing such violation with reasonable particularity. The council may, upon written application therefor received within fifteen days after notice imposing any penalty is received by the person incurring the penalty, and when deemed in the best interest to carry out the purposes of this chapter, remit or mitigate any penalty provided in this section upon such terms as the council shall deem proper, and shall have authority to ascertain the facts upon all such applications in such manner and under such regulations as it may deem proper. Any person incurring any penalty under this section may appeal the same to the council. Such appeals shall be filed within thirty days of receipt of notice imposing any penalty unless an application for remission or mitigation is made to the council. When an application for remission or mitigation is made, such appeals shall be filed within thirty days of receipt of notice from the council setting forth the disposition of the application. Any penalty imposed under this section shall become due and payable thirty days after receipt of a notice imposing the same unless application for remission or mitigation is made or an appeal is filed. When an application for remission or mitigation is made, any penalty incurred hereunder shall become due and payable thirty days after receipt of notice setting forth the disposition of the application unless an appeal is filed from such disposition. Whenever an appeal of any penalty incurred hereunder is filed, the penalty shall become due and payable only upon completion of all review proceedings and the issuance of a final order confirming the penalty in whole or in part. If the amount of any penalty is not paid to the council within thirty days after it becomes due and payable, the attorney general, upon the request of the council, shall bring an action in the name of the state of Washington in the superior court of Thurston county or of any county in which such violator may do business, to recover such penalty. In all such actions, the procedure and rules of evidence shall be the same as an ordinary civil action except as otherwise provided in this chapter. All penalties recovered under this section shall be paid into the state treasury and credited to the general fund.

(6) Civil proceedings to enforce this chapter may be brought by the attorney general or the prosecuting attorney of any county affected by the violation on his or her own motion or at the request of the council. Criminal proceedings to enforce this chapter may be brought by the prosecuting attorney of any county affected by the violation on his or her own motion or at the request of the council.

(7) The remedies and penalties in this section, both civil and criminal, shall be cumulative and shall be in addition to any other penalties and remedies available at law, or in equity, to any person. [2013 c 23 § 283. Prior: 1979 ex.s. c 254 § 2; 1979 c 41 § 1; 1977 ex.s. c 371 § 12; 1970 ex.s. c 45 § 15.]

***Reviser's note:** The reference to RCW 80.50.090(14) appears to be in error; that section has only four subsections and concerns public hearings, not issuance of permits. RCW 80.50.040(12) relates to issuance of permits.

Title 81 TRANSPORTATION

Chapters

- 81.04 Regulations—General.**
- 81.08 Securities.**
- 81.24 Regulatory fees.**
- 81.28 Common carriers in general.**
- 81.40 Railroads—Employee requirements and regulations.**
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Chapter 81.04 RCW REGULATIONS—GENERAL

Sections

- 81.04.020 Procedure before commission and courts.
- 81.04.040 Witness fees and mileage.
- 81.04.050 Protection against self-incrimination.
- 81.04.070 Inspection of books, papers, and documents.
- 81.04.120 Hearing—Order—Record.
- 81.04.280 Purchase and sale of stock by employees.
- 81.04.460 Commission to enforce public service laws—Employees as peace officers.
- 81.04.500 Duties of attorney general.
- 81.04.510 Engaging in business or operating without approval or authority—Procedure.

81.04.020 Procedure before commission and courts. Each commissioner shall have power to administer oaths, certify to all official acts, and to issue subpoenas for the attendance of witnesses and the production of papers, waybills, books, accounts, documents, and testimony in any inquiry, investigation, hearing, or proceeding in any part of the state.

The superior court of the county in which any such inquiry, investigation, hearing, or proceeding may be had, shall have power to compel the attendance of witnesses and the production of papers, waybills, books, accounts, documents, and testimony as required by such subpoena. The commission or the commissioner before which the testimony is to be given or produced, in case of the refusal of any witness to attend or testify or produce any papers required by the subpoena, shall report to the superior court in and for the county in which the proceeding is pending by petition, setting forth that due notice has been given of the time and place of

attendance of said witnesses, or the production of said papers, and that the witness has been summoned in the manner prescribed in this chapter, and that the fees and mileage of the witness have been paid or tendered to the witness for his or her attendance and testimony, and that the witness has failed and refused to attend or produce the papers required by the subpoena, before the commission, in the cause or proceedings named in the notice and subpoena, or has refused to answer questions propounded to him or her in the course of such proceeding, and ask an order of said court, compelling the witness to attend and testify before the commission. The court, upon the petition of the commission, shall enter an order directing the witness to appear before said court at a time and place to be fixed by the court in such order, and then and there show cause why he or she has not responded to said subpoena. A copy of said order shall be served upon said witness. If it shall appear to the court that said subpoena was regularly issued by the commission, the court shall thereupon enter an order that said witness appear before the commission at said time and place as fixed in said order, and testify or produce the required papers, and upon failing to obey said order, said witness shall be dealt with as for contempt of court. [2013 c 23 § 284; 1961 c 14 § 81.04.020. Prior: 1911 c 117 § 75, part; RRS § 10413, part.]

81.04.040 Witness fees and mileage. Each witness who appears under subpoena shall receive for his or her attendance four dollars per day and ten cents per mile traveled by the nearest practicable route in going to and returning from the place of hearing. No witness shall be entitled to fees or mileage from the state when summoned at the instance of the public service companies affected. [2013 c 23 § 285; 1961 c 14 § 81.04.040. Prior: 1955 c 79 § 3; 1911 c 117 § 76, part; RRS § 10414, part.]

81.04.050 Protection against self-incrimination. The claim by any witness that any testimony sought to be elicited may tend to incriminate him or her shall not excuse such witness from testifying, but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding, excepting in a prosecution for perjury. The commissioner shall have power to compel the attendance of witnesses at any place within the state. [2013 c 23 § 286; 1961 c 14 § 81.04.050. Prior: 1911 c 117 § 76, part; RRS § 10414, part.]

81.04.070 Inspection of books, papers, and documents. The commission and each commissioner, or any person employed by the commission, shall have the right, at any and all times, to inspect the accounts, books, papers, and documents of any public service company, and the commission, or any commissioner, may examine under oath any officer, agent, or employee of such public service company in relation thereto, and with reference to the affairs of such company: PROVIDED, That any person other than a commissioner who shall make any such demand shall produce his or her authority from the commission to make such inspection. [2013 c 23 § 287; 1961 c 14 § 81.04.070. Prior: 1911 c 117 § 77; RRS § 10415.]

81.04.120 Hearing—Order—Record. At the time fixed for the hearing mentioned in RCW 81.04.110, the complainant and the person or corporation complained of shall be entitled to be heard and introduce such evidence as he or she or it may desire. The commission shall issue process to enforce the attendance of all necessary witnesses. At the conclusion of such hearing, the commission shall make and render findings concerning the subject matter and facts inquired into and enter its order based thereon. A copy of such order, certified under the seal of the commission, shall be served upon the person or corporation complained of, or his or her or its attorney, which order shall, of its own force, take effect and become operative twenty days after the service thereof, except as otherwise provided. Where an order cannot, in the judgment of the commission, be complied with within twenty days, the commission may prescribe such additional time as in its judgment is reasonably necessary to comply with the order, and may, on application and for good cause shown, extend the time for compliance fixed in its order. A full and complete record of all proceedings had before the commission, or any member thereof, on any formal hearing had, and all testimony shall be taken down by a stenographer appointed by the commission, and the parties shall be entitled to be heard in person or by attorney. In case of an action to review any order of the commission, a transcript of such testimony, together with all exhibits introduced, and of the record and proceedings in the cause, shall constitute the record of the commission. [2013 c 23 § 288; 1961 c 14 § 81.04.120. Prior: 1911 c 117 § 81; RRS § 10423.]

81.04.280 Purchase and sale of stock by employees. A public service company subject to regulation by the commission as to rates and service shall not: (1) Permit any employee to sell, offer for sale, or solicit the purchase of any security of any other person or corporation during such hours as such employee is engaged to perform any duty of such public service company; (2) by any means or device, require any employee to purchase or contract to purchase any of its securities or those of any other person or corporation; or (3) require any employee to permit the deduction from his or her wages or salary of any sum as a payment or to be applied as a payment of any purchase or contract to purchase any security of such public service company or of any other person or corporation. [2013 c 23 § 289; 2007 c 234 § 13; 1961 c 14 § 81.04.280. Prior: 1933 c 165 § 9; RRS § 10458-3.]

81.04.460 Commission to enforce public service laws—Employees as peace officers. It shall be the duty of the commission to enforce the provisions of this title and all other acts of this state affecting public service companies, the enforcement of which is not specifically vested in some other officer or tribunal. Any employee of the commission may, without a warrant, arrest any person found violating in his or her presence any provision of this title, or any rule or regulation adopted by the commission: PROVIDED, That each such employee shall be first specifically designated in writing by the commission or a member thereof as having been found to be a fit and proper person to exercise such authority. Upon being so designated, such person shall be a peace officer and a police officer for the purposes herein mentioned. [2013 c

23 § 290; 1961 c 173 § 2; 1961 c 14 § 81.04.460. Prior: 1911 c 117 § 101; RRS § 10450.]

81.04.500 Duties of attorney general. It shall be the duty of the attorney general to represent and appear for the people of the state of Washington and the commission in all actions and proceedings involving any question under this title, or under or in reference to any act or order of the commission; and it shall be the duty of the attorney general generally to see that all laws affecting any of the persons or corporations herein enumerated are complied with, and that all laws, the enforcement of which devolves upon the commission, are enforced, and to that end he or she is authorized to institute, prosecute, and defend all necessary actions and proceedings. [2013 c 23 § 291; 1961 c 14 § 81.04.500. Prior: 1911 c 117 § 5; RRS § 10341.]

81.04.510 Engaging in business or operating without approval or authority—Procedure. Whether or not any person or corporation is conducting business requiring operating authority, or has performed or is performing any act requiring approval of the commission without securing such approval, shall be a question of fact to be determined by the commission. Whenever the commission believes that any person or corporation is engaged in operations without the necessary approval or authority required by any provision of this title, it may institute a special proceeding requiring such person or corporation to appear before the commission at a location convenient for witnesses and the production of evidence and bring with him or her or its books, records, accounts, and other memoranda, and give testimony under oath as to his or her or its operations or acts, and the burden shall rest upon such person or corporation of proving that his or her or its operations or acts are not subject to the provisions of this chapter. The commission may consider any and all facts that may indicate the true nature and extent of the operations or acts and may subpoena such witnesses and documents as it deems necessary.

After having made the investigation herein described, the commission is authorized and directed to issue the necessary order or orders declaring the operations or acts to be subject to, or not subject to, the provisions of this title. In the event the operations or acts are found to be subject to the provisions of this title, the commission is authorized and directed to issue cease and desist orders to all parties involved in the operations or acts.

In proceedings under this section, no person or corporation shall be excused from testifying or from producing any book, waybill, document, paper, or account before the commission when ordered to do so, on the ground that the testimony or evidence, book, waybill, document, paper, or account required of him or her or it may tend to incriminate him or her or it or subject him or her or it to penalty or forfeiture; but no person or corporation shall be prosecuted, punished, or subjected to any penalty or forfeiture for or on account of any account, transaction, matter, or thing concerning which he or she or it shall under oath have testified or produced documentary evidence in proceedings under this section: PROVIDED, That no person so testifying shall be exempt from prosecution or punishment for any perjury com-

mitted by him or her in his or her testimony. [2013 c 23 § 292; 1973 c 115 § 15.]

Chapter 81.08 RCW SECURITIES

Sections

81.08.110 Penalty against company.

81.08.110 Penalty against company. Every public service company which, directly or indirectly, issues or causes to be issued, any stock or stock certificate or other evidence of interest or ownership, or bond, note, or other evidence of indebtedness, in nonconformity with the provisions of this chapter, or which applies the proceeds from the sale thereof, or any part thereof, to any purpose other than the purpose or purposes allowed by this chapter shall be subject to a penalty of not more than one thousand dollars for each offense. Every violation of any such order, rules, direction, demand, or requirement of the department, or of any provision of this chapter, shall be a separate and distinct offense and in case of a continuing violation every day's continuance thereof shall be deemed to be a separate and distinct offense.

The act, omission, or failure of any officer, agent, or employee of any public service company acting within the scope of his or her official duties or employment, shall in every case be deemed to be the act, omission, or failure of such public service company. [2013 c 23 § 293; 1994 c 251 § 10; 1961 c 14 § 81.08.110. Prior: 1933 c 151 § 11; RRS § 10439-11.]

Chapter 81.24 RCW REGULATORY FEES

Sections

81.24.070 Disposition of fees.

81.24.070 Disposition of fees. All moneys collected under the provisions of this chapter shall within thirty days be paid to the state treasurer and by him or her deposited to the public service revolving fund. [2013 c 23 § 294; 1961 c 14 § 81.24.070. Prior: 1937 c 158 § 6; RRS § 10417-4.]

Chapter 81.28 RCW COMMON CARRIERS IN GENERAL

Sections

81.28.290 Investigation of accidents, wrecks.

81.28.290 Investigation of accidents, wrecks. The commission shall investigate all accidents that may occur upon the lines of any common carrier resulting in loss of life, to any passenger or employee, and may investigate any and all accidents or wrecks occurring on the line of any common carrier. Notice of the investigation shall be given in all cases for a sufficient length of time to enable the company affected to participate in the hearing and may be given orally or in writing, in such manner as the commission may prescribe.

Such witnesses may be examined as the commission deems necessary and proper to thoroughly ascertain the cause

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of the accident or wreck and fix the responsibility therefor. The examination and investigation may be conducted by an inspector or deputy inspector, and he or she may administer oaths, issue subpoenas, and compel the attendance of witnesses, and when the examination is conducted by an inspector or deputy inspector, he or she shall make a full and complete report thereof to the commission. [2013 c 23 § 295; 1961 c 14 § 81.28.290. Prior: 1953 c 104 § 4; prior: 1911 c 117 § 63, part; RRS § 10399, part.]

Chapter 81.40 RCW

RAILROADS—EMPLOYEE REQUIREMENTS AND REGULATIONS

Sections

81.40.060 Purchase of apparel by employees—Penalty.

81.40.110 Flagger must read, write, and speak English.

81.40.060 Purchase of apparel by employees—Penalty. (1) It shall be unlawful for any railroad or other transportation company doing business in the state of Washington, or of any officer, agent, or servant of such railroad or other transportation company, to require any conductor, engineer, brake operator, fire tender, purser, or other employee, as a condition of his or her continued employment, or otherwise to require or compel, or attempt to require or compel, any such employees to purchase of any such railroad or other transportation company or of any particular person, firm, or corporation or at any particular place or places, any uniform or other clothing or apparel, required by any such railroad or other transportation company to be used by any such employee in the performance of his or her duties as such; and any such railroad or transportation company or any officer, agent or servant thereof, who shall order or require any conductor, engineer, brake operator, fire tender, purser, or other person in its employ, to purchase any uniform or other clothing or apparel as aforesaid, shall be deemed to have required such purchase as a condition of such employee's continued employment.

(2) Any railroad or other transportation company doing business in the state of Washington, or any officer, agent, or servant thereof, violating this section is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine in any sum not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail of the county where the misdemeanor is committed, not exceeding six months. [2013 c 23 § 296; 2003 c 53 § 388; 1961 c 14 § 81.40.060. Prior: 1907 c 224 § 1; RRS § 10504.]

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

81.40.110 Flagger must read, write, and speak English. Any railroad operating within this state, shall not employ or use as flagger any person or persons who cannot read, write, and speak the English language. [2013 c 23 § 297; 1961 c 14 § 81.40.110. Prior: 1907 c 138 § 1, part; 1899 c 35 § 1, part; RRS § 10480, part.]

Chapter 81.44 RCW
COMMON CARRIERS—EQUIPMENT

Sections

81.44.070 Duties of inspector of safety appliances.

81.44.070 Duties of inspector of safety appliances. It shall be the duty of the inspector of tracks, bridges, structures, and equipment, and such deputies as may be appointed, to inspect all equipment, and appliances connected therewith, and all apparatus, tracks, bridges and structures, depots and facilities and accommodations connected therewith, and facilities and accommodations furnished for the use of employees, and make such reports of his or her inspection to the commission as may be required. He or she shall, on discovering any defective equipment or appliances connected therewith, rendering the use of such equipment dangerous, immediately report the same to the superintendent of the road on which it is found, and to the proper official at the nearest point where such defect is discovered, describing the defect. Such inspector may, on the discovery of any defect rendering the use of any car, motor or locomotive dangerous, condemn such car, motor or locomotive, and order the same out of service until repaired and put in good working order. He or she shall, on discovering any track, bridge, or structure defective or unsafe in any particular, report such condition to the commission, and, in addition thereto, report the same to the official in charge of the division of such railroad upon which such defect is found. In case any track, bridge, or structure is found so defective as to be dangerous to the employees or public for a train or trains to be operated over the same, the inspector is hereby authorized to condemn such track, bridge, or structure and notify the commission and the office in charge of the division of such railroad where such defect is found of his or her action concerning the same, reporting in detail the defect complained of, and the work or improvements necessary to repair such defect. He or she shall also report to the commission the violation of any law governing, controlling, or affecting the conduct of public service companies in this state, as such companies are defined in this title or in Title 80 RCW.

The inspector, or such deputies as may be appointed, shall have the right and privilege of riding on any locomotive, either on freight or passenger trains, or on the caboose of any freight train, for the purpose of inspecting the track on any railroad in this state: PROVIDED, That the engineer or conductor in charge of any such locomotive or caboose may require such inspector to produce his or her authority, under the seal of the commission, showing that he or she is such inspector or deputy inspector.

The inspector, or such deputy inspector or inspectors as may be appointed, shall, when required by the commission, inspect any street railroad, gas plant, electrical plant, water system, telephone line, or telegraph line, and upon discovering any defective or dangerous track, bridge, structure, equipment, apparatus, machinery, appliance, facility, instrumentality, or building, rendering the use of the same dangerous to the public or to the employees of the company owning or operating the same, report the same to the commission, and to the official in charge of such road, plant, system, or line. [2013 c 23 § 298; 1961 c 14 § 81.44.070. Prior: 1911 c 117

§ 67; RRS § 10403. Formerly RCW 81.44.070 and 81.44.080.]

Chapter 81.48 RCW
RAILROADS—OPERATING REQUIREMENTS
AND REGULATIONS

Sections

81.48.060 Penalty for violation of duty endangering safety.

81.48.070 Cruelty to stock in transit—Penalty.

81.48.060 Penalty for violation of duty endangering safety. Every engineer, motor operator, grip operator, conductor, brake operator, switch tender, train dispatcher, or other officer, agent, or servant of any railway company, who shall be guilty of any willful violation or omission of his or her duty as such officer, agent, or servant, by which human life or safety shall be endangered, for which no punishment is specially prescribed, shall be guilty of a misdemeanor. [2013 c 23 § 299; 1961 c 14 § 81.48.060. Prior: 1909 c 249 § 277; RRS § 2529.]

81.48.070 Cruelty to stock in transit—Penalty. Railroad companies in carrying or transporting animals shall not permit them to be confined in cars for a longer period than forty-eight consecutive hours without unloading them for rest, water, and feeding for a period of at least two consecutive hours, unless prevented from so unloading them by unavoidable accident. In estimating such confinement, the time during which the animals have been confined without such rest on connecting roads from which they are received shall be included. Animals so unloaded shall, during such rest, be properly fed, watered by the owner or person having the custody of them, or in case of his or her default in so doing, then by the railroad company transporting them, at the expense of said owner or person in custody thereof, and said company shall in such case have a lien upon such animals for food, care, and custody furnished, and shall not be liable for such detention of such animals. If animals are transported where they can and do have proper food, water, space, and opportunity for rest, the foregoing provision in regard to their being unloaded shall not apply. Violators of this section shall be punished by fine not exceeding one thousand dollars per animal. [2013 c 23 § 300; 1994 c 261 § 19; 1961 c 14 § 81.56.120. Prior: 1893 c 27 § 4; RRS § 10494. Formerly RCW 81.56.120.]

Finding—Intent—1994 c 261: See note following RCW 16.52.011.

Chapter 81.52 RCW
RAILROADS—RIGHTS-OF-WAY—
SPURS—FENCES

Sections

81.52.050 Fences—Crossings—Cattle guards.

81.52.050 Fences—Crossings—Cattle guards. Every person, company, or corporation having the control or management of any railroad shall, outside of any corporate city or town, and outside the limits of any sidetrack or switch, cause to be constructed and maintained in good repair on each side of said railroad, along the line of said right-of-way of such

person, company, or corporation operating the same, a substantial fence, and at every point where any roadway or other public highway shall cross said railroad, a safe and sufficient crossing must be built and maintained, and on each side of such crossing and at each end of such sidetrack or switch, outside of any incorporated city or town, a sufficient cattle guard: PROVIDED, That any person holding land on both sides of said right-of-way shall have the right to put in gates for his or her own use at such places as may be convenient. [2013 c 23 § 301; 1961 c 14 § 81.52.050. Prior: 1907 c 88 § 1; RRS § 10507.]

Chapter 81.53 RCW RAILROADS—CROSSINGS

Sections

81.53.010	Definitions.
81.53.030	Petition for crossing—Hearing—Order.
81.53.120	Cost when railroad crosses railroad.
81.53.261	Crossing signals, warning devices—Petition—Hearing—Order—Costs apportionment—Records not evidence for actions—Appeal.

81.53.010 Definitions. The term "commission," when used in this chapter, means the utilities and transportation commission of Washington.

The term "highway," when used in this chapter, includes all state and county roads, streets, alleys, avenues, boulevards, parkways, and other public places actually open and in use, or to be opened and used, for travel by the public.

The term "railroad," when used in this chapter, means every railroad, including interurban and suburban electric railroads, by whatsoever power operated, for the public use in the conveyance of persons or property for hire, with all bridges, ferries, tunnels, equipment, switches, spurs, sidings, tracks, stations, and terminal facilities of every kind, used, operated, controlled, managed, or owned by or in connection therewith. The said term shall also include every logging and other industrial railway owned or operated primarily for the purpose of carrying the property of its owners or operators or of a limited class of persons, with all tracks, spurs, and sidings used in connection therewith. The said term shall not include street railways operating within the limits of any incorporated city or town.

The term "railroad company," when used in this chapter, includes every corporation, company, association, joint stock association, partnership, or person, its, their, or his or her lessees, trustees, or receivers appointed by any court whatsoever, owning, operating, controlling, or managing any railroad, as that term is defined in this section.

The term "over-crossing," when used in this chapter, means any point or place where a highway crosses a railroad by passing above the same.

The term "under-crossing," when used in this chapter, means any point or place where a highway crosses a railroad by passing under the same.

The term "over-crossing" or "under-crossing," shall also mean any point or place where one railroad crosses another railroad not at grade.

The term "grade crossing," when used in this chapter, means any point or place where a railroad crosses a highway or a highway crosses a railroad or one railroad crosses

another, at a common grade. [2013 c 23 § 302; 1961 c 14 § 81.53.010. Prior: 1959 c 283 § 2; prior: (i) 1913 c 30 § 1; RRS § 10511. (ii) 1941 c 161 § 1; Rem. Supp. 1941 § 10511-1. Formerly RCW 81.52.080, part.]

81.53.030 Petition for crossing—Hearing—Order. Whenever a railroad company desires to cross a highway or railroad at grade, it shall file a written petition with the commission setting forth the reasons why the crossing cannot be made either above or below grade. Whenever the legislative authority of a county, or the municipal authorities of a city, or the state officers authorized to lay out and construct state roads, or the state parks and recreation commission, desire to extend a highway across a railroad at grade, they shall file a written petition with the commission, setting forth the reasons why the crossing cannot be made either above or below grade. Upon receiving the petition, the commission shall immediately investigate it, giving at least ten days' notice to the railroad company and the county or city affected thereby, of the time and place of the investigation, to the end that all parties interested may be present and heard. If the highway involved is a state road or parkway, the secretary of transportation or the state parks and recreation commission shall be notified of the time and place of hearing. The evidence introduced shall be reduced to writing and be filed by the commission. If it finds that it is not practicable to cross the railroad or highway either above or below grade, the commission shall enter a written order in the cause, either granting or denying the right to construct a grade crossing at the point in question. The commission may provide in the order authorizing a grade crossing, or at any subsequent time, that the railroad company shall install and maintain proper signals, warnings, flaggers, interlocking devices, or other devices or means to secure the safety of the public and its employees. In respect to existing railroad grade crossings over highways the construction of which grade crossings was accomplished other than under a commission order authorizing it, the commission may in any event require the railroad company to install and maintain, at or near each crossing, on both sides of it, a sign known as the sawbuck crossing sign with the lettering "Railroad Crossing" inscribed thereon with a suitable inscription indicating the number of tracks. The sign shall be of standard design conforming to specifications furnished by the Washington state department of transportation. [2013 c 23 § 303; 1984 c 7 § 373; 1961 c 14 § 81.53.030. Prior: 1959 c 283 § 1; 1955 c 310 § 3; prior: 1937 c 22 § 1, part; 1913 c 30 § 3, part; RRS § 10513, part. Formerly RCW 81.52.100.]

Additional notes found at www.leg.wa.gov

81.53.120 Cost when railroad crosses railroad. Whenever two or more lines of railroad owned or operated by different companies cross a highway, or each other, by an over-crossing, under-crossing, or grade crossing required or permitted by this chapter or by an order of the commission, the portion of the expense of making such crossing not chargeable to any municipality, county, or to the state, and the expense of constructing and maintaining such signals, warnings, flaggers, interlocking devices, or other devices or means to secure the safety of the public and the employees of the railroad company, as the commission may require to be constructed and maintained, shall be apportioned between

said railroad companies by the commission in such manner as justice may require, regard being had for all facts relating to the establishment, reason for, and construction of said improvement, unless said companies shall mutually agree upon an apportionment. If it becomes necessary for the commission to make an apportionment between the railroad companies, a hearing for that purpose shall be held, at least ten days' notice of which shall be given. [2013 c 23 § 304; 1961 c 14 § 81.53.120. Prior: 1937 c 22 § 4C; 1925 ex.s. c 73 § 1C; 1921 c 138 § 2C; 1913 c 30 § 6C; RRS § 10516C. Formerly RCW 81.52.190.]

81.53.261 Crossing signals, warning devices—Petition—Hearing—Order—Costs apportionment—Records not evidence for actions—Appeal. Whenever the secretary of transportation or the governing body of any city, town, or county, or any railroad company whose road is crossed by any highway, shall deem that the public safety requires signals or other warning devices, other than sawbuck signs, at any crossing of a railroad at common grade by any state, city, town, or county highway, road, street, alley, avenue, boulevard, parkway, or other public place actually open and in use or to be opened and used for travel by the public, he or she or it shall file with the utilities and transportation commission a petition in writing, alleging that the public safety requires the installation of specified signals or other warning devices at such crossing or specified changes in the method and manner of existing crossing warning devices. Upon receiving such petition, the commission shall promptly set the matter for hearing, giving at least twenty days notice to the railroad company or companies and the county or municipality affected thereby, or the secretary of transportation in the case of a state highway, of the time and place of such hearing. At the time and place fixed in the notice, all persons and parties interested shall be entitled to be heard and introduce evidence, which shall be reduced to writing and filed by the commission. If the commission shall determine from the evidence that public safety does not require the installation of the signal, other warning device or change in the existing warning device specified in the petition, it shall make determinations to that effect and enter an order denying said petition in toto. If the commission shall determine from the evidence that public safety requires the installation of such signals or other warning devices at such crossing or such change in the existing warning devices at said crossing, it shall make determinations to that effect and enter an order directing the installation of such signals or other warning devices or directing that such changes shall be made in existing warning devices. The commission shall also at said hearing apportion the entire cost of installation and maintenance of such signals or other warning devices, other than sawbuck signs, as provided in RCW 81.53.271: PROVIDED, That upon agreement by all parties to waive hearing, the commission shall forthwith enter its order.

No railroad shall be required to install any such signal or other warning device until the public body involved has either paid or executed its promise to pay to the railroad its portion of the estimated cost thereof.

Nothing in this section shall be deemed to foreclose the right of the interested parties to enter into an agreement, franchise, or permit arrangement providing for the installation of

signals or other warning devices at any such crossing or for the apportionment of the cost of installation and maintenance thereof, or compliance with an existing agreement, franchise, or permit arrangement providing for the same.

The hearing and determinations authorized by this section may be instituted by the commission on its own motion, and the proceedings, hearing, and consequences thereof shall be the same as for the hearing and determination of any petition authorized by this section.

No part of the record, or a copy thereof, of the hearing and determination provided for in this section and no finding, conclusion, or order made pursuant thereto shall be used as evidence in any trial, civil or criminal, arising out of an accident at or in the vicinity of any crossing prior to installation of signals or other warning devices pursuant to an order of the commission as a result of any such investigation.

Any order entered by the utilities and transportation commission under this section shall be subject to review, supersedeas, and appeal as provided in chapter 34.05 RCW.

Nothing in this section shall be deemed to relieve any railroad from liability on account of failure to provide adequate protective devices at any such crossing. [2013 c 23 § 305; 2007 c 234 § 99; 1982 c 94 § 1; 1969 c 134 § 1.]

Additional notes found at www.leg.wa.gov

Chapter 81.64 RCW STREET RAILWAYS

Sections

81.64.160 Hours of labor—Penalty.

81.64.160 Hours of labor—Penalty. (1) No person, agent, officer, manager, or superintendent or receiver of any corporation or owner of streetcars shall require his, her, or its grip operators, motor operators, drivers, or conductors to work more than ten hours in any twenty-four hours.

(2) Any person, agent, officer, manager, superintendent, or receiver of any corporation, or owner of streetcar or cars, violating this section is guilty of a misdemeanor, and shall be fined in any sum not less than twenty-five dollars nor more than one hundred dollars for each day in which such grip operator, motor operator, driver, or conductor in the employ of such person, agent, officer, manager, superintendent, or receiver of such corporation or owner is required to work more than ten hours during each twenty-four hours, as provided in this section.

(3) It is the duty of the prosecuting attorney of each county of this state to institute the necessary proceedings to enforce the provisions of this section. [2013 c 23 § 306; 2003 c 53 § 397; 1961 c 14 § 81.64.160. Prior: 1895 c 100 § 1; RRS § 7648.]

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

Chapter 81.77 RCW SOLID WASTE COLLECTION COMPANIES (Formerly: Garbage and refuse collection companies)

Sections

81.77.020 Compliance with chapter required—Exemption for cities.

81.77.020 Compliance with chapter required—Exemption for cities. No person, his or her lessees, receivers, or trustees, shall engage in the business of operating as a solid waste collection company in this state, except in accordance with the provisions of this chapter: PROVIDED, That the provisions of this chapter shall not apply to the operations of any solid waste collection company under a contract of solid waste disposal with any city or town, nor to any city or town which itself undertakes the disposal of solid waste. [2013 c 23 § 307; 1989 c 431 § 18; 1961 c 295 § 3.]

Chapter 81.80 RCW MOTOR FREIGHT CARRIERS

Sections

- 81.80.100 Form and contents of permit.
81.80.355 Unlawful advertising—Penalty.

81.80.100 Form and contents of permit. Permits granted by the commission shall be in such form as the commission shall prescribe and shall set forth the name and address of the person to whom the permit is granted, the nature of the transportation service to be engaged in and the principal place of operation, termini or route to be used or territory to be served by the operation. No permit holder shall operate except in accordance with the permit issued to him or her. [2013 c 23 § 308; 1961 c 14 § 81.80.100. Prior: 1935 c 194 § 8; RRS § 6382-8.]

81.80.355 Unlawful advertising—Penalty. Any person not holding a permit authorizing him or her to operate as a common carrier, contract carrier, or temporary carrier for the transportation of property for compensation in this state, or an exempt carrier, who displays on any building, vehicle, billboard, or in any manner, any advertisement of, or by circular, letter, newspaper, magazine, poster, card, or telephone directory, advertises the transportation of property for compensation shall be guilty of a misdemeanor and punishable as such. [2013 c 23 § 309; 1961 c 14 § 81.80.355. Prior: 1957 c 205 § 8; 1953 c 95 § 22.]

Chapter 81.96 RCW WESTERN REGIONAL SHORT-HAUL AIR TRANSPORTATION COMPACT

Sections

- 81.96.030 Service of secretary of transportation as state member—Execution of compact.

81.96.030 Service of secretary of transportation as state member—Execution of compact. The secretary of transportation or his or her designee may serve as the Washington state member to the western regional short-haul air transportation compact and may execute the compact on behalf of this state with any other state or states legally joining therein. [2013 c 23 § 310; 1984 c 7 § 376; 1972 ex.s. c 36 § 4.]

Additional notes found at www.leg.wa.gov

Title 82 EXCISE TAXES

Chapters

- 82.02 General provisions.**
82.03 Board of tax appeals.
82.04 Business and occupation tax.
82.08 Retail sales tax.
82.12 Use tax.
82.14 Local retail sales and use taxes.
82.14B Counties—Tax on telephone access line use.
82.16 Public utility tax.
82.18 Solid waste collection tax.
82.19 Litter tax.
82.21 Hazardous substance tax—Model toxics control act.
82.23A Petroleum products—Underground storage tank program funding.
82.23B Oil spill response tax.
82.24 Tax on cigarettes.
82.26 Tax on tobacco products.
82.27 Tax on enhanced food fish.
82.29A Leasehold excise tax.
82.32 General administrative provisions.
82.36 Motor vehicle fuel tax.
82.38 Special fuel tax act.
82.41 Multistate motor fuel tax agreement.
82.42 Aircraft fuel tax.
82.44 Motor vehicle excise tax.
82.45 Excise tax on real estate sales.
82.48 Aircraft excise tax.
82.50 Travel trailers and campers excise tax.
82.56 Multistate tax compact.
82.64 Syrup tax.
82.70 Commute trip reduction incentives.
82.72 Telephone program excise tax administration.
82.80 Local option transportation taxes.

Chapter 82.02 RCW GENERAL PROVISIONS

Sections

- 82.02.020 State preempts certain tax fields—Fees prohibited for the development of land or buildings—Voluntary payments by developers authorized—Limitations—Exceptions.

82.02.020 State preempts certain tax fields—Fees prohibited for the development of land or buildings—Voluntary payments by developers authorized—Limitations—Exceptions. Except only as expressly provided in chapters 67.28, 81.104, and 82.14 RCW, the state preempts the field of imposing retail sales and use taxes and taxes upon parimutuel wagering authorized pursuant to RCW 67.16.060, conveyances, and cigarettes, and no county, town, or other municipal subdivision shall have the right to impose taxes of that nature. Except as provided in RCW 64.34.440 and 82.02.050 through 82.02.090, no county, city, town, or other municipal corporation shall impose any tax, fee, or charge, either direct or indirect, on the construction or reconstruction of residential buildings, commercial buildings, industrial buildings, or on any other building or building space or appurtenance thereto, or on the development, subdivision, classification, or reclassification of land. However, this sec-

tion does not preclude dedications of land or easements within the proposed development or plat which the county, city, town, or other municipal corporation can demonstrate are reasonably necessary as a direct result of the proposed development or plat to which the dedication of land or easement is to apply.

This section does not prohibit voluntary agreements with counties, cities, towns, or other municipal corporations that allow a payment in lieu of a dedication of land or to mitigate a direct impact that has been identified as a consequence of a proposed development, subdivision, or plat. A local government shall not use such voluntary agreements for local off-site transportation improvements within the geographic boundaries of the area or areas covered by an adopted transportation program authorized by chapter 39.92 RCW. Any such voluntary agreement is subject to the following provisions:

(1) The payment shall be held in a reserve account and may only be expended to fund a capital improvement agreed upon by the parties to mitigate the identified, direct impact;

(2) The payment shall be expended in all cases within five years of collection; and

(3) Any payment not so expended shall be refunded with interest to be calculated from the original date the deposit was received by the county and at the same rate applied to tax refunds pursuant to RCW 84.69.100; however, if the payment is not expended within five years due to delay attributable to the developer, the payment shall be refunded without interest.

No county, city, town, or other municipal corporation shall require any payment as part of such a voluntary agreement which the county, city, town, or other municipal corporation cannot establish is reasonably necessary as a direct result of the proposed development or plat.

Nothing in this section prohibits cities, towns, counties, or other municipal corporations from collecting reasonable fees from an applicant for a permit or other governmental approval to cover the cost to the city, town, county, or other municipal corporation of processing applications, inspecting and reviewing plans, or preparing detailed statements required by chapter 43.21C RCW, including reasonable fees that are consistent with RCW 43.21C.420(6), 43.21C.428, and beginning July 1, 2014, RCW 35.91.020.

This section does not limit the existing authority of any county, city, town, or other municipal corporation to impose special assessments on property specifically benefited thereby in the manner prescribed by law.

Nothing in this section prohibits counties, cities, or towns from imposing or permits counties, cities, or towns to impose water, sewer, natural gas, drainage utility, and drainage system charges. However, no such charge shall exceed the proportionate share of such utility or system's capital costs which the county, city, or town can demonstrate are attributable to the property being charged. Furthermore, these provisions may not be interpreted to expand or contract any existing authority of counties, cities, or towns to impose such charges.

Nothing in this section prohibits a transportation benefit district from imposing fees or charges authorized in RCW 36.73.120 nor prohibits the legislative authority of a county, city, or town from approving the imposition of such fees within a transportation benefit district.

Nothing in this section prohibits counties, cities, or towns from imposing transportation impact fees authorized pursuant to chapter 39.92 RCW.

Nothing in this section prohibits counties, cities, or towns from requiring property owners to provide relocation assistance to tenants under RCW 59.18.440 and 59.18.450.

Nothing in this section limits the authority of counties, cities, or towns to implement programs consistent with RCW 36.70A.540, nor to enforce agreements made pursuant to such programs.

This section does not apply to special purpose districts formed and acting pursuant to Title 54, 57, or 87 RCW, nor is the authority conferred by these titles affected. [2013 c 243 § 4; 2010 c 153 § 3; 2009 c 535 § 1103; 2008 c 113 § 2; 2006 c 149 § 3; 2005 c 502 § 5; 1997 c 452 § 21; 1996 c 230 § 1612; 1990 1st ex.s. c 17 § 42; 1988 c 179 § 6; 1987 c 327 § 17; 1982 1st ex.s. c 49 § 5; 1979 ex.s. c 196 § 3; 1970 ex.s. c 94 § 8; 1967 c 236 § 16; 1961 c 15 § 82.02.020. Prior: (i) 1935 c 180 § 29; RRS § 8370-29. (ii) 1949 c 228 § 28; 1939 c 225 § 22; 1937 c 227 § 24; Rem. Supp. 1949 § 8370-219. Formerly RCW 82.32.370.]

Intent—2010 c 153: See note following RCW 43.21C.420.

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Application—Effective date—2008 c 113: See notes following RCW 64.34.440.

Findings—Construction—2006 c 149: See notes following RCW 36.70A.540.

Effective date—2005 c 502: See note following RCW 1.12.070.

Intent—Severability—1997 c 452: See notes following RCW 67.28.080.

Intent—Construction—Effective date—Fire district funding—1982 1st ex.s. c 49: See notes following RCW 35.21.710.

Additional notes found at www.leg.wa.gov

Chapter 82.03 RCW BOARD OF TAX APPEALS

Sections

82.03.050	Operation on part-time or full-time basis—Salary—Compensation—Travel expenses.
82.03.060	Members not to be candidate or hold public office, engage in inconsistent occupation nor be on political committee—Restriction on leaving board.
82.03.080	Chair.

82.03.050 Operation on part-time or full-time basis—Salary—Compensation—Travel expenses. The board shall operate on either a part-time or a full-time basis, as determined by the governor. If it is determined that the board shall operate on a full-time basis, each member of the board shall receive an annual salary to be determined by the governor. If it is determined that the board shall operate on a part-time basis, each member of the board shall receive compensation on the basis of seventy-five dollars for each day spent in performance of his or her duties, but such compensation shall not exceed ten thousand dollars in a fiscal year. Each board member shall receive reimbursement for travel expenses incurred in the discharge of his or her duties in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. [2013 c 23 § 311; 1975-'76

2nd ex.s. c 34 § 176; 1970 ex.s. c 65 § 2; 1967 ex.s. c 26 § 34.]

Additional notes found at www.leg.wa.gov

82.03.060 Members not to be candidate or hold public office, engage in inconsistent occupation nor be on political committee—Restriction on leaving board. Each member of the board of tax appeals:

(1) Shall not be a candidate for nor hold any other public office or trust, and shall not engage in any occupation or business interfering with or inconsistent with his or her duty as a member of the board, nor shall he or she serve on or under any committee of any political party; and

(2) Shall not for a period of one year after the termination of his or her membership on the board, act in a representative capacity before the board on any matter. [2013 c 23 § 312; 1967 ex.s. c 26 § 35.]

82.03.080 Chair. The board shall as soon as practicable after the initial appointment of the members thereof, meet and elect from among its members a chair, and shall at least biennially thereafter meet and elect such a chair. [2013 c 23 § 313; 1967 ex.s. c 26 § 37.]

Chapter 82.04 RCW

BUSINESS AND OCCUPATION TAX

Sections

82.04.050	"Sale at retail," "retail sale."
82.04.260	Tax on manufacturers and processors of various foods and by-products—Research and development organizations—Travel agents—Certain international activities—Stevedoring and associated activities—Low-level waste disposers—Insurance producers, surplus line brokers, and title insurance agents—Hospitals—Commercial airplane activities—Timber product activities—Canned salmon processors. (<i>Effective until July 1, 2015.</i>)
82.04.260	Tax on manufacturers and processors of various foods and by-products—Research and development organizations—Travel agents—Certain international activities—Stevedoring and associated activities—Low-level waste disposers—Insurance producers, surplus line brokers, and title insurance agents—Hospitals—Commercial airplane activities—Timber product activities—Canned salmon processors. (<i>Effective July 1, 2015.</i>)
82.04.272	Tax on warehousing and reselling prescription drugs.
82.04.290	Tax on international investment management services or other business or service activities.
82.04.294	Tax on manufacturers or wholesalers of solar energy systems. (<i>Expires June 30, 2017.</i>)
82.04.323	Exemption—Washington health benefit exchange. (<i>Expires July 1, 2023.</i>)
82.04.324	Exemptions—Qualifying blood, tissue, or blood and tissue banks. (<i>Effective until July 1, 2016.</i>)
82.04.425	Exemptions—Accommodation sales.
82.04.4268	Exemptions—Dairy product businesses. (<i>Expires July 1, 2015.</i>)
82.04.4285	Deductions—Motor vehicle fuel and special fuel taxes. (<i>Effective July 1, 2015.</i>)
82.04.43393	Deductions—Paymaster services.
82.04.43394	Deductions—Cooperative finance organizations. (<i>Expires July 1, 2017.</i>)
82.04.629	Exemptions—Honey bee products. (<i>Expires July 1, 2017.</i>)
82.04.630	Exemptions—Bee pollination services. (<i>Expires July 1, 2017.</i>)
82.04.760	Tax preferences—Expiration dates.

82.04.050 "Sale at retail," "retail sale." (1)(a) "Sale at retail" or "retail sale" means every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons irrespective of the nature of their

business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers other than a sale to a person who:

(i) Purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by such person, but a purchase for the purpose of resale by a regional transit authority under RCW 81.112.300 is not a sale for resale; or

(ii) Installs, repairs, cleans, alters, imprints, improves, constructs, or decorates real or personal property of or for consumers, if such tangible personal property becomes an ingredient or component of such real or personal property without intervening use by such person; or

(iii) Purchases for the purpose of consuming the property purchased in producing for sale as a new article of tangible personal property or substance, of which such property becomes an ingredient or component or is a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale; or

(iv) Purchases for the purpose of consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon; or

(v) Purchases for the purpose of providing the property to consumers as part of competitive telephone service, as defined in RCW 82.04.065; or

(vi) Purchases for the purpose of satisfying the person's obligations under an extended warranty as defined in subsection (7) of this section, if such tangible personal property replaces or becomes an ingredient or component of property covered by the extended warranty without intervening use by such person.

(b) The term includes every sale of tangible personal property that is used or consumed or to be used or consumed in the performance of any activity defined as a "sale at retail" or "retail sale" even though such property is resold or used as provided in (a)(i) through (vi) of this subsection following such use.

(c) The term also means every sale of tangible personal property to persons engaged in any business that is taxable under RCW 82.04.280(1) (a), (b), and (g), 82.04.290, and 82.04.2908.

(2) The term "sale at retail" or "retail sale" includes the sale of or charge made for tangible personal property consumed and/or for labor and services rendered in respect to the following:

(a) The installing, repairing, cleaning, altering, imprinting, or improving of tangible personal property of or for consumers, including charges made for the mere use of facilities in respect thereto, but excluding charges made for the use of self-service laundry facilities, and also excluding sales of laundry service to nonprofit health care facilities, and excluding services rendered in respect to live animals, birds and insects;

(b) The constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for consumers, including the installing or attaching of any article of tangible personal

property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, and also includes the sale of services or charges made for the clearing of land and the moving of earth excepting the mere leveling of land used in commercial farming or agriculture;

(c) The constructing, repairing, or improving of any structure upon, above, or under any real property owned by an owner who conveys the property by title, possession, or any other means to the person performing such construction, repair, or improvement for the purpose of performing such construction, repair, or improvement and the property is then reconveyed by title, possession, or any other means to the original owner;

(d) The cleaning, fumigating, razing, or moving of existing buildings or structures, but does not include the charge made for janitorial services; and for purposes of this section the term "janitorial services" means those cleaning and caretaking services ordinarily performed by commercial janitor service businesses including, but not limited to, wall and window washing, floor cleaning and waxing, and the cleaning in place of rugs, drapes and upholstery. The term "janitorial services" does not include painting, papering, repairing, furnace or septic tank cleaning, snow removal or sandblasting;

(e) Automobile towing and similar automotive transportation services, but not in respect to those required to report and pay taxes under chapter 82.16 RCW;

(f) The furnishing of lodging and all other services by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property, and it is presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or enjoy the same. For the purposes of this subsection, it is presumed that the sale of and charge made for the furnishing of lodging for a continuous period of one month or more to a person is a rental or lease of real property and not a mere license to enjoy the same;

(g) The installing, repairing, altering, or improving of digital goods for consumers;

(h) Persons taxable under (a), (b), (c), (d), (e), (f), and (g) of this subsection when such sales or charges are for property, labor and services which are used or consumed in whole or in part by such persons in the performance of any activity defined as a "sale at retail" or "retail sale" even though such property, labor and services may be resold after such use or consumption. Nothing contained in this subsection may be construed to modify subsection (1) of this section and nothing contained in subsection (1) of this section may be construed to modify this subsection.

(3) The term "sale at retail" or "retail sale" includes the sale of or charge made for personal, business, or professional services including amounts designated as interest, rents, fees, admission, and other service emoluments however designated, received by persons engaging in the following business activities:

(a)(i) Amusement and recreation services including but not limited to golf, pool, billiards, skating, bowling, ski lifts and tows, day trips for sightseeing purposes, and others, when provided to consumers.

(ii) Until July 1, 2017, amusement and recreation services do not include the opportunity to dance provided by an establishment in exchange for a cover charge.

(iii) For purposes of this subsection (3)(a):

(A) "Cover charge" means a charge, regardless of its label, to enter an establishment or added to the purchaser's bill by an establishment or otherwise collected after entrance to the establishment, and the purchaser is provided the opportunity to dance in exchange for payment of the charge.

(B) "Opportunity to dance" means that an establishment provides a designated physical space, on either a temporary or permanent basis, where customers are allowed to dance and the establishment either advertises or otherwise makes customers aware that it has an area for dancing;

(b) Abstract, title insurance, and escrow services;

(c) Credit bureau services;

(d) Automobile parking and storage garage services;

(e) Landscape maintenance and horticultural services but excluding (i) horticultural services provided to farmers and (ii) pruning, trimming, repairing, removing, and clearing of trees and brush near electric transmission or distribution lines or equipment, if performed by or at the direction of an electric utility;

(f) Service charges associated with tickets to professional sporting events; and

(g) The following personal services: Physical fitness services, tanning salon services, tattoo parlor services, steam bath services, turkish bath services, escort services, and dating services.

(4)(a) The term also includes the renting or leasing of tangible personal property to consumers.

(b) The term does not include the renting or leasing of tangible personal property where the lease or rental is for the purpose of sublease or subrent.

(5) The term also includes the providing of "competitive telephone service," "telecommunications service," or "ancillary services," as those terms are defined in RCW 82.04.065, to consumers.

(6)(a) The term also includes the sale of prewritten computer software to a consumer, regardless of the method of delivery to the end user. For purposes of this subsection (6)(a), the sale of prewritten computer software includes the sale of or charge made for a key or an enabling or activation code, where the key or code is required to activate prewritten computer software and put the software into use. There is no separate sale of the key or code from the prewritten computer software, regardless of how the sale may be characterized by the vendor or by the purchaser.

The term "retail sale" does not include the sale of or charge made for:

(i) Custom software; or

(ii) The customization of prewritten computer software.

(b)(i) The term also includes the charge made to consumers for the right to access and use prewritten computer software, where possession of the software is maintained by the seller or a third party, regardless of whether the charge for the service is on a per use, per user, per license, subscription, or some other basis.

(ii)(A) The service described in (b)(i) of this subsection (6) includes the right to access and use prewritten computer software to perform data processing.

(B) For purposes of this subsection (6)(b)(ii), "data processing" means the systematic performance of operations on data to extract the required information in an appropriate form or to convert the data to usable information. Data processing includes check processing, image processing, form processing, survey processing, payroll processing, claim processing, and similar activities.

(7) The term also includes the sale of or charge made for an extended warranty to a consumer. For purposes of this subsection, "extended warranty" means an agreement for a specified duration to perform the replacement or repair of tangible personal property at no additional charge or a reduced charge for tangible personal property, labor, or both, or to provide indemnification for the replacement or repair of tangible personal property, based on the occurrence of specified events. The term "extended warranty" does not include an agreement, otherwise meeting the definition of extended warranty in this subsection, if no separate charge is made for the agreement and the value of the agreement is included in the sales price of the tangible personal property covered by the agreement. For purposes of this subsection, "sales price" has the same meaning as in RCW 82.08.010.

(8)(a) The term also includes the following sales to consumers of digital goods, digital codes, and digital automated services:

(i) Sales in which the seller has granted the purchaser the right of permanent use;

(ii) Sales in which the seller has granted the purchaser a right of use that is less than permanent;

(iii) Sales in which the purchaser is not obligated to make continued payment as a condition of the sale; and

(iv) Sales in which the purchaser is obligated to make continued payment as a condition of the sale.

(b) A retail sale of digital goods, digital codes, or digital automated services under this subsection (8) includes any services provided by the seller exclusively in connection with the digital goods, digital codes, or digital automated services, whether or not a separate charge is made for such services.

(c) For purposes of this subsection, "permanent" means perpetual or for an indefinite or unspecified length of time. A right of permanent use is presumed to have been granted unless the agreement between the seller and the purchaser specifies or the circumstances surrounding the transaction suggest or indicate that the right to use terminates on the occurrence of a condition subsequent.

(9) The term also includes the charge made for providing tangible personal property along with an operator for a fixed or indeterminate period of time. A consideration of this is that the operator is necessary for the tangible personal property to perform as designed. For the purpose of this subsection (9), an operator must do more than maintain, inspect, or set up the tangible personal property.

(10) The term does not include the sale of or charge made for labor and services rendered in respect to the building, repairing, or improving of any street, place, road, highway, easement, right-of-way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind.

(11) The term also does not include sales of chemical sprays or washes to persons for the purpose of postharvest treatment of fruit for the prevention of scald, fungus, mold, or decay, nor does it include sales of feed, seed, seedlings, fertilizer, agents for enhanced pollination including insects such as bees, and spray materials to: (a) Persons who participate in the federal conservation reserve program, the environmental quality incentives program, the wetlands reserve program, and the wildlife habitat incentives program, or their successors administered by the United States department of agriculture; (b) farmers for the purpose of producing for sale any agricultural product; and (c) farmers acting under cooperative habitat development or access contracts with an organization exempt from federal income tax under 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code or the Washington state department of fish and wildlife to produce or improve wildlife habitat on land that the farmer owns or leases.

(12) The term does not include the sale of or charge made for labor and services rendered in respect to the constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing, or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation. Nor does the term include the sale of services or charges made for the clearing of land and the moving of earth of or for the United States, any instrumentality thereof, or a county or city housing authority. Nor does the term include the sale of services or charges made for cleaning up for the United States, or its instrumentalities, radioactive waste and other by-products of weapons production and nuclear research and development.

(13) The term does not include the sale of or charge made for labor, services, or tangible personal property pursuant to agreements providing maintenance services for bus, rail, or rail fixed guideway equipment when a regional transit authority is the recipient of the labor, services, or tangible personal property, and a transit agency, as defined in RCW 81.104.015, performs the labor or services.

(14) The term does not include the sale for resale of any service described in this section if the sale would otherwise constitute a "sale at retail" and "retail sale" under this section. [2013 2nd sp.s. c 13 § 802; 2011 c 174 § 202. Prior: 2010 c 112 § 14; 2010 c 111 § 201; 2010 c 106 § 202; prior: 2009 c 563 § 301; 2009 c 535 § 301; prior: 2007 c 54 § 4; 2007 c 6 § 1004; prior: 2005 c 515 § 2; 2005 c 514 § 101; prior: 2004 c 174 § 3; 2004 c 153 § 407; 2003 c 168 § 104; 2002 c 178 § 1; 2000 2nd sp.s. c 4 § 23; prior: 1998 c 332 § 2; 1998 c 315 § 1; 1998 c 308 § 1; 1998 c 275 § 1; 1997 c 127 § 1; prior: 1996 c 148 § 1; 1996 c 112 § 1; 1995 1st sp.s. c 12 § 2; 1995 c 39 § 2; 1993 sp.s. c 25 § 301; 1988 c 253 § 1; prior: 1987 c 285 § 1; 1987 c 23 § 2; 1986 c 231 § 1; 1983 2nd ex.s. c 3 § 25; 1981 c 144 § 3; 1975 1st ex.s. c 291 § 5; 1975 1st ex.s. c 90 § 1; 1973 1st ex.s. c 145 § 1; 1971 ex.s. c 299 § 3; 1971 ex.s. c 281 § 1; 1970 ex.s. c 8 § 1; prior: 1969 ex.s. c 262 § 30; 1969 ex.s. c 255 § 3; 1967 ex.s. c 149 § 4; 1965 ex.s. c 173 § 1; 1963 c 7 § 1; prior: 1961 ex.s. c 24 § 1; 1961 c 293 § 1; 1961 c 15 § 82.04.050; prior: 1959 ex.s. c 5 § 2; 1957 c

279 § 1; 1955 c 389 § 6; 1953 c 91 § 3; 1951 2nd ex.s. c 28 § 3; 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

Intent—2013 2nd sp.s. c 13: "It is the intent of part VIII of this act to provide a sales tax exemption for cover charges to patrons at establishments that provide the opportunity to dance. The intent is to provide tax relief to businesses who have been reporting the income for cover charges under the service and other classification, but not intending to avoid their tax obligation of collecting retail sales tax because of department and taxpayer confusion regarding the appropriate tax treatment of this income. To ensure proper tax reporting in the future by businesses who provide the opportunity to dance, the legislature intends to review the tax preference and its actual fiscal impact on state revenues to determine if the fiscal impact to state revenues reasonably conforms with the fiscal estimate in the fiscal note for this legislation." [2013 2nd sp.s. c 13 § 801.]

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.04.43393.

Retroactive application—2010 c 112: See note following RCW 82.32.780.

Purpose—2010 c 111: "The 2009 legislature enacted Engrossed Substitute House Bill No. 2075 (chapter 535, Laws of 2009), an act relating to the excise taxation of certain products and services provided or furnished electronically. The bill took effect July 26, 2009.

Engrossed Substitute House Bill No. 2075, at eighty-five pages, was a comprehensive piece of legislation that made major changes to state and local sales and use taxes, as well as the state business and occupation tax. Moreover, Engrossed Substitute House Bill No. 2075 was a complex piece of legislation because of the intricate interrelationship between the sales tax and the business and occupation tax and also because the bill affects the taxation of products and services that involve technologies that are changing rapidly.

Because of the complexity and length of Engrossed Substitute House Bill No. 2075, it was the legislature's expectation that, in the course of implementing the bill, ambiguities and unintended consequences would be discovered, which, if not corrected, will unsettle expectations. Thus, the legislature further anticipated that it would need to consider legislation in the 2010 legislative session to address these issues.

Therefore, the purpose of this act is to clarify ambiguities, correct unintended consequences, restore expectations, and conform the law to the original intent of the legislature." [2010 c 111 § 101.]

Retroactive application—2010 c 111: "(1) Except as provided in subsection (2) of this section, this act applies both prospectively and retroactively to July 26, 2009.

(2) Sections 202, 402, and 502 of this act, and those provisions of sections 401 and 501 of this act that eliminate the sales and use tax exemptions in RCW 82.08.02082 and 82.12.02082, apply prospectively only." [2010 c 111 § 902.]

Effective date—2010 c 111: "This act takes effect July 1, 2010." [2010 c 111 § 903.]

Effective date—2010 c 106: See note following RCW 35.102.145.

Finding—Intent—Construction—Effective date—Reports and recommendations—2009 c 563: See notes following RCW 82.32.780.

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Severability—2007 c 54: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2007 c 54 § 32.]

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

Findings—2005 c 515: "The legislature finds that:

(1) Public entities that receive tax dollars must continuously improve the way they operate and deliver service so citizens receive maximum value for their tax dollars; and

(2) An explicit statement clarifying that no sales or use tax shall apply to the entire charge paid by regional transit authorities for bus or rail combined operations and maintenance agreements that are provided to such

authorities in support of their provision of urban transportation or transportation services is necessary to improve efficient service." [2005 c 515 § 1.]

Effective date—2005 c 514: See note following RCW 83.100.230.

Part headings not law—Severability—2005 c 514: See notes following RCW 82.12.808.

Effective date—2004 c 174: See note following RCW 82.04.2908.

Retroactive effective date—Effective date—2004 c 153: See note following RCW 82.08.0293.

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

Findings—Construction—2000 2nd sp.s. c 4 §§ 18-30: See notes following RCW 81.112.300.

Findings—Intent—Effective date—1998 c 332: See notes following RCW 82.04.29001.

Intent—1995 1st sp.s. c 12: "It is the intent of the legislature that massage services be recognized as health care practitioners for the purposes of business and occupation tax application. To achieve this intent massage services are being removed from the definition of sale at retail and retail sale." [1995 1st sp.s. c 12 § 1.]

Intent—Severability—Effective date—1981 c 144: See notes following RCW 82.16.010.

Credit for retail sales or use taxes paid to other jurisdictions with respect to property used: RCW 82.12.035.

"Services rendered in respect to" defined: RCW 82.04.051.

Additional notes found at www.leg.wa.gov

82.04.260 Tax on manufacturers and processors of various foods and by-products—Research and development organizations—Travel agents—Certain international activities—Stevedoring and associated activities—Low-level waste disposers—Insurance producers, surplus line brokers, and title insurance agents—Hospitals—Commercial airplane activities—Timber product activities—Canned salmon processors. (Effective until July 1, 2015.) (1) Upon every person engaging within this state in the business of manufacturing:

(a) Wheat into flour, barley into pearl barley, soybeans into soybean oil, canola into canola oil, canola meal, or canola by-products, or sunflower seeds into sunflower oil; as to such persons the amount of tax with respect to such business is equal to the value of the flour, pearl barley, oil, canola meal, or canola by-product manufactured, multiplied by the rate of 0.138 percent;

(b) Beginning July 1, 2015, seafood products that remain in a raw, raw frozen, or raw salted state at the completion of the manufacturing by that person; or selling manufactured seafood products that remain in a raw, raw frozen, or raw salted state at the completion of the manufacturing, to purchasers who transport in the ordinary course of business the goods out of this state; as to such persons the amount of tax with respect to such business is equal to the value of the products manufactured or the gross proceeds derived from such sales, multiplied by the rate of 0.138 percent. Sellers must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state;

(c)(i) Beginning July 1, 2015, dairy products; or selling dairy products that the person has manufactured to purchasers who either transport in the ordinary course of business the goods out of state or purchasers who use such dairy products as an ingredient or component in the manufacturing of a dairy product; as to such persons the tax imposed is equal to the value of the products manufactured or the gross proceeds

derived from such sales multiplied by the rate of 0.138 percent. Sellers must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state or sold to a manufacturer for use as an ingredient or component in the manufacturing of a dairy product.

(ii) For the purposes of this subsection (1)(c), "dairy products" means:

(A) Products that as of September 20, 2001, are identified in 21 C.F.R., chapter 1, parts 131, 133, and 135, including by-products from the manufacturing of the dairy products, such as whey and casein; and

(B) Products comprised of not less than seventy percent dairy products that qualify under (c)(ii)(A) of this subsection, measured by weight or volume.

(iii) The preferential tax rate provided to taxpayers under this subsection (1)(c) does not apply to sales of dairy products on or after July 1, 2023, where a dairy product is used by the purchaser as an ingredient or component in the manufacturing in Washington of a dairy product;

(d) Beginning July 1, 2015, fruits or vegetables by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables, or selling at wholesale fruits or vegetables manufactured by the seller by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables and sold to purchasers who transport in the ordinary course of business the goods out of this state; as to such persons the amount of tax with respect to such business is equal to the value of the products manufactured or the gross proceeds derived from such sales multiplied by the rate of 0.138 percent. Sellers must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state;

(e) Until July 1, 2009, alcohol fuel, biodiesel fuel, or biodiesel feedstock, as those terms are defined in RCW 82.29A.135; as to such persons the amount of tax with respect to the business is equal to the value of alcohol fuel, biodiesel fuel, or biodiesel feedstock manufactured, multiplied by the rate of 0.138 percent; and

(f) Wood biomass fuel as defined in RCW 82.29A.135; as to such persons the amount of tax with respect to the business is equal to the value of wood biomass fuel manufactured, multiplied by the rate of 0.138 percent.

(2) Upon every person engaging within this state in the business of splitting or processing dried peas; as to such persons the amount of tax with respect to such business is equal to the value of the peas split or processed, multiplied by the rate of 0.138 percent.

(3) Upon every nonprofit corporation and nonprofit association engaging within this state in research and development, as to such corporations and associations, the amount of tax with respect to such activities is equal to the gross income derived from such activities multiplied by the rate of 0.484 percent.

(4) Upon every person engaging within this state in the business of slaughtering, breaking and/or processing perishable meat products and/or selling the same at wholesale only and not at retail; as to such persons the tax imposed is equal

to the gross proceeds derived from such sales multiplied by the rate of 0.138 percent.

(5) Upon every person engaging within this state in the business of acting as a travel agent or tour operator; as to such persons the amount of the tax with respect to such activities is equal to the gross income derived from such activities multiplied by the rate of 0.275 percent.

(6) Upon every person engaging within this state in business as an international steamship agent, international customs house broker, international freight forwarder, vessel and/or cargo charter broker in foreign commerce, and/or international air cargo agent; as to such persons the amount of the tax with respect to only international activities is equal to the gross income derived from such activities multiplied by the rate of 0.275 percent.

(7) Upon every person engaging within this state in the business of stevedoring and associated activities pertinent to the movement of goods and commodities in waterborne interstate or foreign commerce; as to such persons the amount of tax with respect to such business is equal to the gross proceeds derived from such activities multiplied by the rate of 0.275 percent. Persons subject to taxation under this subsection are exempt from payment of taxes imposed by chapter 82.16 RCW for that portion of their business subject to taxation under this subsection. Stevedoring and associated activities pertinent to the conduct of goods and commodities in waterborne interstate or foreign commerce are defined as all activities of a labor, service or transportation nature whereby cargo may be loaded or unloaded to or from vessels or barges, passing over, onto or under a wharf, pier, or similar structure; cargo may be moved to a warehouse or similar holding or storage yard or area to await further movement in import or export or may move to a consolidation freight station and be stuffed, unstuffed, containerized, separated or otherwise segregated or aggregated for delivery or loaded on any mode of transportation for delivery to its consignee. Specific activities included in this definition are: Wharfage, handling, loading, unloading, moving of cargo to a convenient place of delivery to the consignee or a convenient place for further movement to export mode; documentation services in connection with the receipt, delivery, checking, care, custody and control of cargo required in the transfer of cargo; imported automobile handling prior to delivery to consignee; terminal stevedoring and incidental vessel services, including but not limited to plugging and unplugging refrigerator service to containers, trailers, and other refrigerated cargo receptacles, and securing ship hatch covers.

(8) Upon every person engaging within this state in the business of disposing of low-level waste, as defined in RCW 43.145.010; as to such persons the amount of the tax with respect to such business is equal to the gross income of the business, excluding any fees imposed under chapter 43.200 RCW, multiplied by the rate of 3.3 percent.

If the gross income of the taxpayer is attributable to activities both within and without this state, the gross income attributable to this state must be determined in accordance with the methods of apportionment required under RCW 82.04.460.

(9) Upon every person engaging within this state as an insurance producer or title insurance agent licensed under chapter 48.17 RCW or a surplus line broker licensed under

chapter 48.15 RCW; as to such persons, the amount of the tax with respect to such licensed activities is equal to the gross income of such business multiplied by the rate of 0.484 percent.

(10) Upon every person engaging within this state in business as a hospital, as defined in chapter 70.41 RCW, that is operated as a nonprofit corporation or by the state or any of its political subdivisions, as to such persons, the amount of tax with respect to such activities is equal to the gross income of the business multiplied by the rate of 0.75 percent through June 30, 1995, and 1.5 percent thereafter.

(11)(a) Beginning October 1, 2005, upon every person engaging within this state in the business of manufacturing commercial airplanes, or components of such airplanes, or making sales, at retail or wholesale, of commercial airplanes or components of such airplanes, manufactured by the seller, as to such persons the amount of tax with respect to such business is, in the case of manufacturers, equal to the value of the product manufactured and the gross proceeds of sales of the product manufactured, or in the case of processors for hire, equal to the gross income of the business, multiplied by the rate of:

(i) 0.4235 percent from October 1, 2005, through June 30, 2007; and

(ii) 0.2904 percent beginning July 1, 2007.

(b) Beginning July 1, 2008, upon every person who is not eligible to report under the provisions of (a) of this subsection (11) and is engaging within this state in the business of manufacturing tooling specifically designed for use in manufacturing commercial airplanes or components of such airplanes, or making sales, at retail or wholesale, of such tooling manufactured by the seller, as to such persons the amount of tax with respect to such business is, in the case of manufacturers, equal to the value of the product manufactured and the gross proceeds of sales of the product manufactured, or in the case of processors for hire, be equal to the gross income of the business, multiplied by the rate of 0.2904 percent.

(c) For the purposes of this subsection (11), "commercial airplane" and "component" have the same meanings as provided in RCW 82.32.550.

(d) In addition to all other requirements under this title, a person reporting under the tax rate provided in this subsection (11) must file a complete annual report with the department under RCW 82.32.534.

(e) This subsection (11) does not apply on and after July 1, 2024.

(12)(a) Until July 1, 2024, upon every person engaging within this state in the business of extracting timber or extracting for hire timber; as to such persons the amount of tax with respect to the business is, in the case of extractors, equal to the value of products, including by-products, extracted, or in the case of extractors for hire, equal to the gross income of the business, multiplied by the rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30, 2024.

(b) Until July 1, 2024, upon every person engaging within this state in the business of manufacturing or processing for hire: (i) Timber into timber products or wood products; or (ii) timber products into other timber products or wood products; as to such persons the amount of the tax with respect to the business is, in the case of manufacturers, equal

to the value of products, including by-products, manufactured, or in the case of processors for hire, equal to the gross income of the business, multiplied by the rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30, 2024.

(c) Until July 1, 2024, upon every person engaging within this state in the business of selling at wholesale: (i) Timber extracted by that person; (ii) timber products manufactured by that person from timber or other timber products; or (iii) wood products manufactured by that person from timber or timber products; as to such persons the amount of the tax with respect to the business is equal to the gross proceeds of sales of the timber, timber products, or wood products multiplied by the rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30, 2024.

(d) Until July 1, 2024, upon every person engaging within this state in the business of selling standing timber; as to such persons the amount of the tax with respect to the business is equal to the gross income of the business multiplied by the rate of 0.2904 percent. For purposes of this subsection (12)(d), "selling standing timber" means the sale of timber apart from the land, where the buyer is required to sever the timber within thirty months from the date of the original contract, regardless of the method of payment for the timber and whether title to the timber transfers before, upon, or after severance.

(e) For purposes of this subsection, the following definitions apply:

(i) "Biocomposite surface products" means surface material products containing, by weight or volume, more than fifty percent recycled paper and that also use nonpetroleum-based phenolic resin as a bonding agent.

(ii) "Paper and paper products" means products made of interwoven cellulosic fibers held together largely by hydrogen bonding. "Paper and paper products" includes newsprint; office, printing, fine, and pressure-sensitive papers; paper napkins, towels, and toilet tissue; kraft bag, construction, and other kraft industrial papers; paperboard, liquid packaging containers, containerboard, corrugated, and solid-fiber containers including linerboard and corrugated medium; and related types of cellulosic products containing primarily, by weight or volume, cellulosic materials. "Paper and paper products" does not include books, newspapers, magazines, periodicals, and other printed publications, advertising materials, calendars, and similar types of printed materials.

(iii) "Recycled paper" means paper and paper products having fifty percent or more of their fiber content that comes from postconsumer waste. For purposes of this subsection (12)(e)(iii), "postconsumer waste" means a finished material that would normally be disposed of as solid waste, having completed its life cycle as a consumer item.

(iv) "Timber" means forest trees, standing or down, on privately or publicly owned land. "Timber" does not include Christmas trees that are cultivated by agricultural methods or short-rotation hardwoods as defined in RCW 84.33.035.

(v) "Timber products" means:

(A) Logs, wood chips, sawdust, wood waste, and similar products obtained wholly from the processing of timber, short-rotation hardwoods as defined in RCW 84.33.035, or both;

(B) Pulp, including market pulp and pulp derived from recovered paper or paper products; and

(C) Recycled paper, but only when used in the manufacture of biocomposite surface products.

(vi) "Wood products" means paper and paper products; dimensional lumber; engineered wood products such as particleboard, oriented strand board, medium density fiberboard, and plywood; wood doors; wood windows; and biocomposite surface products.

(f) Except for small harvesters as defined in RCW 84.33.035, a person reporting under the tax rate provided in this subsection (12) must file a complete annual survey with the department under RCW 82.32.585.

(13) Upon every person engaging within this state in inspecting, testing, labeling, and storing canned salmon owned by another person, as to such persons, the amount of tax with respect to such activities is equal to the gross income derived from such activities multiplied by the rate of 0.484 percent.

(14)(a) Upon every person engaging within this state in the business of printing a newspaper, publishing a newspaper, or both, the amount of tax on such business is equal to the gross income of the business multiplied by the rate of 0.365 percent through June 30, 2013, and beginning July 1, 2013, multiplied by the rate of 0.35 percent.

(b) A person reporting under the tax rate provided in this subsection (14) must file a complete annual report with the department under RCW 82.32.534. [2013 2nd sp.s. c 13 § 202. Prior: 2012 2nd sp.s. c 6 § 602; 2012 2nd sp.s. c 6 § 204; 2011 c 2 § 203 (Initiative Measure No. 1107, approved November 2, 2010); 2010 1st sp.s. c 23 § 506; (2010 1st sp.s. c 23 § 505 expired June 10, 2010); 2010 c 114 § 107; prior: 2009 c 479 § 64; 2009 c 461 § 1; 2009 c 162 § 34; prior: 2008 c 296 § 1; 2008 c 217 § 100; 2008 c 81 § 4; prior: 2007 c 54 § 6; 2007 c 48 § 2; prior: 2006 c 354 § 4; 2006 c 300 § 1; prior: 2005 c 513 § 2; 2005 c 443 § 4; prior: 2003 2nd sp.s. c 1 § 4; 2003 2nd sp.s. c 1 § 3; 2003 c 339 § 11; 2003 c 261 § 11; 2001 2nd sp.s. c 25 § 2; prior: 1998 c 312 § 5; 1998 c 311 § 2; prior: 1998 c 170 § 4; 1996 c 148 § 2; 1996 c 115 § 1; prior: 1995 2nd sp.s. c 12 § 1; 1995 2nd sp.s. c 6 § 1; 1993 sp.s. c 25 § 104; 1993 c 492 § 304; 1991 c 272 § 15; 1990 c 21 § 2; 1987 c 139 § 1; prior: 1985 c 471 § 1; 1985 c 135 § 2; 1983 2nd ex.s. c 3 § 5; prior: 1983 1st ex.s. c 66 § 4; 1983 1st ex.s. c 55 § 4; 1982 2nd ex.s. c 13 § 1; 1982 c 10 § 16; prior: 1981 c 178 § 1; 1981 c 172 § 3; 1979 ex.s. c 196 § 2; 1975 1st ex.s. c 291 § 7; 1971 ex.s. c 281 § 5; 1971 ex.s. c 186 § 3; 1969 ex.s. c 262 § 36; 1967 ex.s. c 149 § 10; 1965 ex.s. c 173 § 6; 1961 c 15 § 82.04.260; prior: 1959 c 211 § 2; 1955 c 389 § 46; prior: 1953 c 91 § 4; 1951 2nd ex.s. c 28 § 4; 1950 ex.s. c 5 § 1, part; 1949 c 228 § 1, part; 1943 c 156 § 1, part; 1941 c 178 § 1, part; 1939 c 225 § 1, part; 1937 c 227 § 1, part; 1935 c 180 § 4, part; Rem. Supp. 1949 § 8370-4, part.]

Reviser's note: Pursuant to RCW 43.135.041, chapter 6, Laws of 2012 2nd special session was subject to an advisory vote of the people in the November 2012 general election on whether the tax increase in such session law should be maintained or repealed. The advisory vote was in favor of repeal.

Intent—2013 2nd sp.s. c 13: "The intent of part II of this act is to incentivize the creation of additional jobs in Washington in the dairy industry and related industries that manufacture dairy-based products. More specifically, it is the intent of part II of this act to encourage infant formula producers to locate new facilities in Washington or expand existing facilities in

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Washington through an extension of a preferential business and occupation tax rate for dairy producers. It is the further intent of the legislature to provide this tax incentive in a fiscally responsible manner where the actual revenue impact of the legislation substantially conforms with the fiscal estimate provided in the legislation's fiscal note." [2013 2nd sp.s. c 13 § 201.]

Expiration date—2013 2nd sp.s. c 13 § 202: "Section 202 of this act expires July 1, 2015." [2013 2nd sp.s. c 13 § 1901.]

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.04.43393.

Expiration date—2012 2nd sp.s. c 6 §§ 601 and 602: See note following RCW 82.04.214.

Existing rights, liabilities, or obligations—Effective dates—Contingent effective dates—2012 2nd sp.s. c 6: See notes following RCW 82.04.29005.

Findings—Construction—2011 c 2 (Initiative Measure No. 1107): See notes following RCW 82.08.0293.

Expiration date—2010 1st sp.s. c 23 §§ 503, 505, and 514: See note following RCW 82.04.4266.

Effective date—2010 1st sp.s. c 23 §§ 504, 506, and 515: See note following RCW 82.04.4266.

Findings—Intent—2010 1st sp.s. c 23: See notes following RCW 82.04.220.

Effective date—2010 1st sp.s. c 23: See note following RCW 82.04.4292.

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.585.

Effective date—2009 c 479: See note following RCW 2.56.030.

Effective date—Contingent effective date—2009 c 461: See note following RCW 82.04.280.

Effective date—2009 c 162: See note following RCW 48.03.020.

Retroactive application—2008 c 296: "Section 1 of this act applies retroactively to July 1, 2007, as well as prospectively." [2008 c 296 § 2.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

Findings—Savings—Effective date—2008 c 81: See notes following RCW 82.08.975.

Severability—2007 c 54: See note following RCW 82.04.050.

Effective date—2007 c 48: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2007." [2007 c 48 § 9.]

Effective dates—2006 c 354: See note following RCW 82.04.4268.

Effective dates—Contingent effective date—2006 c 300: See note following RCW 82.04.261.

Effective dates—2005 c 513: See note following RCW 82.04.4266.

Finding—Intent—Effective date—2005 c 443: See notes following RCW 82.08.0255.

Finding—2003 2nd sp.s. c 1: See note following RCW 82.04.4461.

Effective dates—2003 c 339: See note following RCW 84.36.640.

Effective dates—2003 c 261: See note following RCW 84.36.635.

Purpose—Intent—2001 2nd sp.s. c 25: "The purpose of sections 2 and 3 of this act is to provide a tax rate for persons who manufacture dairy products that is commensurate to the rate imposed on certain other processors of agricultural commodities. This tax rate applies to persons who manufacture dairy products from raw materials such as fluid milk, dehydrated milk, or by-products of milk such as cream, buttermilk, whey, butter, or casein. It is not the intent of the legislature to provide this tax rate to persons who use dairy products as an ingredient or component of their manufactured product, such as milk-based soups or pizza. It is the intent that persons who manufacture products such as milk, cheese, yogurt, ice cream, whey, or whey products be subject to this rate." [2001 2nd sp.s. c 25 § 1.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Additional notes found at www.leg.wa.gov

82.04.260 Tax on manufacturers and processors of various foods and by-products—Research and develop-

ment organizations—Travel agents—Certain international activities—Stevedoring and associated activities—Low-level waste disposers—Insurance producers, surplus line brokers, and title insurance agents—Hospitals—Commercial airplane activities—Timber product activities—Canned salmon processors. (Effective July 1, 2015.)

(1) Upon every person engaging within this state in the business of manufacturing:

(a) Wheat into flour, barley into pearl barley, soybeans into soybean oil, canola into canola oil, canola meal, or canola by-products, or sunflower seeds into sunflower oil; as to such persons the amount of tax with respect to such business is equal to the value of the flour, pearl barley, oil, canola meal, or canola by-product manufactured, multiplied by the rate of 0.138 percent;

(b) Beginning July 1, 2015, seafood products that remain in a raw, raw frozen, or raw salted state at the completion of the manufacturing by that person; or selling manufactured seafood products that remain in a raw, raw frozen, or raw salted state at the completion of the manufacturing, to purchasers who transport in the ordinary course of business the goods out of this state; as to such persons the amount of tax with respect to such business is equal to the value of the products manufactured or the gross proceeds derived from such sales, multiplied by the rate of 0.138 percent. Sellers must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state;

(c)(i) Beginning July 1, 2015, dairy products; or selling dairy products that the person has manufactured to purchasers who either transport in the ordinary course of business the goods out of state or purchasers who use such dairy products as an ingredient or component in the manufacturing of a dairy product; as to such persons the tax imposed is equal to the value of the products manufactured or the gross proceeds derived from such sales multiplied by the rate of 0.138 percent. Sellers must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state or sold to a manufacturer for use as an ingredient or component in the manufacturing of a dairy product.

(ii) For the purposes of this subsection (1)(c), "dairy products" means:

(A) Products that as of September 20, 2001, are identified in 21 C.F.R., chapter 1, parts 131, 133, and 135, including by-products from the manufacturing of the dairy products, such as whey and casein; and

(B) Products comprised of not less than seventy percent dairy products that qualify under (c)(ii)(A) of this subsection, measured by weight or volume.

(iii) The preferential tax rate provided to taxpayers under this subsection (1)(c) does not apply to sales of dairy products on or after July 1, 2023, where a dairy product is used by the purchaser as an ingredient or component in the manufacturing in Washington of a dairy product;

(d) Beginning July 1, 2015, fruits or vegetables by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables, or selling at wholesale fruits or vegetables manufactured by the seller by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables and

sold to purchasers who transport in the ordinary course of business the goods out of this state; as to such persons the amount of tax with respect to such business is equal to the value of the products manufactured or the gross proceeds derived from such sales multiplied by the rate of 0.138 percent. Sellers must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state;

(e) Until July 1, 2009, alcohol fuel, biodiesel fuel, or biodiesel feedstock, as those terms are defined in RCW 82.29A.135; as to such persons the amount of tax with respect to the business is equal to the value of alcohol fuel, biodiesel fuel, or biodiesel feedstock manufactured, multiplied by the rate of 0.138 percent; and

(f) Wood biomass fuel as defined in RCW 82.29A.135; as to such persons the amount of tax with respect to the business is equal to the value of wood biomass fuel manufactured, multiplied by the rate of 0.138 percent.

(2) Upon every person engaging within this state in the business of splitting or processing dried peas; as to such persons the amount of tax with respect to such business is equal to the value of the peas split or processed, multiplied by the rate of 0.138 percent.

(3) Upon every nonprofit corporation and nonprofit association engaging within this state in research and development, as to such corporations and associations, the amount of tax with respect to such activities is equal to the gross income derived from such activities multiplied by the rate of 0.484 percent.

(4) Upon every person engaging within this state in the business of slaughtering, breaking and/or processing perishable meat products and/or selling the same at wholesale only and not at retail; as to such persons the tax imposed is equal to the gross proceeds derived from such sales multiplied by the rate of 0.138 percent.

(5) Upon every person engaging within this state in the business of acting as a travel agent or tour operator; as to such persons the amount of the tax with respect to such activities is equal to the gross income derived from such activities multiplied by the rate of 0.275 percent.

(6) Upon every person engaging within this state in business as an international steamship agent, international customs house broker, international freight forwarder, vessel and/or cargo charter broker in foreign commerce, and/or international air cargo agent; as to such persons the amount of the tax with respect to only international activities is equal to the gross income derived from such activities multiplied by the rate of 0.275 percent.

(7) Upon every person engaging within this state in the business of stevedoring and associated activities pertinent to the movement of goods and commodities in waterborne interstate or foreign commerce; as to such persons the amount of tax with respect to such business is equal to the gross proceeds derived from such activities multiplied by the rate of 0.275 percent. Persons subject to taxation under this subsection are exempt from payment of taxes imposed by chapter 82.16 RCW for that portion of their business subject to taxation under this subsection. Stevedoring and associated activities pertinent to the conduct of goods and commodities in waterborne interstate or foreign commerce are defined as all

activities of a labor, service or transportation nature whereby cargo may be loaded or unloaded to or from vessels or barges, passing over, onto or under a wharf, pier, or similar structure; cargo may be moved to a warehouse or similar holding or storage yard or area to await further movement in import or export or may move to a consolidation freight station and be stuffed, unstuffed, containerized, separated or otherwise segregated or aggregated for delivery or loaded on any mode of transportation for delivery to its consignee. Specific activities included in this definition are: Wharfage, handling, loading, unloading, moving of cargo to a convenient place of delivery to the consignee or a convenient place for further movement to export mode; documentation services in connection with the receipt, delivery, checking, care, custody and control of cargo required in the transfer of cargo; imported automobile handling prior to delivery to consignee; terminal stevedoring and incidental vessel services, including but not limited to plugging and unplugging refrigerator service to containers, trailers, and other refrigerated cargo receptacles, and securing ship hatch covers.

(8) Upon every person engaging within this state in the business of disposing of low-level waste, as defined in RCW 43.145.010; as to such persons the amount of the tax with respect to such business is equal to the gross income of the business, excluding any fees imposed under chapter 43.200 RCW, multiplied by the rate of 3.3 percent.

If the gross income of the taxpayer is attributable to activities both within and without this state, the gross income attributable to this state must be determined in accordance with the methods of apportionment required under RCW 82.04.460.

(9) Upon every person engaging within this state as an insurance producer or title insurance agent licensed under chapter 48.17 RCW or a surplus line broker licensed under chapter 48.15 RCW; as to such persons, the amount of the tax with respect to such licensed activities is equal to the gross income of such business multiplied by the rate of 0.484 percent.

(10) Upon every person engaging within this state in business as a hospital, as defined in chapter 70.41 RCW, that is operated as a nonprofit corporation or by the state or any of its political subdivisions, as to such persons, the amount of tax with respect to such activities is equal to the gross income of the business multiplied by the rate of 0.75 percent through June 30, 1995, and 1.5 percent thereafter.

(11)(a) Beginning October 1, 2005, upon every person engaging within this state in the business of manufacturing commercial airplanes, or components of such airplanes, or making sales, at retail or wholesale, of commercial airplanes or components of such airplanes, manufactured by the seller, as to such persons the amount of tax with respect to such business is, in the case of manufacturers, equal to the value of the product manufactured and the gross proceeds of sales of the product manufactured, or in the case of processors for hire, equal to the gross income of the business, multiplied by the rate of:

(i) 0.4235 percent from October 1, 2005, through June 30, 2007; and

(ii) 0.2904 percent beginning July 1, 2007.

(b) Beginning July 1, 2008, upon every person who is not eligible to report under the provisions of (a) of this sub-

section (11) and is engaging within this state in the business of manufacturing tooling specifically designed for use in manufacturing commercial airplanes or components of such airplanes, or making sales, at retail or wholesale, of such tooling manufactured by the seller, as to such persons the amount of tax with respect to such business is, in the case of manufacturers, equal to the value of the product manufactured and the gross proceeds of sales of the product manufactured, or in the case of processors for hire, be equal to the gross income of the business, multiplied by the rate of 0.2904 percent.

(c) For the purposes of this subsection (11), "commercial airplane" and "component" have the same meanings as provided in RCW 82.32.550.

(d) In addition to all other requirements under this title, a person reporting under the tax rate provided in this subsection (11) must file a complete annual report with the department under RCW 82.32.534.

(e) This subsection (11) does not apply on and after July 1, 2024.

(12)(a) Until July 1, 2024, upon every person engaging within this state in the business of extracting timber or extracting for hire timber; as to such persons the amount of tax with respect to the business is, in the case of extractors, equal to the value of products, including by-products, extracted, or in the case of extractors for hire, equal to the gross income of the business, multiplied by the rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30, 2024.

(b) Until July 1, 2024, upon every person engaging within this state in the business of manufacturing or processing for hire: (i) Timber into timber products or wood products; or (ii) timber products into other timber products or wood products; as to such persons the amount of the tax with respect to the business is, in the case of manufacturers, equal to the value of products, including by-products, manufactured, or in the case of processors for hire, equal to the gross income of the business, multiplied by the rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30, 2024.

(c) Until July 1, 2024, upon every person engaging within this state in the business of selling at wholesale: (i) Timber extracted by that person; (ii) timber products manufactured by that person from timber or other timber products; or (iii) wood products manufactured by that person from timber or timber products; as to such persons the amount of the tax with respect to the business is equal to the gross proceeds of sales of the timber, timber products, or wood products multiplied by the rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30, 2024.

(d) Until July 1, 2024, upon every person engaging within this state in the business of selling standing timber; as to such persons the amount of the tax with respect to the business is equal to the gross income of the business multiplied by the rate of 0.2904 percent. For purposes of this subsection (12)(d), "selling standing timber" means the sale of timber apart from the land, where the buyer is required to sever the timber within thirty months from the date of the original contract, regardless of the method of payment for the timber and whether title to the timber transfers before, upon, or after severance.

(e) For purposes of this subsection, the following definitions apply:

(i) "Biocomposite surface products" means surface material products containing, by weight or volume, more than fifty percent recycled paper and that also use nonpetroleum-based phenolic resin as a bonding agent.

(ii) "Paper and paper products" means products made of interwoven cellulosic fibers held together largely by hydrogen bonding. "Paper and paper products" includes newsprint; office, printing, fine, and pressure-sensitive papers; paper napkins, towels, and toilet tissue; kraft bag, construction, and other kraft industrial papers; paperboard, liquid packaging containers, containerboard, corrugated, and solid-fiber containers including linerboard and corrugated medium; and related types of cellulosic products containing primarily, by weight or volume, cellulosic materials. "Paper and paper products" does not include books, newspapers, magazines, periodicals, and other printed publications, advertising materials, calendars, and similar types of printed materials.

(iii) "Recycled paper" means paper and paper products having fifty percent or more of their fiber content that comes from postconsumer waste. For purposes of this subsection (12)(e)(iii), "postconsumer waste" means a finished material that would normally be disposed of as solid waste, having completed its life cycle as a consumer item.

(iv) "Timber" means forest trees, standing or down, on privately or publicly owned land. "Timber" does not include Christmas trees that are cultivated by agricultural methods or short-rotation hardwoods as defined in RCW 84.33.035.

(v) "Timber products" means:

(A) Logs, wood chips, sawdust, wood waste, and similar products obtained wholly from the processing of timber, short-rotation hardwoods as defined in RCW 84.33.035, or both;

(B) Pulp, including market pulp and pulp derived from recovered paper or paper products; and

(C) Recycled paper, but only when used in the manufacture of biocomposite surface products.

(vi) "Wood products" means paper and paper products; dimensional lumber; engineered wood products such as particleboard, oriented strand board, medium density fiberboard, and plywood; wood doors; wood windows; and biocomposite surface products.

(f) Except for small harvesters as defined in RCW 84.33.035, a person reporting under the tax rate provided in this subsection (12) must file a complete annual survey with the department under RCW 82.32.585.

(13) Upon every person engaging within this state in inspecting, testing, labeling, and storing canned salmon owned by another person, as to such persons, the amount of tax with respect to such activities is equal to the gross income derived from such activities multiplied by the rate of 0.484 percent.

(14)(a) Upon every person engaging within this state in the business of printing a newspaper, publishing a newspaper, or both, the amount of tax on such business is equal to the gross income of the business multiplied by the rate of 0.2904 percent.

(b) A person reporting under the tax rate provided in this subsection (14) must file a complete annual report with the department under RCW 82.32.534. [2013 2nd sp.s. c 13 §

203; 2012 2nd sp.s. c 6 § 204; 2011 c 2 § 203 (Initiative Measure No. 1107, approved November 2, 2010); 2010 1st sp.s. c 23 § 506; (2010 1st sp.s. c 23 § 505 expired June 10, 2010); 2010 c 114 § 107. Prior: 2009 c 479 § 64; 2009 c 461 § 1; 2009 c 162 § 34; prior: 2008 c 296 § 1; 2008 c 217 § 100; 2008 c 81 § 4; prior: 2007 c 54 § 6; 2007 c 48 § 2; prior: 2006 c 354 § 4; 2006 c 300 § 1; prior: 2005 c 513 § 2; 2005 c 443 § 4; prior: 2003 2nd sp.s. c 1 § 4; 2003 2nd sp.s. c 1 § 3; 2003 c 339 § 11; 2003 c 261 § 11; 2001 2nd sp.s. c 25 § 2; prior: 1998 c 312 § 5; 1998 c 311 § 2; prior: 1998 c 170 § 4; 1996 c 148 § 2; 1996 c 115 § 1; prior: 1995 2nd sp.s. c 12 § 1; 1995 2nd sp.s. c 6 § 1; 1993 sp.s. c 25 § 104; 1993 c 492 § 304; 1991 c 272 § 15; 1990 c 21 § 2; 1987 c 139 § 1; prior: 1985 c 471 § 1; 1985 c 135 § 2; 1983 2nd ex.s. c 3 § 5; prior: 1983 1st ex.s. c 66 § 4; 1983 1st ex.s. c 55 § 4; 1982 2nd ex.s. c 13 § 1; 1982 c 10 § 16; prior: 1981 c 178 § 1; 1981 c 172 § 3; 1979 ex.s. c 196 § 2; 1975 1st ex.s. c 291 § 7; 1971 ex.s. c 281 § 5; 1971 ex.s. c 186 § 3; 1969 ex.s. c 262 § 36; 1967 ex.s. c 149 § 10; 1965 ex.s. c 173 § 6; 1961 c 15 § 82.04.260; prior: 1959 c 211 § 2; 1955 c 389 § 46; prior: 1953 c 91 § 4; 1951 2nd ex.s. c 28 § 4; 1950 ex.s. c 5 § 1, part; 1949 c 228 § 1, part; 1943 c 156 § 1, part; 1941 c 178 § 1, part; 1939 c 225 § 1, part; 1937 c 227 § 1, part; 1935 c 180 § 4, part; Rem. Supp. 1949 § 8370-4, part.]

Reviser's note: Pursuant to RCW 43.135.041, chapter 6, Laws of 2012 2nd special session was subject to an advisory vote of the people in the November 2012 general election on whether the tax increase in such session law should be maintained or repealed. The advisory vote was in favor of repeal.

Effective date—2013 2nd sp.s. c 13 § 203: "Section 203 of this act takes effect July 1, 2015." [2013 2nd sp.s. c 13 § 1902.]

Existing rights, liabilities, or obligations—Effective dates—Contingent effective dates—2012 2nd sp.s. c 6: See notes following RCW 82.04.29005.

Findings—Construction—2011 c 2 (Initiative Measure No. 1107): See notes following RCW 82.08.0293.

Expiration date—2010 1st sp.s. c 23 §§ 503, 505, and 514: See note following RCW 82.04.4266.

Effective date—2010 1st sp.s. c 23 §§ 504, 506, and 515: See note following RCW 82.04.4266.

Findings—Intent—2010 1st sp.s. c 23: See notes following RCW 82.04.220.

Effective date—2010 1st sp.s. c 23: See note following RCW 82.04.4292.

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.585.

Effective date—2009 c 479: See note following RCW 2.56.030.

Effective date—Contingent effective date—2009 c 461: See note following RCW 82.04.280.

Effective date—2009 c 162: See note following RCW 48.03.020.

Retroactive application—2008 c 296: "Section 1 of this act applies retroactively to July 1, 2007, as well as prospectively." [2008 c 296 § 2.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

Findings—Savings—Effective date—2008 c 81: See notes following RCW 82.08.975.

Severability—2007 c 54: See note following RCW 82.04.050.

Effective date—2007 c 48: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2007." [2007 c 48 § 9.]

Effective dates—2006 c 354: See note following RCW 82.04.4268.

Effective dates—Contingent effective date—2006 c 300: See note following RCW 82.04.261.

Effective dates—2005 c 513: See note following RCW 82.04.4266.

Finding—Intent—Effective date—2005 c 443: See notes following RCW 82.08.0255.

Finding—2003 2nd sp.s. c 1: See note following RCW 82.04.4461.

Effective dates—2003 c 339: See note following RCW 84.36.640.

Effective dates—2003 c 261: See note following RCW 84.36.635.

Purpose—Intent—2001 2nd sp.s. c 25: "The purpose of sections 2 and 3 of this act is to provide a tax rate for persons who manufacture dairy products that is commensurate to the rate imposed on certain other processors of agricultural commodities. This tax rate applies to persons who manufacture dairy products from raw materials such as fluid milk, dehydrated milk, or by-products of milk such as cream, buttermilk, whey, butter, or casein. It is not the intent of the legislature to provide this tax rate to persons who use dairy products as an ingredient or component of their manufactured product, such as milk-based soups or pizza. It is the intent that persons who manufacture products such as milk, cheese, yogurt, ice cream, whey, or whey products be subject to this rate." [2001 2nd sp.s. c 25 § 1.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Additional notes found at www.leg.wa.gov

82.04.272 Tax on warehousing and reselling prescription drugs. (1) Upon every person engaging within this state in the business of warehousing and reselling drugs for human use pursuant to a prescription; as to such persons, the amount of the tax shall be equal to the gross income of the business multiplied by the rate of 0.138 percent.

(2) For the purposes of this section:

(a) "Prescription" and "drug" have the same meaning as in RCW 82.08.0281; and

(b) "Warehousing and reselling drugs for human use pursuant to a prescription" means the buying of drugs for human use pursuant to a prescription from a manufacturer or another wholesaler, and reselling of the drugs to persons selling at retail or to hospitals, clinics, health care providers, or other providers of health care services, by a wholesaler or retailer who is registered with the federal drug enforcement administration and licensed by the pharmacy quality assurance commission. [2013 c 19 § 127; 2003 c 168 § 401; 1998 c 343 § 1.]

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

Additional notes found at www.leg.wa.gov

82.04.290 Tax on international investment management services or other business or service activities. (1) Upon every person engaging within this state in the business of providing international investment management services, as to such persons, the amount of tax with respect to such business shall be equal to the gross income or gross proceeds of sales of the business multiplied by a rate of 0.275 percent.

(2)(a) Upon every person engaging within this state in any business activity other than or in addition to an activity taxed explicitly under another section in this chapter or subsection (1) or (3) of this section; as to such persons the amount of tax on account of such activities shall be equal to the gross income of the business multiplied by the rate of 1.5 percent.

(b) This subsection (2) includes, among others, and without limiting the scope hereof (whether or not title to materials used in the performance of such business passes to another by accession, confusion or other than by outright sale), persons engaged in the business of rendering any type of service which does not constitute a "sale at retail" or a "sale at whole-

sale." The value of advertising, demonstration, and promotional supplies and materials furnished to an agent by his or her principal or supplier to be used for informational, educational, and promotional purposes shall not be considered a part of the agent's remuneration or commission and shall not be subject to taxation under this section.

(3)(a) Until July 1, 2024, upon every person engaging within this state in the business of performing aerospace product development for others, as to such persons, the amount of tax with respect to such business shall be equal to the gross income of the business multiplied by a rate of 0.9 percent.

(b) "Aerospace product development" has the meaning as provided in RCW 82.04.4461. [2013 c 23 § 314; 2011 c 174 § 101; 2008 c 81 § 6; 2005 c 369 § 8; 2004 c 174 § 2; 2003 c 343 § 2; 2001 1st sp.s. c 9 § 6; (2001 1st sp.s. c 9 § 4 expired July 1, 2001). Prior: 1998 c 343 § 4; 1998 c 331 § 2; 1998 c 312 § 8; 1998 c 308 § 5; 1998 c 308 § 4; 1997 c 7 § 2; 1996 c 1 § 2; 1995 c 229 § 3; 1993 sp.s. c 25 § 203; 1985 c 32 § 3; 1983 2nd ex.s. c 3 § 2; 1983 c 9 § 2; 1983 c 3 § 212; 1971 ex.s. c 281 § 8; 1970 ex.s. c 65 § 4; 1969 ex.s. c 262 § 39; 1967 ex.s. c 149 § 14; 1963 ex.s. c 28 § 2; 1961 c 15 § 82.04.290; prior: 1959 ex.s. c 5 § 5; 1955 c 389 § 49; prior: 1953 c 195 § 2; 1950 ex.s. c 5 § 1, part; 1949 c 228 § 1, part; 1943 c 156 § 1, part; 1941 c 178 § 1, part; 1939 c 225 § 1, part; 1937 c 227 § 1, part; 1935 c 180 § 4, part; Rem. Supp. 1949 § 8370-4, part.]

Findings—Savings—Effective date—2008 c 81: See notes following RCW 82.08.975.

Findings—Intent—Severability—Effective date—2005 c 369: See notes following RCW 43.20A.890.

Effective date—2004 c 174: See note following RCW 82.04.2908.

Additional notes found at www.leg.wa.gov

82.04.294 Tax on manufacturers or wholesalers of solar energy systems. (Expires June 30, 2017.) (1) Upon every person engaging within this state in the business of manufacturing solar energy systems using photovoltaic modules or stirling converters, or of manufacturing solar grade silicon, silicon solar wafers, silicon solar cells, thin film solar devices, or compound semiconductor solar wafers to be used exclusively in components of such systems; as to such persons the amount of tax with respect to such business is, in the case of manufacturers, equal to the value of the product manufactured, or in the case of processors for hire, equal to the gross income of the business, multiplied by the rate of 0.275 percent.

(2) Upon every person engaging within this state in the business of making sales at wholesale of solar energy systems using photovoltaic modules or stirling converters, or of solar grade silicon, silicon solar wafers, silicon solar cells, thin film solar devices, or compound semiconductor solar wafers to be used exclusively in components of such systems, manufactured by that person; as to such persons the amount of tax with respect to such business is equal to the gross proceeds of sales of the solar energy systems using photovoltaic modules or stirling converters, or of the solar grade silicon to be used exclusively in components of such systems, multiplied by the rate of 0.275 percent.

(3) Silicon solar wafers, silicon solar cells, thin film solar devices, solar grade silicon, or compound semiconductor

solar wafers are "semiconductor materials" for the purposes of RCW 82.08.9651 and 82.12.9651.

(4) The definitions in this subsection apply throughout this section.

(a) "Compound semiconductor solar wafers" means a semiconductor solar wafer composed of elements from two or more different groups of the periodic table.

(b) "Module" means the smallest nondivisible self-contained physical structure housing interconnected photovoltaic cells and providing a single direct current electrical output.

(c) "Photovoltaic cell" means a device that converts light directly into electricity without moving parts.

(d) "Silicon solar cells" means a photovoltaic cell manufactured from a silicon solar wafer.

(e) "Silicon solar wafers" means a silicon wafer manufactured for solar conversion purposes.

(f) "Solar energy system" means any device or combination of devices or elements that rely upon direct sunlight as an energy source for use in the generation of electricity.

(g) "Solar grade silicon" means high-purity silicon used exclusively in components of solar energy systems using photovoltaic modules to capture direct sunlight. "Solar grade silicon" does not include silicon used in semiconductors.

(h) "Stirling converter" means a device that produces electricity by converting heat from a solar source utilizing a stirling engine.

(i) "Thin film solar devices" means a nonparticipating substrate on which various semiconducting materials are deposited to produce a photovoltaic cell that is used to generate electricity.

(5) A person reporting under the tax rate provided in this section must file a complete annual survey with the department under RCW 82.32.585.

(6) This section expires June 30, 2017. [2013 2nd sp.s. c 13 § 902; 2011 c 179 § 1; 2010 c 114 § 109; 2009 c 469 § 501; 2007 c 54 § 8; 2005 c 301 § 2.]

Findings—Intent—2013 2nd sp.s. c 13: "(1) The legislature finds that to attract and maintain clean energy technology manufacturing businesses, a competitive business climate is crucial. The legislature further finds that specific tax preferences can facilitate a positive business climate in Washington. The legislature further finds that businesses in the solar silicon industry have had to reduce employment due to global conditions. Therefore, the legislature intends to extend a preferential business and occupation tax rate to manufacturers and wholesalers of specific solar energy material and parts to maintain and grow jobs in the solar silicon industry.

(2) The joint legislative audit and review committee, as part of its tax preference review process, must assess the actual fiscal impact of this tax preference in relation to the fiscal estimate for the tax preference and assess changes in employment for firms claiming the preferential tax rate." [2013 2nd sp.s. c 13 § 901.]

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.04.43393.

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.585.

Effective date—2009 c 469: See note following RCW 82.08.962.

Severability—2007 c 54: See note following RCW 82.04.050.

Findings—Intent—2005 c 301: "The legislature finds that the welfare of the people of the state of Washington is positively impacted through the encouragement and expansion of key growth industries in the state. The legislature further finds that targeting tax incentives to focus on key growth industries is an important strategy to enhance the state's business climate.

A recent report by the Washington State University energy program recognized the solar electric industry as one of the state's important growth industries. It is of great concern that businesses in this industry have been increasingly expanding and relocating their operations elsewhere. The

report indicates that additional incentives for the solar electric industry are needed in recognition of the unique forces and issues involved in business decisions in this industry.

Therefore, the legislature intends to enact comprehensive tax incentives for the solar electric industry that address activities of the manufacture of these products and to encourage these industries to locate in Washington. Tax incentives for the solar electric industry are important in both retention and expansion of existing business and attraction of new businesses, all of which will strengthen this growth industry within our state, will create jobs, and will bring many indirect benefits to the state." [2005 c 301 § 1.]

Effective date—2005 c 301: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005." [2005 c 301 § 6.]

82.04.323 Exemption—Washington health benefit exchange. (Expires July 1, 2023.) (1) The taxes imposed by this chapter do not apply to amounts received by the Washington health benefit exchange established under chapter 43.71 RCW.

(2) This section expires July 1, 2023. [2013 2nd sp.s. c 6 § 8.]

Retroactive application—2013 2nd sp.s. c 6 § 8: "Section 8 of this act applies both prospectively and retroactively." [2013 2nd sp.s. c 6 § 10.]

82.04.324 Exemptions—Qualifying blood, tissue, or blood and tissue banks. (Effective until July 1, 2016.) (1) Except as otherwise provided in subsection (3) of this section, this chapter does not apply to amounts received by a qualifying blood bank, a qualifying tissue bank, or a qualifying blood and tissue bank to the extent the amounts are exempt from federal income tax.

(2) For the purposes of this section:

(a) "Qualifying blood bank" means an exempt organization under 26 U.S.C. 501(c)(3) as existing on June 10, 2004, that is registered pursuant to 21 C.F.R., part 607 as existing on June 10, 2004, and whose primary business purpose is the collection, preparation, testing or processing of blood, on behalf of itself or other qualifying blood bank or qualifying blood and tissue bank. "Qualifying blood bank" does not include a comprehensive cancer center that is recognized as such by the national cancer institute.

(b) "Qualifying tissue bank" means a tissue bank that qualifies as an exempt organization under 26 U.S.C. 501(c)(3) as existing on June 10, 2004, is registered pursuant to 21 C.F.R., part 1271 as existing on June 10, 2004, and whose primary business purpose is the recovery, processing, storage, labeling, packaging, or distribution of human bone tissue, ligament tissue and similar musculoskeletal tissues, skin tissue, heart valve tissue, or human eye tissue. "Qualifying tissue bank" does not include a comprehensive cancer center that is recognized as such by the national cancer institute.

(c) "Qualifying blood and tissue bank" means an exempt organization under 26 U.S.C. 501(c)(3) as existing on June 10, 2004, that is registered pursuant to 21 C.F.R., part 607 and part 1271 as existing on June 10, 2004, and whose primary business purpose is the collection, preparation, testing, or processing of blood, on behalf of itself or other qualifying blood bank or qualifying blood and tissue bank, and the recovery, processing, storage, labeling, packaging, or distribution of human bone tissue, ligament tissue and similar musculoskeletal tissues, skin tissue, and heart valve tissue.

"Qualifying blood and tissue bank" does not include a comprehensive cancer center that is recognized as such by the national cancer institute.

(3) A person claiming the exemption under this section must report amounts exempt under this section to the department. Except for persons whose primary business purpose is the collection, preparation, and processing of blood, a person may not claim an exemption under this section for more than one hundred fifty thousand dollars in tax per calendar year. [2013 2nd sp.s. c 13 § 1202; 2004 c 82 § 1; 1995 2nd sp.s. c 9 § 3.]

Intent—2013 2nd sp.s. c 13: "Part XII of this act is intended to allow flexibility for nonprofit organizations where qualifying activities will be provided by more than one organization. It is not the legislature's intent to expand the lines of nontaxable activity. Therefore, the legislature further intends to reassess the changes made in part XII of this act to ensure the actual fiscal impact reasonably conforms with the fiscal estimate provided in the fiscal note for the legislation." [2013 2nd sp.s. c 13 § 1201.]

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.04.43393.

Additional notes found at www.leg.wa.gov

82.04.425 Exemptions—Accommodation sales. This chapter shall not apply to sales for resale by persons regularly engaged in the business of making sales of the type of property so sold to other persons similarly engaged in the business of selling such property where (1) the amount paid by the buyer does not exceed the amount paid by the seller to his or her vendor in the acquisition of the article and (2) the sale is made as an accommodation to the buyer to enable him or her to fill a bona fide existing order of a customer or is made within fourteen days to reimburse in kind a previous accommodation sale by the buyer to the seller; nor to sales by a wholly owned subsidiary of a person making sales at retail which are exempt under RCW 82.08.0262 when the parent corporation shall have paid the tax imposed under this chapter. [2013 c 23 § 315; 1980 c 37 § 78; 1965 ex.s. c 173 § 9; 1961 c 15 § 82.04.425. Prior: 1955 c 95 § 1.]

Intent—1980 c 37: See note following RCW 82.04.4281.

Additional notes found at www.leg.wa.gov

82.04.4268 Exemptions—Dairy product businesses. (Expires July 1, 2015.) (1) In computing tax there may be deducted from the measure of tax, the value of products or the gross proceeds of sales derived from:

(a) Manufacturing dairy products; or

(b) Selling dairy products manufactured by the seller to purchasers who either transport in the ordinary course of business the goods out of this state or purchasers who use such dairy products as an ingredient or component in the manufacturing of a dairy product. A person taking an exemption under this subsection (1)(b) must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state or sold to a manufacturer for use as an ingredient or component in the manufacturing of a dairy product.

(2) "Dairy products" has the same meaning as provided in RCW 82.04.260.

(3) A person claiming the exemption provided in this section must file a complete annual survey with the department under RCW 82.32.585.

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(4) This section expires July 1, 2015. [2013 2nd sp.s. c 13 § 204; 2012 2nd sp.s. c 6 § 202; 2010 c 114 § 112; 2006 c 354 § 1.]

Reviser's note: Pursuant to RCW 43.135.041, chapter 6, Laws of 2012 2nd special session was subject to an advisory vote of the people in the November 2012 general election on whether the tax increase in such session law should be maintained or repealed. The advisory vote was in favor of repeal.

Intent—2013 2nd sp.s. c 13: See note following RCW 82.04.260.

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.04.43393.

Existing rights, liabilities, or obligations—Effective dates—Continuing effective dates—2012 2nd sp.s. c 6: See notes following RCW 82.04.29005.

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.585.

Effective dates—2006 c 354: "(1) Except as otherwise provided in this section, this act takes effect July 1, 2006.

(2) Sections 6 through 9 and 11 of this act take effect July 1, 2007.

(3) Sections 12 and 13 of this act take effect July 1, 2012." [2006 c 354 § 18.]

82.04.4285 Deductions—Motor vehicle fuel and special fuel taxes. (Effective July 1, 2015.) In computing tax there may be deducted from the measure of tax so much of the sale price of fuel as constitutes the amount of tax imposed by the state under chapter 82.38 RCW or the United States government, under 26 U.S.C., Subtitle D, chapters 31 and 32, upon the sale thereof. [2013 c 225 § 639; 1998 c 176 § 3; 1980 c 37 § 6. Formerly RCW 82.04.430(5).]

Effective date—2013 c 225: See note following RCW 82.38.010.

Rules—Findings—Effective date—1998 c 176: See RCW 82.36.800, 82.36.900, and 82.36.901.

Intent—1980 c 37: See note following RCW 82.04.4281.

82.04.43393 Deductions—Paymaster services. (1) In computing tax there may be deducted from the measure of tax, amounts that a qualified employer of record engaged in providing paymaster services receives from an affiliated business to cover employee costs of a qualified employee. However, no exclusion is allowed under this section for any employee costs incurred in connection with a contractual obligation of the taxpayer to provide services, including staffing services as defined in RCW 82.04.540.

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

(a) "Affiliated" has the same meaning as provided in RCW 82.32.655(7).

(b) "Employee costs" are the actual cost of wages and salaries, benefits, workers' compensation, payroll taxes, withholding, or other assessments paid to or on behalf of an employee.

(c) "Functional employment relationship" means having control over the work schedule and activities of the employees and control over all employment decisions such as salary, discipline, hiring, or layoffs.

(d) "Paymaster services" means providing payroll and related human resource services.

(e) "Qualified employee" means an employee with whom the affiliated business has a functional employment relationship. Neither the employer of record, nor any other affiliate, may have a functional employment relationship with the employee.

(f) "Qualified employer of record" is a person who:

(i) Has no functional employment relationship with a qualified employee; and

(ii) Has no contractual liability with a qualified employee for the employee costs. A qualified employer of record may have statutory or common law liability to the qualified employees or to third parties for employee costs.

(3) RCW 82.32.805(1) does not apply to the deduction authorized in this section. [2013 2nd sp.s. c 13 § 102.]

Findings—Intent—2013 2nd sp.s. c 13: "(1) The legislature finds that the supreme court's decision in *William Rogers v. Tacoma*, while clarifying the taxation of temporary staffing agencies, resulted in differing interpretations of regulatory requirements in order to qualify for a pass-through exclusion from Washington B&O taxes for payroll reimbursements made within an affiliated group.

(2) The legislature passed Second Engrossed Substitute Senate Bill No. 6143 during the 2010 legislative session that directed the department of revenue to conduct a review and provide a report on the state's tax policies with respect to the taxation of intercompany transactions. The report affirms that centralized payroll reporting systems can result in an additional layer of tax for Washington businesses. Exclusions for payroll reimbursements allow businesses to have efficient administrative costs without incurring an additional tax obligation resulting exclusively from streamlining payroll processes. Further, this treatment of allowing for an exclusion of payroll cost reimbursements within a centralized payroll system is consistent with historical tax practices of the department of revenue prior to the *William Rogers* decision.

(3) The department of revenue continues to work with taxpayers to study taxation of transactions within and between affiliated business organizations in order to determine the appropriate policies and to identify areas where statutory and regulatory changes may be necessary.

(4) The legislature finds that the tax policy of allowing exclusions for payroll cost reimbursements within a centralized payroll reporting system is appropriate and should be affirmed. The legislature adopts the historical tax policy of allowing exclusions for payroll cost reimbursements within a centralized payroll reporting system of an affiliated group and requires the implementation of such tax policy from October 1, 2013. In affirming this tax policy, the legislature also intends to monitor these transactions to ensure they are being used appropriately and not for tax avoidance purposes and to monitor the potential impact on state revenue collections. The legislature does not intend for part I of this act to retroactively create a right of refund for taxes paid on payroll cost reimbursements prior to the enactment of this statute." [2013 2nd sp.s. c 13 § 101.]

Effective date—2013 2nd sp.s. c 13: "Except as otherwise provided in this act, this act takes effect October 1, 2013." [2013 2nd sp.s. c 13 § 1904.]

82.04.43394 Deductions—Cooperative finance organizations. (Expires July 1, 2017.) (1) In computing tax there may be deducted from the measure of tax, amounts received by a cooperative finance organization where the amounts are derived from loans to rural electric cooperatives or other nonprofit or governmental providers of utility services organized under the laws of this state.

(2) For the purposes of this section, the following definitions apply:

(a) "Cooperative finance organization" means a nonprofit organization with the primary purpose of providing, securing, or otherwise arranging financing for rural electric cooperatives.

(b) "Rural electric cooperative" means a nonprofit, customer-owned organization that provides utility services to rural areas.

(3) This section expires July 1, 2017. [2013 2nd sp.s. c 13 § 602.]

Application—2013 2nd sp.s. c 13 § 602: "Section 602 of this act applies to amounts received on or after October 1, 2013." [2013 2nd sp.s. c 13 § 603.]

Intent—2013 2nd sp.s. c 13: "(1) The intent of part VI of this act is to provide tax relief for customers of rural electric cooperatives by providing a business and occupation tax deduction for interest income on loans made by certain finance organizations to rural electric cooperatives. It is the further intent of the legislature to provide this tax deduction in a fiscally responsible manner where the actual revenue impact of the legislation substantially conforms with the fiscal estimate provided in the legislation's fiscal note.

(2) To measure the effectiveness of this tax preference in meeting its policy objectives, the joint legislative audit and review committee shall specifically evaluate customer rates charged by rural electric cooperatives that are repaying debt to the national rural utilities cooperative finance organization, or any similar financing organization, and the impact the business and occupation deduction provided under part VI of this act has had on those rates." [2013 2nd sp.s. c 13 § 601.]

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.04.43393.

82.04.629 Exemptions—Honey bee products. (Expires July 1, 2017.) (1) This chapter does not apply to amounts derived from the wholesale sale of honey bee products by an eligible apiarist who owns or keeps bee colonies and who does not qualify for an exemption under RCW 82.04.330 in respect to such sales.

(2) The exemption provided in subsection (1) of this section does not apply to any person selling such products at retail or to any person selling manufactured substances or articles.

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

(a) "Bee colony" means a natural group of honey bees containing seven thousand or more workers and one or more queens, housed in a man-made hive with movable frames, and operated as a beekeeping unit.

(b) "Eligible apiarist" means a person who owns or keeps one or more bee colonies and who grows, raises, or produces honey bee products for sale at wholesale and is registered under RCW 15.60.021.

(c) "Honey bee products" means queen honey bees, packaged honey bees, honey, pollen, bees wax, propolis, or other substances obtained from honey bees. "Honey bee products" does not include manufactured substances or articles.

(4) This section expires July 1, 2017. [2013 2nd sp.s. c 13 § 306; 2008 c 314 § 2.]

Findings—Intent—Honey bee work group—Created—2013 2nd sp.s. c 13: See notes following RCW 82.08.200.

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.08.200.

Finding—Intent—2008 c 314: "The legislature finds that recent occurrences of colony collapse disorder and the resulting loss of bee hives will have an economic impact on the state's agricultural sector. The legislature intends to provide temporary business and occupation tax relief for Washington's apiarists." [2008 c 314 § 1.]

Effective date—2008 c 314: "This act takes effect July 1, 2008." [2008 c 314 § 6.]

82.04.630 Exemptions—Bee pollination services. (Expires July 1, 2017.) (1) This chapter does not apply to amounts received by an eligible apiarist, as defined in RCW 82.04.629, for providing bee pollination services to a farmer using a bee colony owned or kept by the person providing the pollination services.

(2) The definitions in RCW 82.04.213 apply to this section.

(3) This section expires July 1, 2017. [2013 2nd sp.s. c 13 § 307; 2008 c 314 § 3.]

Findings—Intent—Honey bee work group—Created—2013 2nd sp.s. c 13: See notes following RCW 82.08.200.

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.08.200.

Finding—Intent—Effective date—2008 c 314: See notes following RCW 82.04.629.

82.04.760 Tax preferences—Expiration dates. See RCW 82.32.805 for the expiration date of new tax preferences for the tax imposed under this chapter. [2013 2nd sp.s. c 13 § 1704.]

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.04.43393.

Chapter 82.08 RCW RETAIL SALES TAX

Sections

82.08.0204	Exemptions—Honey bees. (<i>Expires July 1, 2017.</i>)
82.08.0255	Exemptions—Sales of motor vehicle and special fuel—Conditions—Credit or refund of special fuel used outside this state in interstate commerce. (<i>Effective July 1, 2015.</i>)
82.08.0266	Exemptions—Sales of watercraft to nonresidents for use outside the state.
82.08.0269	Exemptions—Sales for use in states, territories, and possessions of the United States which are not contiguous to any other state.
82.08.0289	Exemptions—Telephone, telecommunications, and ancillary services.
82.08.100	Cash receipts taxpayers—Bad debts.
82.08.160	Remittance of tax—Liquor excise tax fund created.
82.08.200	Exemptions—Honey beekeepers. (<i>Expires July 1, 2017.</i>)
82.08.205	Exemptions—Clay targets. (<i>Expires July 1, 2017.</i>)
82.08.207	Investment data for investment firms. (<i>Expires July 1, 2021.</i>)
82.08.210	Exemptions—Flavor imparters—Restaurants. (<i>Expires July 1, 2017.</i>)
82.08.215	Exemptions—Large private airplanes. (<i>Effective January 1, 2014, until July 1, 2021.</i>)
82.08.220	Exemptions—Mint growers. (<i>Expires July 1, 2017.</i>)
82.08.875	Exemptions—Automotive adaptive equipment. (<i>Expires July 1, 2018.</i>)
82.08.956	Exemptions—Hog fuel used to generate electricity, steam, heat, or biofuel. (<i>Expires June 30, 2024.</i>)
82.08.962	Exemptions—Sales of machinery and equipment used in generating electricity. (<i>Expires January 1, 2020.</i>)
82.08.963	Exemptions—Sales of machinery and equipment using solar energy to generate electricity or produce thermal heat. (<i>Expires June 30, 2018.</i>)
82.08.99991	Tax preferences—Expiration dates.

82.08.0204 Exemptions—Honey bees. (*Expires July 1, 2017.*) (1) The tax levied by RCW 82.08.020 does not apply to the sale of honey bees to an eligible apiarist, as defined in RCW 82.04.629. This exemption is available only if the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department.

(2) This section expires July 1, 2017. [2013 2nd sp.s. c 13 § 308; 2008 c 314 § 4.]

Findings—Intent—Honey bee work group—Created—2013 2nd sp.s. c 13: See notes following RCW 82.08.200.

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.08.200.

Finding—Intent—Effective date—2008 c 314: See notes following RCW 82.04.629.

82.08.0255 Exemptions—Sales of motor vehicle and special fuel—Conditions—Credit or refund of special fuel used outside this state in interstate commerce. (*Effective*

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July 1, 2015.) (1) The tax levied by RCW 82.08.020 does not apply to sales of motor vehicle and special fuel if:

(a) The fuel is purchased for the purpose of public transportation and the purchaser is entitled to a refund or an exemption under RCW 82.38.080(1) (f) and (g) or 82.38.180(3)(b); or

(b) The fuel is purchased by a private, nonprofit transportation provider certified under chapter 81.66 RCW and the purchaser is entitled to a refund or an exemption under RCW 82.38.080(1)(d) or 82.38.180(3)(a); or

(c) The fuel is purchased by a public transportation benefit area created under chapter 36.57A RCW or a county-owned ferry or county ferry district created under chapter 36.54 RCW for use in passenger-only ferry vessels; or

(d) The fuel is purchased by the Washington state ferry system for use in a state-owned ferry after June 30, 2013; or

(e) The fuel is purchased by a county-owned ferry for use in ferry vessels after June 30, 2013; or

(f) The fuel is taxable under chapter 82.38 RCW.

(2) Any person who has paid the tax imposed by RCW 82.08.020 on the sale of special fuel delivered in this state is entitled to a credit or refund of such tax with respect to fuel subsequently established to have been actually transported and used outside this state by persons engaged in interstate commerce. The tax must be claimed as a credit or refunded through the tax reports required under RCW 82.38.150. [2013 c 225 § 640; 2011 1st sp.s. c 16 § 4; 2007 c 223 § 9; 2005 c 443 § 5; 1998 c 176 § 4. Prior: 1983 1st ex.s. c 35 § 2; 1983 c 108 § 1; 1980 c 147 § 1; 1980 c 37 § 23. Formerly RCW 82.08.030(5).]

Effective date—2013 c 225: See note following RCW 82.38.010.

Effective date—2011 1st sp.s. c 16 §§ 1-15: See note following RCW 47.60.530.

Effective date—2007 c 223: See note following RCW 36.57A.220.

Finding—Intent—2005 c 443: "The legislature finds that a number of tax exemptions, deductions, credits, and other preferences have outlived their usefulness. State records show no taxpayers have claimed relief under these tax preferences in recent years. The intent of this act is to update and simplify the tax statutes by repealing these outdated tax preferences." [2005 c 443 § 1.]

Effective date—2005 c 443: "This act takes effect July 1, 2006." [2005 c 443 § 8.]

Rules—Findings—Effective date—1998 c 176: See RCW 82.36.800, 82.36.900, and 82.36.901.

Intent—1983 1st ex.s. c 35: "It is the intent of the legislature that special fuel purchased in Washington upon which the special fuel tax has been paid, regardless of whether or not the tax is subsequently refunded or credited in whole or in part, should not be subject to the sales and use tax if the special fuel is transported and used outside the state by persons engaged in interstate commerce." [1983 1st ex.s. c 35 § 1.]

Intent—1980 c 37: See note following RCW 82.04.4281.

Diesel, biodiesel, and aircraft fuel sales tax exemption for farmers: RCW 82.08.865.

82.08.0266 Exemptions—Sales of watercraft to nonresidents for use outside the state. The tax levied by RCW 82.08.020 shall not apply to sales to nonresidents of this state for use outside of this state of watercraft requiring coast guard registration or registration by the state of principal use according to the federal boating act of 1958, even though delivery be made within this state, but only when (1) the watercraft will not be used within this state for more than forty-five days and (2) an appropriate exemption certificate

supported by identification ascertaining residence as required by the department of revenue and signed by the purchaser or his or her agent establishing the fact that the purchaser is a nonresident and that the watercraft is for use outside of this state, a copy of which shall be retained by the dealer. [2013 c 23 § 316; 1999 c 358 § 5; 1980 c 37 § 33. Formerly RCW 82.08.030(15).]

Intent—1980 c 37: See note following RCW 82.04.4281.

Additional notes found at www.leg.wa.gov

82.08.0269 Exemptions—Sales for use in states, territories, and possessions of the United States which are not contiguous to any other state. The tax levied by RCW 82.08.020 shall not apply to sales for use in states, territories, and possessions of the United States which are not contiguous to any other state, but only when, as a necessary incident to the contract of sale, the seller delivers the subject matter of the sale to the purchaser or his or her designated agent at the usual receiving terminal of the carrier selected to transport the goods, under such circumstances that it is reasonably certain that the goods will be transported directly to a destination in such noncontiguous states, territories, and possessions. [2013 c 23 § 317; 1980 c 37 § 36. Formerly RCW 82.08.030(18).]

Intent—1980 c 37: See note following RCW 82.04.4281.

82.08.0289 Exemptions—Telephone, telecommunications, and ancillary services. Subject to the enactment into law of the 2013 amendments to RCW 82.14B.040 in section 103, chapter 8, Laws of 2013 2nd sp. sess., the 2013 amendments to RCW 82.14B.042 in section 104, chapter 8, Laws of 2013 2nd sp. sess., the 2013 amendments to RCW 82.14B.030 in section 105, chapter 8, Laws of 2013 2nd sp. sess., the 2013 amendments to RCW 82.14B.200 in section 106, chapter 8, Laws of 2013 2nd sp. sess., the 2013 amendments to RCW 80.36.430 in section 108, chapter 8, Laws of 2013 2nd sp. sess., and the 2013 amendments to RCW 43.20A.725 in section 109, chapter 8, Laws of 2013 2nd sp. sess.:

(1) Until August 1, 2013, the tax levied by RCW 82.08.020 does not apply to sales of:

- (a) Local service;
- (b) Coin-operated telephone service; and
- (c) Mobile telecommunications services, including any toll service, provided to a customer whose place of primary use is outside this state.

(2) The definitions in RCW 82.04.065, as well as the definitions in this subsection, apply to this section.

(a) "Local service" means: (i) Ancillary services and telecommunications service, as those terms are defined in RCW 82.04.065, other than toll service, provided to an individual subscribing to a residential class of telephone service offered under a tariff required to be filed with the Washington utilities and transportation commission under Title 80 RCW; and (ii) fixed interconnected voice over internet protocol service, other than the nonlocal service allocation attributable to that service, sold by a provider to an individual classified as residential by that provider.

(b) "Toll service" means long distance service regardless of the method of billing for such service, but does not include

customer access line charges for access to a toll calling network.

(c) "Coin-operated telephone service" means a telecommunications service paid for by inserting money into a telephone accepting direct deposits of money to operate.

(d) "Fixed interconnected voice over internet protocol service" means a service that meets the definition of interconnected voice over internet protocol service in 47 C.F.R. Sec. 9.3 on January 1, 2009, and that offers an active telephone number or successor dialing protocol assigned by a provider; provides inbound and outbound calling capability; and can be used for transmission of telephone calls only from a fixed location.

(e) "Nonlocal service allocation" means the portion of the provider's fixed interconnected voice over internet protocol service attributable to the provider's nationwide nonlocal service activity as determined using a method sanctioned by the federal communications commission in FCC 06-94 and reported to the federal communications commission for the same calendar quarter. If the provider does not report any nonlocal service activity to the federal communications commission, the full revenue derived from the fixed interconnected voice over internet protocol service is deemed part of the nonlocal service allocation.

(f) "Provider" means a provider of a fixed interconnected voice over internet protocol service that is, or is affiliated with a person that is, subject to a franchise fee in this state under the authority of Title 47 U.S.C. Sec. 542(a). A provider is affiliated with a person if the provider and the person have one hundred percent common ownership. [2013 2nd sp.s. c 8 § 107. Prior: 2007 c 6 § 1006; 2007 c 6 § 1005; 2002 c 67 § 6; 1983 2nd ex.s. c 3 § 30.]

Retroactive application—2013 2nd sp.s. c 8 § 107: "Section 107 of this act applies prospectively as well as retroactively to tax periods open for assessment or refund of taxes under RCW 82.32.050 or 82.32.060, including any refund claims or disputed assessments pending before the department of revenue, board of tax appeals, or any court of law." [2013 2nd sp.s. c 8 § 111.]

VOIP sales tax refunds not authorized before August 1, 2013—2013 2nd sp.s. c 8 § 107: "In accordance with Article VIII, section 5 of the state Constitution, section 107 of this act does not authorize refunds of sales tax validly collected before August 1, 2013, on fixed interconnected voice over internet protocol service as defined in section 107 of this act." [2013 2nd sp.s. c 8 § 112.]

Application—Local service ending after August 1, 2013—2013 2nd sp.s. c 8: "For services affected by the expiration of the exemption for local service under RCW 82.08.0289(1) that cover a billing period starting before and ending after August 1, 2013, RCW 82.08.064(3)(a) is deemed to apply, and retail sales tax will apply to the first billing period starting on or after August 1, 2013." [2013 2nd sp.s. c 8 § 110.]

Findings—Intent—Effective dates—2013 2nd sp.s. c 8: See notes following RCW 82.14B.040.

Contingent effective date—2007 c 6 §§ 1003, 1006, 1014, and 1018: See note following RCW 82.04.065.

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

Finding—Effective date—2002 c 67: See notes following RCW 82.04.530.

Additional notes found at www.leg.wa.gov

82.08.100 Cash receipts taxpayers—Bad debts. The department of revenue, by general regulation, shall provide that a taxpayer whose regular books of account are kept on a

cash receipts basis may file returns based upon his or her cash receipts for each reporting period and pay the tax herein provided upon such basis in lieu of reporting and paying the tax on all sales made during such period. A taxpayer filing returns on a cash receipts basis is not required to pay such tax on debt subject to credit or refund under RCW 82.08.037. [2013 c 23 § 318; 2004 c 153 § 303; 1982 1st ex.s. c 35 § 37; 1975 1st ex.s. c 278 § 50; 1961 c 15 § 82.08.100. Prior: 1959 ex.s. c 3 § 9; 1959 c 197 § 5; prior: 1941 c 178 § 9, part; 1939 c 225 § 12, part; 1935 c 180 § 25, part; Rem. Supp. 1941 § 8370-25, part.]

Bad debts—Intent—2004 c 153: See note following RCW 82.08.037.

Retroactive effective date—Effective date—2004 c 153: See note following RCW 82.08.0293.

Additional notes found at www.leg.wa.gov

82.08.160 Remittance of tax—Liquor excise tax fund created. (1) On or before the twenty-fifth day of each month, all taxes collected under RCW 82.08.150 during the preceding month must be remitted to the state department of revenue, to be deposited with the state treasurer. Except as provided in subsections (2), (3), and (4) of this section, upon receipt of such moneys the state treasurer must credit sixty-five percent of the sums collected and remitted under RCW 82.08.150 (1) and (2) and one hundred percent of the sums collected and remitted under RCW 82.08.150 (3) and (4) to the state general fund and thirty-five percent of the sums collected and remitted under RCW 82.08.150 (1) and (2) to a fund which is hereby created to be known as the "liquor excise tax fund."

(2) During the 2012 fiscal year, 66.19 percent of the sums collected and remitted under RCW 82.08.150 (1) and (2) must be deposited in the state general fund and the remainder collected and remitted under RCW 82.08.150 (1) and (2) must be deposited in the liquor excise tax fund.

(3) During fiscal year 2013, all funds collected under RCW 82.08.150 (1), (2), (3), and (4) must be deposited into the state general fund.

(4) During the 2013-2015 fiscal biennium, eighty two and one-half percent of the sums collected and remitted under RCW 82.08.150 (1) and (2) must be deposited in the state general fund and the remainder collected and remitted under RCW 82.08.150 (1) and (2) must be deposited in the liquor excise tax fund. [2013 2nd sp.s. c 4 § 1003; 2012 2nd sp.s. c 5 § 3; 2011 1st sp.s. c 50 § 969; 1982 1st ex.s. c 35 § 4; 1981 1st ex.s. c 5 § 26; 1969 ex.s. c 21 § 12; 1961 c 15 § 82.08.160. Prior: 1955 c 396 § 2.]

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

Effective date—2012 2nd sp.s. c 5: See note following RCW 43.135.045.

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

Additional notes found at www.leg.wa.gov

82.08.200 Exemptions—Honey beekeepers. (Expires July 1, 2017.) (1) The tax levied by RCW 82.08.020 does not apply to sales of feed to an eligible apiarist for use in the raising of a bee colony used to make honey bee products.

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(2) This exemption is available only if the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department.

(3) The definitions in RCW 82.04.629 apply to this section.

(4) This section expires July 1, 2017. [2013 2nd sp.s. c 13 § 302.]

Findings—Intent—2013 2nd sp.s. c 13: "(1) The legislature finds that in 2008 the legislature passed Second Substitute Senate Bill No. 6468, which provided temporary tax relief for honey beekeepers. The legislature further finds that the 2008 legislation included the following intent language: "The legislature finds that recent occurrences of colony collapse disorder and the resulting loss of bee hives will have an economic impact on the state's agricultural sector. The legislature intends to provide temporary business and occupation tax relief for Washington's apiarists." The legislature further finds that in 2013, colony collapse disorder is still a significant problem for the apiary industry.

(2) Because of the continuing problems associated with colony collapse disorder, it is the legislature's intent to extend the tax relief provided in the 2008 legislation, subject to a rigorous and periodic review of the health of honey bee colonies in Washington to determine whether colony collapse disorder is still a significant problem in the apiary industry. It is the legislature's intent that the tax relief provided in part III of this act will not be extended when data indicates that honey bee colony survivorship has improved, as provided in the colony collapse disorder progress report, published annually by the United States department of agriculture, and data provided by the Washington state department of agriculture to the joint legislative audit and review committee." [2013 2nd sp.s. c 13 § 301.]

Honey bee work group—Created—2013 2nd sp.s. c 13: "(1) The department of agriculture must convene a honey bee work group to address challenges facing the honey bee industry and to develop a report outlining solutions that bolster the use of Washington honey bee colonies used to pollinate tree fruits, berries, and seeds. The work group must include the following members: Two members from the Washington state beekeepers association; one apiarist as defined in RCW 15.60.005 with no less than one thousand hives; one apiarist as defined in RCW 15.60.005 with no more than twenty-five hives; one member from the Washington State University apiary lab; one member from the Washington state department of agriculture; one member from the tree fruit industry; and one member from the seed industry.

(2) The work group may include or seek input from other agencies, organizations, or stakeholders. By December 31, 2014, and in compliance with RCW 43.01.036, the department must submit the work group's report to the legislature that includes the following: (a) Proposed changes to the industry's tax structure to increase competitiveness with out-of-state beekeepers for pollination contracts; (b) providing analytics and metrics to measure the value of the proposed tax structure changes; (c) proposed additional resources needed to continue applied and basic research to support commercial beekeepers in the state and to recover colony losses; (d) identifying colony levels needed to meet the pollination demands of the Washington agricultural industry; (e) identifying other policy changes that would increase the competitiveness of Washington beekeepers; (f) other industry needs that would increase the market share of pollination contracts awarded to Washington beekeepers; and (g) metrics needed to provide accountability for state resources invested in the honey bee industry.

(3) This section expires July 1, 2017." [2013 2nd sp.s. c 13 § 305.]

Effective date—2013 2nd sp.s. c 13: "Parts III, X, XV, and XVI of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 2013." [2013 2nd sp.s. c 13 § 1903.]

82.08.205 Exemptions—Clay targets. (Expires July 1, 2017.) (1) The tax levied by RCW 82.08.020 does not apply to sales of clay targets purchased by a nonprofit gun club for use in providing the activity of clay target shooting for a fee.

(2) The exemption is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller must retain a copy of the certificate for the seller's files. For sellers who electronically file their taxes, the department must provide a

separate tax reporting line for exemption amounts claimed under this section.

(3) This section expires July 1, 2017. [2013 2nd sp.s. c 13 § 402.]

Intent—2013 2nd sp.s. c 13: "The legislature intends for the tax preferences in sections 402 and 403 of this act to be temporary in order for the legislature to assess the actual fiscal impact of the tax preferences to ensure that they reasonably conform with the fiscal estimate provided in the legislature's fiscal note. It is not the legislature's intent to establish a broad policy of providing sales and use tax exemptions for business consumables used by businesses in the provision of services to customers." [2013 2nd sp.s. c 13 § 401.]

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.04.43393.

82.08.207 Investment data for investment firms. (Expires July 1, 2021.) (1) The tax imposed by RCW 82.08.020 does not apply to sales of standard financial information to qualifying international investment management companies. The exemption provided in this section applies regardless of whether the standard financial information is provided to the buyer in a tangible format or on a tangible storage medium or as a digital product transferred electronically.

(2) Sellers making tax-exempt sales under this section must obtain an exemption certificate from the buyer in a form and manner prescribed by the department. The seller must retain a copy of the exemption certificate for the seller's files. In lieu of an exemption certificate, a seller may capture the relevant data elements as allowed under the streamlined sales and use tax agreement. For sellers who electronically file their taxes, the department must provide a separate tax reporting line for exemption amounts claimed under this section.

(3) A buyer may not continue to claim the exemption under this section once the buyer has purchased standard financial information during the current calendar year with an aggregate total selling price in excess of fifteen million dollars and an exemption has been claimed under this section or RCW 82.12.207 for such standard financial information. The fifteen million dollar limitation under this subsection does not apply to any other exemption under this chapter that applies to standard financial information. Sellers are not responsible for ensuring a buyer's compliance with the fifteen million dollar limitation under this subsection. Sellers may not be assessed for uncollected sales tax on a sale to a buyer claiming an exemption under this section after having exceeded the fifteen million dollar limitation under this subsection, except as provided in RCW 82.08.050 (4) and (5).

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

(a)(i) "Qualifying international investment management company" means a person:

(A) Who is primarily engaged in the business of providing investment management services; and

(B) Who has gross income that is at least ten percent derived from providing investment management services to:

(I) Persons or collective investment funds residing outside the United States; or

(II) Collective investment funds with at least ten percent of their investments located outside the United States.

(ii) The definitions in RCW 82.04.293 apply to this subsection (4)(a).

(b)(i) "Standard financial information" means financial data, facts, or information, or financial information services, not generated, compiled, or developed only for a single customer. Standard financial information includes, but is not limited to, financial market data, bond ratings, credit ratings, and deposit, loan, or mortgage reports.

(ii) For purposes of this subsection (4)(b), "financial market data" means market pricing information, such as for securities, commodities, and derivatives; corporate actions for publicly and privately traded companies, such as dividend schedules and reorganizations; corporate attributes, such as domicile, currencies used, and exchanges where shares are traded; and currency information.

(5) This section expires July 1, 2021. [2013 2nd sp.s. c 13 § 702.]

Findings—Intent—2013 2nd sp.s. c 13: "(1) The legislature finds that in 2007, Engrossed Substitute House Bill No. 1981 was enacted into law, which provided a sales tax exemption for electronically delivered standard financial information if the sales were to an investment management company or financial institution. The legislature further finds that in 2009 and 2010, Engrossed Substitute House Bill No. 2075 and Substitute House Bill No. 2620 were passed, to address the taxation of electronically delivered products. The legislature further finds that this legislation imposed sales and use tax on most digital services, goods, and prewritten software, but provided a broad business exemption for digital goods. The legislature further finds that the sales tax exemption for standard financial information from the 2007 legislation was eliminated because it was believed that the broader business exemption in Engrossed Substitute House Bill No. 2075 covered these transactions. The legislature further finds that the method of transmission of data by data providers to investment management companies has evolved over time where data providers add search tools to their web-based data, which makes it subject to sales tax.

(2) The legislature's intent under part VII of this act is to conform with a previously determined policy objective of exempting certain standard financial information purchased by international investment management companies from sales and use tax on the understanding that the fiscal impact is minimal. Therefore, it is the legislature's further intent to reevaluate the exemption in three years to ensure that actual fiscal impact on state revenues reasonably conforms with the fiscal estimate in the fiscal note for this legislation." [2013 2nd sp.s. c 13 § 701.]

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.04.43393.

82.08.210 Exemptions—Flavor imparters—Restaurants. (Expires July 1, 2017.) (1) Except as provided in subsection (2) of this section, the tax levied by RCW 82.08.020 does not apply to sales to restaurants of products that impart flavor to food during the cooking process and that:

(a) Are completely or substantially consumed by combustion during the cooking process, such as wood chips, charcoal, charcoal briquettes, and grape vines; or

(b) Support the food during the cooking process and are comprised entirely of wood, such as cedar grilling planks.

(2) The exemption provided by this section does not apply to any type of gas fuel.

(3) Sellers making tax-exempt sales under this section must obtain an exemption certificate from the buyer in a form and manner prescribed by the department. The seller must retain a copy of the exemption certificate for the seller's files. In lieu of an exemption certificate, a seller may capture the relevant data elements as allowed under the streamlined sales and use tax agreement. For sellers who electronically file their taxes, the department must provide a separate tax reporting line for exemption amounts claimed under this section.

(4) For purposes of this subsection, "restaurant" has the same meaning as provided in RCW 82.08.9995.

(5) This section expires July 1, 2017. [2013 2nd sp.s. c 13 § 502.]

Intent—2013 2nd sp.s. c 13: "The intent of part V of this act is to provide tax relief to restaurants for business inputs that cannot be reused and are consumed for a specific purpose during the cooking process. More specifically, it is the intent of part V of this act to provide a sales and use tax exemption for specific items used in the cooking process that impart flavor and therefore are similar to an ingredient added to a final product that is sold to the consumer. It is also the intent of the legislature to provide this tax preference in a fiscally responsible manner where the actual revenue impact of the legislation substantially conforms with the fiscal estimate provided in the legislation's fiscal note. Therefore, the legislature intends for this tax preference to be temporary so the legislature can assess the actual fiscal impact of the tax preference and whether the tangible personal property subject to the exemption is being used in a manner consistent with an ingredient or component that becomes part of a product sold to a final consumer." [2013 2nd sp.s. c 13 § 501.]

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.04.43393.

82.08.215 Exemptions—Large private airplanes. (Effective January 1, 2014, until July 1, 2021.) (1)(a) The tax levied by RCW 82.08.020 does not apply to:

(i) Sales of large private airplanes to nonresidents of this state; and

(ii) Sales of or charges made for labor and services rendered in respect to repairing, cleaning, altering, or improving large private airplanes owned by nonresidents of this state.

(b) The exemption provided by this section applies only when the large private airplane is not required to be registered with the department of transportation, or its successor, under chapter 47.68 RCW. The airplane owner or lessee claiming an exemption under this section must provide the department, upon request, a copy of the written statement required under RCW 47.68.250(5)(c)(ii) documenting the airplane's registration exemption and any additional information the department may require.

(2) Sellers making tax-exempt sales under this section must obtain an exemption certificate from the buyer in a form and manner prescribed by the department. The seller must retain a copy of the exemption certificate for the seller's files. In lieu of an exemption certificate, a seller may capture the relevant data elements as allowed under the streamlined sales and use tax agreement. For sellers who electronically file their taxes, the department must provide a separate tax reporting line for exemption amounts claimed under this section.

(3) Upon request, the department of transportation must provide to the department of revenue information needed by the department of revenue to verify eligibility under this section.

(4) For purposes of this section "large private airplane" means an airplane not used in interstate commerce, not owned or leased by a government entity, weighing more than forty-one thousand pounds, and assigned a category A, B, C, or D test flow management system aircraft weight class by the federal aviation administration's office of aviation policy and plans. [2013 2nd sp.s. c 13 § 1103.]

Effective date—2013 2nd sp.s. c 13: "Part XI of this act takes effect January 1, 2014." [2013 2nd sp.s. c 13 § 1905.]

Expiration date—2013 2nd sp.s. c 13: "Part XI of this act expires July 1, 2021." [2013 2nd sp.s. c 13 § 1906.]

Intent—Findings—2013 2nd sp.s. c 13: See note following RCW 47.68.250.

[2013 RCW Supp—page 956]

82.08.220 Exemptions—Mint growers. (Expires July 1, 2017.) (1) The tax levied by RCW 82.08.020 does not apply to sales to farmers of propane or natural gas used exclusively to distill mint on a farm.

(2) The exemption is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller must retain a copy of the certificate for the seller's files. For sellers who electronically file their taxes, the department must provide a separate line for exemption amounts claimed under this section.

(3) For the purposes of this section, "farmer" has the same meaning as provided in RCW 82.04.213.

(4) This section expires July 1, 2017. [2013 2nd sp.s. c 13 § 1302.]

Findings—Intent—2013 2nd sp.s. c 13: "The legislature finds that mint growers utilize fuel to generate heat to extract oil from harvested mint and thereby produce a saleable agricultural product. Diesel fuel is often used as the fuel source that generates heat to distill mint. This on-farm diesel fuel is currently exempt from sales and use tax. The legislature further finds that propane and natural gas are alternative sources of cleaner burning fuel. A transition by mint growers to these alternative fuel sources, though costly, provides air quality benefits as compared to the use of diesel. It is the intent of the legislature to provide an incentive to mint growers to make the transition to cleaner fuels by extending the sales and use tax exemptions to propane and natural gas used by farmers who produce mint oil." [2013 2nd sp.s. c 13 § 1301.]

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.04.43393.

82.08.875 Exemptions—Automotive adaptive equipment. (Expires July 1, 2018.) (1) The tax imposed by RCW 82.08.020 does not apply to sales to eligible purchasers of prescribed add-on automotive adaptive equipment, including charges incurred for labor and services rendered in respect to the installation and repairing of such equipment. The exemption provided in this section only applies if the eligible purchaser is reimbursed in whole or part for the purchase by the United States department of veterans affairs or other federal agency, and the reimbursement is paid directly by that federal agency to the seller.

(2) Sellers making tax-exempt sales under this section must:

(a) Obtain an exemption certificate from the eligible purchaser in a form and manner prescribed by the department. The seller must retain a copy of the exemption certificate for the seller's files. In lieu of an exemption certificate, a seller may capture the relevant data elements as allowed under the streamlined sales and use tax agreement;

(b) File their tax return with the department electronically; and

(c) Report their total gross sales on their return and deduct the exempt sales under subsection (1) of this section from their reported gross sales.

(3) For purposes of this section, the following definitions apply unless the context clearly requires otherwise:

(a) "Add-on automotive adaptive equipment" means equipment installed in, and modifications made to, a motor vehicle that are necessary to assist physically challenged persons to enter, exit, or safely operate a motor vehicle. The term includes but is not limited to wheelchair lifts, wheelchair restraints, ramps, under vehicle lifts, power door openers, power seats, lowered floors, raised roofs, raised doors,

hand controls, left foot gas pedals, chest and shoulder harnesses, parking brake extensions, dual battery systems, steering devices, reduced and zero effort steering and braking, voice-activated controls, and digital driving systems. The term does not include motor vehicles and equipment installed in a motor vehicle by the manufacturer of the motor vehicle.

(b) "Eligible purchaser" means a veteran, or member of the armed forces serving on active duty, who is disabled, regardless of whether the disability is service connected as that term is defined by federal statute 38 U.S.C. Sec. 101, as amended, as of August 1, 2013.

(c) "Prescribed add-on automotive adaptive equipment" means add-on automotive adaptive equipment prescribed by a physician.

(4) This section expires July 1, 2018. [2013 c 211 § 2.]

Findings—Intent—2013 c 211: "(1) The legislature finds that it is important to recognize the service of active duty military and veterans and to acknowledge the continued sacrifice of those veterans who have been catastrophically injured. The legislature further finds that many disabled veterans often need customized, accessible transportation to be self-sufficient and to maintain a high quality of life. The legislature further finds that individuals with a severe disability are three times more likely to be at or below the national poverty level. The legislature further finds that the federal government pays for the cost of mobility adaptive equipment for severely injured veterans; however, it does not cover the cost of sales or use tax owed on this equipment. The legislature further finds that this cost is then shifted onto the veterans, who often times cannot afford the tax due to the substantial amount of adaptive equipment required in such customized vehicles. The legislature further finds that this added financial burden has the unintended effect of causing some veterans to acquire their mobility adaptive equipment in neighboring states that do not impose a sales tax, thereby negatively impacting Washington businesses providing mobility enhancing equipment and services to Washington veterans.

(2) It is the legislature's intent to provide specific financial relief for severely injured veterans and to ameliorate a negative consequence of Washington's tax structure by providing a sales and use tax exemption for mobility adaptive equipment required to customize vehicles for disabled veterans. It is the further intent of the legislature to reexamine this exemption in five years to determine whether it has mitigated the competitive disadvantage stemming from Washington's tax structure on mobility businesses and to assess whether the cost of the exemption in terms of forgone state revenue is beyond what was reasonably assumed in the fiscal estimate for the legislation." [2013 c 211 § 1.]

Effective date—2013 c 211: "This act takes effect August 1, 2013." [2013 c 211 § 4.]

82.08.956 Exemptions—Hog fuel used to generate electricity, steam, heat, or biofuel. (Expires June 30, 2024.) (1) The tax levied by RCW 82.08.020 does not apply to sales of hog fuel used to produce electricity, steam, heat, or biofuel. This exemption is available only if the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller must retain a copy of the certificate for the seller's files.

(2) For the purposes of this section the following definitions apply:

(a) "Hog fuel" means wood waste and other wood residuals including forest derived biomass. "Hog fuel" does not include firewood or wood pellets; and

(b) "Biofuel" has the same meaning as provided in RCW 43.325.010.

(3) If a taxpayer who claimed an exemption under this section closes a facility in Washington for which employment positions were reported under RCW 82.32.605, resulting in a loss of jobs located within the state, the department must declare the amount of the tax exemption claimed under

this section for the previous two calendar years to be immediately due.

(4) This section expires June 30, 2024. [2013 2nd sp.s. c 13 § 1002; 2009 c 469 § 301.]

Intent—2013 2nd sp.s. c 13: "It is the intent of the legislature to retain and grow family wage jobs in rural, economically distressed areas; to promote healthy forests; and to utilize Washington's abundant natural resources to promote diversified renewable energy use in the state." [2013 2nd sp.s. c 13 § 1001.]

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.08.200.

Effective date—2009 c 469: See note following RCW 82.08.962.

82.08.962 Exemptions—Sales of machinery and equipment used in generating electricity. (Expires January 1, 2020.)

(1)(a) Except as provided in RCW 82.08.963, purchasers who have paid the tax imposed by RCW 82.08.020 on machinery and equipment used directly in generating electricity using fuel cells, wind, sun, biomass energy, tidal or wave energy, geothermal resources, anaerobic digestion, technology that converts otherwise lost energy from exhaust, or landfill gas as the principal source of power, or to sales of or charges made for labor and services rendered in respect to installing such machinery and equipment, are eligible for an exemption as provided in this section, but only if the purchaser develops with such machinery, equipment, and labor a facility capable of generating not less than one thousand watts of electricity.

(b) Beginning on July 1, 2009, through June 30, 2011, the tax levied by RCW 82.08.020 does not apply to the sale of machinery and equipment described in (a) of this subsection that are used directly in generating electricity or to sales of or charges made for labor and services rendered in respect to installing such machinery and equipment.

(c) Beginning on July 1, 2011, through January 1, 2020, the amount of the exemption under this subsection (1) is equal to seventy-five percent of the state and local sales tax paid. The purchaser is eligible for an exemption under this subsection (1)(c) in the form of a remittance.

(2) For purposes of this section and RCW 82.12.962, the following definitions apply:

(a) "Biomass energy" includes: (i) By-products of pulping and wood manufacturing process; (ii) animal waste; (iii) solid organic fuels from wood; (iv) forest or field residues; (v) wooden demolition or construction debris; (vi) food waste; (vii) liquors derived from algae and other sources; (viii) dedicated energy crops; (ix) biosolids; and (x) yard waste. "Biomass energy" does not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenic; wood from old growth forests; or municipal solid waste.

(b) "Fuel cell" means an electrochemical reaction that generates electricity by combining atoms of hydrogen and oxygen in the presence of a catalyst.

(c) "Landfill gas" means biomass fuel, of the type qualified for federal tax credits under Title 26 U.S.C. Sec. 29 of the federal internal revenue code, collected from a "landfill" as defined under RCW 70.95.030.

(d)(i) "Machinery and equipment" means fixtures, devices, and support facilities that are integral and necessary to the generation of electricity using fuel cells, wind, sun, biomass energy, tidal or wave energy, geothermal resources,

anaerobic digestion, technology that converts otherwise lost energy from exhaust, or landfill gas as the principal source of power.

(ii) "Machinery and equipment" does not include: (A) Hand-powered tools; (B) property with a useful life of less than one year; (C) repair parts required to restore machinery and equipment to normal working order; (D) replacement parts that do not increase productivity, improve efficiency, or extend the useful life of machinery and equipment; (E) buildings; or (F) building fixtures that are not integral and necessary to the generation of electricity that are permanently affixed to and become a physical part of a building.

(3)(a) Machinery and equipment is "used directly" in generating electricity by wind energy, solar energy, biomass energy, tidal or wave energy, geothermal resources, anaerobic digestion, technology that converts otherwise lost energy from exhaust, or landfill gas power if it provides any part of the process that captures the energy of the wind, sun, biomass energy, tidal or wave energy, geothermal resources, anaerobic digestion, technology that converts otherwise lost energy from exhaust, or landfill gas, converts that energy to electricity, and stores, transforms, or transmits that electricity for entry into or operation in parallel with electric transmission and distribution systems.

(b) Machinery and equipment is "used directly" in generating electricity by fuel cells if it provides any part of the process that captures the energy of the fuel, converts that energy to electricity, and stores, transforms, or transmits that electricity for entry into or operation in parallel with electric transmission and distribution systems.

(4)(a) A purchaser claiming an exemption in the form of a remittance under subsection (1)(c) of this section must pay the tax imposed by RCW 82.08.020 and all applicable local sales taxes imposed under the authority of chapters 82.14 and 81.104 RCW. The purchaser may then apply to the department for remittance in a form and manner prescribed by the department. A purchaser may not apply for a remittance under this section more frequently than once per quarter. The purchaser must specify the amount of exempted tax claimed and the qualifying purchases for which the exemption is claimed. The purchaser must retain, in adequate detail, records to enable the department to determine whether the purchaser is entitled to an exemption under this section, including: Invoices; proof of tax paid; and documents describing the machinery and equipment.

(b) The department must determine eligibility under this section based on the information provided by the purchaser, which is subject to audit verification by the department. The department must on a quarterly basis remit exempted amounts to qualifying purchasers who submitted applications during the previous quarter.

(5) This section expires January 1, 2020. [2013 2nd sp.s. c 13 § 1502; 2009 c 469 § 101.]

Intent—2013 2nd sp.s. c 13: "It is the intent of the legislature to help promote energy independence in the state of Washington and to better position Washington to attract a vibrant clean energy technology manufacturing sector to the state. The purpose of the tax preference created in part XV of this act is to incentivize electricity generation from renewable energy sources, reducing the costs of transitioning to these sources and technologies by exempting machinery, equipment, and labor and service charges associated with such electricity generation from the retail sales and use tax. This tax preference makes the most of the local renewable resources, protects us

from the price volatility of certain fossil fuel sources, and helps the state achieve its greenhouse gas emissions targets. In addition, promoting manufacture and installation of facilities capable of generating power from renewable sources can create economic benefits in both rural and urban counties, creating high-quality jobs and developing a skilled workforce in an industry sector in which significant job growth is anticipated over the coming decades." [2013 2nd sp.s. c 13 § 1501.]

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.08.200.

Effective date—2009 c 469: "Except for sections 801 and 802 of this act, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2009." [2009 c 469 § 902.]

82.08.963 Exemptions—Sales of machinery and equipment using solar energy to generate electricity or produce thermal heat. (Expires June 30, 2018.)

(1) The tax levied by RCW 82.08.020 does not apply to sales of machinery and equipment used directly in generating electricity or producing thermal heat using solar energy, or to sales of or charges made for labor and services rendered in respect to installing such machinery and equipment, but only if the purchaser develops with such machinery, equipment, and labor a facility capable of generating not more than ten kilowatts of electricity or producing not more than three million British thermal units per day and provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller must retain a copy of the certificate for the seller's files. For sellers who electronically file their taxes, the department must provide a separate tax reporting line for exemption amounts claimed by a buyer under this section.

(2) For purposes of this section and RCW 82.12.963:

(a) "Machinery and equipment" means industrial fixtures, devices, and support facilities that are integral and necessary to the generation of electricity or production and use of thermal heat using solar energy;

(b) "Machinery and equipment" does not include: (i) Hand-powered tools; (ii) property with a useful life of less than one year; (iii) repair parts required to restore machinery and equipment to normal working order; (iv) replacement parts that do not increase productivity, improve efficiency, or extend the useful life of machinery and equipment; (v) buildings; or (vi) building fixtures that are not integral and necessary to the generation of electricity that are permanently affixed to and become a physical part of a building;

(c) Machinery and equipment is "used directly" in generating electricity with solar energy if it provides any part of the process that captures the energy of the sun, converts that energy to electricity, and stores, transforms, or transmits that electricity for entry into or operation in parallel with electric transmission and distribution systems; and

(d) Machinery and equipment is "used directly" in producing thermal heat with solar energy if it uses a solar collector or a solar hot water system that (i) meets the certification standards for solar collectors and solar hot water systems developed by the solar rating and certification corporation; or (ii) is determined by the Washington State University extension whether a solar collector or solar hot water system is an equivalent collector or system.

(3) This section expires June 30, 2018. [2013 2nd sp.s. c 13 § 1602; 2009 c 469 § 103.]

Intent—2013 2nd sp.s. c 13: "It is the intent of the legislature to help promote energy independence in the state of Washington. The purpose of the tax preference created in part XVI of this act is to incentivize electricity generation from solar energy, reducing the costs of transitioning to solar energy by exempting machinery, equipment, and labor and service charges from the retail sales and use tax to increase affordability for Washington residents. It is also the intent of the legislature to provide this tax preference in a fiscally responsible manner where the actual revenue impact of the legislation substantially conforms with the fiscal estimate provided in the legislature's fiscal note. Therefore, the legislature intends for this tax preference to be temporary so the legislature can assess the actual fiscal impact of the tax preference." [2013 2nd sp.s. c 13 § 1601.]

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.08.200.

Effective date—2009 c 469: See note following RCW 82.08.962.

82.08.9991 Tax preferences—Expiration dates. See RCW 82.32.805 for the expiration date of new tax preferences for the tax imposed under this chapter. [2013 2nd sp.s. c 13 § 1705.]

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.04.43393.

Chapter 82.12 RCW USE TAX

Sections

82.12.0204	Exemptions—Honey bees. (<i>Expires July 1, 2017.</i>)
82.12.0256	Exemptions—Use of motor vehicle and special fuel—Conditions. (<i>Effective July 1, 2015.</i>)
82.12.070	Cash receipts taxpayers—Bad debts.
82.12.200	Exemptions—Honey beekeepers. (<i>Expires July 1, 2017.</i>)
82.12.205	Clay targets. (<i>Expires July 1, 2017.</i>)
82.12.207	Investment date for investment firms. (<i>Expires July 1, 2021.</i>)
82.12.210	Flavor imparters—Restaurants. (<i>Expires July 1, 2017.</i>)
82.12.215	Exemptions—Large private airplanes. (<i>Effective January 1, 2014, until July 1, 2021.</i>)
82.12.220	Exemptions—Mint growers. (<i>Expires July 1, 2017.</i>)
82.12.225	Exemptions—Nonprofit fund-raising activities. (<i>Expires July 1, 2017.</i>)
82.12.875	Automotive adaptive equipment. (<i>Expires July 1, 2018.</i>)
82.12.956	Exemptions—Hog fuel used to generate electricity, steam, heat, or biofuel. (<i>Expires June 30, 2024.</i>)
82.12.962	Exemptions—Use of machinery and equipment in generating electricity. (<i>Expires January 1, 2020.</i>)
82.12.963	Exemptions—Use of machinery and equipment using solar energy to generate electricity or produce thermal heat. (<i>Expires June 30, 2018.</i>)
82.12.9991	Tax preferences—Expiration dates.

82.12.0204 Exemptions—Honey bees. (*Expires July 1, 2017.*) (1) The provisions of this chapter do not apply in respect to the use of honey bees by an eligible apiarist, as defined in RCW 82.04.629. This exemption is available only if the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department.

(2) This section expires July 1, 2017. [2013 2nd sp.s. c 13 § 309; 2008 c 314 § 5.]

Findings—Intent—Honey bee work group—Created—2013 2nd sp.s. c 13: See notes following RCW 82.08.200.

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.08.200.

Finding—Intent—Effective date—2008 c 314: See notes following RCW 82.04.629.

82.12.0256 Exemptions—Use of motor vehicle and special fuel—Conditions. (*Effective July 1, 2015.*) The provisions of this chapter do not apply in respect to the use of:

(1) Special fuel purchased in this state upon which a refund is obtained as provided in RCW 82.38.180(1)(b); and

(2) Motor vehicle and special fuel if:

(a) The fuel is used for the purpose of public transportation and the purchaser is entitled to a refund or an exemption under RCW 82.38.080(1) (f) and (g) or 82.38.180(3)(b); or

(b) The fuel is purchased by a private, nonprofit transportation provider certified under chapter 81.66 RCW and the purchaser is entitled to a refund or an exemption under RCW 82.38.080(1)(d) or 82.38.180(3)(a); or

(c) The fuel is purchased by a public transportation benefit area created under chapter 36.57A RCW or a county-owned ferry or county ferry district created under chapter 36.54 RCW for use in passenger-only ferry vessels; or

(d) The fuel is taxable under chapter 82.38 RCW. However, the use of motor vehicle and special fuel upon which a refund of the applicable fuel tax is obtained is not exempt under this subsection (2)(d) and the director of licensing must deduct from the amount of such tax to be refunded the amount of tax due under this chapter and remit the same each month to the department of revenue; or

(e) The fuel is purchased by a county-owned ferry for use in ferry vessels after June 30, 2013; or

(f) The fuel is purchased by the Washington state ferry system for use in a state-owned ferry after June 30, 2013. [2013 c 225 § 646; 2011 1st sp.s. c 16 § 5; 2007 c 223 § 10; 2005 c 443 § 6; 1998 c 176 § 5. Prior: 1983 1st ex.s. c 35 § 3; 1983 c 108 § 2; 1980 c 147 § 2; 1980 c 37 § 56. Formerly RCW 82.12.030(6).]

Effective date—2013 c 225: See note following RCW 82.38.010.

Effective date—2011 1st sp.s. c 16 §§ 1-15: See note following RCW 47.60.530.

Effective date—2007 c 223: See note following RCW 36.57A.220.

Finding—Intent—Effective date—2005 c 443: See notes following RCW 82.08.0255.

Rules—Findings—Effective date—1998 c 176: See RCW 82.36.800, 82.36.900, and 82.36.901.

Intent—1983 1st ex.s. c 35: See note following RCW 82.08.0255.

Intent—1980 c 37: See note following RCW 82.04.4281.

Diesel, biodiesel, and aircraft fuel sales tax exemption for farmers: RCW 82.12.865.

82.12.070 Cash receipts taxpayers—Bad debts. The department of revenue, by general regulation, shall provide that a taxpayer whose regular books of account are kept on a cash receipts basis may file returns based upon his or her cash receipts for each reporting period and pay the tax herein provided upon such basis in lieu of reporting and paying the tax on all sales made during such period. A taxpayer filing returns on a cash receipts basis is not required to pay such tax on debt subject to credit or refund under RCW 82.12.037. [2013 c 23 § 319; 2004 c 153 § 305; 1982 1st ex.s. c 35 § 38; 1975 1st ex.s. c 278 § 55; 1961 c 15 § 82.12.070. Prior: 1959 ex.s. c 3 § 14; 1959 c 197 § 9; prior: 1941 c 178 § 11, part; Rem. Supp. 1941 § 8370-34a, part.]

Bad debts—Intent—2004 c 153: See note following RCW 82.08.037.

Retroactive effective date—Effective date—2004 c 153: See note following RCW 82.08.0293.

Additional notes found at www.leg.wa.gov

82.12.200 Exemptions—Honey beekeepers. (Expires July 1, 2017.) (1) The provisions of this chapter do not apply with respect to the use of feed to an eligible apiarist for use in the raising of a bee colony used to make honey bee products.

(2) The definitions in RCW 82.04.629 apply to this section.

(3) This section expires July 1, 2017. [2013 2nd sp.s. c 13 § 303.]

Findings—Intent—Honey bee work group—Created—2013 2nd sp.s. c 13: See notes following RCW 82.08.200.

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.08.200.

82.12.205 Clay targets. (Expires July 1, 2017.) (1) The provisions of this chapter do not apply with respect to the use by a nonprofit gun club of clay targets that are provided while conducting the activity of clay target shooting for a fee.

(2) This section expires July 1, 2017. [2013 2nd sp.s. c 13 § 403.]

Intent—2013 2nd sp.s. c 13: See note following RCW 82.08.205.

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.04.43393.

82.12.207 Investment date for investment firms. (Expires July 1, 2021.) (1) The tax imposed by RCW 82.12.020 does not apply to the use of standard financial information by qualifying international investment management companies. The exemption provided in this section applies regardless of whether the standard financial information is in a tangible format or resides on a tangible storage medium or is a digital product transferred electronically to the qualifying international investment management company.

(2) The definitions, conditions, and requirements in RCW 82.08.207 apply to this section.

(3) This section expires July 1, 2021. [2013 2nd sp.s. c 13 § 703.]

Findings—Intent—2013 2nd sp.s. c 13: See note following RCW 82.08.207.

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.04.43393.

82.12.210 Flavor imparters—Restaurants. (Expires July 1, 2017.) (1) Except as provided in subsection (2) of this section, the provisions of this chapter do not apply to restaurants with respect to the use of products that impart flavor to food during the cooking process and that:

(a) Are completely or substantially consumed by combustion during the cooking process, such as wood chips, charcoal, charcoal briquettes, and grape vines; or

(b) Support the food during the cooking process and are comprised entirely of wood, such as cedar grilling planks.

(2) The exemption provided by this section does not apply to any type of gas fuel.

(3) For purposes of this subsection, "restaurant" has the same meaning as provided in RCW 82.08.9995.

(4) This section expires July 1, 2017. [2013 2nd sp.s. c 13 § 503.]

Intent—2013 2nd sp.s. c 13: See note following RCW 82.08.210.

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.04.43393.

[2013 RCW Supp—page 960]

82.12.215 Exemptions—Large private airplanes. (Effective January 1, 2014, until July 1, 2021.) (1)(a) The tax levied by RCW 82.12.020 does not apply to the use of:

(i) Large private airplanes owned by nonresidents of this state; and

(ii) Labor and services rendered in respect to repairing, cleaning, altering, or improving large private airplanes owned by nonresidents of this state.

(b) The exemption provided by this section applies only when the large private airplane is not required to be registered with the department of transportation, or its successor, under chapter 47.68 RCW. The airplane owner or lessee claiming an exemption under this section must provide the department, upon request, a copy of the written statement required under RCW 47.68.250(5)(c)(ii) documenting the airplane's registration exemption and any additional information the department may require.

(2) Upon request, the department of transportation must provide to the department of revenue information needed by the department of revenue to verify eligibility under this section.

(3) For purposes of this section, the conditions, limitation, and definitions in RCW 82.08.215 apply to this section. [2013 2nd sp.s. c 13 § 1104.]

Intent—Findings—2013 2nd sp.s. c 13: See note following RCW 47.68.250.

Effective date—Expiration date—2013 2nd sp.s. c 13: See notes following RCW 82.08.215.

82.12.220 Exemptions—Mint growers. (Expires July 1, 2017.) (1) The provisions of this chapter do not apply with respect to the use of propane or natural gas by a farmer to exclusively distill mint on a farm.

(2) For the purposes of this section, "farmer" has the same meaning as provided in RCW 82.04.213.

(3) This section expires July 1, 2017. [2013 2nd sp.s. c 13 § 1303.]

Findings—Intent—2013 2nd sp.s. c 13: See note following RCW 82.08.220.

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.04.43393.

82.12.225 Exemptions—Nonprofit fund-raising activities. (Expires July 1, 2017.) (1) The provisions of this chapter do not apply in respect to the use of any article of personal property, valued at less than ten thousand dollars, purchased or received as a prize in a contest of chance, as defined in RCW 82.04.285, from a nonprofit organization or a library, if the gross income the nonprofit organization or library receives from the sale is exempt under RCW 82.04.3651.

(2) This section expires July 1, 2017. [2013 2nd sp.s. c 13 § 1402.]

Intent—2013 2nd sp.s. c 13: "It is the intent of part XIV of this act to provide use tax relief for individuals who support charitable activities by purchasing or winning articles of personal property from a nonprofit organization or library when the personal property is sales tax exempt. It is also the intent of the legislation to provide this tax preference in a fiscally responsible manner by capping the exemption for articles of personal property that are valued at ten thousand dollars or less." [2013 2nd sp.s. c 13 § 1401.]

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.04.43393.

82.12.875 Automotive adaptive equipment. (Expires July 1, 2018.) (1) The tax imposed by RCW 82.12.020 does not apply to the use of prescribed add-on automotive adaptive equipment or to labor and services rendered in respect to the installation and repairing of such equipment. The exemption under this section only applies if the sale of the prescribed add-on automotive adaptive equipment or labor and services was exempt from sales tax under RCW 82.08.875 or would have been exempt from sales tax under RCW 82.08.875 if the equipment or labor and services had been purchased in this state.

(2) For purposes of this section, "prescribed add-on automotive adaptive equipment" has the same meaning as provided in RCW 82.08.875.

(3) This section expires July 1, 2018. [2013 c 211 § 3.]

Findings—Intent—Effective date—2013 c 211: See notes following RCW 82.08.875.

82.12.956 Exemptions—Hog fuel used to generate electricity, steam, heat, or biofuel. (Expires June 30, 2024.) (1) The provisions of this chapter do not apply with respect to the use of hog fuel for production of electricity, steam, heat, or biofuel.

(2) For the purposes of this section:

(a) "Hog fuel" has the same meaning as provided in RCW 82.08.956; and

(b) "Biofuel" has the same meaning as provided in RCW 43.325.010.

(3) This section expires June 30, 2024. [2013 2nd sp.s. c 13 § 1003; 2009 c 469 § 302.]

Intent—2013 2nd sp.s. c 13: See note following RCW 82.08.956.

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.08.200.

Effective date—2009 c 469: See note following RCW 82.08.962.

82.12.962 Exemptions—Use of machinery and equipment in generating electricity. (Expires January 1, 2020.)

(1)(a) Except as provided in RCW 82.12.963, consumers who have paid the tax imposed by RCW 82.12.020 on machinery and equipment used directly in generating electricity using fuel cells, wind, sun, biomass energy, tidal or wave energy, geothermal resources, anaerobic digestion, technology that converts otherwise lost energy from exhaust, or landfill gas as the principal source of power, or to sales of or charges made for labor and services rendered in respect to installing such machinery and equipment, are eligible for an exemption as provided in this section, but only if the purchaser develops with such machinery, equipment, and labor a facility capable of generating not less than one thousand watts of electricity.

(b) Beginning on July 1, 2009, through June 30, 2011, the provisions of this chapter do not apply in respect to the use of machinery and equipment described in (a) of this subsection that are used directly in generating electricity or to sales of or charges made for labor and services rendered in respect to installing such machinery and equipment.

(c) Beginning on July 1, 2011, through January 1, 2020, the amount of the exemption under this subsection (1) is equal to seventy-five percent of the state and local sales tax paid. The consumer is eligible for an exemption under this subsection (1)(c) in the form of a remittance.

(2)(a) A person claiming an exemption in the form of a remittance under subsection (1)(c) of this section must pay the tax imposed by RCW 82.12.020 and all applicable local use taxes imposed under the authority of chapters 82.14 and 81.104 RCW. The consumer may then apply to the department for remittance in a form and manner prescribed by the department. A consumer may not apply for a remittance under this section more frequently than once per quarter. The consumer must specify the amount of exempted tax claimed and the qualifying purchases or acquisitions for which the exemption is claimed. The consumer must retain, in adequate detail, records to enable the department to determine whether the consumer is entitled to an exemption under this section, including: Invoices; proof of tax paid; and documents describing the machinery and equipment.

(b) The department must determine eligibility under this section based on the information provided by the consumer, which is subject to audit verification by the department. The department must on a quarterly basis remit exempted amounts to qualifying consumers who submitted applications during the previous quarter.

(3) Purchases exempt under RCW 82.08.962 are also exempt from the tax imposed under RCW 82.12.020.

(4) The definitions in RCW 82.08.962 apply to this section.

(5) This section expires January 1, 2020. [2013 2nd sp.s. c 13 § 1505; 2009 c 469 § 102.]

Intent—2013 2nd sp.s. c 13: See note following RCW 82.08.962.

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.08.200.

Effective date—2009 c 469: See note following RCW 82.08.962.

82.12.963 Exemptions—Use of machinery and equipment using solar energy to generate electricity or produce thermal heat. (Expires June 30, 2018.) (1) The provisions of this chapter do not apply with respect to machinery and equipment used directly in generating not more than ten kilowatts of electricity or producing not more than three million British thermal units per day using solar energy, or to the use of labor and services rendered in respect to installing such machinery and equipment.

(2) The definitions in RCW 82.08.963 apply to this section.

(3) This section expires June 30, 2018. [2013 2nd sp.s. c 13 § 1603; 2009 c 469 § 104.]

Intent—2013 2nd sp.s. c 13: See note following RCW 82.08.963.

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.08.200.

Effective date—2009 c 469: See note following RCW 82.08.962.

82.12.99991 Tax preferences—Expiration dates. See RCW 82.32.805 for the expiration date of new tax preferences for the tax imposed under this chapter. [2013 2nd sp.s. c 13 § 1706.]

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.04.43393.

Chapter 82.14 RCW

LOCAL RETAIL SALES AND USE TAXES

Sections

- 82.14.310 County criminal justice assistance account—Transfers from general fund—Distributions based on crime rate and population—Limitations.
- 82.14.475 Sales and use tax for the local infrastructure financing tool program. (*Expires June 30, 2044.*)

82.14.310 County criminal justice assistance account—Transfers from general fund—Distributions based on crime rate and population—Limitations. (1) The county criminal justice assistance account is created in the state treasury. Beginning in fiscal year 2000, the state treasurer must transfer into the county criminal justice assistance account from the general fund the sum of twenty-three million two hundred thousand dollars divided into four equal deposits occurring on July 1, October 1, January 1, and April 1. For each fiscal year thereafter, the state treasurer must increase the total transfer by the fiscal growth factor, as defined in RCW 43.135.025, forecast for that fiscal year by the office of financial management in November of the preceding year.

(2) The moneys deposited in the county criminal justice assistance account for distribution under this section, less any moneys appropriated for purposes under subsection (4) of this section, must be distributed at such times as distributions are made under *RCW 82.44.150 and on the relative basis of each county's funding factor as determined under this subsection.

(a) A county's funding factor is the sum of:

- (i) The population of the county, divided by one thousand, and multiplied by two-tenths;
- (ii) The crime rate of the county, multiplied by three-tenths; and
- (iii) The annual number of criminal cases filed in the county superior court, for each one thousand in population, multiplied by five-tenths.

(b) Under this section and RCW 82.14.320 and 82.14.330:

- (i) The population of the county or city is as last determined by the office of financial management;
- (ii) The crime rate of the county or city is the annual occurrence of specified criminal offenses, as calculated in the most recent annual report on crime in Washington state as published by the Washington association of sheriffs and police chiefs, for each one thousand in population;
- (iii) The annual number of criminal cases filed in the county superior court must be determined by the most recent annual report of the courts of Washington, as published by the administrative office of the courts;

(iv) Distributions and eligibility for distributions in the 1989-1991 biennium must be based on 1988 figures for both the crime rate as described under (ii) of this subsection and the annual number of criminal cases that are filed as described under (iii) of this subsection. Future distributions must be based on the most recent figures for both the crime rate as described under (ii) of this subsection and the annual number of criminal cases that are filed as described under (iii) of this subsection.

(3) Moneys distributed under this section must be expended exclusively for criminal justice purposes and may not be used to replace or supplant existing funding. Criminal justice purposes are defined as activities that substantially assist the criminal justice system, which may include circumstances where ancillary benefit to the civil or juvenile justice system occurs, and which includes (a) domestic violence services such as those provided by domestic violence programs, community advocates, and legal advocates, as defined in RCW 70.123.020, and (b) during the 2001-2003 fiscal biennium, juvenile dispositional hearings relating to petitions for at-risk youth, truancy, and children in need of services. Existing funding for purposes of this subsection is defined as calendar year 1989 actual operating expenditures for criminal justice purposes. Calendar year 1989 actual operating expenditures for criminal justice purposes exclude the following: Expenditures for extraordinary events not likely to reoccur, changes in contract provisions for criminal justice services, beyond the control of the local jurisdiction receiving the services, and major nonrecurring capital expenditures.

(4) Not more than five percent of the funds deposited to the county criminal justice assistance account may be available for appropriations for enhancements to the state patrol crime laboratory system and the continuing costs related to these enhancements. Funds appropriated from this account for such enhancements may not supplant existing funds from the state general fund.

(5) During the 2011-2013 fiscal biennium, the amount that would otherwise be transferred into the county criminal justice assistance account from the general fund under subsection (1) of this section must be reduced by 3.4 percent.

(6) During the 2013-2015 fiscal biennium, for the purposes of substance abuse and other programs for offenders, the legislature may appropriate from the county criminal justice assistance account such amounts as are in excess of the amounts necessary to fully meet the state's obligations to the counties and to the Washington state patrol. Excess amounts in this account are not the result of subsection (5) of this section. [2013 2nd sp.s. c 4 § 1004; 2011 1st sp.s. c 50 § 970; 2005 c 282 § 49; 2001 2nd sp.s. c 7 § 915; 1999 c 309 § 920; 1998 c 321 § 11 (Referendum Bill No. 49, approved November 3, 1998); 1995 c 398 § 11; 1993 sp.s. c 21 § 1; 1991 c 311 § 1; 1990 2nd ex.s. c 1 § 102.]

***Reviser's note:** RCW 82.44.150 was repealed by 2003 c 1 § 5 (Initiative Measure No. 776, approved November 5, 2002).

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

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

Purpose—Severability—1998 c 321: See notes following RCW 82.14.045.

Additional notes found at www.leg.wa.gov

82.14.475 Sales and use tax for the local infrastructure financing tool program. (*Expires June 30, 2044.*) (1) A sponsoring local government, and any cosponsoring local government, that has been approved by the board to use local infrastructure financing may impose a sales and use tax in accordance with the terms of this chapter and subject to the criteria set forth in this section. Except as provided in this section, the tax is in addition to other taxes authorized by law

and is collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the taxing jurisdiction of the sponsoring local government or cosponsoring local government.

(2) The tax authorized under subsection (1) of this section is credited against the state taxes imposed under RCW 82.08.020(1) and 82.12.020 at the rate provided in RCW 82.08.020(1). The department must perform the collection of such taxes on behalf of the sponsoring local government or cosponsoring local government at no cost to the sponsoring local government or cosponsoring local government and must remit the taxes as provided in RCW 82.14.060.

(3) The aggregate rate of tax imposed by the sponsoring local government, and any cosponsoring local government, must not exceed the lesser of:

(a) The rate provided in RCW 82.08.020(1) less:

(i) The aggregate rates of all other local sales and use taxes imposed by any taxing authority on the same taxable events;

(ii) The aggregate rates of all taxes under RCW 82.14.465 and this section that are authorized to be imposed on the same taxable events but have not yet been imposed by a sponsoring local government or cosponsoring local government that has been approved by the department or the community economic revitalization board to receive a state contribution under chapter 39.100 or 39.102 RCW; and

(iii) The percentage amount of distributions required under RCW 82.08.020(5) multiplied by the rate of state taxes imposed under RCW 82.08.020(1); and

(b) The rate, as determined by the sponsoring local government, and any cosponsoring local government, in consultation with the department, reasonably necessary to receive the state contribution over ten months.

(4) Sponsoring local governments that have been approved before October 1, 2008, by the community economic revitalization board for a state contribution must select the rate of tax under this section no later than September 1, 2009.

(5) The department, upon request, must assist a sponsoring local government and cosponsoring local government in establishing their tax rate in accordance with subsection (3) of this section. Once the rate of tax is selected, it may not be increased.

(6)(a) No tax may be imposed under the authority of this section:

(i) Before July 1st of the second calendar year following the year approval by the board under RCW 39.102.040 was made; and

(ii) Until a sponsoring local government reports to the board and the department as required by RCW 39.102.140 that the state has benefited through the receipt of state excise tax allocation revenues or state property tax allocation revenues, or both.

(b) The tax imposed under this section expires when all indebtedness issued under the authority of RCW 39.102.150 is retired and all other contractual obligations relating to the financing of public improvements under chapter 39.102 RCW are satisfied, but not more than twenty-five years after the tax is first imposed.

(7) An ordinance adopted by the legislative authority of a sponsoring local government or cosponsoring local government imposing a tax under this section must provide that:

(a) The tax is first imposed on the first day of a fiscal year;

(b) The cumulative amount of tax received by the sponsoring local government, and any cosponsoring local government, in any fiscal year may not exceed the amount of the state contribution;

(c) The tax will cease to be distributed for the remainder of any fiscal year in which either:

(i) The amount of tax received by the sponsoring local government, and any cosponsoring local government, equals the amount of the state contribution;

(ii) The amount of revenue from taxes imposed under this section by all sponsoring and cosponsoring local governments equals the annual state contribution limit; or

(iii) The amount of tax received by the sponsoring local government equals the amount of project award granted in the approval notice described in RCW 39.102.040;

(d) Neither the local excise tax allocation revenues nor the local property tax allocation revenues may constitute more than eighty percent of the total local funds as described in RCW 39.102.020(29)(b). This requirement applies beginning January 1st of the fifth calendar year after the calendar year in which the sponsoring local government begins allocating local excise tax allocation revenues under RCW 39.102.110;

(e) The tax must be distributed again, should it cease to be distributed for any of the reasons provided in (c) of this subsection, at the beginning of the next fiscal year, subject to the restrictions in this section; and

(f) Any revenue generated by the tax in excess of the amounts specified in (c) of this subsection belongs to the state of Washington.

(8) If a county and city cosponsor a revenue development area, the combined amount of distributions received by both the city and county may not exceed the state contribution.

(9) The department must determine the amount of tax receipts distributed to each sponsoring local government, and any cosponsoring local government, imposing sales and use tax under this section and shall advise a sponsoring or cosponsoring local government when tax distributions for the fiscal year equal the amount of state contribution for that fiscal year as provided in subsection (11) of this section. Determinations by the department of the amount of tax distributions attributable to each sponsoring or cosponsoring local government are final and may not be used to challenge the validity of any tax imposed under this section. The department must remit any tax receipts in excess of the amounts specified in subsection (7)(c) of this section to the state treasurer who must deposit the money in the general fund.

(10) If a sponsoring or cosponsoring local government fails to comply with RCW 39.102.140, no tax may be distributed in the subsequent fiscal year until such time as the sponsoring or cosponsoring local government complies and the department calculates the state contribution amount for such fiscal year.

(11) Each year, the amount of taxes approved by the department for distribution to a sponsoring or cosponsoring

local government in the next fiscal year must be equal to the state contribution and may be no more than the total local funds as described in RCW 39.102.020(29)(b). The department must consider information from reports described in RCW 39.102.140 when determining the amount of state contributions for each fiscal year. The department's determination of the amount of the state contribution is final and conclusive, and may not be changed once such determination is made and such contribution is distributed to the sponsoring or cosponsoring local government, unless the department subsequently determines that local revenue information contained in a report described in RCW 39.102.140 differs from the actual dedicated local revenue. If a discrepancy is found, the department must adjust its determination accordingly. A sponsoring or cosponsoring local government may not receive, in any fiscal year, more revenues from taxes imposed under the authority of this section than the amount approved annually by the department. The department may not approve the receipt of more distributions of sales and use tax under this section to a sponsoring or cosponsoring local government than is authorized under subsection (7) of this section.

(12) The amount of tax distributions received from taxes imposed under the authority of this section by all sponsoring and cosponsoring local governments is limited annually to not more than seven million five hundred thousand dollars.

(13) The definitions in RCW 39.102.020 apply to this section unless the context clearly requires otherwise.

(14) If a sponsoring local government is a federally recognized Indian tribe, the distribution of the sales and use tax authorized under this section must be authorized through an interlocal agreement pursuant to chapter 39.34 RCW.

(15) Subject to RCW 39.102.195, the tax imposed under the authority of this section may be applied either to provide for the payment of debt service on bonds issued under RCW 39.102.150 by the sponsoring local government or to pay public improvement costs on a pay-as-you-go basis, or both.

(16) The tax imposed under the authority of this section must cease to be imposed if the sponsoring local government or cosponsoring local government fails to commence construction on public improvements by June 30, 2017.

(17) For purposes of this section, the following definitions apply:

(a) "Local sales and use taxes" means sales and use taxes imposed by cities, counties, public facilities districts, and other local governments under the authority of this chapter, chapter 67.28 or *67.40 RCW, or any other chapter, and that are credited against the state sales and use taxes.

(b) "State sales and use taxes" means the tax imposed in RCW 82.08.020(1) and the tax imposed in RCW 82.12.020 at the rate provided in RCW 82.08.020(1).

(18) This section expires June 30, 2044. [2013 2nd sp.s. c 21 § 3; 2010 c 164 § 12; 2009 c 267 § 8; 2007 c 229 § 8; 2006 c 181 § 401.]

***Reviser's note:** A majority of chapter 67.40 RCW was repealed by 2010 1st sp.s. c 15 § 14, effective November 30, 2010. RCW 67.40.020 was repealed by 2010 1st sp.s. c 15 § 15, effective December 30, 2010.

Expiration date—2010 c 164 §§ 11 and 12: See note following RCW 39.102.020.

Expiration date—2009 c 267: See note following RCW 39.102.020.

Application—Severability—Expiration date—2007 c 229: See notes following RCW 39.102.020.

Captions and part headings not law—Severability—Construction—Effective date—Expiration date—2006 c 181: See RCW 39.102.900 through 39.102.904.

Chapter 82.14B RCW COUNTIES—TAX ON TELEPHONE ACCESS LINE USE

Sections

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82.14B.020 Definitions. (*Effective January 1, 2014.*)

As used in this chapter:

(1) "Consumer" means a person who purchases a prepaid wireless telecommunications service in a retail transaction.

(2) "Emergency services communication system" means a multicounty or countywide communications network, including an enhanced 911 emergency communications system, which provides rapid public access for coordinated dispatching of services, personnel, equipment, and facilities for police, fire, medical, or other emergency services.

(3) "Enhanced 911 emergency communications system" means a public communications system consisting of a network, database, and on-premises equipment that is accessed by dialing or accessing 911 and that enables reporting police, fire, medical, or other emergency situations to a public safety answering point. The system includes the capability to selectively route incoming 911 voice or data to the appropriate public safety answering point that operates in a defined 911 service area and the capability to automatically display the name, address, and telephone number of incoming 911 voice or data at the appropriate public safety answering point. "Enhanced 911 emergency communications system" includes the modernization to next generation 911 systems.

(4) "Interconnected voice over internet protocol service" has the same meaning as provided by the federal communications commission in 47 C.F.R. Sec. 9.3 on January 1, 2009, or a subsequent date determined by the department.

(5) "Interconnected voice over internet protocol service line" means an interconnected voice over internet protocol service that offers an active telephone number or successor dialing protocol assigned by a voice over internet protocol provider to a voice over internet protocol service customer that has inbound and outbound calling capability, which can directly access a public safety answering point when such a voice over internet protocol service customer has a place of primary use in the state.

(6) "Local exchange company" has the meaning ascribed to it in RCW 80.04.010.

(7) "Place of primary use" means the street address representative of where the subscriber's use of the radio access

line or interconnected voice over internet protocol service line occurs, which must be:

(a) The residential street address or primary business street address of the subscriber; and

(b) In the case of radio access lines, within the licensed service area of the home service provider.

(8) "Prepaid wireless telecommunications service" means a telecommunications service that provides the right to use mobile wireless service as well as other nontelecommunications services including the download of digital products delivered electronically, content, and ancillary services, which must be paid for in full in advance and sold in predetermined units or dollars of which the number declines with use in a known amount.

(9) "Private telecommunications system" has the meaning ascribed to it in RCW 80.04.010.

(10) "Radio access line" means the telephone number assigned to or used by a subscriber for two-way local wireless voice service available to the public for hire from a radio communications service company. Radio access lines include, but are not limited to, radio-telephone communications lines used in cellular telephone service, personal communications services, and network radio access lines, or their functional and competitive equivalent. Radio access lines do not include lines that provide access to one-way signaling service, such as paging service, or to communications channels suitable only for data transmission, or to nonlocal radio access line service, such as wireless roaming service, or to a private telecommunications system.

(11) "Radio communications service company" has the meaning ascribed to it in RCW 80.04.010, except that it does not include radio paging providers. It does include those persons or entities that provide commercial mobile radio services, as defined by 47 U.S.C. Sec. 332(d)(1), and both facilities-based and nonfacilities-based resellers.

(12) "Retail transaction" means the purchase of prepaid wireless telecommunications service from a seller for any purpose other than resale.

(13) "Seller" means a person who sells prepaid wireless telecommunications service to another person.

(14) "Subscriber" means the retail purchaser of telecommunications service, a competitive telephone service, or interconnected voice over internet protocol service. "Subscriber" does not include a consumer, as defined in this section.

(15) "Switched access line" means the telephone service line which connects a subscriber's main telephone(s) or equivalent main telephone(s) to the local exchange company's switching office. [2013 2nd sp.s. c 8 § 102. Prior: 2010 1st sp.s. c 19 § 2; prior: 2007 c 54 § 16; 2007 c 6 § 1009; 2002 c 341 § 7; 1998 c 304 § 2; 1994 c 96 § 2; 1991 c 54 § 10; 1981 c 160 § 2.]

Findings—Intent—Effective dates—2013 2nd sp.s. c 8: See notes following RCW 82.14B.040.

Effective dates—2010 1st sp.s. c 19: See note following RCW 82.14B.010.

Severability—2007 c 54: See note following RCW 82.04.050.

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

Findings—1998 c 304: "The legislature finds that:

(1) The state enhanced 911 excise tax imposed at the current rate of twenty cents per switched access line per month generates adequate tax revenues to enhance the 911 telephone system for switched access lines statewide by December 31, 1998, as mandated in RCW 38.52.510;

(2) The tax revenues generated from the state enhanced 911 excise tax when the tax rate decreases to a maximum of ten cents per switched access line on January 1, 1999, will not be adequate to fund the long-term operation and equipment replacement costs for the enhanced 911 telephone systems in the counties or multicounty regions that receive financial assistance from the state enhanced 911 office;

(3) Some counties or multicounty regions will need financial assistance from the state enhanced 911 office to implement and maintain enhanced 911 because the tax revenue generated from the county enhanced 911 excise tax is not adequate;

(4) Counties with populations of less than seventy-five thousand will need salary assistance to create multicounty regions and counties with populations of seventy-five thousand or more, if requested by smaller counties, will need technical assistance and incentives to provide multicounty services; and

(5) Counties should not request state financial assistance for implementation and maintenance of enhanced 911 for switched access lines unless the county has imposed the maximum enhanced 911 tax authorized in RCW 82.14B.030." [1998 c 304 § 1.]

Finding—Intent—1994 c 96: "(1) The legislature finds that:

(a) Emergency services communication systems, including enhanced 911 telephone systems, are currently funded with revenues from state and local excise taxes imposed on the use of switched access lines;

(b) Users of cellular communication systems and other similar wireless telecommunications systems do not use switched access lines and are not currently subject to these excise taxes; and

(c) The volume of 911 calls by users of cellular communications systems and other similar wireless telecommunications systems has increased in recent years.

(2) The intent of this act is to acknowledge the recommendations regarding 911 emergency communication system funding as detailed in the report to the legislature dated November 1993, entitled "Taxation of Cellular Communications in Washington State," to authorize imposition and collection of the twenty-five cent county tax discussed in chapter 6 of that report, and to require the department of revenue to continue the *study of such funding as detailed in the report." [1994 c 96 § 1.]

***Reviser's note:** See 1992 c 218 and 1994 c 96 § 6.

Additional notes found at www.leg.wa.gov

82.14B.030 County enhanced 911 excise tax on use of switched access lines and radio access lines authorized—Amount—State enhanced 911 excise tax—Amount. (Effective January 1, 2014.) Subject to the enactment into law of the 2013 amendments to RCW 82.08.0289 in section 107, chapter 8, Laws of 2013 2nd sp. sess., the 2013 amendments to RCW 80.36.430 in section 108, chapter 8, Laws of 2013 2nd sp. sess., and the 2013 amendments to RCW 43.20A.725 in section 109, chapter 8, Laws of 2013 2nd sp. sess.:

(1) The legislative authority of a county may impose a county enhanced 911 excise tax on the use of switched access lines in an amount not exceeding seventy cents per month for each switched access line. The amount of tax must be uniform for each switched access line. Each county must provide notice of the tax to all local exchange companies serving in the county at least sixty days in advance of the date on which the first payment is due. The tax imposed under this subsection must be remitted to the department by local exchange companies on a tax return provided by the department. The tax must be deposited in the county enhanced 911 excise tax account as provided in RCW 82.14B.063.

(2)(a) The legislative authority of a county may also impose a county enhanced 911 excise tax on the use of radio access lines:

(i) By subscribers whose place of primary use is located within the county in an amount not exceeding seventy cents per month for each radio access line. The amount of tax must be uniform for each radio access line under this subsection (2)(a)(i); and

(ii) By consumers whose retail transaction occurs within the county in an amount not exceeding seventy cents per retail transaction. The amount of tax must be uniform for each retail transaction under this subsection (2)(a)(ii).

(b) The county must provide notice of the tax to all radio communications service companies serving in the county at least sixty days in advance of the date on which the first payment is due. The tax imposed under this section must be remitted to the department by radio communications service companies, including those companies that resell radio access lines, and sellers of prepaid wireless telecommunications services, on a tax return provided by the department. The tax must be deposited in the county enhanced 911 excise tax account as provided in RCW 82.14B.063.

(3)(a) The legislative authority of a county may impose a county enhanced 911 excise tax on the use of interconnected voice over internet protocol service lines in an amount not exceeding seventy cents per month for each interconnected voice over internet protocol service line. The amount of tax must be uniform for each line and must be levied on no more than the number of voice over internet protocol service lines on an account that are capable of simultaneous unrestricted outward calling to the public switched telephone network.

(b) The interconnected voice over internet protocol service company must use the place of primary use of the subscriber to determine which county's enhanced 911 excise tax applies to the service provided to the subscriber.

(c) The tax imposed under this section must be remitted to the department by interconnected voice over internet protocol service companies on a tax return provided by the department.

(d) The tax must be deposited in the county enhanced 911 excise tax account as provided in RCW 82.14B.063.

(e) To the extent that a local exchange carrier and an interconnected voice over internet protocol service company contractually jointly provide a single service line, only one service company is responsible for remitting the enhanced 911 excise taxes, and nothing in this section precludes service companies who jointly provide service from agreeing by contract which of them must remit the taxes collected.

(4) Counties imposing a county enhanced 911 excise tax must provide an annual update to the enhanced 911 coordinator detailing the proportion of their county enhanced 911 excise tax that is being spent on:

(a) Efforts to modernize their existing enhanced 911 communications system; and

(b) Enhanced 911 operational costs.

(5) A state enhanced 911 excise tax is imposed on all switched access lines in the state. The amount of tax may not exceed twenty-five cents per month for each switched access line. The tax must be uniform for each switched access line. The tax imposed under this subsection must be remitted to the department by local exchange companies on a tax return provided by the department. Tax proceeds must be deposited by the treasurer in the enhanced 911 account created in RCW 38.52.540.

(6)(a) A state enhanced 911 excise tax is imposed on the use of all radio access lines:

(i) By subscribers whose place of primary use is located within the state in an amount of twenty-five cents per month for each radio access line. The tax must be uniform for each radio access line under this subsection (6)(a)(i); and

(ii) By consumers whose retail transaction occurs within the state in an amount of twenty-five cents per retail transaction. The tax must be uniform for each retail transaction under this subsection (6)(a)(ii). Until July 1, 2018, a seller of prepaid wireless telecommunications service may charge an additional five cents per retail transaction as compensation for the cost of collecting and remitting the tax.

(b) The tax imposed under this section must be remitted to the department by radio communications service companies, including those companies that resell radio access lines, and sellers of prepaid wireless telecommunications service, on a tax return provided by the department. Tax proceeds must be deposited by the treasurer in the enhanced 911 account created in RCW 38.52.540. The tax imposed under this section is not subject to the state sales and use tax or any local tax.

(7) For purposes of the state and county enhanced 911 excise taxes imposed by subsections (2) and (6) of this section, the retail transaction is deemed to occur at the location where the transaction is sourced to under RCW 82.32.520(3)(c).

(8) A state enhanced 911 excise tax is imposed on all interconnected voice over internet protocol service lines in the state. The amount of tax may not exceed twenty-five cents per month for each interconnected voice over internet protocol service line whose place of primary use is located in the state. The amount of tax must be uniform for each line and must be levied on no more than the number of voice over internet protocol service lines on an account that are capable of simultaneous unrestricted outward calling to the public switched telephone network. The tax imposed under this subsection must be remitted to the department by interconnected voice over internet protocol service companies on a tax return provided by the department. Tax proceeds must be deposited by the treasurer in the enhanced 911 account created in RCW 38.52.540.

(9) For calendar year 2011, the taxes imposed by subsections (5) and (8) of this section must be set at their maximum rate. By August 31, 2011, and by August 31st of each year thereafter, the state enhanced 911 coordinator must recommend the level for the next year of the state enhanced 911 excise tax imposed by subsections (5) and (8) of this section, based on a systematic cost and revenue analysis, to the utilities and transportation commission. The commission must by the following October 31st determine the level of the state enhanced 911 excise taxes imposed by subsections (5) and (8) of this section for the following year. [2013 2nd sp.s. c 8 § 105; 2010 1st sp.s. c 19 § 3. Prior: 2007 c 54 § 17; 2007 c 6 § 1024; prior: 2002 c 341 § 8; 2002 c 67 § 8; 1998 c 304 § 3; 1994 c 96 § 3; 1991 c 54 § 11; 1981 c 160 § 3.]

Findings—Intent—Effective dates—2013 2nd sp.s. c 8: See notes following RCW 82.14B.040.

Effective dates—2010 1st sp.s. c 19: See note following RCW 82.14B.010.

Severability—2007 c 54: See note following RCW 82.04.050.

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

Finding—Effective date—2002 c 67: See notes following RCW 82.04.530.

Findings—Effective dates—1998 c 304: See notes following RCW 82.14B.020.

Finding—Intent—Effective dates—1994 c 96: See notes following RCW 82.14B.020.

Additional notes found at www.leg.wa.gov

82.14B.035 Tax preferences—Expiration dates. See RCW 82.32.805 for the expiration date of new tax preferences for the tax imposed under this chapter. [2013 2nd sp.s. c 13 § 1707.]

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.04.43393.

82.14B.040 Collection of tax. (Effective January 1, 2014.) Subject to the enactment into law of the 2013 amendments to RCW 82.08.0289 in section 107, chapter 8, Laws of 2013 2nd sp. sess., the 2013 amendments to RCW 80.36.430 in section 108, chapter 8, Laws of 2013 2nd sp. sess., and the 2013 amendments to RCW 43.20A.725 in section 109, chapter 8, Laws of 2013 2nd sp. sess.:

(1) Except as provided otherwise in subsection (2) of this section:

(a) The state enhanced 911 excise tax and the county enhanced 911 excise tax on switched access lines must be collected from the subscriber by the local exchange company providing the switched access line.

(b) The state enhanced 911 excise tax and the county enhanced 911 excise tax on radio access lines must be collected from the subscriber by the radio communications service company, including those companies that resell radio access lines, providing the radio access line to the subscriber, and the seller of prepaid wireless telecommunications service.

(c) The state and county enhanced 911 excise taxes on interconnected voice over internet protocol service lines must be collected from the subscriber by the interconnected voice over internet protocol service company providing the interconnected voice over internet protocol service line to the subscriber.

(d) The amount of the tax must be stated separately on the billing statement which is sent to the subscriber.

(2)(a) The state and county enhanced 911 excise taxes imposed by this chapter must be collected from the consumer by the seller of a prepaid wireless telecommunications service for each retail transaction occurring in this state.

(b) The department must transfer all tax proceeds remitted by a seller under this subsection (2) as provided in RCW 82.14B.030 (2) and (6).

(c) The taxes required by this subsection to be collected by the seller must be separately stated in any sales invoice or instrument of sale provided to the consumer. [2013 2nd sp.s. c 8 § 103; 2010 1st sp.s. c 19 § 6; 2002 c 341 § 9; 1998 c 304 § 4; 1994 c 96 § 4; 1991 c 54 § 12; 1981 c 160 § 4.]

Findings—Intent—2013 2nd sp.s. c 8: "(1) The legislature finds that:

(a) The communications industry is undergoing rapid change due to technological advances and deregulation. The legislature further finds that an industry that began with the telephone now includes cable, wireless, and

satellite communications, as well as the internet;

(b) Washington's tax system has not kept pace with this industry;

(c) There are a vast array of state taxes and other charges on communications services in Washington that were established for a far different technological, legal, and structural landscape than what exists today;

(d) Many taxes and fees remain targeted to a specific technology (e.g., telephone taxes or cable franchise fees), despite the blurring of distinctions between technologies that provide similar services (e.g., the telephone and internet telephony); and

(e) The convergence of formerly distinct communications technologies renders the existing tax structure difficult to justify in terms of economic efficiency or equity.

(2) It is the legislature's intent to address the vast disparity in tax policy for communications services in an effort to minimize the existing inequity, inefficiency, and administrative complexity while preserving revenue sufficiency.

(3) With respect to section 107 of this act, the legislature further finds that:

(a) The department of revenue has consistently interpreted the phrase "a residential class of telephone service" as it would have been understood when the residential telephone service exemption was enacted in 1983;

(b) In 1983, all telephone service was divided into separate "local" and "toll" services for "residential" and "business" classifications, as defined by regulatory tariffs filed with the utilities and transportation commission. As a result, the department of revenue has consistently restricted the residential telephone service exemption in RCW 82.08.0289 to nontoll telephone service provided under a residential customer regulatory tariff. This includes traditional landline telephone service but excludes cellular telephone service and voice over internet protocol telephone services, which are not subject to regulatory tariffs;

(c) The department of revenue's interpretation of the residential telephone service exemption has been upheld by the board of tax appeals but was rejected by the Thurston county superior court in a 2011 decision; and

(d) Further litigation would be costly and could result in the unintended expansion of the exemption to all telephone services that a carrier treats as residential, such as cellular and voice over internet protocol telephone services provided to nonbusiness customers, and to long-distance service provided to residential customers for a flat rate. This could result in extremely large and devastating revenue impacts for the state and local governments.

(4) The legislature intends section 107 of this act to clarify retroactively that, prior to this act, the residential telephone service exemption in RCW 82.08.0289 has always applied only to residential nontoll telephone service offered under a tariff filed with the utilities and transportation commission, consistent with the department of revenue's long-standing interpretation of the exemption." [2013 2nd sp.s. c 8 § 101.]

Effective dates—2013 2nd sp.s. c 8: "(1) Except as provided otherwise in this section, part I of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect August 1, 2013.

(2) Sections 102 through 106 of this act take effect January 1, 2014." [2013 2nd sp.s. c 8 § 301.]

Effective dates—2010 1st sp.s. c 19: See note following RCW 82.14B.010.

Findings—Effective dates—1998 c 304: See notes following RCW 82.14B.020.

Finding—Intent—Effective dates—1994 c 96: See notes following RCW 82.14B.020.

Additional notes found at www.leg.wa.gov

82.14B.042 Payment and collection of taxes—Penalties for violations. (Effective January 1, 2014.) Subject to the enactment into law of the 2013 amendments to RCW 82.08.0289 in section 107, chapter 8, Laws of 2013 2nd sp. sess., the 2013 amendments to RCW 80.36.430 in section 108, chapter 8, Laws of 2013 2nd sp. sess., and the 2013 amendments to RCW 43.20A.725 in section 109, chapter 8, Laws of 2013 2nd sp. sess.:

(1)(a) The state and county enhanced 911 excise taxes imposed by this chapter must be paid by:

(i) The subscriber to the local exchange company providing the switched access line, the radio communications ser-

vice company providing the radio access line, or the interconnected voice over internet protocol service company providing the interconnected voice over internet protocol service line; or

(ii) The consumer to the seller of prepaid wireless telecommunications service.

(b) Each local exchange company, each radio communications service company, and each interconnected voice over internet protocol service company must collect from the subscriber, and each seller of prepaid wireless telecommunications service must collect from the consumer, the full amount of the taxes payable. The state and county enhanced 911 excise taxes required by this chapter to be collected by a company or seller, are deemed to be held in trust by the company or seller until paid to the department. Any local exchange company, radio communications service company, seller of prepaid wireless telecommunications service, or interconnected voice over internet protocol service company that appropriates or converts the tax collected to its own use or to any use other than the payment of the tax to the extent that the money collected is not available for payment on the due date as prescribed in this chapter is guilty of a gross misdemeanor.

(2) If any local exchange company, radio communications service company, seller of prepaid wireless telecommunications service, or interconnected voice over internet protocol service company fails to collect the state or county enhanced 911 excise tax or, after collecting the tax, fails to pay it to the department in the manner prescribed by this chapter, whether such failure is the result of its own act or the result of acts or conditions beyond its control, the company or seller is personally liable to the state for the amount of the tax, unless the company or seller has taken from the buyer in good faith documentation, in a form and manner prescribed by the department, stating that the buyer is not a subscriber or consumer or is otherwise not liable for the state or county enhanced 911 excise tax.

(3) The amount of tax, until paid by the subscriber to the local exchange company, the radio communications service company, the interconnected voice over internet protocol service company, or to the department, or until paid by the consumer to the seller of prepaid wireless telecommunications service, or to the department, constitutes a debt from the subscriber to the company, or from the consumer to the seller. Any company or seller that fails or refuses to collect the tax as required with intent to violate the provisions of this chapter or to gain some advantage or benefit, either direct or indirect, and any subscriber or consumer who refuses to pay any tax due under this chapter is guilty of a misdemeanor. The state and county enhanced 911 excise taxes required by this chapter to be collected by the local exchange company, radio communications service company, or interconnected voice over internet protocol service company must be stated separately on the billing statement that is sent to the subscriber.

(4) If a subscriber has failed to pay to the local exchange company, radio communications service company, or interconnected voice over internet protocol service company, or a consumer has failed to pay to the seller of prepaid wireless telecommunications service, the state or county enhanced 911 excise taxes imposed by this chapter and the company or seller has not paid the amount of the tax to the department, the department may, in its discretion, proceed directly against

the subscriber or consumer for collection of the tax, in which case a penalty of ten percent may be added to the amount of the tax for failure of the subscriber or consumer to pay the tax to the company or seller, regardless of when the tax is collected by the department. Tax under this chapter is due as provided under RCW 82.14B.061. [2013 2nd sp.s. c 8 § 104; 2010 1st sp.s. c 19 § 7; 2009 c 563 § 208; 2002 c 341 § 10; 2000 c 106 § 2; 1998 c 304 § 9.]

Findings—Intent—Effective dates—2013 2nd sp.s. c 8: See notes following RCW 82.14B.040.

Effective dates—2010 1st sp.s. c 19: See note following RCW 82.14B.010.

Finding—Intent—Construction—Effective date—Reports and recommendations—2009 c 563: See notes following RCW 82.32.780.

Findings—Effective dates—1998 c 304: See notes following RCW 82.14B.020.

Additional notes found at www.leg.wa.gov

82.14B.200 Burden of proof that sale is not to subscriber—Effect of resale certificate—Liability if no retail certificate—Penalties—Exceptions. (Effective January 1, 2014.) Subject to the enactment into law of the 2013 amendments to RCW 82.08.0289 in section 107, chapter 8, Laws of 2013 2nd sp. sess., the 2013 amendments to RCW 80.36.430 in section 108, chapter 8, Laws of 2013 2nd sp. sess., and the 2013 amendments to RCW 43.20A.725 in section 109, chapter 8, Laws of 2013 2nd sp. sess.:

(1) Unless a seller, local exchange company, radio communications service company, or interconnected voice over internet protocol service company has taken from the buyer documentation, in a form and manner prescribed by the department, stating that the buyer is not a subscriber, consumer, or is otherwise not liable for the tax, the burden of proving that a sale of the use of a switched access line, radio access line, or interconnected voice over internet protocol service line was not a sale to a subscriber, consumer, or was not otherwise subject to the tax is upon the person who made the sale.

(2) If a seller, local exchange company, radio communications service company, or interconnected voice over internet protocol service company does not receive documentation, in a form and manner prescribed by the department, stating that the buyer is not a subscriber, consumer, or is otherwise not liable for the tax at the time of the sale, have such documentation on file at the time of the sale, or obtain such documentation from the buyer within a reasonable time after the sale, the seller, local exchange company, radio communications service company, or interconnected voice over internet protocol service company remains liable for the tax as provided in RCW 82.14B.042, unless the seller, local exchange company, radio communications service company, or interconnected voice over internet protocol service company can demonstrate facts and circumstances according to rules adopted by the department that show the sale was properly made without payment of the state or county enhanced 911 excise tax.

(3) The penalty imposed by RCW 82.32.291 may not be assessed on state or county enhanced 911 excise taxes due but not paid as a result of the improper use of documentation stating that the buyer is not a subscriber or consumer or is otherwise not liable for the state or county enhanced 911 excise

tax. This subsection does not prohibit or restrict the application of other penalties authorized by law. [2013 2nd sp.s. c 8 § 106; 2010 1st sp.s. c 19 § 12; 2009 c 563 § 209; 2002 c 341 § 12; 1998 c 304 § 10.]

Findings—Intent—Effective dates—2013 2nd sp.s. c 8: See notes following RCW 82.14B.040.

Effective dates—2010 1st sp.s. c 19: See note following RCW 82.14B.010.

Finding—Intent—Construction—Effective date—Reports and recommendations—2009 c 563: See notes following RCW 82.32.780.

Findings—Effective dates—1998 c 304: See notes following RCW 82.14B.020.

Additional notes found at www.leg.wa.gov

Chapter 82.16 RCW PUBLIC UTILITY TAX

Sections

82.16.020	Public utility tax imposed—Additional tax imposed—Deposit of moneys.
82.16.023	Tax preferences—Expiration dates.

82.16.020 Public utility tax imposed—Additional tax imposed—Deposit of moneys. (1) There is levied and there shall be collected from every person a tax for the act or privilege of engaging within this state in any one or more of the businesses herein mentioned. The tax shall be equal to the gross income of the business, multiplied by the rate set out after the business, as follows:

(a) Express, sewerage collection, and telegraph businesses: Three and six-tenths percent;

(b) Light and power business: Three and sixty-two one-hundredths percent;

(c) Gas distribution business: Three and six-tenths percent;

(d) Urban transportation business: Six-tenths of one percent;

(e) Vessels under sixty-five feet in length, except tugboats, operating upon the waters within the state: Six-tenths of one percent;

(f) Motor transportation, railroad, railroad car, and tugboat businesses, and all public service businesses other than ones mentioned above: One and eight-tenths of one percent;

(g) Water distribution business: Four and seven-tenths percent.

(2) An additional tax is imposed equal to the rate specified in RCW 82.02.030 multiplied by the tax payable under subsection (1) of this section.

(3) Twenty percent of the moneys collected under subsection (1) of this section on water distribution businesses and sixty percent of the moneys collected under subsection (1) of this section on sewerage collection businesses shall be deposited in the education legacy trust account created in RCW 83.100.230 from July 1, 2013, through June 30, 2019, and thereafter in the public works assistance account created in RCW 43.155.050. [2013 2nd sp.s. c 9 § 7; 2011 1st sp.s. c 48 § 7033; 2011 1st sp.s. c 48 § 7032; (2009 c 469 § 702 expired June 30, 2013); 1996 c 150 § 2; 1989 c 302 § 204; 1986 c 282 § 14; 1985 c 471 § 10; 1983 2nd ex.s. c 3 § 13; 1982 2nd ex.s. c 5 § 1; 1982 1st ex.s. c 35 § 5; 1971 ex.s. c 299 § 12; 1967 ex.s. c 149 § 24; 1965 ex.s. c 173 § 21; 1961

c 293 § 13; 1961 c 15 § 82.16.020. Prior: 1959 ex.s. c 3 § 16; 1939 c 225 § 19; 1935 c 180 § 36; RRS § 8370-36.]

Intent—Effective dates—2013 2nd sp.s. c 9: See notes following RCW 28A.150.220.

Effective date—2011 1st sp.s. c 48: See note following RCW 39.35B.050.

Effective date—2009 c 469: See note following RCW 82.08.962.

Expiration date—2009 c 469 §§ 701 and 702: See note following RCW 82.16.010.

Finding, purpose—1989 c 302: See note following RCW 82.04.120.

Additional notes found at www.leg.wa.gov

82.16.023 Tax preferences—Expiration dates. See RCW 82.32.805 for the expiration date of new tax preferences for the tax imposed under this chapter. [2013 2nd sp.s. c 13 § 1708.]

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.04.43393.

Chapter 82.18 RCW SOLID WASTE COLLECTION TAX (Formerly: Refuse collection tax)

Sections

82.18.025	Tax preferences—Expiration dates.
82.18.040	Collection of tax—Payment to state.

82.18.025 Tax preferences—Expiration dates. See RCW 82.32.805 for the expiration date of new tax preferences for the tax imposed under this chapter. [2013 2nd sp.s. c 13 § 1709.]

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.04.43393.

82.18.040 Collection of tax—Payment to state. (1) Taxes collected under this chapter must be held in trust until paid to the state. Except as otherwise provided in this subsection (1), taxes received by the state must be deposited in the public works assistance account created in RCW 43.155.050. For the period beginning July 1, 2011, and ending June 30, 2015, taxes received by the state under this chapter must be deposited in the general fund for general purpose expenditures. For fiscal years 2016, 2017, and 2018, one-half of the taxes received by the state under this chapter must be deposited in the general fund for general purpose expenditures and the remainder deposited in the education legacy trust account created in RCW 83.100.230. For fiscal year 2019, taxes received by the state under this chapter must be deposited in the education legacy trust account created in RCW 83.100.230. Any person collecting the tax who appropriates or converts the tax collected is guilty of a gross misdemeanor if the money required to be collected is not available for payment on the date payment is due. If a taxpayer fails to pay the tax imposed by this chapter to the person charged with collection of the tax and the person charged with collection fails to pay the tax to the department, the department may, in its discretion, proceed directly against the taxpayer for collection of the tax.

(2) The tax is due from the taxpayer within twenty-five days from the date the taxpayer is billed by the person collecting the tax.

(3) The tax is due from the person collecting the tax at the end of the tax period in which the tax is received from the taxpayer. If the taxpayer remits only a portion of the total amount billed for taxes, consideration, and related charges, the amount remitted must be applied first to payment of the solid waste collection tax and this tax has priority over all other claims to the amount remitted. [2013 2nd sp.s. c 9 § 8; 2012 2nd sp.s. c 5 § 2; 2011 1st sp.s. c 48 § 7034; 2000 c 103 § 11; 1989 c 431 § 85; 1986 c 282 § 9.]

Intent—Effective dates—2013 2nd sp.s. c 9: See notes following RCW 28A.150.220.

Effective date—2012 2nd sp.s. c 5 § 2: "Section 2 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 2, 2012]." [2012 2nd sp.s. c 5 § 13.]

Effective date—2011 1st sp.s. c 48: See note following RCW 39.35B.050.

Chapter 82.19 RCW LITTER TAX

Sections

- 82.19.040 Application of chapters 82.04 and 82.32 RCW—Disposition of revenue. (*Effective until June 30, 2017.*)
82.19.055 Tax preferences—Expiration dates.

82.19.040 Application of chapters 82.04 and 82.32 RCW—Disposition of revenue. (*Effective until June 30, 2017.*) (1) To the extent applicable, all of the definitions of chapter 82.04 RCW and all of the provisions of chapter 82.32 RCW apply to the tax imposed in this chapter.

(2) Taxes collected under this chapter shall be distributed as follows: (a) Five million dollars per fiscal year must be deposited in equal monthly amounts to the state parks renewal and stewardship account under RCW 79A.05.215; and (b) the remainder to the waste reduction, recycling, and litter control account under RCW 70.93.180. [2013 2nd sp.s. c 15 § 5; 2001 c 118 § 6; 1992 c 175 § 6; 1971 ex.s. c 307 § 16. Formerly RCW 70.93.160.]

Effective date—2013 2nd sp.s. c 15 §§ 5-7: "Sections 5 through 7 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 2013." [2013 2nd sp.s. c 15 § 9.]

Expiration date—2013 2nd sp.s. c 15 §§ 5-7: "Sections 5 through 7 of this act expire June 30, 2017." [2013 2nd sp.s. c 15 § 8.]

82.19.055 Tax preferences—Expiration dates. See RCW 82.32.805 for the expiration date of new tax preferences for the tax imposed under this chapter. [2013 2nd sp.s. c 13 § 1710.]

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.04.43393.

Chapter 82.21 RCW HAZARDOUS SUBSTANCE TAX— MODEL TOXICS CONTROL ACT

Sections

- 82.21.045 Tax preferences—Expiration dates.

82.21.045 Tax preferences—Expiration dates. See RCW 82.32.805 for the expiration date of new tax preferences [2013 RCW Supp—page 970]

ences for the tax imposed under this chapter. [2013 2nd sp.s. c 13 § 1711.]

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.04.43393.

Chapter 82.23A RCW PETROLEUM PRODUCTS—UNDERGROUND STORAGE TANK PROGRAM FUNDING (Formerly: Tax on petroleum products)

Sections

- 82.23A.050 Tax preferences—Expiration dates.

82.23A.050 Tax preferences—Expiration dates. See RCW 82.32.805 for the expiration date of new tax preferences for the tax imposed under this chapter. [2013 2nd sp.s. c 13 § 1712.]

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.04.43393.

Chapter 82.23B RCW OIL SPILL RESPONSE TAX

Sections

- 82.23B.025 Tax preferences—Expiration dates.

82.23B.025 Tax preferences—Expiration dates. See RCW 82.32.805 for the expiration date of new tax preferences for the tax imposed under this chapter. [2013 2nd sp.s. c 13 § 1713.]

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.04.43393.

Chapter 82.24 RCW TAX ON CIGARETTES

Sections

- 82.24.029 Tax preferences—Expiration dates.
82.24.210 Redemption of stamps.
82.24.250 Transportation of unstamped cigarettes—Invoices and delivery tickets required—Stop and inspect.
82.24.510 Wholesaler's and retailer's licenses—Application and issuance—Criminal background check.
82.24.520 Wholesaler's license—Fee—Display of license—Bond.

82.24.029 Tax preferences—Expiration dates. See RCW 82.32.805 for the expiration date of new tax preferences for the tax imposed under this chapter. [2013 2nd sp.s. c 13 § 1714.]

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.04.43393.

82.24.210 Redemption of stamps. The department of revenue may promulgate rules and regulations providing for the refund to dealers for the cost of stamps affixed to articles taxed herein, which by reason of damage become unfit for sale and are destroyed by the dealer or returned to the manufacturer or jobber. In the case of any articles to which stamps have been affixed, and which articles have been sold and shipped to a regular dealer in such articles in another state, the seller in this state shall be entitled to a refund of the actual amount of the stamps so affixed, less the affixing discount, upon condition that the seller in this state makes affidavit that

the articles were sold and shipped outside of the state and that he or she has received from the purchaser outside the state a written acknowledgment that he or she has received such articles with the amount of stamps affixed thereto, together with the name and address of such purchaser. The department of revenue may redeem any unused stamps purchased from it at the face value thereof less the affixing discount. A distributor or wholesaler that has lawfully affixed stamps to cigarettes, and subsequently is unable to sell those cigarettes lawfully because the cigarettes are removed from the directory created pursuant to RCW 70.158.030(2), may apply to the department for a refund of the cost of the stamps. [2013 c 23 § 320; 2003 c 25 § 11; 1975 1st ex.s. c 278 § 68; 1961 c 15 § 82.24.210. Prior: 1949 c 228 § 17; 1941 c 178 § 17; 1935 c 180 § 92; Rem. Supp. 1949 § 8370-92.]

Conflict of law—Severability—Effective date—2003 c 25: See RCW 70.158.900 and 70.158.901.

Additional notes found at www.leg.wa.gov

82.24.250 Transportation of unstamped cigarettes—Invoices and delivery tickets required—Stop and inspect.

(1) No person other than: (a) A licensed wholesaler in the wholesaler's own vehicle; or (b) a person who has given notice to the board in advance of the commencement of transportation shall transport or cause to be transported in this state cigarettes not having the stamps affixed to the packages or containers.

(2) When transporting unstamped cigarettes, such persons shall have in their actual possession or cause to have in the actual possession of those persons transporting such cigarettes on their behalf invoices or delivery tickets for such cigarettes, which shall show the true name and address of the consignor or seller, the true name and address of the consignee or purchaser, and the quantity and brands of the cigarettes so transported.

(3) If unstamped cigarettes are consigned to or purchased by any person in this state, such purchaser or consignee must be a person who is authorized by this chapter to possess unstamped cigarettes in this state.

(4) In the absence of the notice of transportation required by this section or in the absence of such invoices or delivery tickets, or, if the name or address of the consignee or purchaser is falsified or if the purchaser or consignee is not a person authorized by this chapter to possess unstamped cigarettes, the cigarettes so transported shall be deemed contraband subject to seizure and sale under the provisions of RCW 82.24.130.

(5) Transportation of cigarettes from a point outside this state to a point in some other state will not be considered a violation of this section provided that the person so transporting such cigarettes has in his or her possession adequate invoices or delivery tickets which give the true name and address of such out-of-state seller or consignor and such out-of-state purchaser or consignee.

(6) In any case where the department or its duly authorized agent, or any peace officer of the state, has knowledge or reasonable grounds to believe that any vehicle is transporting cigarettes in violation of this section, the department, such agent, or such police officer, is authorized to stop such vehicle and to inspect the same for contraband cigarettes.

(7) For purposes of this section, the term "person authorized by this chapter to possess unstamped cigarettes in this state" means:

- (a) A wholesaler, licensed under Washington state law;
- (b) The United States or an agency thereof;

(c) Any person, including an Indian tribal organization, who, after notice has been given to the board as provided in this section, brings or causes to be brought into the state unstamped cigarettes, if within a period of time after receipt of the cigarettes as the department determines by rule to be reasonably necessary for the purpose the person has caused stamps to be affixed in accordance with RCW 82.24.030 or otherwise made payment of the tax required by this chapter in the manner set forth in rules adopted by the department; and

(d) Any purchaser or consignee of unstamped cigarettes, including an Indian tribal organization, who has given notice to the board in advance of receiving unstamped cigarettes and who within a period of time after receipt of the cigarettes as the department determines by rule to be reasonably necessary for the purpose the person has caused stamps to be affixed in accordance with RCW 82.24.030 or otherwise made payment of the tax required by this chapter in the manner set forth in rules adopted by the department.

Nothing in this subsection (7) shall be construed as modifying RCW 82.24.050 or 82.24.110.

(8) Nothing in this section shall be construed as limiting any otherwise lawful activity under a cigarette tax compact pursuant to chapter 43.06 RCW.

(9) Nothing in this section shall be construed as limiting the right to travel upon all public highways under Article III of the treaty with the Yakamas of 1855. [2013 c 23 § 321; 2008 c 226 § 5; 2003 c 114 § 8; 1997 c 420 § 7; 1995 c 278 § 10; 1990 c 216 § 6; 1972 ex.s. c 157 § 6.]

Finding—Intent—2008 c 226: See note following RCW 82.24.080.

Additional notes found at www.leg.wa.gov

82.24.510 Wholesaler's and retailer's licenses—Application and issuance—Criminal background check.

(1) The licenses issuable under this chapter are as follows:

- (a) A wholesaler's license.
- (b) A retailer's license.

(2) Application for the licenses must be made through the business licensing system under chapter 19.02 RCW. The board must adopt rules regarding the regulation of the licenses. The board may refrain from the issuance of any license under this chapter if the board has reasonable cause to believe that the applicant has willfully withheld information requested for the purpose of determining the eligibility of the applicant to receive a license, or if the board has reasonable cause to believe that information submitted in the application is false or misleading or is not made in good faith. In addition, for the purpose of reviewing an application for a wholesaler's license or retailer's license and for considering the denial, suspension, or revocation of any such license, the board may consider any prior criminal conduct of the applicant, including an administrative violation history record with the board and a criminal history record information check within the previous five years, in any state, tribal, or federal jurisdiction in the United States, its territories, or possessions, and the provisions of RCW 9.95.240 and chapter 9.96A RCW do not apply to such cases. The board may, in

its discretion, grant or refuse the wholesaler's license or retailer's license, subject to the provisions of RCW 82.24.550.

(3) No person may qualify for a wholesaler's license or a retailer's license under this section without first undergoing a criminal background check. The background check must be performed by the board and must disclose any criminal conduct within the previous five years in any state, tribal, or federal jurisdiction in the United States, its territories, or possessions. A person who possesses a valid license on July 22, 2001, is subject to this subsection and subsection (2) of this section beginning on the date of the person's business license expiration under chapter 19.02 RCW, and thereafter. If the applicant or licensee also has a license issued under chapter 66.24 or 82.26 RCW, the background check done under the authority of chapter 66.24 or 82.26 RCW satisfies the requirements of this section.

(4) Each such license expires on the business license expiration date, and each such license must be continued annually if the licensee has paid the required fee and complied with all the provisions of this chapter and the rules of the board made pursuant thereto.

(5) Each license and any other evidence of the license that the board requires must be exhibited in each place of business for which it is issued and in the manner required for the display of a business license. [2013 c 144 § 50; 2009 c 154 § 1; 2001 c 235 § 8; 1986 c 321 § 5.]

Intent—Finding—2001 c 235: See RCW 43.06.450.

Policy—Intent—Savings—Effective date—1986 c 321: See notes following RCW 82.24.500.

82.24.520 Wholesaler's license—Fee—Display of license—Bond. A fee of six hundred fifty dollars must accompany each wholesaler's license application or license renewal application. If a wholesaler sells or intends to sell cigarettes at two or more places of business, whether established or temporary, a separate license with a license fee of one hundred fifteen dollars is required for each additional place of business. Each license, or certificate thereof, and such other evidence of license as the department of revenue requires, must be exhibited in the place of business for which it is issued and in such manner as is prescribed for the display of a business license issued under chapter 19.02 RCW. The board must require each licensed wholesaler to file with the department of revenue a bond in an amount not less than one thousand dollars to guarantee the proper performance of the duties and the discharge of the liabilities under this chapter. The bond must be executed by such licensed wholesaler as principal, and by a corporation approved by the department of revenue and authorized to engage in business as a surety company in this state, as surety. The bond must run concurrently with the wholesaler's license. [2013 c 144 § 51; 1986 c 321 § 6.]

Policy—Intent—Savings—Effective date—1986 c 321: See notes following RCW 82.24.500.

Chapter 82.26 RCW TAX ON TOBACCO PRODUCTS

Sections

82.26.027 Tax preferences—Expiration dates.

[2013 RCW Supp—page 972]

82.26.150 Distributor's license, retailer's license—Application—Approval—Display.

82.26.027 Tax preferences--Expiration dates. See RCW 82.32.805 for the expiration date of new tax preferences for the tax imposed under this chapter. [2013 2nd sp.s. c 13 § 1715.]

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.04.43393.

82.26.150 Distributor's license, retailer's license—Application—Approval—Display. (1) The licenses issuable by the board under this chapter are as follows:

- (a) A distributor's license; and
- (b) A retailer's license.

(2) Application for the licenses must be made through the business licensing system under chapter 19.02 RCW. The board may adopt rules regarding the regulation of the licenses. The board may refuse to issue any license under this chapter if the board has reasonable cause to believe that the applicant has willfully withheld information requested for the purpose of determining the eligibility of the applicant to receive a license, or if the board has reasonable cause to believe that information submitted in the application is false or misleading or is not made in good faith. In addition, for the purpose of reviewing an application for a distributor's license or retailer's license and for considering the denial, suspension, or revocation of any such license, the board may consider criminal conduct of the applicant, including an administrative violation history record with the board and a criminal history record information check within the previous five years, in any state, tribal, or federal jurisdiction in the United States, its territories, or possessions, and the provisions of RCW 9.95.240 and chapter 9.96A RCW do not apply to such cases. The board may, in its discretion, issue or refuse to issue the distributor's license or retailer's license, subject to the provisions of RCW 82.26.220.

(3) No person may qualify for a distributor's license or a retailer's license under this section without first undergoing a criminal background check. The background check must be performed by the board and must disclose any criminal conduct within the previous five years in any state, tribal, or federal jurisdiction in the United States, its territories, or possessions. If the applicant or licensee also has a license issued under chapter 66.24 or 82.24 RCW, the background check done under the authority of chapter 66.24 or 82.24 RCW satisfies the requirements of this section.

(4) Each license issued under this chapter expires on the business license expiration date. The license must be continued annually if the licensee has paid the required fee and complied with all the provisions of this chapter and the rules of the board adopted pursuant to this chapter.

(5) Each license and any other evidence of the license required under this chapter must be exhibited in each place of business for which it is issued and in the manner required for the display of a business license. [2013 c 144 § 52; 2009 c 154 § 4; 2005 c 180 § 11.]

Effective date—2005 c 180: See note following RCW 82.26.105.

Chapter 82.27 RCW
TAX ON ENHANCED FOOD FISH

Sections

82.27.025 Tax preferences—Expiration dates.

82.27.025 Tax preferences—Expiration dates. See RCW 82.32.805 for the expiration date of new tax preferences for the tax imposed under this chapter. [2013 2nd sp.s. c 13 § 1716.]

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.04.43393.

Chapter 82.29A RCW
LEASEHOLD EXCISE TAX

Sections

82.29A.025 Tax preferences—Expiration dates.

82.29A.120 Allowable credits.

82.29A.025 Tax preferences—Expiration dates. See RCW 82.32.805 for the expiration date of new tax preferences for the tax imposed under this chapter. [2013 2nd sp.s. c 13 § 1717.]

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.04.43393.

82.29A.120 Allowable credits. After computation of the taxes imposed pursuant to RCW 82.29A.030 and 82.29A.040, the following credits are allowed in determining the tax payable:

(1) For lessees and sublessees who would qualify for a property tax exemption under RCW 84.36.381 if the property were privately owned, the tax otherwise due after this credit shall be reduced by a percentage equal to the percentage reduction in property tax that would result from the property tax exemption under RCW 84.36.381; and

(2) A credit of thirty-three percent of the tax otherwise due is allowed with respect to a product lease. [2013 c 235 § 3; 1994 c 95 § 2; 1986 c 285 § 2; 1975-'76 2nd ex.s. c 61 § 12.]

Additional notes found at www.leg.wa.gov

Chapter 82.32 RCW
GENERAL ADMINISTRATIVE PROVISIONS

Sections

82.32.070 Records to be preserved—Examination—Estoppel to question assessment—Unified business identifier account number records.

82.32.120 Oaths and acknowledgments.

82.32.170 Reduction of tax after payment—Petition—Conference—Determination by department.

82.32.215 Revocation of certificate of registration.

82.32.260 Payment condition to dissolution or withdrawal of corporation.

82.32.270 Accounting period prescribed.

82.32.290 Unlawful acts—Penalties.

82.32.310 Immunity of officers, agents, etc., of the department of revenue acting in good faith.

82.32.605 Annual survey—Hog fuel. (*Expires June 30, 2024.*)

82.32.607 Annual survey for tax exemption for sales of machinery and equipment used in generating electricity.

82.32.670 Tax evasion by electronic means—Seizure and forfeiture.

82.32.680 Tax evasion by electronic means—Search and seizure.

82.32.805 Tax preferences—Expiration dates.

82.32.808 Tax preferences—Performance statement requirement.

82.32.070 Records to be preserved—Examination—Estoppel to question assessment—Unified business identifier account number records. (1) Every person liable for any fee or tax imposed by chapters 82.04 through 82.27 RCW shall keep and preserve, for a period of five years, suitable records as may be necessary to determine the amount of any tax for which he or she may be liable, which records shall include copies of all federal income tax and state tax returns and reports made by him or her. All his or her books, records, and invoices shall be open for examination at any time by the department of revenue. In the case of an out-of-state person or concern which does not keep the necessary books and records within this state, it shall be sufficient if it produces within the state such books and records as shall be required by the department of revenue, or permits the examination by an agent authorized or designated by the department of revenue at the place where such books and records are kept. Any person who fails to comply with the requirements of this section shall be forever barred from questioning, in any court action or proceedings, the correctness of any assessment of taxes made by the department of revenue based upon any period for which such books, records, and invoices have not been so kept and preserved.

(2) A person liable for any fee or tax imposed by chapters 82.04 through 82.27 RCW who contracts with another person or entity for work subject to chapter 18.27 or 19.28 RCW shall obtain and preserve a record of the unified business identifier account number for the person or entity performing the work. Failure to obtain or maintain the record is subject to RCW 39.06.010 and to a penalty determined by the director, but not to exceed two hundred fifty dollars. The department shall notify the taxpayer and collect the penalty in the same manner as penalties under RCW 82.32.100. [2013 c 23 § 322; 1999 c 358 § 14; 1997 c 54 § 4; 1983 c 3 § 221; 1967 ex.s. c 89 § 2; 1961 c 15 § 82.32.070. Prior: 1951 1st ex.s. c 9 § 7; 1935 c 180 § 190; RRS § 8370-190.]

Additional notes found at www.leg.wa.gov

82.32.120 Oaths and acknowledgments. All officers empowered by law to administer oaths, the director of the department of revenue, and such officers as he or she may designate shall have the power to administer an oath to any person or to take the acknowledgment of any person with respect to any return or report required by law or the rules and regulations of the department of revenue. [2013 c 23 § 323; 1975 1st ex.s. c 278 § 80; 1961 c 15 § 82.32.120. Prior: 1935 c 180 § 195; RRS § 8370-195.]

Additional notes found at www.leg.wa.gov

82.32.170 Reduction of tax after payment—Petition—Conference—Determination by department. Any person, having paid any tax, original assessment, additional assessment, or corrected assessment of any tax, may apply to the department within the time limitation for refund provided in this chapter, by petition in writing for a correction of the amount paid, and a conference for examination and review of the tax liability, in which petition he or she shall set forth the reasons why the conference should be granted, and the amount in which the tax, interest, or penalty, should be refunded. The department shall promptly consider the petition, and may grant or deny it. If denied, the petitioner shall

be notified by mail, or electronically as provided in RCW 82.32.135, thereof forthwith. If a conference is granted, the department shall notify the petitioner by mail, or electronically as provided in RCW 82.32.135, of the time and place fixed therefor. After the hearing, the department may make such determination as may appear to it just and lawful, and shall mail a copy of its determination to the petitioner, or provide a copy of its determination electronically as provided in RCW 82.32.135. [2013 c 23 § 324; 2007 c 111 § 111; 1967 ex.s. c 26 § 50; 1961 c 15 § 82.32.170. Prior: 1951 1st ex.s. c 9 § 11; 1939 c 225 § 29, part; 1935 c 180 § 199, part; RRS § 8370-199, part.]

Part headings not law—2007 c 111: See note following RCW 82.16.120.

Additional notes found at www.leg.wa.gov

82.32.215 Revocation of certificate of registration.

(1) The department may, by order, revoke the certificate of registration of a taxpayer for any of the following reasons:

(a) A warrant issued under this chapter is not paid within thirty days after it has been filed with the clerk of the superior court;

(b) The taxpayer is delinquent, for three consecutive reporting periods, in the transmission to the department of retail sales tax collected by the taxpayer; or

(c)(i)(A) The taxpayer was convicted of violating RCW 82.32.290(4) and continues to engage in business without fully complying with RCW 82.32.290(4)(b) (i) through (iii); or

(B) A person convicted of violating RCW 82.32.290(4) is an owner, officer, director, partner, trustee, member, or manager of the taxpayer, and the person and taxpayer have not fully complied with RCW 82.32.290(4)(b) (i) through (iii).

(ii) For the purposes of this subsection (1)(c), the terms "manager," "member," and "officer" mean the same as defined in RCW 82.32.145.

(2) If the department enters a final order revoking a taxpayer's certificate of registration, a copy of the order must, if practicable, be posted in a conspicuous place at the main entrance to the taxpayer's place of business. The department may also post a final order revoking a taxpayer's certificate of registration in any public facility, such as a courthouse or post office, as may be allowed by the public entity that owns or occupies the facility. A final order posted at the taxpayer's place of business must remain posted until such time as the taxpayer is eligible to have its certificate of registration reinstated as provided in subsection (3) of this section or has abandoned the premises. A taxpayer will not be deemed to have abandoned the premises if the taxpayer or any person with an ownership interest in the taxpayer continues to operate a substantially similar type of business under a different legal entity at the same location.

(3) Any certificate revoked under subsection (1) of this section may not be reinstated, nor may a new certificate of registration be issued to the taxpayer, until:

(a) The amount due on the warrant has been paid, or provisions for payment satisfactory to the department have been entered, and until the taxpayer has deposited with the department security for payment of any taxes, increases, and penalties, due or which may become due in an amount and under

such terms and conditions as the department of revenue may require, but the amount of the security may not be greater than one-half the estimated average annual liability of the taxpayer; or

(b) The taxpayer and, if applicable, the owner, officer, director, partner, trustee, member, or manager of the taxpayer who was convicted of violating RCW 82.32.290(4) are in full compliance with RCW 82.32.290(4)(b) (i) through (iii), if the certificate of registration was revoked under the provisions of subsection (1)(c) of this section. [2013 c 309 § 1; 1998 c 311 § 9; 1983 1st ex.s. c 55 § 9.]

Additional notes found at www.leg.wa.gov

82.32.260 Payment condition to dissolution or withdrawal of corporation.

In the case of any corporation organized under the laws of this state, the courts shall not enter or sign any decree of dissolution, nor shall the secretary of state file in his or her office any certificate of dissolution, and in the case of any corporation organized under the laws of another jurisdiction and admitted to do business in this state, the secretary of state shall withhold the issuance of any certificate of withdrawal, until proof, in the form of a certificate from the department of revenue, has been furnished by the applicant for such dissolution or withdrawal, that every license fee, tax, increase, or penalty has been paid or provided for. [2013 c 23 § 325; 1975 1st ex.s. c 278 § 87; 1961 c 15 § 82.32.260. Prior: 1935 c 180 § 204; RRS § 8370-204.]

Additional notes found at www.leg.wa.gov

82.32.270 Accounting period prescribed. The taxes imposed hereunder, and the returns required therefor, shall be upon a calendar year basis; but, if any taxpayer in transacting his or her business, keeps books reflecting the same on a basis other than the calendar year, he or she may, with consent of the department of revenue, make his or her returns, and pay taxes upon the basis of his or her accounting period as shown by the method of keeping the books of his or her business. [2013 c 23 § 326; 1975 1st ex.s. c 278 § 88; 1961 c 15 § 82.32.270. Prior: 1935 c 180 § 205; RRS § 8370-205.]

Additional notes found at www.leg.wa.gov

82.32.290 Unlawful acts—Penalties. (1)(a) It is unlawful:

(i) For any person to engage in business without having obtained a certificate of registration as provided in this chapter;

(ii) For the president, vice president, secretary, treasurer, or other officer of any company to cause or permit the company to engage in business without having obtained a certificate of registration as provided in this chapter;

(iii) For any person to tear down or remove any order or notice posted by the department in violation of this chapter;

(iv) For any person to aid or abet another in any attempt to evade the payment of any tax or any part thereof;

(v) For any purchaser to fraudulently sign or furnish to a seller documentation authorized under RCW 82.04.470 without intent to resell the property purchased or with intent to otherwise use the property in a manner inconsistent with the claimed wholesale purchase; or

(vi) For any person to fail or refuse to permit the examination of any book, paper, account, record, or other data by

the department or its duly authorized agent; or to fail or refuse to permit the inspection or appraisal of any property by the department or its duly authorized agent; or to refuse to offer testimony or produce any record as required.

(b) Any person violating any of the provisions of this subsection (1) is guilty of a gross misdemeanor in accordance with chapter 9A.20 RCW.

(2)(a) It is unlawful:

(i) For any person to engage in business after revocation of a certificate of registration unless the person's certification of registration has been reinstated;

(ii) For the president, vice president, secretary, treasurer, or other officer of any company to cause or permit the company to engage in business after revocation of a certificate of registration unless the company's certificate of registration has been reinstated; or

(iii) For any person to make any false or fraudulent return or false statement in any return, with intent to defraud the state or evade the payment of any tax or part thereof.

(b) Any person violating any of the provisions of this subsection (2) is guilty of a class C felony in accordance with chapter 9A.20 RCW.

(3) In addition to the foregoing penalties, any person who knowingly swears to or verifies any false or fraudulent return, or any return containing any false or fraudulent statement with the intent aforesaid, is guilty of the offense of perjury in the second degree; and any company for which a false return, or a return containing a false statement, as aforesaid, is made, must be punished, upon conviction thereof, by a fine of not more than one thousand dollars.

(4)(a) It is unlawful for any person to knowingly sell, purchase, install, transfer, manufacture, create, design, update, repair, use, possess, or otherwise make available, in this state, any automated sales suppression device or phantom-ware. However, it is not unlawful for persons to possess or use automated sales suppression devices or phantom-ware as authorized in RCW 82.32.670(6).

(b) It is unlawful for any person who has been convicted of violating this section to engage in business, or participate in any business as an owner, officer, director, partner, trustee, member, or manager of the business, unless:

(i) All taxes, penalties, and interest lawfully due are paid;

(ii) The person pays in full all penalties and fines imposed on the person for violating this section; and

(iii) The person, if the person is engaging in business subject to tax under this title, or the business in which the person participates, enters into a written agreement with the department for the electronic monitoring of the business's sales, by a method acceptable to the department, for five years at the business's expense.

(c)(i) Any person violating the provisions of this subsection, including material breach of the monitoring agreement under (b)(iii) of this subsection, is guilty of a class C felony in accordance with chapter 9A.20 RCW and, as applicable, (c)(ii) of this subsection.

(ii) Any person violating the provisions of this subsection by furnishing an automated sales suppression device or phantom-ware to another person or by updating or repairing another person's automated sales suppression device or phantom-ware is, in addition to the punishments prescribed in chapter 9A.20 RCW, subject to a mandatory fine fixed by the

court in an amount equal to the greater of ten thousand dollars, the defendant's gain from the commission of the crime, or the state's loss from the commission of the crime. For purposes of this subsection (4)(c)(ii), "loss" means the total of all taxes, penalties, and interest certified by the department to be due, as of the date of sentencing, as a result of any violation of the provisions of this subsection by a person using the automated sales suppression device or phantom-ware obtained from, or updated or repaired by, the defendant, which results in the defendant's conviction for violating the provisions of this subsection.

(d) For the purposes of this subsection (4), the terms "manager," "member," and "officer" have the same meaning as in RCW 82.32.145.

(e) The definitions in RCW 82.32.670 apply to this subsection (4).

(5) All penalties or punishments provided in this section are in addition to all other penalties provided by law. [2013 c 309 § 2; 2010 c 112 § 11; 2009 c 563 § 211; 1985 c 414 § 2; 1975 1st ex.s. c 278 § 89; 1961 c 15 § 82.32.290. Prior: 1935 c 180 § 207; RRS § 8370-207.]

Effective date—2010 c 112 §§ 2, 3, 11, 12, and 15: See note following RCW 82.32.780.

Retroactive application—2010 c 112: See note following RCW 82.32.780.

Finding—Intent—Construction—Effective date—Reports and recommendations—2009 c 563: See notes following RCW 82.32.780.

Additional notes found at www.leg.wa.gov

82.32.310 Immunity of officers, agents, etc., of the department of revenue acting in good faith. When recovery is had in any suit or proceeding against an officer, agent, or employee of the department of revenue for any act done by him or her or for the recovery of any money exacted by or paid to him or her and by him or her paid over to the department, in the performance of his or her official duty, and the court certifies that there was probable cause for the act done by such officer, agent, or employee, or that he or she acted under the direction of the department or an officer thereof, no execution shall issue against such officer, agent, or employee, but the amount so recovered shall, upon final judgment, be paid by the department as an expense of operation. [2013 c 23 § 327; 1975 1st ex.s. c 278 § 91; 1961 c 15 § 82.32.310. Prior: 1935 c 180 § 208, part; RRS § 8370-208, part.]

Additional notes found at www.leg.wa.gov

82.32.605 Annual survey—Hog fuel. (Expires June 30, 2024.) (1) Every taxpayer claiming an exemption under RCW 82.08.956 or 82.12.956 must file with the department a complete annual survey as required under RCW 82.32.585, except that the taxpayer must file a separate survey for each facility owned or operated in the state of Washington.

(2) This section expires June 30, 2024. [2013 2nd sp.s. c 13 § 1004.]

Intent—2013 2nd sp.s. c 13: See note following RCW 82.08.956.

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.08.200.

82.32.607 Annual survey for tax exemption for sales of machinery and equipment used in generating electricity. Every taxpayer claiming an exemption under RCW

82.08.962 or 82.12.962 must file with the department a complete annual survey as required under RCW 82.32.585, except that the taxpayer must file a separate survey for each facility owned or operated in the state of Washington developed with machinery, equipment, services, or labor for which the exemption under RCW 43.136.058, 82.08.962, and 82.12.962 is claimed. [2013 2nd sp.s. c 13 § 1503.]

Intent—2013 2nd sp.s. c 13: See note following RCW 82.08.962.

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.08.200.

82.32.670 Tax evasion by electronic means—Seizure and forfeiture. (1)(a) Automated sales suppression devices, phantom-ware, electronic cash registers or point of sale systems used with automated sales suppression devices or phantom-ware, and any property constituting proceeds traceable to any violation of RCW 82.32.290(4) are considered contraband and are subject to seizure and forfeiture.

(b) Property subject to forfeiture under (a) of this subsection (1) may be seized by any agent of the department authorized to assess or collect taxes, or law enforcement officer of this state, upon process issued by any superior court or district court having jurisdiction over the property. Seizure without process may be made if:

(i) The seizure is incident to an arrest or a search under a search warrant; or

(ii) The department or the law enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of RCW 82.32.290(4) and exigent circumstances exist making procurement of a search warrant impracticable.

(2) Forfeiture authorized by this section is deemed to have commenced by the seizure. Notice of seizure must be given to the department if the seizure is made by a law enforcement officer without the presence of any agent of the department. The department must cause notice of the seizure and intended forfeiture to be served on the owner of the property seized, if known, and on any other person known by the department to have a right or interest in the seized property. Such service must be made within fifteen days following the seizure or the department's receipt of notification of the seizure. The notice may be served by any method authorized by law or court rule, by certified mail with return receipt requested, or electronically in accordance with RCW 82.32.135. Service by certified mail or electronic means is deemed complete upon mailing the notice, electronically sending the notice, or electronically notifying the person or persons entitled to the notice that the notice is available to be accessed by the person or persons, within the fifteen-day period following the seizure or the department's receipt of notification of the seizure.

(3) If no person notifies the department in writing of the person's claim of lawful ownership or right to lawful possession of the item or items seized within thirty days of the date of service of the notice of seizure and intended forfeiture, the item or items seized are deemed forfeited.

(4)(a) If any person notifies the department, in writing, of the person's claim of lawful ownership or lawful right to possession of the item or items seized within thirty days of the date of service of the notice of seizure and intended forfeiture, the person or persons must be afforded a reasonable

opportunity to be heard as to the claim. The hearing must be before the director or the director's designee. A hearing and any administrative or judicial review is governed by chapter 34.05 RCW. The burden of proof by a preponderance of the evidence is upon the person claiming to be the lawful owner or the person claiming to have the lawful right to possession of the item or items seized.

(b) The department must return the item or items to the claimant as soon as possible upon a determination that the claimant is the present lawful owner or is lawfully entitled to possession of the item or items seized.

(5) When property is sought to be forfeited on the ground that it constitutes proceeds traceable to a violation of RCW 82.32.290(4), the department must prove by a preponderance of the evidence that the property constitutes proceeds traceable to a violation of RCW 82.32.290(4).

(6)(a) When property forfeited under this section, other than proceeds traceable to a violation of RCW 82.32.290(4), is no longer required for evidentiary purposes, the department may:

(i) Destroy or have the property destroyed;

(ii) Retain the property for training or other official purposes; or

(iii) Loan or give the property to any law enforcement or tax administration agency of any state, political subdivision or municipal corporation of a state, or the United States for training or other official purposes. For purposes of this subsection (6)(a)(iii), "state" has the same meaning as in RCW 82.04.462.

(b) When proceeds traceable to a violation of RCW 82.32.290(4) forfeited under this section are no longer required for evidentiary purposes, they must be deposited into the general fund.

(7) The definitions in this subsection apply to this section:

(a) "Automated sales suppression device" means a software program that falsifies the electronic records of electronic cash registers or other point of sale systems, including transaction data and transaction reports. The term includes the software program, any device that carries the software program, or an internet link to the software program.

(b) "Electronic cash register" means a device that keeps a register or supporting documents through the means of an electronic device or computer system designed to record transaction data for the purpose of computing, compiling, or processing sales transaction data in whatever manner.

(c) "Phantom-ware" means a programming option that is hidden, preinstalled, or installed-at-a-later-time in the operating system of an electronic cash register or other point of sale device, or hardwired into the electronic cash register or other point of sale device, and that can be used to create a virtual second till or may eliminate or manipulate transaction reports that may or may not be preserved in digital formats to represent the true or manipulated record of transactions in the electronic cash register or other point of sale device.

(d) "Transaction data" means information about sales transactions, including items purchased by a customer, the price for each item, a taxability determination for each item, a segregated tax amount for each of the taxed items, the amount of cash or credit tendered, the net amount returned to the customer in change, the date and time of the purchase, the

name, address, and identification number of the vendor, and the receipt or invoice number of the transaction.

(e) "Transaction reports" means a report that includes information associated with sales transactions, taxes collected, media totals, and discount voids at an electronic cash register that can be printed on cash register tape at the end of a day or shift, or a report documenting every action at an electronic cash register or other point of sale device and that is stored electronically. [2013 c 309 § 3.]

82.32.680 Tax evasion by electronic means—Search and seizure. When the department has good reason to believe that any property subject to seizure and forfeiture under RCW 82.32.670 is being used or maintained in this state in violation of RCW 82.32.290(4)(a), the department may make affidavit of facts describing the place or thing to be searched before any judge of any superior or district court in this state. The judge may issue a search warrant directed to a law enforcement officer or agent of the department authorized under RCW 82.32.670 to seize contraband, commanding him or her to diligently search any place or thing as designated in the affidavit and search warrant, and to seize such suspected contraband and hold it until disposed of as provided by RCW 82.32.670. [2013 c 309 § 4.]

82.32.805 Tax preferences—Expiration dates. (1)(a) Except as otherwise provided in this section, every new tax preference expires on the first day of the calendar year that is subsequent to the calendar year that is ten years from the effective date of the tax preference. With respect to any new property tax exemption, the exemption does not apply to taxes levied for collection beginning in the calendar year that is subsequent to the calendar year that is ten years from the effective date of the tax preference.

(b) A future amendment that expands a tax preference does not extend the tax preference beyond the period provided in this subsection unless an extension is expressly and unambiguously stated in the amendment.

(2) Subsection (1) of this section does not apply if legislation creating a new tax preference includes an expiration date for the new tax preference.

(3) Subsection (1) of this section does not apply to any existing tax preference that is amended to clarify an ambiguity or correct a technical inconsistency. Future enacted legislation intended to make such clarifications or corrections must explicitly indicate this intent.

(4) For the purposes of this section, the following definitions apply:

(a) "New tax preference" means a tax preference that initially takes effect after August 1, 2013, or a tax preference in effect as of August 1, 2013, that is expanded or extended after August 1, 2013, even if the expanding or extending amendment includes any other change to the tax preference.

(b) "Tax preference" has the same meaning as in RCW 43.136.021 with respect to any state tax administered by the department, except does not include the Washington estate and transfer tax in chapter 83.100 RCW.

(5) The department must provide written notice to the office of the code reviser of a ten-year expiration date required under this section for a new tax preference. [2013 2nd sp.s. c 13 § 1701.]

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.04.43393.

82.32.808 Tax preferences—Performance statement requirement. (1) As provided in this section, every bill enacting a new tax preference must include a tax preference performance statement.

(2) A tax preference performance statement must state the legislative purpose for the new tax preference. The tax preference performance statement must indicate one or more of the following general categories, by reference to the applicable category specified in this subsection, as the legislative purpose of the new tax preference:

(a) Tax preferences intended to induce certain designated behavior by taxpayers;

(b) Tax preferences intended to improve industry competitiveness;

(c) Tax preferences intended to create or retain jobs;

(d) Tax preferences intended to reduce structural inefficiencies in the tax structure;

(e) Tax preferences intended to provide tax relief for certain businesses or individuals; or

(f) A general purpose not identified in (a) through (e) of this subsection.

(3) In addition to identifying the general legislative purpose of the tax preference under subsection (2) of this section, the tax preference performance statement must provide additional detailed information regarding the legislative purpose of the new tax preference.

(4) A new tax preference performance statement must specify clear, relevant, and ascertainable metrics and data requirements that allow the joint legislative audit and review committee and the legislature to measure the effectiveness of the new tax preference in achieving the purpose designated under subsection (2) of this section.

(5) If the tax preference performance statement for a new tax preference indicates a legislative purpose described in subsection (2)(b) or (c) of this section, any taxpayer claiming the new tax preference must file an annual survey in accordance with RCW 82.32.585.

(6)(a) Taxpayers claiming a new tax preference must report the amount of the tax preference claimed by the taxpayer to the department as otherwise required by statute or determined by the department as part of the taxpayer's regular tax reporting responsibilities. For new tax preferences allowing certain types of gross income of the business to be excluded from business and occupation or public utility taxation, the tax return must explicitly report the amount of the exclusion, regardless of whether it is structured as an exemption or deduction, if the taxpayer is otherwise required to report taxes to the department on a monthly or quarterly basis. For a new sales and use tax exemption, the total sales or uses subject to the exemption claimed by the buyer must be reported on an addendum to the buyer's tax return if the buyer is otherwise required to report taxes to the department on a monthly or quarterly basis and the buyer is required to submit an exemption certificate, or similar document, to the seller.

(b) This subsection does not apply to:

(i) Property tax exemptions;

(ii) Tax preferences required by constitutional law;

(iii) Tax preferences for which the tax benefit to the taxpayer is less than one thousand dollars per calendar year; or

(iv) Taxpayers who are annual filers.

(c) The department may waive the filing requirements of this subsection for taxpayers who are not required to file electronically any return, report, or survey under this chapter.

(7)(a) Except as otherwise provided in this subsection, the amount claimed by a taxpayer for any new tax preference is subject to public disclosure and is not considered confidential tax information under RCW 82.32.330, if the reporting periods subject to disclosure ended at least twenty-four months prior to the date of disclosure and the taxpayer is required to report the amount of the tax preference claimed by the taxpayer to the department under subsection (6) of this section.

(b)(i) The department may waive the public disclosure requirement under (a) of this subsection (7) for good cause. Good cause may be demonstrated by a reasonable showing of economic harm to a taxpayer if the information specified under this subsection is disclosed. The waiver under this subsection (7)(b)(i) only applies to the new tax preferences provided in chapter 13, Laws of 2013 2nd sp. sess.

(ii) The amount of the tax preference claimed by a taxpayer during a calendar year is confidential under RCW 82.32.330 and may not be disclosed under this subsection if the amount for the calendar year is less than ten thousand dollars.

(c) In lieu of the disclosure and waiver requirements under this subsection, the requirements under RCW 82.32.585 apply to any tax preference that requires a survey.

(8) If a new tax preference does not include the information required under subsections (2) through (4) of this section, the joint legislative audit and review committee is not required to perform a tax preference review under chapter 43.136 RCW, and it is legislatively presumed that it is the intent of the legislature to allow the new tax preference to expire upon its scheduled expiration date.

(9) For the purposes of this section, "tax preference" and "new tax preference" have the same meaning as provided in RCW 82.32.805. [2013 2nd sp.s. c 13 § 1702.]

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.04.43393.

Chapter 82.36 RCW MOTOR VEHICLE FUEL TAX

Sections

82.36.010	through 82.36.901 Repealed. (<i>Effective July 1, 2015.</i>)
82.36.110	Delinquency—Lien of tax—Notice.
82.36.250	Nongovernmental use of fuels, etc., acquired from United States government—Tax—Unlawful to procure or use.
82.36.310	Claim of refund.
82.36.410	Revenue to motor vehicle fund.

82.36.010 through 82.36.901 Repealed. (*Effective July 1, 2015.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

82.36.110 Delinquency—Lien of tax—Notice.

Reviser's note: RCW 82.36.110 was amended by 2013 c 23 § 328 without reference to its repeal by 2013 c 225 § 501. It has been decodified for publication purposes under RCW 1.12.025.

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82.36.250 Nongovernmental use of fuels, etc., acquired from United States government—Tax—Unlawful to procure or use.

Reviser's note: RCW 82.36.250 was amended by 2013 c 23 § 329 without reference to its repeal by 2013 c 225 § 501. It has been decodified for publication purposes under RCW 1.12.025.

82.36.310 Claim of refund.

Reviser's note: RCW 82.36.310 was amended by 2013 c 23 § 330 without reference to its repeal by 2013 c 225 § 501. It has been decodified for publication purposes under RCW 1.12.025.

82.36.410 Revenue to motor vehicle fund.

Reviser's note: RCW 82.36.410 was amended by 2013 c 23 § 331 without reference to its repeal by 2013 c 225 § 501. It has been decodified for publication purposes under RCW 1.12.025.

Chapter 82.38 RCW SPECIAL FUEL TAX ACT

Sections

82.38.010	Statement of purpose. (<i>Effective July 1, 2015.</i>)
82.38.020	Definitions. (<i>Effective July 1, 2015.</i>)
82.38.030	Tax imposed—Rate—Incidence—Allocation of proceeds—Expiration of subsection. (<i>Effective July 1, 2015.</i>)
82.38.032	Payment of tax by international fuel tax agreement licensees or persons operating under other reciprocity agreements. (<i>Effective July 1, 2015.</i>)
82.38.033	Payment of tax by a nonlicensee. (<i>Effective July 1, 2015.</i>)
82.38.035	Tax liability. (<i>Effective July 1, 2015.</i>)
82.38.045	Repealed. (<i>Effective July 1, 2015.</i>)
82.38.047	Repealed. (<i>Effective July 1, 2015.</i>)
82.38.050	Tax liability on leased motor vehicles. (<i>Effective July 1, 2015.</i>)
82.38.055	Bonding Requirements. (<i>Effective July 1, 2015.</i>)
82.38.060	Tax computation on mileage basis. (<i>Effective until July 1, 2015.</i>)
82.38.060	Tax computation on mileage basis (<i>as amended by 2013 c 23</i>).
82.38.060	Tax computation on mileage basis (<i>as amended by 2013 c 225</i>). (<i>Effective July 1, 2015.</i>)
82.38.065	Dyed special fuel use—Authorization, license required—Imposition of tax. (<i>Effective July 1, 2015.</i>)
82.38.066	Dyed special fuel—Requirements—Marking—Notice. (<i>Effective July 1, 2015.</i>)
82.38.072	Dyed special fuel—Penalties. (<i>Effective July 1, 2015.</i>)
82.38.075	Natural gas, propane—Annual license fee in lieu of special fuel tax for use in motor vehicles—Schedule—Decal or other identifying device. (<i>Effective July 1, 2015.</i>)
82.38.080	Exemptions. (<i>Effective July 1, 2015.</i>)
82.38.083	Deductions—Handling losses—Reports. (<i>Effective July 1, 2015.</i>)
82.38.090	Penalty for acting without license—Separate licenses for separate activities—Interstate commerce—Exception. (<i>Effective July 1, 2015.</i>)
82.38.110	Application for license—Federal certificate of registry—Investigation—Fee—Bond or security. (<i>Effective July 1, 2015.</i>)
82.38.120	Issuance of license—Refusal. (<i>Effective July 1, 2015.</i>)
82.38.130	Repealed. (<i>Effective July 1, 2015.</i>)
82.38.140	Fuel records—Reports—Inspection. (<i>Effective July 1, 2015.</i>)
82.38.150	Periodic tax reports—Forms—Filing—Time extensions during state of emergency. (<i>Effective July 1, 2015.</i>)
82.38.160	Computation and payment of tax—Remittance—Electronic funds transfer. (<i>Effective July 1, 2015.</i>)
82.38.170	Civil and statutory penalties and interest—Deficiency assessments. (<i>Effective July 1, 2015.</i>)
82.38.180	Refunds and credits. (<i>Effective July 1, 2015.</i>)
82.38.183	Refund to aeronautics account. (<i>Effective July 1, 2015.</i>)
82.38.190	Claim of refund or credit. (<i>Effective July 1, 2015.</i>)
82.38.195	Date of mailing deemed date of filing or receipt—Timely mailing bars penalties and tolls statutory time limitations. (<i>Effective July 1, 2015.</i>)
82.38.205	Injunctions—Writs. (<i>Effective July 1, 2015.</i>)
82.38.210	Tax lien—Filing. (<i>Effective July 1, 2015.</i>)
82.38.220	Delinquency—Notice to debtors—Transfer or disposition of property, credits, or debts prohibited—Lien—Answer. (<i>Effective July 1, 2015.</i>)

- 82.38.230 Delinquency—Seizure and sale of property—Notice—Distribution of excess. (*Effective July 1, 2015.*)
- 82.38.235 Assessments—Warrant—Lien—Filing fee—Writs of execution and garnishment. (*Effective July 1, 2015.*)
- 82.38.240 Repealed. (*Effective July 1, 2015.*)
- 82.38.245 Bankruptcy proceedings—Notice. (*Effective July 1, 2015.*)
- 82.38.250 Repealed. (*Effective July 1, 2015.*)
- 82.38.255 Discontinuance, sale, or transfer of business—Notice—Payment of taxes, interest, penalties. (*Effective July 1, 2015.*)
- 82.38.260 Administration and enforcement. (*Effective July 1, 2015.*)
- 82.38.265 Repealed. (*Effective July 1, 2015.*)
- 82.38.270 Violations—Penalties. (*Effective July 1, 2015.*)
- 82.38.275 Investigatory power.
- 82.38.280 State preempts tax field. (*Effective July 1, 2015.*)
- 82.38.290 Disposition of funds. (*Effective July 1, 2015.*)
- 82.38.310 Agreement with tribe for fuel taxes. (*Effective July 1, 2015.*)
- 82.38.320 Bulk storage of special fuel by international fuel tax agreement licensee—Authorization to pay tax at time of filing tax return—Schedule—Report—Exemptions. (*Effective July 1, 2015.*)
- 82.38.350 Repealed. (*Effective July 1, 2015.*)
- 82.38.360 Fuel tax evasion—Seizure and forfeiture. (*Effective July 1, 2015.*)
- 82.38.365 Fuel tax evasion—Forfeiture procedure. (*Effective July 1, 2015.*)
- 82.38.370 Fuel tax evasion—Forfeited property. (*Effective July 1, 2015.*)
- 82.38.380 Fuel tax evasion—Search and seizure. (*Effective July 1, 2015.*)
- 82.38.385 Rules. (*Effective July 1, 2015.*)
- 82.38.800 through 82.38.941 Decodified. (*Effective July 1, 2015.*)

82.38.010 Statement of purpose. (*Effective July 1, 2015.*) The purpose of this chapter is to impose a tax upon fuels used for the propulsion of motor vehicles upon the highways of this state. [2013 c 225 § 101; 1979 c 40 § 1; 1971 ex.s. c 175 § 2.]

Effective date—2013 c 225: "This act takes effect July 1, 2015." [2013 c 225 § 650.]

82.38.020 Definitions. (*Effective July 1, 2015.*) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Blended fuel" means a mixture of fuel and another liquid, other than a de minimis amount of the liquid.

(2) "Blender" means a person who produces blended fuel outside the bulk transfer-terminal system.

(3) "Bond" means a bond duly executed with a corporate surety qualified under chapter 48.28 RCW payable to the state of Washington conditioned upon faithful performance of all requirements of this chapter.

(4) "Bulk transfer-terminal system" means the fuel distribution system consisting of refineries, pipelines, vessels, and terminals. Fuel in a refinery, pipeline, vessel, or terminal is in the bulk transfer-terminal system.

(5) "Bulk transfer" means a transfer of fuel by pipeline or vessel.

(6) "Bulk storage" means the placing of fuel into a receptacle other than the fuel supply tank of a motor vehicle.

(7) "Department" means the department of licensing.

(8) "Distributor" means a person who acquires fuel outside the bulk transfer-terminal system for importation into Washington, from a terminal or refinery rack located within Washington for distribution within Washington, or for immediate export outside the state of Washington.

(9) "Dyed special fuel user" means a person authorized by the internal revenue code to operate a motor vehicle on the highway using dyed special fuel, in which the use is not exempt from the fuel tax.

(10) "Evasion" or "evade" means to diminish or avoid the computation, assessment, or payment of authorized taxes or fees through:

(a) A knowing: False statement; omission; misrepresentation of fact; or other act of deception;

(b) An intentional: Failure to file a return or report; or other act of deception; or

(c) The unlawful use of dyed special fuel.

(11) "Exempt sale" means the sale of fuel to a person whose use of fuel is exempt from the fuel tax.

(12) "Export" means to obtain fuel in this state for sales or distribution outside the state. Fuel distributed to a federally recognized Indian tribal reservation located within the state of Washington is not considered exported outside this state.

(13) "Exporter" means a person who purchases fuel physically located in this state at the time of purchase and directly exports the fuel by a means other than the bulk transfer-terminal system to a destination outside of the state. If the exporter of record is acting as an agent, the person for whom the agent is acting is the exporter. If there is no exporter of record, the owner of the fuel at the time of exportation is the exporter.

(14) "Fuel" means motor vehicle fuel or special fuel.

(15) "Fuel user" means a person engaged in uses of fuel that are not specifically exempted from the fuel tax imposed under this chapter.

(16) "Highway" means every way or place open to the use of the public, as a matter of right, for the purpose of vehicular travel.

(17) "Import" means to bring fuel into this state by a means of conveyance other than the fuel supply tank of a motor vehicle.

(18) "Importer" means a person who imports fuel into the state by a means other than the bulk transfer-terminal system. If the importer of record is acting as an agent, the person for whom the agent is acting is the importer. If there is no importer of record, the owner of the fuel at the time of importation is the importer.

(19) "International fuel tax agreement licensee" means a fuel user operating qualified motor vehicles in interstate commerce and licensed by the department under the international fuel tax agreement.

(20) "Licensee" means a person holding a license issued under this chapter.

(21) "Motor vehicle" means a self-propelled vehicle utilizing fuel as a means of propulsion.

(22) "Motor vehicle fuel" means gasoline and any other inflammable gas or liquid, by whatsoever name the gasoline, gas, or liquid may be known or sold the chief use of which is as a fuel for the propulsion of motor vehicles or vessels.

(23) "Natural gas" means naturally occurring mixtures of hydrocarbon gases and vapors consisting principally of methane, whether in gaseous or liquid form.

(24) "Person" means any individual, partnership, association, public or private corporation, limited liability company, or any other type of legal or commercial entity, including their members, managers, partners, directors, or officers.

(25) "Position holder" means a person who holds the inventory position in fuel, as reflected by the records of the terminal operator. A person holds the inventory position if

the person has a contractual agreement with the terminal for the use of storage facilities and terminating services. "Position holder" includes a terminal operator that owns fuel in their terminal.

(26) "Rack" means a mechanism for delivering fuel from a refinery or terminal into a truck, trailer, railcar, or other means of nonbulk transfer.

(27) "Refiner" means a person who owns, operates, or otherwise controls a refinery.

(28) "Removal" means a physical transfer of fuel other than by evaporation, loss, or destruction.

(29) "Special fuel" means diesel fuel, propane, natural gas, kerosene, biodiesel, and any other combustible liquid or gas by whatever name the liquid or gas may be known or sold for the generation of power to propel a motor vehicle on the highways, except it does not include motor vehicle fuel.

(30) "Supplier" means a person who holds a federal certificate of registry issued under the internal revenue code and authorizes the person to engage in tax-free transactions of fuel in the bulk transfer-terminal system.

(31) "Terminal" means a fuel storage and distribution facility that has been assigned a terminal control number by the internal revenue service.

(32) "Terminal operator" means a person who owns, operates, or otherwise controls a terminal.

(33) "Two-party exchange" or "buy-sell agreement" means a transaction in which taxable fuel is transferred from one licensed supplier to another licensed supplier whereby the supplier that is the position holder agrees to deliver taxable fuel to the other supplier or the other supplier's customer at the terminal at which the delivering supplier is the position holder. [2013 c 225 § 102; 2002 c 183 § 1; 2001 c 270 § 4; 1998 c 176 § 50; 1995 c 287 § 3; 1994 c 262 § 22; 1988 c 122 § 1; 1979 c 40 § 2; 1971 ex.s. c 175 § 3.]

Effective date—2013 c 225: See note following RCW 82.38.010.

82.38.030 Tax imposed—Rate—Incidence—Allocation of proceeds—Expiration of subsection. (Effective July 1, 2015.) (1) There is levied and imposed upon fuel licensees a tax at the rate of twenty-three cents per gallon of fuel, or each one hundred cubic feet of compressed natural gas, measured at standard pressure and temperature.

(2) Beginning July 1, 2003, an additional and cumulative tax rate of five cents per gallon of fuel, or each one hundred cubic feet of compressed natural gas, measured at standard pressure and temperature is imposed on fuel licensees. This subsection (2) expires when the bonds issued for transportation 2003 projects are retired.

(3) Beginning July 1, 2005, an additional and cumulative tax rate of three cents per gallon of fuel, or each one hundred cubic feet of compressed natural gas, measured at standard pressure and temperature is imposed on fuel licensees.

(4) Beginning July 1, 2006, an additional and cumulative tax rate of three cents per gallon of fuel, or each one hundred cubic feet of compressed natural gas, measured at standard pressure and temperature is imposed on fuel licensees.

(5) Beginning July 1, 2007, an additional and cumulative tax rate of two cents per gallon of fuel, or each one hundred cubic feet of compressed natural gas, measured at standard pressure and temperature is imposed on fuel licensees.

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(6) Beginning July 1, 2008, an additional and cumulative tax rate of one and one-half cents per gallon of fuel, or each one hundred cubic feet of compressed natural gas, measured at standard pressure and temperature is imposed on fuel licensees.

(7) Taxes are imposed when:

(a) Fuel is removed in this state from a terminal if the fuel is removed at the rack unless the removal is by a licensed supplier or distributor for direct delivery to a destination outside of the state, or the removal is by a fuel supplier for direct delivery to an international fuel tax agreement licensee under RCW 82.38.320;

(b) Fuel is removed in this state from a refinery if either of the following applies:

(i) The removal is by bulk transfer and the refiner or the owner of the fuel immediately before the removal is not a licensed supplier; or

(ii) The removal is at the refinery rack unless the removal is to a licensed supplier or distributor for direct delivery to a destination outside of the state, or the removal is to a licensed supplier for direct delivery to an international fuel tax agreement licensee under RCW 82.38.320;

(c) Fuel enters into this state for sale, consumption, use, or storage, unless the fuel enters this state for direct delivery to an international fuel tax agreement licensee under RCW 82.38.320, if either of the following applies:

(i) The entry is by bulk transfer and the importer is not a licensed supplier; or

(ii) The entry is not by bulk transfer;

(d) Fuel enters this state by means outside the bulk transfer-terminal system and is delivered directly to a licensed terminal unless the owner is a licensed distributor or supplier;

(e) Fuel is sold or removed in this state to an unlicensed entity unless there was a prior taxable removal, entry, or sale of the fuel;

(f) Blended fuel is removed or sold in this state by the blender of the fuel. The number of gallons of blended fuel subject to tax is the difference between the total number of gallons of blended fuel removed or sold and the number of gallons of previously taxed fuel used to produce the blended fuel;

(g) Dyed special fuel is used on a highway, as authorized by the internal revenue code, unless the use is exempt from the fuel tax;

(h) Dyed special fuel is held for sale, sold, used, or is intended to be used in violation of this chapter;

(i) Special fuel purchased by an international fuel tax agreement licensee under RCW 82.38.320 is used on a highway; and

(j) Fuel is sold by a licensed fuel supplier to a fuel distributor or fuel blender and the fuel is not removed from the bulk transfer-terminal system. [2013 c 225 § 103; 2007 c 515 § 21; 2005 c 314 § 102; 2003 c 361 § 402; 2002 c 183 § 2; 2001 c 270 § 6; 1998 c 176 § 51; 1996 c 104 § 7; 1989 c 193 § 3; 1983 1st ex.s. c 49 § 30; 1979 c 40 § 3; 1977 ex.s. c 317 § 5; 1975 1st ex.s. c 62 § 1; 1973 1st ex.s. c 156 § 1; 1972 ex.s. c 135 § 2; 1971 ex.s. c 175 § 4.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Severability—Effective date—2007 c 515: See notes following RCW 82.36.010.

Effective date—2005 c 314 §§ 101-107, 109, 303-309, and 401: See note following RCW 46.68.290.

Part headings not law—2005 c 314: See note following RCW 46.68.035.

Findings—Part headings not law—Severability—2003 c 361: See notes following RCW 82.36.025.

Effective dates—2003 c 361: See note following RCW 82.08.020.

Additional notes found at www.leg.wa.gov

82.38.032 Payment of tax by international fuel tax agreement licensees or persons operating under other reciprocity agreements. (Effective July 1, 2015.) International fuel tax agreement licensees, or persons operating motor vehicles under other reciprocity agreements entered into with the state of Washington, are liable for and must pay the tax under RCW 82.38.030 to the department on fuel used to operate motor vehicles on the highways of this state. This provision does not apply if the tax under RCW 82.38.030 has previously been imposed and paid by the international fuel tax agreement licensee or if the use of such fuel is exempt from the tax under this chapter. [2013 c 225 § 104; 2007 c 515 § 22; 1998 c 176 § 52.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Severability—Effective date—2007 c 515: See notes following RCW 82.36.010.

82.38.033 Payment of tax by a nonlicensee. (Effective July 1, 2015.) Every person, other than a licensee, who acquires fuel upon which payment of tax is required must, if the tax has not been paid, comply with the provisions of this chapter, and pay tax at the rate provided in RCW 82.38.030. The person is subject to the same duties and penalties imposed upon licensees. [2013 c 225 § 208.]

Effective date—2013 c 225: See note following RCW 82.38.010.

82.38.035 Tax liability. (Effective July 1, 2015.) (1) A licensed supplier is liable for and must pay tax on fuel as provided in RCW 82.38.030(7) (a) and (i). On a two-party exchange, or buy-sell agreement between two licensed suppliers, the receiving exchange partner or buyer shall be liable for and pay the tax.

(2) A refiner is liable for and must pay tax on fuel removed from a refinery as provided in RCW 82.38.030(7)(b).

(3) A licensed distributor is liable for and must pay tax on fuel as provided in RCW 82.38.030(7)(c).

(4) A licensed blender is liable for and must pay tax on fuel as provided in RCW 82.38.030(7)(f).

(5) A licensed dyed special fuel user is liable for and must pay tax on fuel as provided in RCW 82.38.030(7)(g).

(6) A terminal operator is jointly and severally liable for and must pay tax on fuel if, at the time of removal:

(a) The position holder of the fuel is a person other than the terminal operator and is not a licensee;

(b) The terminal operator is not a licensee;

(c) The position holder has an expired internal revenue notification certificate;

(d) The terminal operator has reason to believe that information on the internal revenue notification certificate is false.

(7) A terminal operator is jointly and severally liable for and must pay tax on special fuel if the special fuel is removed and is not dyed or marked in accordance with internal revenue service requirements, and the terminal operator provides a person with a bill of lading, shipping paper, or similar document indicating the special fuel is dyed or marked in accordance with internal revenue service requirements.

(8) International fuel tax agreement licensees, or persons operating motor vehicles under other reciprocity agreements entered into with the state of Washington, are liable for and must pay tax on fuel used to operate motor vehicles on state highways.

(9) Dyed special fuel users are liable for and must pay tax on dyed special fuel used on state highways unless the use of the fuel is exempt from the tax. [2013 c 225 § 105; 2007 c 515 § 23; 2005 c 314 § 107; 2003 c 361 § 405; 2001 c 270 § 7; 1998 c 176 § 53.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Severability—Effective date—2007 c 515: See notes following RCW 82.36.010.

Effective date—2005 c 314 §§ 101-107, 109, 303-309, and 401: See note following RCW 46.68.290.

Part headings not law—2005 c 314: See note following RCW 46.68.035.

Findings—Part headings not law—Severability—2003 c 361: See notes following RCW 82.36.025.

Effective dates—2003 c 361: See note following RCW 82.08.020.

82.38.045 Repealed. (Effective July 1, 2015.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

82.38.047 Repealed. (Effective July 1, 2015.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

82.38.050 Tax liability on leased motor vehicles. (Effective July 1, 2015.) (1) A lessor leasing motor vehicles without drivers to lessees for interstate operation, may be the fuel user when the lessor supplies or pays for the fuel consumed in the motor vehicles. Any lessee may exclude motor vehicles from reports and liabilities pursuant to this chapter, but only if the excluded motor vehicles have been leased from a lessor holding a valid international fuel tax agreement license.

(2) The lessor is responsible for fuel tax licensing and reporting for the operation of motor vehicles leased for less than thirty days. [2013 c 225 § 106; 2007 c 515 § 24; 1990 c 250 § 82; 1983 c 242 § 1; 1971 ex.s. c 175 § 6.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Severability—Effective date—2007 c 515: See notes following RCW 82.36.010.

Additional notes found at www.leg.wa.gov

82.38.055 Bonding Requirements. (Effective July 1, 2015.) (1) A license may not be issued or continued in force unless a bond is provided to secure payment of all taxes, interest, and penalties. This requirement may be waived for:

(a) Licensed dyed special fuel users;

(b) International fuel tax agreement licensees; or

(c) Licensed fuel distributors who, upon determination by the department, have sufficient resources, assets, other financial instruments, or other means to adequately make payments on monthly fuel tax payments, penalties, and interest.

(2) The department may require a licensee to post a bond if the department determines a bond is required to protect the interests of the state.

(3) The total amount of the bond or bonds is three times the estimated monthly fuel tax liability. The total bonding amount may never be less than five thousand dollars nor more than one hundred thousand dollars.

(4) In lieu of a bond, a licensee may deposit with the state treasurer, a like amount of money of the United States, or bonds or other obligations of the United States, the state, or any county of the state, of a market value not less than the amount of the required bond.

(5) The department may require a licensee to increase the bond amount or to deposit additional securities as described in this section if the security of the bond or the market value of the securities becomes impaired or inadequate.

(6) Any surety on a bond furnished by a licensee must be released and discharged from any liability accruing on such bond after the expiration of forty-five days from the date the surety provided written notification to the department. The provisions of this section do not relieve, release, or discharge the surety from any liability accrued or which will accrue before the expiration of the forty-five day period. The department must promptly notify the licensee who furnished the bond, and unless the licensee, on or before the expiration of the forty-five day period, files a new bond the department must cancel the license. [2013 c 225 § 201.]

Effective date—2013 c 225: See note following RCW 82.38.010.

82.38.060 Tax computation on mileage basis. (Effective until July 1, 2015.) In the event the tax on special fuel imported into this state in the fuel supply tanks of motor vehicles for taxable use on Washington highways can be more accurately determined on a mileage basis, the department is authorized to approve and adopt such basis. When a special fuel user imports special fuel into or exports special fuel from the state of Washington in the fuel supply tanks of motor vehicles, the amount of special fuel consumed in such vehicles on Washington highways shall be deemed to be such proportion of the total amount of such special fuel consumed in his or her entire operations within and without this state as the total number of miles traveled on the public highways within this state bears to the total number of miles traveled within and without the state. The department may also adopt such mileage basis for determining the taxable use of special fuel used in motor vehicles which travel regularly over prescribed courses on and off the highways within the state of Washington. In the absence of records showing the number of miles actually operated per gallon of special fuel consumed, fuel consumption shall be calculated at the rate of one gallon for every: (1) Four miles traveled by vehicles over forty thousand pounds gross vehicle weight; (2) seven miles traveled by vehicles twelve thousand one to forty thousand pounds gross vehicle weight; (3) ten miles traveled by vehicles six thousand one to twelve thousand pounds gross vehicle weight; and (4) sixteen miles traveled by vehicles six

thousand pounds or less gross vehicle weight. [2013 c 23 § 332; 1996 c 90 § 1; 1989 c 142 § 1; 1971 ex.s. c 175 § 7.]

82.38.060 Tax computation on mileage basis (as amended by 2013 c 23). In the event the tax on special fuel imported into this state in the fuel supply tanks of motor vehicles for taxable use on Washington highways can be more accurately determined on a mileage basis, the department is authorized to approve and adopt such basis. When a special fuel user imports special fuel into or exports special fuel from the state of Washington in the fuel supply tanks of motor vehicles, the amount of special fuel consumed in such vehicles on Washington highways shall be deemed to be such proportion of the total amount of such special fuel consumed in his or her entire operations within and without this state as the total number of miles traveled on the public highways within this state bears to the total number of miles traveled within and without the state. The department may also adopt such mileage basis for determining the taxable use of special fuel used in motor vehicles which travel regularly over prescribed courses on and off the highways within the state of Washington. In the absence of records showing the number of miles actually operated per gallon of special fuel consumed, fuel consumption shall be calculated at the rate of one gallon for every: (1) Four miles traveled by vehicles over forty thousand pounds gross vehicle weight; (2) seven miles traveled by vehicles twelve thousand one to forty thousand pounds gross vehicle weight; (3) ten miles traveled by vehicles six thousand one to twelve thousand pounds gross vehicle weight; and (4) sixteen miles traveled by vehicles six thousand pounds or less gross vehicle weight. [2013 c 23 § 332; 1996 c 90 § 1; 1989 c 142 § 1; 1971 ex.s. c 175 § 7.]

82.38.060 Tax computation on mileage basis (as amended by 2013 c 225). (Effective July 1, 2015.) ~~(In the event the tax on special fuel imported into this state in the fuel supply tanks of motor vehicles for taxable use on Washington highways can be more accurately determined on a mileage basis the department is authorized to approve and adopt such basis. When a special fuel user imports special fuel into or exports special fuel from the state of Washington in the fuel supply tanks of motor vehicles, the amount of special fuel consumed in such vehicles on Washington highways shall be deemed to be such proportion of the total amount of such special fuel consumed in his entire operations within and without this state as the total number of miles traveled on the public highways within this state bears to the total number of miles traveled within and without the state. The department may also adopt such mileage basis for determining the taxable use of special fuel used in motor vehicles which travel regularly over prescribed courses on and off the highways within the state of Washington. In the absence of records showing the number of miles actually operated per gallon of special fuel consumed, fuel consumption shall be calculated at the rate of one gallon for every: (1) Four miles traveled by vehicles over forty thousand pounds gross vehicle weight; (2) seven miles traveled by vehicles twelve thousand one to forty thousand pounds gross vehicle weight; (3) ten miles traveled by vehicles six thousand one to twelve thousand pounds gross vehicle weight; and (4) sixteen miles traveled by vehicles six thousand pounds or less gross vehicle weight))~~ If tax on fuel placed in the fuel supply tanks of motor vehicles for taxable use on Washington highways can be more accurately determined on a mileage basis the department is authorized to adopt such basis. In the absence of records showing the number of miles actually operated per gallon of fuel consumed, fuel consumption must be calculated by the department. [2013 c 225 § 107; 1996 c 90 § 1; 1989 c 142 § 1; 1971 ex.s. c 175 § 7.]

Reviser's note: RCW 82.38.060 was amended twice during the 2013 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Effective date—2013 c 225: See note following RCW 82.38.010.

82.38.065 Dyed special fuel use—Authorization, license required—Imposition of tax. (Effective July 1, 2015.) A person may operate or maintain a licensed or required to be licensed motor vehicle with dyed special fuel in the fuel supply tank only if the use is authorized by the internal revenue code and the person is either the holder of a dyed special fuel user license or the use is exempt from the special fuel tax. A person may maintain dyed special fuel for a taxable use in bulk storage if the person is the holder of a

dyed special fuel user license issued under this chapter. [2013 c 225 § 108; 2002 c 183 § 3; 1998 c 176 § 56.]

Effective date—2013 c 225: See note following RCW 82.38.010.

82.38.066 Dyed special fuel—Requirements—Marking—Notice. (Effective July 1, 2015.) (1) Special fuel satisfies the dyeing and marking requirements of this chapter if it meets the dyeing and marking requirements of the internal revenue service, including, but not limited to, requirements respecting type, dosage, and timing.

(2) Notice is required with respect to dyed special fuel. A notice stating "DYED DIESEL FUEL, NONTAXABLE USE ONLY, PENALTY FOR TAXABLE USE" must be:

(a) Provided by the terminal operator to a person who receives dyed special fuel at a terminal rack;

(b) Provided by a seller of dyed special fuel to the buyer if the special fuel is located outside the bulk transfer-terminal system and is not sold from a retail pump posted in accordance with the requirements of this subsection; or

(c) Posted by a seller on a retail pump dispensing dyed special fuel and provided by the seller of dyed special fuel to the buyer at the retail pump. [2013 c 225 § 109; 1998 c 176 § 57.]

Effective date—2013 c 225: See note following RCW 82.38.010.

82.38.072 Dyed special fuel—Penalties. (Effective July 1, 2015.) (1) Unless the use is exempt from the special fuel tax, or expressly authorized by the federal internal revenue code and this chapter, a person having dyed special fuel in the fuel supply tank of a motor vehicle that is licensed or required to be licensed is subject to a civil penalty of ten dollars for each gallon of dyed special fuel placed into the supply tank of the motor vehicle, or one thousand dollars, whichever is greater. The penalties must be collected and administered under this chapter.

(2) A person who maintains dyed special fuel in bulk storage for an intended sale or use in violation of this chapter is subject to a civil penalty of ten dollars for each gallon of dyed special fuel, or one thousand dollars, whichever is greater, currently or previously maintained in bulk storage by the person. The penalties must be collected and administered under this chapter.

(3) For the purposes of enforcement of this section, the Washington state patrol or other commercial vehicle safety alliance-certified officers may inspect, collect, and secure samples of special fuel used in the propulsion of a vehicle operated upon the highways of this state to detect the presence of dye or other chemical compounds.

(4) RCW 43.05.110 does not apply to the civil penalties imposed under subsection (1) of this section. [2013 c 225 § 204.]

Effective date—2013 c 225: See note following RCW 82.38.010.

82.38.075 Natural gas, propane—Annual license fee in lieu of special fuel tax for use in motor vehicles—Schedule—Decal or other identifying device. (Effective July 1, 2015.) (1) To encourage the use of nonpolluting fuels, an annual license fee in lieu of the tax imposed by RCW 82.38.030 is imposed upon the use of natural gas or propane used in any motor vehicle. The annual license fee must be based upon the following schedule and formula:

VEHICLE TONNAGE (GVW)	FEE
0 - 6,000	\$ 45
6,001 - 10,000	\$ 45
10,001 - 18,000	\$ 80
18,001 - 28,000	\$ 110
28,001 - 36,000	\$ 150
36,001 and above	\$ 250

(2) To determine the annual license fee for a registration year, the appropriate dollar amount in the schedule is multiplied by the fuel tax rate per gallon effective on July 1st of the preceding calendar year and the product is divided by 12 cents.

(3) The department, in addition to the resulting fee, must charge an additional fee of five dollars as a handling charge for each license issued.

(4) The vehicle tonnage fee must be prorated so the annual license will correspond with the staggered vehicle licensing system.

(5) A decal or other identifying device issued upon payment of the annual fee must be displayed as prescribed by the department as authority to purchase this fuel.

(6) Persons selling or dispensing natural gas or propane may not sell or dispense this fuel for their own use or the use of others into tanks of vehicles powered by this fuel which do not display a valid decal or other identifying device.

(7) Vehicles registered in jurisdictions outside the state of Washington are exempt from this section.

(8) Any person selling or dispensing natural gas or propane into the tank of a motor vehicle powered by this fuel, except as prescribed in this chapter, is subject to the penalty provisions of this chapter. [2013 c 225 § 110; 1983 c 212 § 1; 1981 c 129 § 1; 1979 c 48 § 1; 1977 ex.s. c 335 § 1.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Additional notes found at www.leg.wa.gov

82.38.080 Exemptions. (Effective July 1, 2015.) (1) The following sales of special fuel are exempt from payment of the tax imposed by this chapter:

(a) Sales to the state of Washington, any county, or any municipality when the fuel is used for street and highway construction and maintenance purposes in motor vehicles owned and operated by the state, county, or municipality;

(b) Sales for use in publicly owned firefighting equipment;

(c) Sales to the United States government;

(d) Sales to a private, nonprofit transportation provider regulated under chapter 81.66 RCW when the fuel is for use in providing transportation services for persons with special transportation needs;

(e) Sales of waste vegetable oil as defined under RCW 82.08.0205, if the oil is used to manufacture biodiesel;

(f)(i) Sales to privately owned urban passenger transportation systems and carriers as defined in chapters 81.68 and 81.70 RCW. No exemption or refund may be granted for special fuel used by any privately owned urban transportation vehicle, or vehicle operated pursuant to chapters 81.68 and 81.70 RCW, on any trip where any portion of the trip is more

than twenty-five road miles beyond the corporate limits of the county in which the trip originated.

(ii) For purposes of this subsection (1)(f), "privately owned urban passenger transportation system" means every privately owned transportation system having as its principal source of revenue the income from transporting persons for compensation by means of motor vehicles or trackless trolleys, each having a seating capacity for over fifteen persons over prescribed routes in such a manner that the routes of such motor vehicles or trackless trolleys, either alone or in conjunction with routes of other such motor vehicles or trackless trolleys subject to routing by the same transportation system, do not extend for a distance exceeding twenty-five road miles beyond the corporate limits of the county in which the original starting points of such motor vehicles or trackless trolleys are located; and

(g)(i) Sales to publicly owned and operated urban passenger transportation systems.

(ii) For the purposes of this subsection (1)(g), "publicly owned and operated urban passenger transportation systems" include public transportation benefit areas under chapter 36.57A RCW, metropolitan municipal corporations under chapter 36.56 RCW, city owned transit systems under chapter 35.58 RCW, county public transportation authorities under chapter 36.57 RCW, unincorporated transportation benefit areas under chapter 36.57 RCW, and regional transit authorities under chapter 81.112 RCW.

(2) The following sales of motor vehicle fuel are exempt from payment of the tax imposed by this chapter:

(a) Sales to the armed forces of the United States or to the national guard when the fuel is used exclusively in ships or for export from this state;

(b) Sales to foreign diplomatic and consular missions, if the foreign government represented grants an equivalent exemption to missions and personnel of the United States performing similar services in the foreign country; and

(c) Sales of fuel used exclusively for racing that is not legally allowed on the public highways of this state. [2013 c 225 § 111; 2009 c 352 § 1; 2008 c 237 § 1; 1998 c 176 § 60; 1996 c 244 § 6; 1993 c 141 § 2; 1990 c 185 § 1; 1983 c 108 § 4; 1979 c 40 § 4; 1973 c 42 § 1. Prior: 1972 ex.s. c 138 § 2; 1972 ex.s. c 49 § 1; 1971 ex.s. c 175 § 9.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Effective date—2008 c 237: See note following RCW 82.08.0205.

Additional notes found at www.leg.wa.gov

82.38.083 Deductions—Handling losses—Reports. (*Effective July 1, 2015.*) Upon the taxable removal of motor vehicle fuel, the licensee who acquired or removed the motor vehicle fuel, other than a motor vehicle fuel distributor acting as an exporter, is entitled to a deduction from the tax liability on the gallonage of taxable motor vehicle fuel removed in order to account for handling losses, as follows: For a motor vehicle fuel supplier acting as a distributor, one-quarter of one percent; and for all other licensees, thirty one-hundredths of one percent. For those licensees required to file tax reports, the handling loss deduction must be reported on tax reports. [2013 c 225 § 205.]

Effective date—2013 c 225: See note following RCW 82.38.010.

82.38.090 Penalty for acting without license—Separate licenses for separate activities—Interstate commerce—Exception. (*Effective July 1, 2015.*) (1) It is unlawful for any person to engage in business in this state as any of the following unless the person is the holder of a license issued by the department authorizing the person to engage in that business:

- (a) Fuel supplier;
- (b) Fuel distributor;
- (c) Fuel blender;
- (d) Terminal operator;
- (e) Dyed special fuel user; or
- (f) International fuel tax agreement licensee.

(2) A person engaged in more than one activity for which a license is required must have a separate license classification for each activity; however, a fuel supplier is not required to obtain a separate license classification for fuel distributor or fuel blender.

(3) Fuel users operating motor vehicles in interstate commerce having two axles and a gross vehicle weight or registered gross vehicle weight not exceeding twenty-six thousand pounds are not required to be licensed. Fuel users operating motor vehicles in interstate commerce having two axles and a gross vehicle weight or registered gross vehicle weight exceeding twenty-six thousand pounds, or having three or more axles regardless of weight, or a combination of vehicles, when the combination exceeds twenty-six thousand pounds gross vehicle weight, must comply with the licensing and reporting requirements of this chapter. A copy of the license must be carried in each motor vehicle entering this state from another state or province. [2013 c 225 § 112; 1998 c 176 § 61; 1995 c 20 § 13; 1994 c 262 § 23; 1993 c 54 § 6; 1991 c 339 § 6; 1990 c 250 § 84; 1986 c 29 § 2; 1979 c 40 § 5; 1971 ex.s. c 175 § 10.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Additional notes found at www.leg.wa.gov

82.38.110 Application for license—Federal certificate of registry—Investigation—Fee—Bond or security. (*Effective July 1, 2015.*) (1) Application for a license must be made to the department. The application must be filed in a manner prescribed by the department and must contain information the department requires. For purposes of this section, the term "applicant" has the same meaning as "person" as provided in RCW 82.38.020.

(2) An application for a license other than an application for a dyed special fuel user or international fuel tax agreement license must contain the following information to the extent it applies to the applicant:

- (a) Proof the department may require concerning the applicant's identity;
- (b) The applicant's business structure and place of business, including proof the applicant is licensed to conduct business in this state;
- (c) The employment history of the applicant and partner, officer, or director;
- (d) A bank reference and whether the applicant or partner, officer, or director has ever been adjudged bankrupt or has an unsatisfied judgment;
- (e) Whether the applicant or partner, officer, or director has been convicted of a crime or suffered a civil judgment

directly related to the distribution and sale of fuel within the last ten years.

(3) An applicant must identify each state, province, or country the applicant intends to import fuel from by means other than bulk transfer and must maintain the appropriate license required of each state, province, or country.

(4) An applicant must identify each state, province, or country the applicant intends to export fuel to by means other than bulk transfer and must maintain the appropriate license required of each state, province, or country.

(5) An applicant for a fuel supplier or terminal operator license must have the appropriate federal certificate of registry issued by the internal revenue service for the activity in which the applicant is engaging.

(6) An applicant must submit a surety bond in an amount, form, and manner set by the department. In lieu of a bond, a licensed distributor may provide evidence to the department of sufficient assets to adequately meet fuel tax payments, penalties, interest, or other obligations arising out of this chapter.

(7) An application for a dyed special fuel user license must be made in a manner prescribed by the department.

(8) An application for an international fuel tax agreement license must be made in a manner prescribed by the department. A fee of ten dollars per set of international fuel tax agreement decals issued to each applicant or licensee must be charged.

(9) For the purpose of considering any application for a license, the department may inspect, cause an inspection, investigate, or cause an investigation of the records of this or any other state, Canadian province, country, or the federal government to ascertain the veracity of the information on the application and the applicant's criminal, civil, and licensing history. [2013 c 225 § 113; 2002 c 352 § 26; 2001 c 270 § 8; 1998 c 176 § 63; 1996 c 104 § 8; 1988 c 122 § 2; 1983 c 242 § 2; 1979 c 40 § 7; 1977 c 26 § 1; 1973 1st ex.s. c 156 § 4; 1971 ex.s. c 175 § 12.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Additional notes found at www.leg.wa.gov

82.38.120 Issuance of license—Refusal. (Effective July 1, 2015.) (1) The department may refuse to issue to, or suspend or revoke a license of any licensee or applicant:

(a) Who formerly held a license issued under chapter 82.36, 82.38, 82.42, or 46.87 RCW which has been suspended or revoked for cause;

(b) Who is a subterfuge for the real party in interest whose license issued under chapter 82.36, 82.38, 82.42, or 46.87 RCW has been revoked for cause;

(c) Who, as an individual licensee, or partner, officer, director, owner, or managing employee of a licensee, has had a license issued under chapter 82.36, 82.38, 82.42, or 46.87 RCW denied, suspended, or revoked for cause;

(d) Who has an unsatisfied debt to the state assessed under either chapter 82.36, 82.38, 82.42, or 46.87 RCW;

(e) Who formerly held as an individual, partner, officer, director, owner, managing employee of a licensee, or subterfuge for a real party in interest, a license issued by the federal government or a state that allowed a person to buy or sell untaxed motor vehicle, special, or aircraft fuel, which has been suspended or revoked for cause;

(f) Who pled guilty to or was convicted as an individual, partner, officer, director, owner, or managing employee of a licensee in this or any other state, Canadian province, or in any federal jurisdiction of a gross misdemeanor or felony crime directly related to the fuel distribution business or has been subject to a civil judgment involving fraud, misrepresentation, conversion, or dishonesty, notwithstanding chapter 9.96A RCW;

(g) Who misrepresented or concealed a material fact in obtaining a license or reinstating a license;

(h) Who violated a statute or administrative rule regulating fuel taxation or distribution;

(i) Who failed to cooperate with the department's investigations by:

(i) Not furnishing papers or documents;

(ii) Not furnishing in writing a full and complete explanation regarding a matter under investigation by the department; or

(iii) Not responding to subpoenas issued by the department, whether or not the recipient of the subpoena is the subject of the proceeding;

(j) Who failed to comply with an order issued by the director; or

(k) Upon other sufficient cause being shown.

(2) Before a refusal under this section, the department must grant the applicant a hearing and must grant the applicant at least twenty days written notice of the time and place thereof. [2013 c 225 § 114. Prior: 1998 c 176 § 64; 1998 c 115 § 4; 1996 c 104 § 9; 1995 c 274 § 21; 1990 c 250 § 85; 1979 c 40 § 8; 1973 1st ex.s. c 156 § 5; 1971 ex.s. c 175 § 13.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Additional notes found at www.leg.wa.gov

82.38.130 Repealed. (Effective July 1, 2015.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

82.38.140 Fuel records—Reports—Inspection. (Effective July 1, 2015.) (1) Every person importing, manufacturing, refining, transporting, blending, or storing fuel

must keep for a period of five years open to inspection at all times during the business hours of the day to the department or its authorized representatives, a complete record of all fuel purchased or received and all fuel sold, delivered, or used by them. Records must show:

(a) The date of receipt;

(b) The name and address of the person from whom purchased or received;

(c) The number of gallons received at each place of business or place of storage in the state of Washington;

(d) The date of sale or delivery;

(e) The number of gallons sold, delivered, or used for taxable purposes;

(f) The number of gallons sold, delivered, or used for any purpose not subject to the fuel tax;

(g) The name, address, and fuel license number of the purchaser if the fuel tax is not collected on the sale or delivery;

(h) The physical inventories of fuel and petroleum products on hand at each place of business at the end of each month;

(i) Stocks of raw gasoline, gasoline stock, diesel oil, kerosene, kerosene distillates, casing head gasoline and other petroleum products which may be used in the compounding, blending, or manufacturing of fuel.

(2)(a) All international fuel tax agreement licensees and dyed special fuel users authorized to use dyed special fuel on highways in vehicles licensed for highway operation must maintain detailed mileage records on an individual vehicle basis.

(b) Operating records must show both on-highway and off-highway usage of special fuel on a daily basis for each vehicle.

(c) In the absence of operating records that show both on-highway and off-highway usage of special fuel on a daily basis for each vehicle, fuel consumption must be computed under RCW 82.38.060.

(3) The department may require a person other than a licensee engaged in the business of selling, purchasing, distributing, storing, transporting, or delivering fuel to submit periodic reports to the department regarding the disposition of the fuel. The reports must be on forms prescribed by the department and must contain such information as the department may require.

(4) Every person operating any conveyance transporting fuel in bulk must possess during the entire time an invoice, bill of sale, or other statement showing the name, address, and license number of the seller or consigner, the destination, name, and address of the purchaser or consignee, license number, if applicable, and the number of gallons. The person transporting fuel must at the request of any law enforcement officer or authorized representative of the department, produce for inspection required records and must permit inspection of the contents of the vehicle. [2013 c 225 § 115; 2007 c 515 § 27; 1998 c 176 § 66. Prior: 1996 c 104 § 10; 1996 c 90 § 2; 1995 c 274 § 22; 1988 c 51 § 1; 1979 c 40 § 10; 1971 ex.s. c 175 § 15.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Severability—Effective date—2007 c 515: See notes following RCW 82.36.010.

82.38.150 Periodic tax reports—Forms—Filing—Time extensions during state of emergency. (Effective July 1, 2015.) (1) For the purpose of determining the amount of liability for the tax imposed under this chapter, each licensee, other than an international fuel tax agreement licensee or a dyed special fuel user, must file monthly tax reports with the department.

(2) Dyed special fuel users whose estimated yearly tax liability is two hundred fifty dollars or less, must file a report yearly, and dyed special fuel users whose estimated yearly tax liability is more than two hundred fifty dollars, must file reports quarterly. International fuel tax agreement licensees must file reports quarterly. Heating oil dealers subject to the pollution liability insurance agency fee must file reports annually.

(3) A licensee, other than international fuel tax agreement licensee, must file a tax report on or before the twenty-fifth day of the calendar month following the reporting period to which it relates. A report must be filed even though no tax is due for the reporting period. Each report must contain a declaration that the statements contained

therein are true and are made under penalties of perjury. The report must show information as the department may reasonably require for the proper administration and enforcement of this chapter.

(4) If the filing date falls on a Saturday, Sunday, or legal holiday the next secular or business day is the filing date.

(5) The department in order to insure payment of the tax or to facilitate administration of this chapter, may require the filing of reports and tax remittances at intervals other than one month.

(6) During a state of emergency declared under RCW 43.06.010(12), the department, on its own motion or at the request of any taxpayer affected by the emergency, may extend the time for filing any report or the due date for tax remittances as the department deems proper. [2013 c 225 § 116; 2008 c 181 § 506; 2007 c 515 § 28; 1998 c 176 § 67; 1996 c 104 § 11; 1995 c 274 § 23; 1991 c 339 § 15; 1990 c 42 § 203; 1988 c 23 § 1; 1983 c 242 § 3; 1979 c 40 § 11; 1973 1st ex.s. c 156 § 6; 1971 ex.s. c 175 § 16.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Part headings not law—2008 c 181: See note following RCW 43.06.220.

Severability—Effective date—2007 c 515: See notes following RCW 82.36.010.

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Additional notes found at www.leg.wa.gov

82.38.160 Computation and payment of tax—Remittance—Electronic funds transfer. (Effective July 1, 2015.)

(1) The tax must be computed by multiplying the tax rate per gallon by the number of gallons of fuel subject to the fuel tax.

(2) A fuel distributor must remit tax on fuel purchased from a supplier, and due to the state for that reporting period, to the special fuel supplier. This provision does not apply to fuel imported by a distributor under RCW 82.38.035(3).

(3) At the election of the distributor, payment of the fuel tax owed on fuel purchased from a supplier must be remitted to the supplier on terms agreed upon between the distributor and the supplier or no later than seven business days before the twenty-sixth day of the following month. This election is subject to a condition that the distributor's remittances of all amounts of fuel tax due to the supplier must be paid by electronic funds transfer. The distributor's election may be terminated by the supplier if the distributor does not make timely payments to the supplier as required by this section.

(4) Except as provided in subsection (5) of this section, the tax return must be accompanied by a remittance payable to the state treasurer covering the tax amount due for the reporting period.

(5) If the tax is paid by electronic funds transfer, the tax must be paid on or before the twenty-sixth calendar day of the month immediately following the reporting period. If the payment due date falls on a Saturday, Sunday, or legal holiday the next business day is the payment date. If the tax is paid by electronic funds transfer and the reporting period ends on a day other than the last day of a calendar month, the tax must be paid on or before the last state business day of the thirty-day period following the end of the reporting period.

(6) The tax must be paid by electronic funds transfer whenever the amount due is fifty thousand dollars or more.

[2013 c 225 § 117; 2005 c 260 § 2; 1998 c 176 § 68; 1987 c 174 § 5; 1979 c 40 § 12; 1971 ex.s. c 175 § 17.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Effective date—2005 c 260: See note following RCW 82.36.035.

Additional notes found at www.leg.wa.gov

82.38.170 Civil and statutory penalties and interest—Deficiency assessments. (Effective July 1, 2015.)

(1) If any person fails to pay any taxes due the state of Washington within the time prescribed by RCW 82.38.150 and 82.38.160, the person must pay a penalty of ten percent of the tax due.

(2) If the tax reported by any licensee is deficient a penalty of ten percent of the deficiency must be assessed.

(3) If any licensee, whether or not licensed as such, fails, neglects, or refuses to file a required fuel tax report, the department must determine the tax liability and add the penalty provided in subsection (2) of this section to the liability. An assessment made by the department pursuant to this subsection or to subsection (2) of this section is presumed to be correct, and the burden is on the person who challenges the assessment to establish by a fair preponderance of the evidence that it is erroneous or excessive.

(4) If any licensee establishes by a fair preponderance of evidence that failure to file a report or pay the proper amount of tax within the time prescribed was due to reasonable cause and was not intentional or willful, the department may waive the penalty prescribed in subsections (1) and (2) of this section.

(5) If any licensee files a false or fraudulent report with intent to evade the tax imposed by this chapter, there is added to the amount of deficiency a penalty of twenty-five percent of the deficiency, in addition to all other penalties prescribed by law.

(6) If any person acts as a licensee without first securing the required license, all fuel tax liability incurred by that person becomes immediately due and payable. The department must determine the amount of the tax liability and must assess the person a penalty of one hundred percent of the tax in addition to the tax owed.

(7) Any fuel tax, penalties, and interest payable under this chapter shall bear interest at the rate of one percent per month, or fraction thereof, from the first day of the calendar month after the amount or any portion thereof should have been paid until the date of payment. The department may waive interest when it determines the cost of processing the collection exceeds the amount of interest due.

(8) Except in the case of filing a false or fraudulent report, if the department deems mitigation of penalties and interest to be reasonable and in the best interests of carrying out the purpose of this chapter, it may mitigate the assessments.

(9) Except in the case of a fraudulent report or failure to file a report, deficiencies, penalties, and interest must be assessed within five years from the twenty-fifth day of the next succeeding month following the reporting period for which the amount is determined or within five years after the return is filed, whichever period expires later.

(10)(a) Any licensee against whom an assessment is made under the provisions of subsections (1) and (2) of this section may petition for a reassessment within thirty days

after service upon the licensee of the assessment. If such petition is not filed within such thirty day period, the amount of the assessment becomes final.

(b) If a petition for reassessment is filed within the thirty day period, the department must reconsider the assessment and, if the licensee has requested in the petition, must grant an informal hearing and give ten days' notice of the time and place. The department may continue the hearing as needed. The decision of the department upon a petition for reassessment becomes final thirty days after service upon the licensee.

(c) Every assessment made by the department becomes due and payable at the time it becomes final and if not timely paid to the department, a penalty of ten percent of the amount of the tax is added to the assessment.

(11) Any notice of assessment required by this section must be served by depositing such notice in the United States mail, postage prepaid addressed to the licensee at the address shown in the records of the department.

(12) Any licensee who has had a fuel license revoked must pay a one hundred dollar penalty prior to the issuance of a new license.

(13) Any person who, upon audit or investigation by the department, is found to have not paid fuel taxes as required by this chapter is subject to cancellation of all vehicle registrations for vehicles utilizing special fuel as a means of propulsion. Any unexpired Washington tonnage on the vehicles in question may be transferred to a purchaser of the vehicles upon application to the department who will hold such tonnage in its custody until a sale of the vehicle is made or the tonnage has expired. [2013 c 225 § 118; 2002 c 183 § 4; 1998 c 176 § 70; 1996 c 104 § 12; 1995 c 274 § 24; 1994 c 262 § 25; 1991 c 339 § 7; 1987 c 174 § 6; 1983 c 242 § 4; 1979 c 40 § 13; 1977 c 26 § 3; 1973 1st ex.s. c 156 § 7; 1972 ex.s. c 138 § 3; 1971 ex.s. c 175 § 18.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Additional notes found at www.leg.wa.gov

82.38.180 Refunds and credits. (Effective July 1, 2015.)

(1) Any person who has purchased fuel on which tax has been paid may file a claim with the department for a refund of the tax for:

(a) Fuel used for purposes other than for the propulsion of motor vehicles upon the public highways in this state. However, a refund may not be made for motor vehicle fuel consumed by a motor vehicle required to be registered under chapter 46.16A RCW.

(b) Fuel exported for use outside of this state. Fuel carried from this state in the fuel tank of a motor vehicle is deemed to be exported from this state. Fuel distributed to a federally recognized Indian tribal reservation located within the state of Washington is not considered exported outside this state.

(c) Tax, penalty, or interest erroneously or illegally collected or paid.

(d) Fuel which is lost or destroyed, while the licensee is the owner thereof, through fire, lightning, flood, wind storm, or explosion.

(e) Fuel of five hundred gallons or more which is lost or destroyed while the licensee is the owner thereof, through

leakage or other casualty except evaporation, shrinkage, or unknown causes.

(f) Fuel used in power pumping units or other power take-off equipment of any motor vehicle which is accurately measured by metering devices that have been specifically approved by the department or by a formula determined by the department.

(2) Any person who has purchased special fuel on which tax has been paid may file a claim with the department for a refund of tax for:

(a) Special fuel used for the operation of a motor vehicle as a part of or incidental to logging operations upon a highway under federal jurisdiction within the boundaries of a federal area if the federal government requires a fee for the privilege of operating the motor vehicle upon the highway, the proceeds of which are reserved for constructing or maintaining roads in the federal area, or requires maintenance or construction work to be performed on the highway for the privilege of operating the motor vehicle on the highway;

(b) Special fuel used by special mobile equipment as defined in RCW 46.04.552;

(c) Special fuel used in a motor vehicle for movement between two pieces of private property wherein the movement is incidental to the primary use of the vehicle; and

(d) Special fuel inadvertently mixed with dyed special fuel.

(3) Any person who has purchased motor vehicle fuel on which tax has been paid may file a claim with the department for a refund of tax for:

(a) Motor vehicle fuel used by a private, nonprofit transportation provider regulated under chapter 81.66 RCW to provide transportation services for persons with special transportation needs; and

(b) Motor vehicle fuel used by an urban passenger transportation system. For purposes of this subsection "urban passenger transportation system" means every transportation system, publicly or privately owned, having as its principal source of revenue the income from transporting persons for compensation by means of motor vehicles or trackless trolleys, each having a seating capacity of over fifteen persons, over prescribed routes in such a manner that the routes of such motor vehicles or trackless trolleys, either alone or in conjunction with routes of other such motor vehicles or trackless trolleys subject to the routing by the same transportation system, do not extend for a distance exceeding fifteen road miles beyond the corporate limits of the city in which the original starting points of such motor vehicles or trackless trolleys are located. No refunds are authorized for fuel used on any trip where any portion of the trip is more than fifteen road miles beyond the corporate limits of the city in which the trip originated.

(4) Recovery for such loss or destruction under subsections (1)(d) or (e) or (2)(d) of this section must be susceptible to positive proof thereby enabling the department to conduct such investigation and require such information as it may deem necessary. In the event that the department is not satisfied that the fuel was lost, destroyed, or contaminated as claimed because information or proof as required hereunder is not sufficient to substantiate the accuracy of the claim, it may deem such as sufficient cause to deny all right relating to

the refund or credit for the excise tax paid on fuel alleged to be lost or destroyed.

(5) No refund or claim for credit may be approved by the department unless the gallons of fuel claimed as nontaxable satisfy the conditions specifically set forth in this section and the nontaxable event or use occurred during the period covered by the refund claim. Refunds or claims for credit are not be [are not] allowed for anticipated nontaxable use or events. [2013 c 225 § 119; 2007 c 515 § 29; 1998 c 176 § 71; 1972 ex.s. c 138 § 4; 1971 ex.s. c 175 § 19.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Severability—Effective date—2007 c 515: See notes following RCW 82.36.010.

Additional notes found at www.leg.wa.gov

82.38.183 Refund to aeronautics account. (Effective July 1, 2015.) At least once each fiscal year, the director must request the state treasurer to refund from the motor vehicle fund, to the aeronautics account created under RCW 82.42.090, an amount equal to 0.028 percent of the gross motor vehicle fuel tax less an amount equal to aircraft fuel taxes transferred to that account as a result of nonhighway refunds claimed by motor fuel purchasers. The refund is considered compensation for unclaimed motor vehicle fuel that is used in aircraft for purposes taxable under RCW 82.42.020. The director must also remit from the motor vehicle fund the taxes required by RCW 82.12.0256(2)(d) for the unclaimed refunds, provided that the sum of the amount refunded and the amount remitted in accordance with RCW 82.12.0256(2)(d) does not exceed the unclaimed refunds. [2013 c 225 § 207.]

Effective date—2013 c 225: See note following RCW 82.38.010.

82.38.190 Claim of refund or credit. (Effective July 1, 2015.) (1) Claims under RCW 82.38.180 must be filed with the department on forms prescribed by the department and must contain and be supported by such information and documentation as the department may require. Claims for refund of fuel tax must be for at least twenty dollars.

(2) Any amount determined to be refundable by the department under RCW 82.38.180 must first be credited on any amounts then due and payable from a person to whom the refund is due.

(3) No refund or credit may be approved by the department unless a written claim for refund or credit stating the specific grounds upon which the claim is founded is filed with the department:

(a) Within thirteen months from the date of purchase or from the last day of the month following the close of the reporting period for which the refundable amount or credit is due with respect to refunds or credits allowable under RCW 82.38.180, with the exception of the credits or refunds allowed under RCW 82.38.180(1)(c), and if not filed within this period the right to refund is barred.

(b) Within five years from the last day of the month following the close of the reporting period for which the overpayment is due with respect to the refunds or credits allowable under RCW 82.38.180(1)(c). The department must refund any amount paid that has been verified by the department to be more than twenty dollars over the amount actually due for the reporting period. Payment credits may not be car-

ried forward and applied to subsequent tax returns for a person licensed under this chapter.

(4) Within thirty days after disallowing any claim in whole or in part, the department must provide written notice of its action to the claimant.

(5)(a) Interest must be paid upon any refundable amount or credit due under RCW 82.38.180(1)(c) at the rate of one percent per month from the last day of the calendar month following the reporting period for which the refundable amount or credit is due.

(b) The interest must be paid:

(i) In the case of a refund, to the last day of the calendar month following the date upon which the claim is approved by the department.

(ii) In the case of a credit, to the same date as that to which interest is computed on the tax or amount against which the credit is applied.

(c) If the department determines that any overpayment has been made intentionally or by reason of carelessness, it may not allow any interest.

(6) The department must pay interest of one percent on any refund payable under RCW 82.38.180 (1) or (2), except as provided in subsection (5)(a) of this section, which is issued more than thirty state business days after the receipt of a claim properly filed and completed. After the end of the thirty business-day period, additional interest accrues at the rate of one percent on the amount payable for each thirty calendar-day period. [2013 c 225 § 120; 1998 c 176 § 74; 1997 c 183 § 10; 1996 c 91 § 4; 1979 c 40 § 14; 1973 1st ex.s. c 156 § 8; 1972 ex.s. c 138 § 5; 1971 ex.s. c 175 § 20.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Additional notes found at www.leg.wa.gov

82.38.195 Date of mailing deemed date of filing or receipt—Timely mailing bars penalties and tolls statutory time limitations. (Effective July 1, 2015.) An application, report, notice, payment, or claim for credit or refund properly addressed and deposited in the United States mail is deemed filed or received on the date shown by the post office cancellation mark on the envelope. No penalty for delinquency attaches, nor is the statutory period deemed to have elapsed in the case of credit or refund claims, if it is established by competent evidence that the application, report, notice, payment, or claim for credit or refund was properly addressed and timely deposited in the United States mail, if a duplicate of the document or payment is filed. [2013 c 225 § 202.]

Effective date—2013 c 225: See note following RCW 82.38.010.

82.38.205 Injunctions—Writs. (Effective July 1, 2015.) No injunction or writ of mandate or other legal or equitable process may be issued in any suit, action, or proceeding in any court against this state or against any officer of the state to prevent or enjoin the collection under this chapter of any tax or any amount of tax required to be collected. [2013 c 225 § 206.]

Effective date—2013 c 225: See note following RCW 82.38.010.

82.38.210 Tax lien—Filing. (Effective July 1, 2015.) (1) If a person liable for payment of tax fails to pay the amount including any interest, penalty, or addition, together with costs accrued, there will be a lien in favor of the state

upon all franchises, property, and rights to property, whether real or personal, belonging to or acquired, whether the property is employed by such person for personal or business use or is in the control of a trustee, receiver, or assignee. The lien is effective from the date taxes were due and payable until the amount is satisfied. The lien has priority over any lien or encumbrance except liens of other taxes having priority by law.

(2) The department must file with any county auditor a statement of claim and lien specifying the amount of delinquent taxes, penalties, and interest owed. [2013 c 225 § 121; 1998 c 176 § 75; 1979 c 40 § 15; 1971 ex.s. c 175 § 22.]

Effective date—2013 c 225: See note following RCW 82.38.010.

82.38.220 Delinquency—Notice to debtors—Transfer or disposition of property, credits, or debts prohibited—Lien—Answer. (Effective July 1, 2015.) (1) If a person is delinquent in the payment of any obligation, the department may give notice of the amount of delinquency to persons having possession or control of credits, personal and real property belonging to the person, or owing debts to the person. Any person notified may not transfer or dispose of credits, personal and real property, or debts without the consent of the department. A person notified must, within twenty days after receipt of notice, advise the department of any credits, personal and real property, or debts in their possession, under their control or owing by them, and must immediately deliver the credits, personal and real property, or debts to the department.

(2) The notice and order to withhold and deliver constitutes a continuing lien on property of the person. The department must include in the notice to withhold and deliver "continuing lien." The effective date of a notice to withhold and deliver is the date of mailing.

(3) If a person fails to timely answer the notice, a court may render judgment, plus costs by default against the person. [2013 c 225 § 122; 1998 c 176 § 76; 1994 c 262 § 26; 1983 c 242 § 5; 1979 c 40 § 16; 1971 ex.s. c 175 § 23.]

Effective date—2013 c 225: See note following RCW 82.38.010.

82.38.230 Delinquency—Seizure and sale of property—Notice—Distribution of excess. (Effective July 1, 2015.) (1) If a person is delinquent in the payment of any obligation, and the delinquency continues after notice and demand for payment the department must collect the amount due. The department must seize any property subject to the lien of excise tax, penalty, and interest and sell it at public auction. Notice of sale and the time and place must be given to the person and to all persons appearing with an interest in the property. The notice must be in writing at least ten days before the date of sale. Notice must be published for at least ten days before the date of sale in a newspaper of general circulation published in the county the property will be sold. If there is no newspaper of general circulation in the county, the notice must be posted in three public places in the county for a period of ten days. The notice must contain a description of the property together with a statement of the amount due, the name of the person, and a statement that unless the amount is paid on or before the time in the notice the property will be sold.

(2) The department must sell the property and deliver to the purchaser a bill of sale or deed. If the moneys received exceed the amount due from the person, the excess must be returned to the person and a receipt obtained. If any person having an interest in or lien upon the property has filed notice with the department prior to the sale, the department must withhold payment of any excess to the person pending determination of the rights of the respective parties by a court of competent jurisdiction. If the receipt of the person is not available, the department must deposit the excess with the state treasurer as trustee for the person or their heirs, successors, or assigns. Prior to making any seizure of property, the department may first serve upon the person's bondsperson a notice of delinquency and, demand for payment of the amount due. [2013 c 225 § 123; 2007 c 218 § 78; 1998 c 176 § 77; 1979 c 40 § 17; 1971 ex.s. c 175 § 24.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

82.38.235 Assessments—Warrant—Lien—Filing fee—Writs of execution and garnishment. (Effective July 1, 2015.) When an assessment becomes final the department may file with the clerk of any county within the state a warrant in the amount of the assessment of taxes, penalties, interest and a filing fee under RCW 36.18.012(10). The warrant is a lien upon title to, and interest in all real and personal property of the person against whom the warrant is issued. The warrant is sufficient to support the issuance of writs of execution and writs of garnishment in favor of the state. [2013 c 225 § 124; 2001 c 146 § 14; 1998 c 176 § 78; 1979 c 40 § 22.]

Effective date—2013 c 225: See note following RCW 82.38.010.

82.38.240 Repealed. (Effective July 1, 2015.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

82.38.245 Bankruptcy proceedings—Notice. (Effective July 1, 2015.) A licensee who files a petition for bankruptcy, or against whom a petition for bankruptcy is filed, must notify the department within ten days of the filing, including the name and location of the court in which the petition was filed. [2013 c 225 § 125; 1997 c 183 § 9.]

Effective date—2013 c 225: See note following RCW 82.38.010.

82.38.250 Repealed. (Effective July 1, 2015.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

82.38.255 Discontinuance, sale, or transfer of business—Notice—Payment of taxes, interest, penalties. (Effective July 1, 2015.) A licensee who ceases to engage in business must notify the department in writing at the time of cessation. The notice must give the date of cessation and the name and address of any purchaser or transferee. The licensee must file a report and pay all taxes, interest, and penalties owing. [2013 c 225 § 203.]

Effective date—2013 c 225: See note following RCW 82.38.010.

82.38.260 Administration and enforcement. (Effective July 1, 2015.) (1) The department may prescribe, adopt,

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and enforce reasonable rules relating to administration and enforcement of this chapter.

(2) The department or its authorized representative may examine the books, papers, records, and equipment of any person distributing, transporting, storing, or using fuel to determine whether all taxes due or refundable are properly reported, paid, or claimed. If books, papers, records, and equipment are not maintained in this state at the time of demand, the department does not lose any right of examination.

(3) The department may require additional reports from any licensee with reference to any of the matters herein concerned. Such reports must be made and filed on forms prepared by the department.

(4) For the purpose of any investigation or proceeding, the director or designee may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director deems relevant or material to the inquiry.

(5) In the case of contumacy by or refusal to obey a subpoena issued to, any person, any court of competent jurisdiction upon application by the director, may issue to that person an order requiring appearance before the director or designee to produce testimony of other evidence regarding the matter under investigation or in question.

(6) The department must, upon request from officials responsible for enforcement of fuel tax laws of any state, the District of Columbia, the United States, its territories and possessions, the provinces or the dominion of Canada, forward information relative to the receipt, storage, delivery, sale, use, or other disposition of fuel by any person, if the other furnishes like information.

(7) The department may enter into a fuel tax cooperative agreement with another state, the District of Columbia, the United States, its territories and possessions, or Canadian province for the administration, collection, and enforcement of their respective fuel taxes.

(8) For the purposes of administration, collection, and enforcement of taxes imposed under this chapter, pursuant to another agreement under chapter 82.41 RCW, chapter 82.41 RCW controls to the extent of any conflict.

(9) The remedies of the state in this chapter are cumulative and no action taken by the department may be construed to be an election on the part of the state or any of its officers to pursue any remedy hereunder to the exclusion of any other remedy for which provision is made in this chapter. [2013 c 225 § 126; 1998 c 176 § 80; 1995 c 274 § 25; 1979 c 40 § 18; 1971 ex.s. c 175 § 27.]

Effective date—2013 c 225: See note following RCW 82.38.010.

82.38.265 Repealed. (Effective July 1, 2015.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

82.38.270 Violations—Penalties. (Effective July 1, 2015.) (1) It is unlawful for a person to:

(a) Have dyed special fuel in the fuel supply tank of a vehicle that is licensed or required to be licensed for highway use or maintain dyed special fuel in bulk storage for highway

use, unless the person maintains an uncanceled dyed special fuel user license or is otherwise exempt under this chapter;

(b) Hold dyed special fuel for use, intended use, sale, or intended sale in a manner in violation of this chapter;

(c) Evade a tax or fee imposed under this chapter;

(d) File a false statement of a material fact regarding the administration and enforcement of this chapter or otherwise commit any fraud or make a false representation on a fuel tax license application, fuel tax refund application, fuel tax return, fuel tax record, or fuel tax refund claim;

(e) Act as a fuel licensee unless the person holds an uncanceled fuel license issued by the department authorizing the person to engage in that business;

(f) Knowingly assist another person to evade a tax or fee imposed by this chapter;

(g) Knowingly operate a conveyance for the purpose of hauling, transporting, or delivering fuel in bulk and not possess an invoice, bill of sale, or other statement showing the name, address, and tax license number of the seller or consignor, the destination, the name, address, and tax license number of the purchaser or consignee, and the number of gallons;

(h) Refuse to permit the department or its authorized representative to examine the person's books, papers, records, storage facilities, and equipment used in conjunction with the use, distribution, or sale of fuel;

(i) To display, or cause to permit to be displayed, or to have in possession, any fuel license knowing the same to be fictitious, or to have been suspended, canceled, revoked, or altered;

(j) To lend to, or knowingly permit the use of, by one not entitled thereto, any fuel license issued to the person lending it or permitting it to be used;

(k) To display or to represent as one's own any fuel license not issued to the person displaying the same;

(l) To use or to conspire with any governmental official, agent, or employee for the use of any requisition, purchase order, or any card or any authority to which the person is not specifically entitled by government regulations, for the purpose of obtaining any fuel or other inflammable petroleum products upon which the fuel tax has not been paid;

(m) To sell or dispense natural gas or propane for their own use or the use of others into tanks of vehicles powered by this fuel when the vehicle does not display a valid decal or other identifying device as provided in RCW 82.38.075.

(2)(a) A single violation of subsection (1)(a) and (b) of this section is a gross misdemeanor under chapter 9A.20 RCW.

(b) Multiple violations of subsection (1)(a) and (b) of this section and violations of subsection (1)(c) through (g) of this section are a class C felony under chapter 9A.20 RCW.

(3) Violations of subsection (1)(h) through (m) of this section are a gross misdemeanor under chapter 9A.20 RCW.

(4) In addition to other penalties and remedies provided by law, the court must order a person or corporation found guilty of violating subsection (1)(c) through (g) of this section to:

(a) Pay the tax or fee evaded plus interest, commencing at the date the tax or fee was first due, at the rate of twelve percent per year, compounded monthly; and

(b) Pay a penalty of one hundred percent of the tax evaded.

(5) The tax imposed by this chapter is held in trust by the licensee until paid to the department, and a licensee who appropriates the tax to his or her own use or to any use other than the payment of the tax is guilty of a felony or gross misdemeanor in accordance with the theft and anticipatory provisions of Title 9A RCW. A person, partnership, corporation, or corporate officer who fails to pay to the department the tax is personally liable to the state for the amount of the tax. [2013 c 225 § 127; 2007 c 515 § 30; 2003 c 358 § 14; 2000 2nd sp.s. c 4 § 10; 1995 c 287 § 4; 1979 c 40 § 19; 1977 c 26 § 4; 1971 ex.s. c 175 § 28.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Severability—Effective date—2007 c 515: See notes following RCW 82.36.010.

Captions not law—Severability—2003 c 358: See notes following RCW 82.36.470.

Additional notes found at www.leg.wa.gov

82.38.275 Investigatory power. The department may initiate and conduct investigations as may be reasonably necessary to establish the existence of any alleged violations of or noncompliance with the provisions of this chapter or any rules or regulations issued hereunder.

For the purpose of any investigation or proceeding under this chapter, the director or any officer designated by him or her may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director deems relevant or material to the inquiry.

In case of contumacy by or refusal to obey a subpoena issued to, any person, any court of competent jurisdiction upon application by the director, may issue to that person an order requiring him or her to appear before the director, or the officer designated by him or her to produce testimony or other evidence touching the matter under investigation or in question. The failure to obey an order of the court may be punishable by contempt. [2013 c 23 § 333; 1979 c 40 § 20.]

82.38.280 State preempts tax field. (Effective July 1, 2015.) (1) The tax levied in this chapter is in lieu of any excise, privilege, or occupational tax upon the business of manufacturing, selling, or distributing fuel, and no city, town, county, township or other subdivision or municipal corporation of the state may levy or collect any excise tax upon or measured by the sale, receipt, distribution, or use of fuel, except as provided in chapter 82.80 RCW and RCW 82.47.020.

(2) This section does not apply to any tax imposed by the state. [2013 c 225 § 128; 2010 c 106 § 231; 2003 c 350 § 6; 1991 c 173 § 5; 1990 c 42 § 205; 1979 ex.s. c 181 § 6; 1971 ex.s. c 175 § 29.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Effective date—2010 c 106: See note following RCW 35.102.145.

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Additional notes found at www.leg.wa.gov

82.38.290 Disposition of funds. (*Effective July 1, 2015.*) (1) Unless directed otherwise in this section, all taxes, fees, assessments, civil and criminal penalties, interest, and proceeds from sales of forfeited property collected under this chapter must be deposited into the motor vehicle fund.

(2) The penalty imposed in RCW 82.38.270(4)(b) must be deposited into the multimodal transportation account.

(3) One cent per gallon must be deducted from each motor vehicle fuel marine use refund claim and deposited into the coastal protection fund.

(4) Fifty percent of all fines and forfeitures imposed in any criminal proceeding by any court of this state for violations of the penal provisions of this chapter must be paid to the current expense fund of the county where collected and the remainder deposited into the motor vehicle fund. All fees, fines, forfeitures, and penalties collected or assessed by a district court must be remitted as provided in chapter 3.62 RCW. [2013 c 225 § 129; 1971 ex.s. c 175 § 30.]

Effective date—2013 c 225: See note following RCW 82.38.010.

82.38.310 Agreement with tribe for fuel taxes. (*Effective July 1, 2015.*) (1) The governor may enter into an agreement with any federally recognized Indian tribe located on a reservation within this state regarding fuel taxes included in the price of fuel delivered to a retail station wholly owned and operated by a tribe, tribal enterprise, or tribal member licensed by the tribe to operate a retail station located on reservation or trust property. The agreement may provide mutually agreeable means to address any tribal immunities or any preemption of the fuel tax.

(2) The provisions of this section do not repeal existing state/tribal fuel tax agreements or consent decrees in existence on May 15, 2007. The state and the tribe may agree to substitute an agreement negotiated under this section for an existing agreement or consent decree, or to enter into an agreement using a methodology similar to the state/tribal fuel tax agreements in effect on May 15, 2007.

(3) If a new agreement is negotiated, the agreement must:

(a) Require that the tribe or the tribal retailer acquire all fuel only from persons or companies operating lawfully in accordance with this chapter as a fuel distributor, supplier, or blender, or from a tribal distributor, supplier, or blender lawfully doing business according to all applicable laws;

(b) Provide that the tribe will expend fuel tax proceeds or equivalent amounts on: Planning, construction, and maintenance of roads, bridges, and boat ramps; transit services and facilities; transportation planning; police services; and other highway-related purposes;

(c) Include provisions for audits or other means of ensuring compliance to certify the number of gallons of fuel purchased by the tribe for resale at tribal retail stations, and the use of fuel tax proceeds or their equivalent for the purposes identified in (b) of this subsection. Compliance reports must be delivered to the director of the department of licensing.

(4) Information from the tribe or tribal retailers received by the state or open to state review under the terms of an agreement are deemed personal information under RCW 42.56.230 (4)(b) and are exempt from public inspection and copying.

(5) The governor may delegate the power to negotiate fuel tax agreements to the department of licensing.

(6) The department of licensing must prepare and submit an annual report to the legislature on the status of existing agreements and any ongoing negotiations with tribes. [2013 c 225 § 130; 2007 c 515 § 31; 1995 c 320 § 3.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Severability—Effective date—2007 c 515: See notes following RCW 82.36.010.

Additional notes found at www.leg.wa.gov

82.38.320 Bulk storage of special fuel by international fuel tax agreement licensee—Authorization to pay tax at time of filing tax return—Schedule—Report—Exemptions. (*Effective July 1, 2015.*) (1) An international fuel tax agreement licensee who meets the qualifications in subsection (2) of this section may be given special authorization by the department to purchase special fuel delivered into bulk storage without payment of the fuel tax at the time the fuel is purchased. The special authorization applies only to full truck-trailer loads filled at a terminal rack and delivered directly to the bulk storage facilities of the special authorization holder. The licensee must pay fuel tax on the fuel at the time the licensee files their international fuel tax agreement tax return and accompanying schedule with the department. The accompanying schedule must be provided in a form and manner determined by the department and must contain information on purchases and usage of all nondyed special fuel purchased during the reporting period. In addition, by the fifteenth day of the month following the month in which fuel under the special authorization was purchased, the licensee must report to the department, the name of the seller and the number of gallons purchased for each purchase of such fuel, and any other information as the department may require.

(2) To receive or maintain special authorization under subsection (1) of this section, the following conditions regarding the international fuel tax agreement licensee must apply:

(a) During the period encompassing the four consecutive calendar quarters immediately preceding the fourth calendar quarter of the previous year, the number of gallons consumed outside the state of Washington as reported on the licensee's international fuel tax agreement tax returns must have been equal to at least twenty percent of the nondyed special fuel gallons, including fuel used on-road and off-road, purchased by the licensee in the state of Washington, as reported on the accompanying schedules required under subsection (1) of this section;

(b) The licensee must have been licensed under the provisions of the international fuel tax agreement during each of the four consecutive calendar quarters immediately preceding the fourth calendar quarter of the previous year; and

(c) The licensee has not violated the reporting requirements of this section.

(3) Only a licensed fuel supplier or fuel distributor may sell special fuel to a special authorization holder in the manner prescribed by this section.

(4) A fuel supplier or distributor who sells fuel under the special authorization provisions of this section is not liable for the fuel tax on the fuel. The fuel supplier or distributor

must report such sales, in a manner prescribed by the department, at the time the fuel supplier or distributor submits the monthly tax report. [2013 c 225 § 131; 2007 c 515 § 32; 1998 c 176 § 83.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Severability—Effective date—2007 c 515: See notes following RCW 82.36.010.

82.38.350 Repealed. (Effective July 1, 2015.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

82.38.360 Fuel tax evasion—Seizure and forfeiture. (Effective July 1, 2015.) (1) The following are subject to seizure and forfeiture:

(a) Fuel imported into this state by a person not licensed in this state in accordance with this chapter to import fuel;

(b) Fuel blended or manufactured by a person not licensed in this state in accordance with this chapter to blend or manufacture fuel;

(c) All conveyances used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in (a) and (b) of this subsection, except where the owner of the conveyance neither had knowledge of nor consented to the transportation of the fuel by an unlicensed importer, blender, or manufacturer of fuel.

(2) Before seizing a common carrier conveyance, contract carrier conveyance, or a conveyance secured by a bona fide security interest where the secured party neither had knowledge of or consented to the unlawful act or omission, the state patrol or the department of licensing must give the common carrier, contract carrier, or secured party, or their representatives within twenty-four hours, a notice in writing served by mail or other means to cease transporting fuel for any person not licensed to import, blend, or manufacture fuel in this state.

(3) Property subject to forfeiture under this chapter may be seized by the state patrol upon process issued by a superior court or district court having jurisdiction over the property. Seizure without process may be made if:

(a) The seizure is incident to an arrest or a search under a search warrant or an administrative inspection; or

(b) The state patrol has probable cause to believe the property was used or is intended to be used in violation of this chapter and exigent circumstances exist making procurement of a search warrant impracticable. [2013 c 225 § 132; 2003 c 358 § 7.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Captions not law—Severability—2003 c 358: See notes following RCW 82.36.470.

82.38.365 Fuel tax evasion—Forfeiture procedure. (Effective July 1, 2015.) In all cases of seizure of property made subject to forfeiture under this chapter, the state patrol must proceed as follows:

(1) Forfeiture is deemed to have commenced by the seizure.

(2) The state patrol must list and particularly describe in duplicate the conveyance seized. After the appropriate

appeal period has expired, a seized conveyance must be sold at a public auction in accordance with chapter 43.19 RCW.

(3) The state patrol must list and particularly describe in duplicate the fuel seized. The selling price of the fuel seized must be the average terminal rack price for similar fuel, at the closest terminal rack on the day of sale, unless circumstance warrants that a different selling price is appropriate. The method used to value the fuel must be documented. The fuel must be sold at the earliest point in time, and the total price must include all appropriate state and federal taxes. The state patrol or the department may enter into contracts for the transportation, handling, storage, and sale of fuel subject to forfeiture.

(4) The state patrol must, within five days after the seizure of a conveyance or fuel, cause notice to be served on the owner of the property seized, if known, on the person in charge of the property, and on any other person having any known right or interest in the property, of the seizure and intended forfeiture. The notice may be served by any method authorized by law or court rule including but not limited to service by mail. If service is by mail it must be by both certified mail with return receipt requested and regular mail. Service by mail is deemed complete upon mailing within the five-day period after the date of seizure.

(5) If no person notifies the state patrol in writing of the person's claim of ownership or right to possession of the items seized within fifteen days of the date of the notice of seizure, the items seized are considered forfeited.

(6) If any person notifies the state patrol, in writing, of the person's claim of ownership or right to possession of the items seized within fifteen days of the date of the notice of seizure, the person or persons must be given a reasonable opportunity to be heard as to the claim or right. The hearing must be before the director of licensing, or the director's designee. A hearing and any appeals must be in accordance with chapter 34.05 RCW. The burden of proof by a preponderance of the evidence is upon the person claiming to be the lawful owner or the person claiming to have the lawful right to possession of the items seized. The state patrol and the department must promptly return the conveyance seized, and money from the sale of fuel seized, to the claimant upon a determination that the claimant is the present lawful owner and is lawfully entitled to possession of the items seized. [2013 c 225 § 133; 2003 c 358 § 8.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Captions not law—Severability—2003 c 358: See notes following RCW 82.36.470.

82.38.370 Fuel tax evasion—Forfeited property. (Effective July 1, 2015.) When property is forfeited under this chapter, the state patrol or the department may use the proceeds of the sale and all moneys forfeited for the payment of all proper expenses of any investigation leading to the seizure and of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs. Proper expenses of investigation include costs incurred by a law enforcement agency or a federal, state, or local agency. [2013 c 225 § 134; 2003 c 358 § 9.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Captions not law—Severability—2003 c 358: See notes following RCW 82.36.470.

82.38.380 Fuel tax evasion—Search and seizure. (*Effective July 1, 2015.*) When the state patrol has good reason to believe that fuel is being unlawfully imported, kept, sold, offered for sale, blended, or manufactured in violation of this chapter or rules adopted under it, the state patrol may make an affidavit of that fact, describing the place or thing to be searched, before a judge of any court in this state, and the judge must issue a search warrant directed to the state patrol commanding the officer diligently to search any place or vehicle designated in the affidavit and search warrant, and to seize the fuel and conveyance so possessed and to hold them until disposed of by law, and to arrest the person in possession or control of them. [2013 c 225 § 135; 2003 c 358 § 11.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Captions not law—Severability—2003 c 358: See notes following RCW 82.36.470.

82.38.385 Rules. (*Effective July 1, 2015.*) The department and the state patrol must adopt rules necessary to implement RCW 82.38.360 through 82.38.380. [2013 c 225 § 136; 2003 c 358 § 12.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Captions not law—Severability—2003 c 358: See notes following RCW 82.36.470.

82.38.800 through 82.38.941 Decodified. (*Effective July 1, 2015.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 82.41 RCW

MULTISTATE MOTOR FUEL TAX AGREEMENT

Sections

82.41.060 Repealed. (*Effective July 1, 2015.*)
82.41.080 Investigatory power.

82.41.060 Repealed. (*Effective July 1, 2015.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

82.41.080 Investigatory power. The department may initiate and conduct investigations as may be reasonably necessary to establish the existence of any alleged violations of or noncompliance with this chapter or any rules issued hereunder.

For the purpose of any investigation or proceeding under this chapter, the director or any officer designated by the director may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director deems relevant or material to the inquiry.

In case of contumacy by or refusal to obey a subpoena issued to any person, any court of competent jurisdiction, upon application by the director, may issue to that person an order requiring him or her to appear before the director, or the officer designated by the director, to produce testimony or other evidence touching the matter under investigation or in question. The failure to obey an order of the court may be punishable by contempt. [2013 c 23 § 334; 1982 c 161 § 8.]

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Chapter 82.42 RCW AIRCRAFT FUEL TAX

Sections

82.42.010 Definitions. (*Effective July 1, 2015.*)
82.42.020 Aircraft fuel tax imposed—Rate. (*Effective July 1, 2015.*)
82.42.030 Exemptions. (*Effective July 1, 2015.*)
82.42.040 Collection of tax—Procedure—Licensing—Surety bond or other security—Records, reports, statements—Extensions during state of emergency—Application—Investigation—Fee—Penalty for false statement. (*Effective until July 1, 2015.*)
82.42.040 Collection of tax—Procedure—Licensing—Surety bond or other security—Records, reports, statements—Extensions during state of emergency—Application—Investigation—Fee—Penalty for false statement (*as amended by 2013 c 23*).
82.42.040 Application—Bond—Investigation—Fee—Penalty for false statement (*as amended by 2013 c 225*). (*Effective July 1, 2015.*)
82.42.050 through 82.42.080 Repealed. (*Effective July 1, 2015.*)
82.42.055 Computation and payment of tax—Remittance—Electronic funds transfer. (*Effective July 1, 2015.*)
82.42.065 Delinquency. (*Effective July 1, 2015.*)
82.42.067 Delinquency—Seizure and sale of property. (*Effective July 1, 2015.*)
82.42.068 Payment of tax by a nonlicensee. (*Effective July 1, 2015.*)
82.42.075 Bonding requirements. (*Effective July 1, 2015.*)
82.42.085 Violations—Penalties. (*Effective July 1, 2015.*)
82.42.090 Tax proceeds—Disposition—Aeronautics account. (*Effective July 1, 2015.*)
82.42.095 Date of mailing deemed date of filing or receipt—Timely mailing bars penalties and tolls statutory time limitations. (*Effective July 1, 2015.*)
82.42.100 Enforcement.
82.42.110 Tax upon persons other than distributors—Imposition—Collection—Distribution—Enforcement. (*Effective July 1, 2015.*)
82.42.115 Assessments—Warrant—Lien—Filing fee—Writs of execution and garnishment. (*Effective July 1, 2015.*)
82.42.118 Civil and statutory penalties and interest—Deficiency assessments. (*Effective July 1, 2015.*)
82.42.120 Repealed. (*Effective July 1, 2015.*)
82.42.125 Bankruptcy proceedings—Notice. (*Effective July 1, 2015.*)
82.42.130 Administration and enforcement. (*Effective July 1, 2015.*)
82.42.135 Discontinuance, sale, or transfer of business—Notice—Payment of taxes, interest, penalties. (*Effective July 1, 2015.*)
82.42.140 Periodic tax reports. (*Effective July 1, 2015.*)
82.42.145 Fuel records. (*Effective July 1, 2015.*)
82.42.200 Injunctions—Writs. (*Effective July 1, 2015.*)
82.42.205 Suits for recovery of taxes illegally or erroneously collected. (*Effective July 1, 2015.*)
82.42.210 Denial—Suspension—Revocation. (*Effective July 1, 2015.*)
82.42.220 Claim of refund or credit. (*Effective July 1, 2015.*)
82.42.230 Refunds. (*Effective July 1, 2015.*)
82.42.240 Remedies cumulative. (*Effective July 1, 2015.*)
82.42.250 Tax lien. (*Effective July 1, 2015.*)

82.42.010 Definitions. (*Effective July 1, 2015.*) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Air carrier" means any airline, air cargo carrier, air taxi, air commuter, or air charter operator, that provides routine air service to the general population for compensation or hire, and operates at least fifteen round trips per week between two or more points and publishes flight schedules which specify the times, days of the week, and points between which it operates. Where it is doubtful that an operation is for "compensation or hire," the test applied is whether the air service is merely incidental to the person's other business or is, in itself, a major enterprise for profit.

(2) "Aircraft" means every contrivance now known or hereafter invented, used or designed for navigation of or flight in the air, operated or propelled by the use of aircraft fuel.

(3) "Aircraft fuel" means gasoline and any other inflammable liquid, by whatever name such liquid is known or sold, the chief use of which is as fuel for the propulsion of aircraft, except gas or liquid, the chief use of which as determined by the director, is for purposes other than the propulsion of aircraft.

(4) "Dealer" means any person engaged in the retail sale of aircraft fuel.

(5) "Department" means the department of licensing.

(6) "Director" means the director of licensing.

(7) "Distributor" means any person engaged in the sale of aircraft fuel to any dealer and includes any dealer from whom the tax hereinafter imposed has not been collected.

(8) "Local service commuter" means an air taxi operator who operates at least five round-trips per week between two or more points; publishes flight schedules which specify the times, days of the week, and points between which it operates; and whose aircraft has a maximum capacity of sixty passengers or eighteen thousand pounds of useful load.

(9) "Person" means every natural person, firm, partnership, association, or private or public corporation. [2013 c 225 § 301; 1983 c 49 § 1; 1982 1st ex.s. c 25 § 1; 1979 c 158 § 229; 1969 ex.s. c 254 § 1; 1967 ex.s. c 10 § 1.]

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

Effective date—2013 c 225: See note following RCW 82.38.010.

Additional notes found at www.leg.wa.gov

82.42.020 Aircraft fuel tax imposed—Rate. (Effective July 1, 2015.) There is levied upon every distributor of aircraft fuel, an excise tax at the rate of eleven cents on each gallon of aircraft fuel sold, delivered, or used in this state. There must be collected from every user of aircraft fuel either the use tax imposed by RCW 82.12.020 or the retail sales tax imposed by RCW 82.08.020. The taxes imposed by this chapter must be collected and paid to the state but once in respect to any aircraft fuel. [2013 c 225 § 302; 2005 c 341 § 3; 2003 c 375 § 5; 1996 c 104 § 13; 1982 1st ex.s. c 25 § 2; 1969 ex.s. c 254 § 2; 1967 ex.s. c 10 § 2.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Effective date—2005 c 341: See note following RCW 47.68.230.

Effective date—2003 c 375: See note following RCW 47.68.240.

Additional notes found at www.leg.wa.gov

82.42.030 Exemptions. (Effective July 1, 2015.) The provision of RCW 82.42.020 imposing the payment of an excise tax on each gallon of aircraft fuel sold, delivered or used in this state does not apply to:

(1) Aircraft fuel sold for export and exported from this state;

(2) Aircraft fuel imported into the state in interstate or foreign commerce and intended to be sold while in interstate or foreign commerce;

(3) Aircraft fuel sold to an agency of the United States government;

(4) Aircraft fuel delivered directly into the aircraft fuel tanks of equipment operated by an air carrier or supplemental air carrier operating under a certificate of public convenience and necessity under the provisions of the federal aviation act of 1958, P.L. 85-726, as amended;

(5) Aircraft fuel delivered directly into the aircraft fuel tanks of equipment operated by a local service commuter;

(6) Aircraft fuel sold to emergency medical air transport entities;

(7) Aircraft fuel sold to a licensed aircraft fuel distributor;

(8) Aircraft fuel delivered into the bulk storage tank of a certified user;

(9) Aircraft fuel used in the operation of aircraft for testing or experimental purposes; and

(10) Aircraft fuel used in the operation of aircraft when such operation is for the training of crews in Washington state for purchasers of aircraft who are certified air carriers. [2013 c 225 § 303; 2005 c 341 § 4; 1989 c 193 § 4; 1982 1st ex.s. c 25 § 4; 1967 ex.s. c 10 § 3.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Effective date—2005 c 341: See note following RCW 47.68.230.

Additional notes found at www.leg.wa.gov

82.42.040 Collection of tax—Procedure—Licensing—Surety bond or other security—Records, reports, statements—Extensions during state of emergency—Application—Investigation—Fee—Penalty for false statement. (Effective until July 1, 2015.) The director shall by rule and regulation adopted as provided in chapter 34.05 RCW (Administrative Procedure Act) set up the necessary administrative procedure for collection by the department of the aircraft fuel excise tax as provided for in RCW 82.42.020, placing the responsibility of collection of said tax upon every distributor of aircraft fuel within the state; he or she may require the licensing of every distributor of aircraft fuel and shall require such a corporate surety bond or security of any distributor or person not otherwise bonded under provisions of *chapter 82.36 RCW as is provided for distributors of motor vehicle fuel under *RCW 82.36.060; he or she shall provide such forms and may require such reports or statements as in his or her determination shall be necessary for the proper administration of this chapter. The director may require such records to be kept, and for such periods of time, as deemed necessary for the administration of this chapter, which records shall be available at all times for the director or his or her representative who may require a statement under oath as to the contents thereof. During a state of emergency declared under RCW 43.06.010(12), the director, on his or her own motion or at the request of any taxpayer affected by the emergency, may extend the time for filing any report or the due date for tax remittances as the director deems proper.

Every application for a distributor's license must contain the following information to the extent it applies to the applicant:

(1) Proof as the department may require concerning the applicant's identity, including but not limited to his or her fingerprints or those of the officers of a corporation making the application;

(2) The applicant's form and place of organization including proof that the individual, partnership, or corporation is licensed to do business in this state;

(3) The qualification and business history of the applicant and any partner, officer, or director;

(4) The applicant's financial condition or history including a bank reference and whether the applicant or any partner,

officer, or director has ever been adjudged bankrupt or has an unsatisfied judgment in a federal or state court;

(5) Whether the applicant has been adjudged guilty of a crime that directly relates to the business for which the license is sought and the time elapsed since the conviction is less than ten years, or has suffered a judgment within the preceding five years in a civil action involving fraud, misrepresentation, or conversion and in the case of a corporation or partnership, all directors, officers, or partners.

After receipt of an application for a license, the director may conduct an investigation to determine whether the facts set forth are true. The director may require a fingerprint record check of the applicant through the Washington state patrol criminal identification system and the federal bureau of investigation before issuance of a license. The results of the background investigation including criminal history information may be released to authorized department personnel as the director deems necessary. The department shall charge a license holder or license applicant a fee of fifty dollars for each background investigation conducted.

An applicant who makes a false statement of a material fact on the application may be prosecuted for false swearing as defined by RCW 9A.72.040. [2013 c 23 § 335; 2008 c 181 § 507; 1996 c 104 § 14; 1982 1st ex.s. c 25 § 5; 1969 ex.s. c 254 § 3; 1967 ex.s. c 10 § 4.]

***Reviser's note:** Chapter 82.36 RCW was repealed in its entirety by 2013 c 225 § 501, effective July 1, 2015.

Part headings not law—2008 c 181: See note following RCW 43.06.220.

Additional notes found at www.leg.wa.gov

82.42.040 Collection of tax—Procedure—Licensing—Surety bond or other security—Records, reports, statements—Extensions during state of emergency—Application—Investigation—Fee—Penalty for false statement (as amended by 2013 c 23). The director shall by rule and regulation adopted as provided in chapter 34.05 RCW (Administrative Procedure Act) set up the necessary administrative procedure for collection by the department of the aircraft fuel excise tax as provided for in RCW 82.42.020, placing the responsibility of collection of said tax upon every distributor of aircraft fuel within the state; he or she may require the licensing of every distributor of aircraft fuel and shall require such a corporate surety bond or security of any distributor or person not otherwise bonded under provisions of *chapter 82.36 RCW as is provided for distributors of motor vehicle fuel under *RCW 82.36.060; he or she shall provide such forms and may require such reports or statements as in his or her determination shall be necessary for the proper administration of this chapter. The director may require such records to be kept, and for such periods of time, as deemed necessary for the administration of this chapter, which records shall be available at all times for the director or his or her representative who may require a statement under oath as to the contents thereof. During a state of emergency declared under RCW 43.06.010(12), the director, on his or her own motion or at the request of any taxpayer affected by the emergency, may extend the time for filing any report or the due date for tax remittances as the director deems proper.

Every application for a distributor's license must contain the following information to the extent it applies to the applicant:

(1) Proof as the department may require concerning the applicant's identity, including but not limited to his or her fingerprints or those of the officers of a corporation making the application;

(2) The applicant's form and place of organization including proof that the individual, partnership, or corporation is licensed to do business in this state;

(3) The qualification and business history of the applicant and any partner, officer, or director;

(4) The applicant's financial condition or history including a bank reference and whether the applicant or any partner, officer, or director has ever been adjudged bankrupt or has an unsatisfied judgment in a federal or state court;

(5) Whether the applicant has been adjudged guilty of a crime that directly relates to the business for which the license is sought and the time elapsed since the conviction is less than ten years, or has suffered a judgment within the preceding five years in a civil action involving fraud, misrepresentation, or conversion and in the case of a corporation or partnership, all directors, officers, or partners.

After receipt of an application for a license, the director may conduct an investigation to determine whether the facts set forth are true. The director may require a fingerprint record check of the applicant through the Washington state patrol criminal identification system and the federal bureau of investigation before issuance of a license. The results of the background investigation including criminal history information may be released to authorized department personnel as the director deems necessary. The department shall charge a license holder or license applicant a fee of fifty dollars for each background investigation conducted.

An applicant who makes a false statement of a material fact on the application may be prosecuted for false swearing as defined by RCW 9A.72.040. [2013 c 23 § 335; 2008 c 181 § 507; 1996 c 104 § 14; 1982 1st ex.s. c 25 § 5; 1969 ex.s. c 254 § 3; 1967 ex.s. c 10 § 4.]

***Reviser's note:** Chapter 82.36 RCW was repealed in its entirety by 2013 c 225 § 501, effective July 1, 2015.

82.42.040 Application—Bond—Investigation—Fee—Penalty for false statement (as amended by 2013 c 225). (Effective July 1, 2015.)

(The director shall by rule and regulation adopted as provided in chapter 34.05 RCW (Administrative Procedure Act) set up the necessary administrative procedure for collection by the department of the aircraft fuel excise tax as provided for in RCW 82.42.020, placing the responsibility of collection of said tax upon every distributor of aircraft fuel within the state; he may require the licensing of every distributor of aircraft fuel and shall require such a corporate surety bond or security of any distributor or person not otherwise bonded under provisions of chapter 82.36 RCW as is provided for distributors of motor vehicle fuel under RCW 82.36.060; he shall provide such forms and may require such reports or statements as in his determination shall be necessary for the proper administration of this chapter. The director may require such records to be kept, and for such periods of time, as deemed necessary for the administration of this chapter, which records shall be available at all times for the director or his representative who may require a statement under oath as to the contents thereof. During a state of emergency declared under RCW 43.06.010(12), the director, on his or her own motion or at the request of any taxpayer affected by the emergency, may extend the time for filing any report or the due date for tax remittances as the director deems proper.

Every application for a distributor's license must contain the following information to the extent it applies to the applicant:

(1) Proof as the department may require concerning the applicant's identity, including but not limited to his or her fingerprints or those of the officers of a corporation making the application;

(2) The applicant's form and place of organization including proof that the individual, partnership, or corporation is licensed to do business in this state;

(3) The qualification and business history of the applicant and any partner, officer, or director;

(4) The applicant's financial condition or history including a bank reference and whether the applicant or any partner, officer, or director has ever been adjudged bankrupt or has an unsatisfied judgment in a federal or state court;

(5) Whether the applicant has been adjudged guilty of a crime that directly relates to the business for which the license is sought and the time elapsed since the conviction is less than ten years, or has suffered a judgment within the preceding five years in a civil action involving fraud, misrepresentation, or conversion and in the case of a corporation or partnership, all directors, officers, or partners.

After receipt of an application for a license, the director may conduct an investigation to determine whether the facts set forth are true. The director may require a fingerprint record check of the applicant through the Washington state patrol criminal identification system and the federal bureau of investigation before issuance of a license. The results of the background investigation including criminal history information may be released to authorized department personnel as the director deems necessary. The department shall charge a license holder or license applicant a fee of fifty dollars for each background investigation conducted.

An applicant who makes a false statement of a material fact on the application may be prosecuted for false swearing as defined by RCW 9A.72.040.) (1) Application for a license must be made to the department.

The application must be filed in a manner prescribed by the department and must contain information the department requires.

(2) For purposes of this section, the term "applicant" has the same meaning as provided for "person" in RCW 82.42.010.

(3) An application for a license must contain the following information to the extent it applies to the applicant:

(a) Proof, as the department may require, concerning the applicant's identity;

(b) The applicant's business structure and place of business, including proof the applicant is licensed to conduct business in this state;

(c) The employment history of the applicant and any partner, officer, or director of the applicant;

(d) A bank reference and whether the applicant or any partner, officer, or director of the applicant has ever been adjudged bankrupt or has an unsatisfied judgment;

(e) Whether the applicant has been adjudged guilty of a crime or suffered a civil judgment directly related to the distribution and sale of fuel within the last ten years;

(f) Each state, province, or country that the applicant intends to import fuel from by means other than bulk transfer. An applicant must also show proof that the applicant has maintained the appropriate license required of each state, province, or country; and

(g) Each state, province, or country that the applicant intends to export fuel to by means other than bulk transfer. An applicant must also show proof that the applicant has maintained the appropriate license required of each state, province, or country.

(4) An applicant must submit a surety bond in an amount, form, and manner set by the department. In lieu of a bond, an applicant may provide evidence to the department of sufficient assets to adequately meet tax payments, penalties, interest, or other obligations arising out of this chapter.

(5) For the purposes of considering any application for a license, the department may inspect, cause an inspection, investigate, or cause an investigation of the records of this or any other state, province, country, or the federal government to ascertain the veracity of the information on the application and the applicant's criminal, civil, and licensing history.

(6) An applicant who makes a false statement of a material fact on the application may be prosecuted for false swearing as defined by RCW 9A.72.040. [2013 c 225 § 304; 2008 c 181 § 507; 1996 c 104 § 14; 1982 1st ex.s. c 25 § 5; 1969 ex.s. c 254 § 3; 1967 ex.s. c 10 § 4.]

Reviser's note: RCW 82.42.040 was amended twice during the 2013 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Effective date—2013 c 225: See note following RCW 82.38.010.

Part headings not law—2008 c 181: See note following RCW 43.06.220.

Additional notes found at www.leg.wa.gov

82.42.050 through 82.42.080 Repealed. (Effective July 1, 2015.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

82.42.055 Computation and payment of tax—Remittance—Electronic funds transfer. (Effective July 1, 2015.)

(1) The tax must be computed by multiplying the tax rate per gallon by the number of gallons of fuel subject to the fuel tax.

(2) An aircraft fuel distributor is liable for and must pay the tax imposed under RCW 82.42.020 to the department on or before the twenty-fifth day of the month immediately following the reporting period. The tax report required in RCW 82.42.140 must accompany the remittance.

(3) If the tax is paid by electronic funds transfer, the tax must be paid on or before the twenty-sixth calendar day of the month immediately following the reporting period. If the payment due date falls on a Saturday, Sunday, or legal holiday, payment is due on the state business day immediately preceding the due date.

(4) The tax must be paid by electronic funds transfer whenever the amount due is fifty thousand dollars or more. [2013 c 225 § 405.]

Effective date—2013 c 225: See note following RCW 82.38.010.

82.42.065 Delinquency. (Effective July 1, 2015.) (1)

If a person is delinquent in the payment of any obligation, the department may give notice of the amount of delinquency to persons having possession or control of credits, personal and real property belonging to the person, or owing debts to the person. Any person notified may not transfer or dispose of credits, personal and real property, or debts without the consent of the department. A person notified must, within twenty days after receipt of notice, advise the department of any credits, personal and real property, or debts in their possession, under their control or owing by them, and must immediately deliver the credits, personal and real property, or debts to the department.

(2) The notice and order to withhold and deliver constitutes a continuing lien on property of the person. The department must include in the notice to withhold and deliver "continuing lien." The effective date of a notice to withhold and deliver is the date of mailing.

(3) If a person fails to timely answer the notice, a court may render a judgment, plus costs by default against the person. [2013 c 225 § 407.]

Effective date—2013 c 225: See note following RCW 82.38.010.

82.42.067 Delinquency—Seizure and sale of property. (Effective July 1, 2015.) (1) If a person is delinquent

in the payment of any obligation and the delinquency continues after notice and demand for payment the department must collect the amount due. The department must seize any property subject to the lien of tax, penalty, and interest and sell it at public auction. Notice of sale and the time and place must be given to the person and to all persons appearing with an interest in the property. The notice must be in writing at least ten days before the date of sale. Notice must be published for at least ten days before the date of sale in a newspaper of general circulation published in the county the property will be sold. If there is no newspaper of general circulation in the county, the notice must be posted in three public places in the county for a period of ten days. The notice must contain a description of the property together with a statement of the amount due, the name of the person and a statement that unless the amount is paid on or before the time in the notice the property will be sold.

(2) The department must sell the property and deliver to the purchaser a bill of sale or deed. If the moneys received exceed the amount due from the person, the excess must be returned to the person and a receipt obtained. If any person having an interest in or lien upon the property has filed notice with the department prior to the sale, the department must withhold payment of any excess to the person pending determination of the rights of the respective parties by a court of competent jurisdiction. If the receipt of the person is not available, the department must deposit the excess with the state treasurer as trustee for the person or their heirs, successors, or assigns. Prior to making any seizure of property, the department may first serve upon the person's bondsperson a

notice of delinquency and demand for payment of the amount due. [2013 c 225 § 408.]

Effective date—2013 c 225: See note following RCW 82.38.010.

82.42.068 Payment of tax by a nonlicensee. (Effective July 1, 2015.) Every person, other than a licensee, who acquires fuel upon which payment of tax is required, if the tax has not been paid, must comply with the provisions of this chapter, and pay tax at the rate provided in RCW 82.42.020. The person is subject to the same duties and penalties imposed upon licensees. [2013 c 225 § 412.]

Effective date—2013 c 225: See note following RCW 82.38.010.

82.42.075 Bonding requirements. (Effective July 1, 2015.) (1) A license may not be issued or continued in force unless a bond is provided to secure payment of all taxes, interest, and penalties. This requirement may be waived for licensees properly bonded under the provisions of chapter 82.38 RCW or licensed aircraft fuel distributors who, upon determination by the department, have sufficient resources, assets, other financial instruments, or other means to adequately make payments on monthly aircraft fuel tax payments, penalties, and interest.

(2) The department may require a licensee to post a bond if the department determines a bond is required to protect the interests of the state.

(3) The total amount of the bond or bonds is three times the estimated monthly aircraft fuel tax liability. The total bonding amount may never be less than five thousand dollars nor more than one hundred thousand dollars.

(4) In lieu of a bond, a licensee may deposit with the state treasurer, a like amount of money of the United States or bonds or other obligations of the United States, the state, or any county of the state, of a market value not less than the amount of the required bond.

(5) The department may require a licensee to increase the bond amount or to deposit additional securities as described in this section if the security of the bond or the market value of the securities becomes impaired or inadequate.

(6) Any surety on a bond furnished by a licensee must be released and discharged from any liability accruing on such bond after the expiration of forty-five days from the date the surety provided written notification to the department. This subsection does not relieve, release, or discharge the surety from any liability accrued or which will accrue before the expiration of the forty-five day period. The department must promptly notify the licensee who furnished the bond, and unless the licensee, on or before the expiration of the forty-five day period, files a new bond the department must cancel the license. [2013 c 225 § 403.]

Effective date—2013 c 225: See note following RCW 82.38.010.

82.42.085 Violations—Penalties. (Effective July 1, 2015.) (1) It is unlawful for a person to:

(a) Evade a tax or fee imposed under this chapter;

(b) Knowingly assist another person to evade a tax or fee imposed by this chapter;

(c) File a false statement of a material fact or otherwise commit any fraud or make a false representation on an aircraft fuel tax license application, aircraft fuel tax refund

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application, aircraft fuel tax return, aircraft fuel tax record, or aircraft fuel tax refund claim;

(d) Act as an aircraft fuel distributor unless the person holds a license issued by the department authorizing the person to engage in that business;

(e) Knowingly operate a conveyance for the purpose of hauling, transporting, or delivering aircraft fuel in bulk and not possess an invoice, bill of sale, or other statement showing the name, address, and tax license number of the seller or consignor, the destination, the name, address, and tax license number of the purchaser or consignee, and the number of gallons;

(f) Refuse to permit the department or its authorized representative to examine the person's books, papers, records, storage facilities, and equipment used in conjunction with the use, distribution, or sale of aircraft fuel;

(g) To display, or cause to permit to be displayed, or to have in possession, an aircraft fuel license knowing the same to be fictitious or to have been suspended, canceled, revoked, or altered;

(h) To lend to, or knowingly permit the use of, by one not entitled thereto, any aircraft fuel license issued to the person lending it or permitting it to be used;

(i) To display or to represent as one's own any aircraft fuel license not issued to the person displaying the same; and

(j) To use or to conspire with any governmental official, agent, or employee for the use of any requisition, purchase order, or any card or any authority to which he or she is not specifically entitled by government regulations, for the purpose of obtaining any aircraft fuel upon which the state tax has not been paid.

(2)(a) A single violation of subsection (1)(a) and (b) of this section is a gross misdemeanor under chapter 9A.20 RCW.

(b) Multiple violations of subsection (1)(a) and (b) of this section are a class C felony under chapter 9A.20 RCW.

(3) Violations of (1)(c) through (j) of this section are a gross misdemeanor under chapter 9A.20 RCW.

(4) In addition to other penalties and remedies provided by law, the court must order a person or corporation found guilty of violating subsection (1)(a) through (b) of this section to:

(a) Pay the tax or fee evaded plus interest, commencing at the date the tax or fee was first due, at the rate of twelve percent per year, compounded monthly; and

(b) Pay a penalty of one hundred percent of the tax evaded.

(5) The tax imposed by this chapter is held in trust by the licensee until paid to the department, and a licensee who appropriates the tax to his or her own use or to any use other than the payment of the tax is guilty of a felony or gross misdemeanor in accordance with the theft and anticipatory provisions of Title 9A RCW. A person, partnership, corporation, or corporate officer who fails to pay to the department the tax is personally liable to the state for the amount of the tax. [2013 c 225 § 420.]

Effective date—2013 c 225: See note following RCW 82.38.010.

82.42.090 Tax proceeds—Disposition—Aeronautics account. (Effective July 1, 2015.) All taxes, interest, and penalties collected under this chapter must be deposited into

the aeronautics account. All taxes, interest, and penalties collected from the consumer or user of aircraft fuel from either the use tax imposed by RCW 82.12.020 or the retail sales tax imposed by RCW 82.08.020 must be deposited into the state general fund. [2013 c 225 § 305; 1995 c 170 § 1; 1991 sp.s. c 13 § 37; 1985 c 57 § 86; 1982 1st ex.s. c 25 § 8; 1967 ex.s. c 10 § 9.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Additional notes found at www.leg.wa.gov

82.42.095 Date of mailing deemed date of filing or receipt—Timely mailing bars penalties and tolls statutory time limitations. (Effective July 1, 2015.) An application, report, notice, payment, or claim for credit or refund properly addressed and deposited in the United States mail is deemed filed or received on the date shown by the post office cancellation mark on the envelope. No penalty for delinquency attaches, nor is the statutory period deemed to have elapsed in the case of credit or refund claims, if it is established by competent evidence that the application, report, notice, payment, or claim for credit or refund was properly addressed and timely deposited in the United States mail, if a duplicate of the document or payment is filed. [2013 c 225 § 406.]

Effective date—2013 c 225: See note following RCW 82.38.010.

82.42.100 Enforcement. The director is charged with the enforcement of the provisions of this chapter and rules and regulations promulgated hereunder. The director may, in his or her discretion, call on the state patrol or any peace officer in the state, who shall then aid in the enforcement of this chapter or any rules or regulations promulgated hereunder. [2013 c 23 § 336; 1967 ex.s. c 10 § 10.]

82.42.110 Tax upon persons other than distributors—Imposition—Collection—Distribution—Enforcement. (Effective July 1, 2015.) Every person other than a distributor who acquires any aircraft fuel within this state upon which payment of tax is required under the provisions of this chapter, or imports such aircraft fuel into this state and sells, delivers, or in any manner uses it in this state, if the tax has not been paid, is subject to the provisions of this chapter provided for aircraft fuel distributors and must pay a tax at the rate computed under RCW 82.42.020 for each gallon thereof so sold, delivered, or used in the manner provided for distributors. The proceeds of the tax imposed by this section must be distributed in the manner provided for the distribution of the aircraft fuel tax in RCW 82.42.090. For failure to comply with the terms of this chapter, such person is subject to the same penalties imposed upon distributors. The director must pursue against such persons the same procedure and remedies for audits, adjustments, collection, and enforcement of this chapter as is provided with respect to distributors. Nothing herein must be construed as classifying such persons as distributors. [2013 c 225 § 306; 1982 1st ex.s. c 25 § 9; 1971 ex.s. c 156 § 5.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Additional notes found at www.leg.wa.gov

82.42.115 Assessments—Warrant—Lien—Filing fee—Writs of execution and garnishment. (Effective July 1, 2015.) When an assessment becomes final the department

may file with the clerk of any county within the state a warrant in the amount of the assessment of taxes, penalties, interest and a filing fee under RCW 36.18.012(10). The warrant is a lien upon title to, and interest in all real and personal property of the person against whom the warrant is issued. The warrant is sufficient to support the issuance of writs of execution and writs of garnishment in favor of the state. [2013 c 225 § 402.]

Effective date—2013 c 225: See note following RCW 82.38.010.

82.42.118 Civil and statutory penalties and interest—Deficiency assessments. (Effective July 1, 2015.) (1) If any licensee fails to pay any taxes due the state of Washington within the time prescribed in this chapter, the licensee must pay a penalty of ten percent of the tax due.

(2) If the tax reported by any licensee is deficient a penalty of ten percent of the deficiency must be assessed.

(3) If any licensee, whether or not licensed as such, fails, neglects, or refuses to file a required fuel tax report, the department must determine the tax liability and add the penalty provided in subsection (2) of this section to the liability. An assessment made by the department pursuant to this subsection or to subsection (2) of this section is presumed to be correct, and the burden is on the person who challenges the assessment to establish by a fair preponderance of the evidence that it is erroneous or excessive.

(4) If any licensee establishes by a fair preponderance of evidence that failure to file a report or pay the proper amount of tax within the time prescribed was due to reasonable cause and was not intentional or willful, the department may waive the penalty prescribed in subsections (1) and (2) of this section.

(5) If any licensee files a false or fraudulent report with intent to evade the tax imposed by this chapter, a penalty of twenty-five percent of the deficiency must be added to the amount of deficiency, which is in addition to all other penalties prescribed by law.

(6) If any person acts as a licensee without first securing the required license, all fuel tax liability incurred by that person becomes immediately due and payable. The department must determine the amount of the tax liability and must assess the person along with a penalty of one hundred percent of the tax.

(7) Any fuel tax, penalties, and interest payable under this chapter bear interest at the rate of one percent per month, or fraction thereof, from the first day of the calendar month after the amount or any portion thereof should have been paid until the date of payment. The department may waive interest when it determines the cost of processing the collection exceeds the amount of interest due.

(8) Except in the case of violations of filing a false or fraudulent report, if the department deems mitigation of penalties and interest to be reasonable and in the best interests of carrying out the purpose of this chapter, it may mitigate the assessments.

(9) Except in the case of a fraudulent report or failure to file a report, deficiencies, penalties, and interest must be assessed within five years from the twenty-fifth day of the next succeeding month following the reporting period for which the amount is determined or within five years after the return is filed, whichever period expires later.

(10)(a) Any licensee against whom an assessment is made under the provisions of subsection (2) or (3) of this section may petition for a reassessment within thirty days after service upon the licensee of the assessment. If such petition is not filed within such thirty-day period, the amount of the assessment becomes final.

(b) If a petition for reassessment is filed within the thirty-day period, the department must reconsider the assessment and, if the licensee has requested in the petition, must grant an informal hearing and give ten days' notice of the time and place. The department may continue the hearing as needed. The decision of the department upon a petition for reassessment becomes final thirty days after service upon the licensee.

(11) Every assessment made by the department becomes due and payable at the time it becomes final and if not timely paid to the department a penalty of ten percent of the amount of the tax must be added to the assessment.

(12) Any notice of assessment required by this section must be served by depositing such notice in the United States mail, postage prepaid addressed to the licensee at the address shown in the records of the department.

(13) Any licensee who has had a fuel license revoked must pay a one hundred dollar penalty prior to the issuance of a new license. [2013 c 225 § 404.]

Effective date—2013 c 225: See note following RCW 82.38.010.

82.42.120 Repealed. (Effective July 1, 2015.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

82.42.125 Bankruptcy proceedings—Notice. (Effective July 1, 2015.) A licensee who files a bankruptcy petition, or against whom a petition for bankruptcy is filed, must notify the department of the filing within ten days of the filing. The notice must include the name and location of the court in which the petition was filed. [2013 c 225 § 307; 1997 c 183 § 11.]

Effective date—2013 c 225: See note following RCW 82.38.010.

82.42.130 Administration and enforcement. (Effective July 1, 2015.) (1) The department may prescribe, adopt, and enforce reasonable rules relating to administration and enforcement of this chapter.

(2) The department or its authorized representative is empowered to examine the books, papers, records, and equipment of any person distributing, transporting, storing, or using aircraft fuel and to investigate the disposition any person makes of aircraft fuel to determine whether all taxes due or refundable are properly reported, paid, or claimed. If books, papers, records, and equipment are not maintained in this state at the time of demand the department does not lose any right of examination.

(3) The director may, from time to time, require additional reports from any licensee with reference to any of the matters herein concerned. Such reports must be made and filed on forms prepared by the director.

(4) For the purpose of any investigation or proceeding, the director or designee may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, cor-

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respondence, memoranda, agreements, or other documents or records which the director deems relevant or material to the inquiry.

(5) In the case of contumacy by or refusal to obey a subpoena issued to, any person, any court of competent jurisdiction upon application by the director, may issue to that person an order requiring appearance before the director or designee to produce testimony of other evidence regarding the matter under investigation or in question.

(6) The department must, upon request from officials responsible for enforcement of aircraft fuel tax laws of any state, the District of Columbia, the United States, its territories and possessions, the provinces or the dominion of Canada, forward information relative to the receipt, storage, delivery, sale, use, or other disposition of aircraft fuel by any person if the other furnishes like information.

(7) The department may enter into an aircraft fuel tax cooperative agreement with another state, the District of Columbia, the United States, its territories and possessions, or Canadian Province for the administration, collection, and enforcement of their respective fuel taxes.

(8) The foregoing remedies of the state in this chapter are cumulative and no action taken by the department may be construed to be an election on the part of the state or any of its officers to pursue any remedy hereunder to the exclusion of any other remedy for which provision is made in this chapter. [2013 c 225 § 401.]

Effective date—2013 c 225: See note following RCW 82.38.010.

82.42.135 Discontinuance, sale, or transfer of business—Notice—Payment of taxes, interest, penalties. (Effective July 1, 2015.) A licensee who ceases to engage in business must notify the department in writing at the time of cessation. The notice must give the date of cessation and the name and address of any purchaser or transferee. The licensee must file a report and pay all taxes, interest, and penalties owing. [2013 c 225 § 409.]

Effective date—2013 c 225: See note following RCW 82.38.010.

82.42.140 Periodic tax reports. (Effective July 1, 2015.) (1) For the purpose of determining the amount of liability for the tax imposed under this chapter, each aircraft fuel distributor must file monthly tax reports with the department.

(2) Tax reports must be filed on or before the twenty-fifth day of the calendar month following the reporting period to which it relates. A report must be filed even though no tax is due for the reporting period. Each report must contain a declaration that the statements contained therein are true and are made under penalties of perjury. The report must show information as the department may reasonably require for the proper administration and enforcement of this chapter.

(3) If the filing date falls on a Saturday, Sunday, or legal holiday the next secular or business day is the filing date.

(4) The department in order to insure payment of the tax or to facilitate administration of this chapter may require the filing of reports and tax remittances at intervals other than one month.

(5) During a state of emergency declared under RCW 43.06.010(12), the department, on its own motion or at the request of any taxpayer affected by the emergency, may

extend the time for filing any report or the due date for tax remittances as the department deems proper. [2013 c 225 § 413.]

Effective date—2013 c 225: See note following RCW 82.38.010.

82.42.145 Fuel records. (Effective July 1, 2015.) (1) Every person importing, manufacturing, refining, transporting, blending, or storing aircraft fuel must keep for a period of five years open to inspection at all times during the business hours of the day to the department or its authorized representatives, a complete record of all aircraft fuel purchased or received and all aircraft fuel sold, delivered, or used by them.

(2) Records must show:

- (a) The date of receipt;
- (b) The name and address of the person from whom purchased or received;
- (c) The number of gallons received at each place of business or place of storage in the state of Washington;
- (d) The date of sale or delivery;
- (e) The number of gallons sold, delivered, or used for taxable purposes;
- (f) The number of gallons sold, delivered, or used for any purpose not subject to tax;
- (g) The name, address, and aircraft fuel license number of the purchaser if the fuel tax is not collected on the sale or delivery;
- (h) The physical inventories of aircraft fuel and petroleum products on hand at each place of business at the end of each month;
- (i) Stocks of raw gasoline, gasoline stock, diesel oil, kerosene, kerosene distillates, casing head gasoline, and other petroleum products which may be used in the compounding, blending, or manufacturing of aircraft fuel.

(3) The department may require a person other than a licensee engaged in the business of selling, purchasing, distributing, storing, transporting, or delivering aircraft fuel to submit periodic reports to the department regarding the disposition of the aircraft fuel. The reports must be on forms prescribed by the department and must contain information as the department may require.

(4) Every person operating any conveyance transporting fuel in bulk must possess during the entire time an invoice, bill of sale, or other statement showing the name, address, and license number of the seller or consigner, the destination, name, and address of the purchaser or consignee, license number, if applicable, and the number of gallons. The person transporting fuel must at the request of any law enforcement officer or authorized representative of the department, produce for inspection required records and must permit inspection of the contents of the vehicle. [2013 c 225 § 414.]

Effective date—2013 c 225: See note following RCW 82.38.010.

82.42.200 Injunctions—Writs. (Effective July 1, 2015.) No injunction or writ of mandate or other legal or equitable process may be issued in any suit, action, or proceeding in any court against this state or against any officer of the state to prevent or enjoin the collection under this chapter of any tax or any amount of tax required to be collected. [2013 c 225 § 410.]

Effective date—2013 c 225: See note following RCW 82.38.010.

82.42.205 Suits for recovery of taxes illegally or erroneously collected. (Effective July 1, 2015.) (1) No suit or proceeding may be maintained in any court for the recovery of any amount alleged to have been overpaid under RCW 82.42.020 unless a claim for refund or credit has been duly filed pursuant to RCW 82.42.220.

(2) Within ninety days after the mailing of the notice of the department's action upon a claim filed pursuant to RCW 82.42.220, the claimant may bring an action against the department on the grounds set forth in the claim in a court of competent jurisdiction in Thurston county for the recovery of the whole or any part of the amount with respect to which the claim has been disallowed. Failure to bring action within the time specified constitutes a waiver of any demand against the state on account of the alleged overpayments.

(3) If the department fails to mail notice of action on a claim within six months after the claim is filed, the claimant may, prior to the mailing of notice by the department of its intention on the claim, consider the claim disallowed and bring an action against the department, on the grounds set forth in the claim for the recovery of the whole or any part of the amount claimed as an overpayment.

(4) If judgment is rendered for the plaintiff, the amount of the judgment must first be credited on any aircraft fuel tax due and payable from the plaintiff. The balance of the judgment must be refunded to the plaintiff.

(5) In any judgment, interest must be allowed at the rate of twelve percent per annum upon the amount found to have been illegally collected from the date of payment of the amount to the date of allowance of credit on account of the judgment or to a date preceding the date of the refund warrant, but not more than thirty days, the date to be determined by the department. [2013 c 225 § 415.]

Effective date—2013 c 225: See note following RCW 82.38.010.

82.42.210 Denial—Suspension—Revocation. (Effective July 1, 2015.) (1) The department may refuse to issue to, or suspend or revoke a license of any licensee or applicant:

(a) Who formerly held a license issued under chapter 82.36, 82.38, 82.42, or 46.87 RCW which has been suspended or revoked for cause;

(b) Who is a subterfuge for the real party in interest whose license issued under chapter 82.36, 82.38, 82.42, or 46.87 RCW has been revoked for cause;

(c) Who, as an individual licensee, or partner, officer, director, owner, or managing employee of a licensee, has had a license issued under chapter 82.36, 82.38, 82.42, or 46.87 RCW denied, suspended, or revoked for cause;

(d) Who has an unsatisfied debt to the state assessed under either chapter 82.36, 82.38, 82.42, or 46.87 RCW;

(e) Who formerly held as an individual, partner, officer, director, owner, managing employee of a licensee, or subterfuge for a real party in interest, a license issued by the federal government or a state that allowed a person to buy or sell untaxed motor vehicle or special fuel, which, has been suspended or revoked for cause;

(f) Who pled guilty to or was convicted as an individual, partner, officer, director, owner, or managing employee of a licensee in this or any other state, Canadian province, or in any federal jurisdiction of a gross misdemeanor or felony crime directly related to the fuel distribution business or has

been subject to a civil judgment involving fraud, misrepresentation, conversion, or dishonesty, notwithstanding chapter 9.96A RCW;

(g) Who misrepresented or concealed a material fact in obtaining a license or reinstating a license;

(h) Who violated a statute or administrative rule regulating fuel taxation or distribution;

(i) Who failed to cooperate with the department's investigations by:

(i) Not furnishing papers or documents;

(ii) Not furnishing in writing a full and complete explanation regarding a matter under investigation by the department; or

(iii) Not responding to subpoenas issued by the department, whether or not the recipient of the subpoena is the subject of the proceeding;

(j) Who failed to comply with an order issued by the director; or

(k) Upon other sufficient cause being shown.

(2) Before such refusal, suspension, or revocation the department must grant the applicant a hearing and must grant the applicant at least twenty days' written notice of the time and place thereof. [2013 c 225 § 411.]

Effective date—2013 c 225: See note following RCW 82.38.010.

82.42.220 Claim of refund or credit. (Effective July 1, 2015.) (1) Claims for refund or credit for aircraft fuel taxes paid under this chapter must be filed with the department on forms prescribed by the department and must contain and be supported by such information and documentation as the department may require. Claims for refund of aircraft fuel taxes must be for at least twenty dollars.

(2) Any amount determined to be refundable by the department must first be credited on any amounts then due and payable from a person to whom the refund is due.

(3) No refund or credit may be approved by the department unless a written claim for refund or credit stating the specific grounds upon which the claim is founded is filed with the department:

(a) Within thirteen months from the date of purchase or from the last day of the month following the close of the reporting period for which the refundable amount or credit is due with respect to refunds or credits allowed and if not filed within this period the right to refund is barred; or

(b) Within five years from the last day of the month following the close of the reporting period for which the overpayment is due with respect to the refunds or credits allowed for aircraft fuel tax licensees.

(4) The department must refund any amount paid that has been verified by the department to be more than twenty dollars over the amount actually due for the reporting period.

(5) Payment credits may not be carried forward and applied to subsequent tax returns for a person licensed under this chapter.

(6) Within thirty days after disallowing any refund claim in whole or in part, the department must provide written notice of its action to the claimant.

(7)(a) Interest must be paid upon any refundable amount or credit due at the rate of one percent per month from the last day of the calendar month following the reporting period for which the refundable amount or credit is due.

(b) The interest must be paid:

(i) In the case of a refund, to the last day of the calendar month following the date upon which the claim is approved by the department; and

(ii) In the case of a credit, to the same date as that to which interest is computed on the tax or amount against which the credit is applied.

(c) If the department determines that any overpayment has been made intentionally or by reason of carelessness, interest is not allowed.

(8) The department must pay interest of one percent on any refund payable that is issued more than thirty state business days after the receipt of a claim properly filed and completed. After the end of the thirty business day period, additional interest accrues at the rate of one percent on the amount payable for each thirty calendar day period. [2013 c 225 § 416.]

Effective date—2013 c 225: See note following RCW 82.38.010.

82.42.230 Refunds. (Effective July 1, 2015.) Any person who has purchased aircraft fuel on which tax has been paid may file a claim with the department for a refund of the tax for:

(1) Aircraft fuel used in aircraft that both operate from a private, nonstate-funded airfield during at least ninety-five percent of the aircraft's normal use and are used principally for the application of pesticides, herbicides, or other agricultural chemicals;

(2) Aircraft fuel used in the operation of aircraft for testing or experimental purposes; and

(3) Aircraft fuel used in the operation of aircraft when the operation is for the training of crews in Washington state for purchasers of aircraft who are certified air carriers. [2013 c 225 § 417.]

Effective date—2013 c 225: See note following RCW 82.38.010.

82.42.240 Remedies cumulative. (Effective July 1, 2015.) The remedies of the state in this chapter are cumulative and no action taken by the department may be construed to be an election to pursue any remedy to the exclusion of another. [2013 c 225 § 418.]

Effective date—2013 c 225: See note following RCW 82.38.010.

82.42.250 Tax lien. (Effective July 1, 2015.) (1) If a person liable for payment of tax fails to pay the amount including any interest, penalty, or addition, together with costs accrued, there must be a lien in favor of the state upon all franchises, property, and rights to property, whether real or personal, belonging to or acquired, whether the property is employed by such person for personal or business use or is in the control of a trustee, receiver, or assignee. The lien is effective from the date taxes were due and payable until the amount is satisfied. The lien has priority over any lien or encumbrance except liens of other taxes having priority by law.

(2) The department must file with any county auditor a statement of claim and lien specifying the amount of delinquent taxes, penalties, and interest owed. [2013 c 225 § 419.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Chapter 82.44 RCW
MOTOR VEHICLE EXCISE TAX

Sections

82.44.140 Director of licensing may act.
82.44.180 Transportation fund—Deposits and distributions.

82.44.140 Director of licensing may act. Any duties required by this chapter to be performed by the county auditor may be performed by any other person designated by the director of licensing and authorized by him or her to receive motor vehicle license fees and issue receipt therefor. [2013 c 23 § 337; 1979 c 158 § 237; 1967 c 121 § 3; 1961 c 15 § 82.44.140. Prior: 1943 c 144 § 13; Rem. Supp. 1943 § 6312-127.]

Reviser's note: See note following RCW 82.44.010.

82.44.180 Transportation fund—Deposits and distributions. The transportation fund is created in the state treasury. Revenues under RCW 82.50.510 shall be deposited into the fund as provided in that section.

Moneys in the fund may be spent only after appropriation. Expenditures from the fund may be used only for transportation purposes and activities and operations of the Washington state patrol not directly related to the policing of public highways and that are not authorized under Article II, section 40 of the state Constitution. [2013 c 251 § 9. Prior: 1999 c 402 § 5; 1999 c 94 § 31; 1998 c 321 § 41 (Referendum Bill No. 49, approved November 3, 1998); 1995 c 269 § 2601; prior: 1993 sp.s. c 23 § 64; 1993 c 393 § 1; 1991 c 199 § 224; 1990 c 42 § 312.]

Residual balance of funds—Effective date—2013 c 251: See notes following RCW 41.06.280.

Legislative finding—Effective dates—1999 c 94: See notes following RCW 43.84.092.

Purpose—Severability—1998 c 321: See notes following RCW 82.14.045.

Finding—1991 c 199: See note following RCW 70.94.011.

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Additional notes found at www.leg.wa.gov

Chapter 82.45 RCW
EXCISE TAX ON REAL ESTATE SALES

Sections

82.45.060 Tax on sale of property.
82.45.065 Tax preferences—Expiration dates.
82.45.180 Disposition of proceeds.

82.45.060 Tax on sale of property. There is imposed an excise tax upon each sale of real property at the rate of one and twenty-eight one-hundredths percent of the selling price. Beginning July 1, 2013, and ending June 30, 2019, an amount equal to two percent of the proceeds of this tax must be deposited in the public works assistance account created in RCW 43.155.050, and an amount equal to four and one-tenth percent must be deposited in the education legacy trust account created in RCW 83.100.230. Thereafter, an amount equal to six and one-tenth percent of the proceeds of this tax to the state treasurer must be deposited in the public works assistance account created in RCW 43.155.050. Except as

otherwise provided in this section, an amount equal to one and six-tenths percent of the proceeds of this tax to the state treasurer must be deposited in the city-county assistance account created in RCW 43.08.290. [2013 2nd sp.s. c 9 § 6. Prior: 2011 1st sp.s. c 50 § 975; 2011 1st sp.s. c 48 § 7035; 2005 c 450 § 1; 2000 c 103 § 15; 1987 c 472 § 14; 1983 2nd ex.s. c 3 § 20; 1982 1st ex.s. c 35 § 14; 1980 c 154 § 2; 1969 ex.s. c 223 § 28A.45.060; prior: 1951 1st ex.s. c 11 § 5. Formerly RCW 28A.45.060, 28.45.060.]

Intent—Effective dates—2013 2nd sp.s. c 9: See notes following RCW 28A.150.220.

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

Effective date—2011 1st sp.s. c 48: See note following RCW 39.35B.050.

Effective date—2005 c 450: "This act takes effect August 1, 2005." [2005 c 450 § 4.]

Purpose—Effective dates—Savings—Disposition of certain funds—Severability—1980 c 154: See notes following chapter digest.

Additional notes found at www.leg.wa.gov

82.45.065 Tax preferences—Expiration dates. See RCW 82.32.805 for the expiration date of new tax preferences for the tax imposed under this chapter. [2013 2nd sp.s. c 13 § 1718.]

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.04.43393.

82.45.180 Disposition of proceeds. (1)(a) For taxes collected by the county under this chapter, the county treasurer shall collect a five dollar fee on all transactions required by this chapter where the transaction does not require the payment of tax. A total of five dollars shall be collected in the form of a tax and fee, where the calculated tax payment is less than five dollars. Through June 30, 2006, the county treasurer shall place one percent of the taxes collected by the county under this chapter and the treasurer's fee in the county current expense fund to defray costs of collection. After June 30, 2006, the county treasurer shall place one and three-tenths percent of the taxes collected by the county under this chapter and the treasurer's fee in the county current expense fund to defray costs of collection. For taxes collected by the county under this chapter before July 1, 2006, the county treasurer shall pay over to the state treasurer and account to the department of revenue for the proceeds at the same time the county treasurer remits funds to the state under RCW 84.56.280. For taxes collected by the county under this chapter after June 30, 2006, on a monthly basis the county treasurer shall pay over to the state treasurer the month's transmittal. The month's transmittal must be received by the state treasurer by 12:00 p.m. on the last working day of each month. The county treasurer shall account to the department for the month's transmittal by the twentieth day of the month following the month in which the month's transmittal was paid over to the state treasurer. The state treasurer shall deposit the proceeds in the general fund.

(b) For purposes of this subsection, the definitions in this subsection apply.

(i) "Close of business" means the time when the county treasurer makes his or her daily deposit of proceeds.

(ii) "Month's transmittal" means all proceeds deposited by the county through the close of business of the day that is two working days before the last working day of the month. This definition of "month's transmittal" shall not be construed as requiring any change in a county's practices regarding the timing of its daily deposits of proceeds.

(iii) "Proceeds" means moneys collected and received by the county from the taxes imposed by this chapter, less the county's share of the proceeds used to defray the county's costs of collection allowable in (a) of this subsection.

(iv) "Working day" means a calendar day, except Saturdays, Sundays, and all legal holidays as provided in RCW 1.16.050.

(2) For taxes collected by the department of revenue under this chapter, the department shall remit the tax to the state treasurer who shall deposit the proceeds of any state tax in the general fund. The state treasurer shall deposit the proceeds of any local taxes imposed under chapter 82.46 RCW in the local real estate excise tax account hereby created in the state treasury. Moneys in the local real estate excise tax account may be spent only for distribution to counties, cities, and towns imposing a tax under chapter 82.46 RCW. Except as provided in RCW 43.08.190, all earnings of investments of balances in the local real estate excise tax account shall be credited to the local real estate excise tax account and distributed to the counties, cities, and towns monthly. Monthly the state treasurer shall make distribution from the local real estate excise tax account to the counties, cities, and towns the amount of tax collected on behalf of each taxing authority. The state treasurer shall make the distribution under this subsection without appropriation.

(3)(a) Through June 30, 2010, the county treasurer shall collect an additional five dollar fee on all transactions required by this chapter, regardless of whether the transaction requires the payment of tax. The county treasurer shall remit this fee to the state treasurer at the same time the county treasurer remits funds to the state under subsection (1) of this section. The state treasurer shall place money from this fee in the general fund. By the twentieth day of the subsequent month, the state treasurer shall distribute to each county treasurer according to the following formula: Three-quarters of the funds available shall be equally distributed among the thirty-nine counties; and the balance shall be ratably distributed among the counties in direct proportion to their population as it relates to the total state's population based on most recent statistics by the office of financial management.

(b) When received by the county treasurer, the funds shall be placed in a special real estate excise tax electronic technology fund held by the county treasurer to be used exclusively for the development, implementation, and maintenance of an electronic processing and reporting system for real estate excise tax affidavits. Funds may be expended to make the system compatible with the automated real estate excise tax system developed by the department and compatible with the processes used in the offices of the county assessor and county auditor. Any funds held in the account that are not expended by the earlier of: July 1, 2015, or at such time that the county treasurer is utilizing an electronic processing and reporting system for real estate excise tax affidavits compatible with the department and compatible with the processes used in the offices of the county assessor and

county auditor, revert to the special real estate and property tax administration assistance account in accordance with subsection (5)(c) of this section.

(4) Beginning July 1, 2010, through December 31, 2013, the county treasurer shall continue to collect the additional five dollar fee in subsection (3) of this section on all transactions required by this chapter, regardless of whether the transaction requires the payment of tax. During this period, the county treasurer shall remit this fee to the state treasurer at the same time the county treasurer remits funds to the state under subsection (1) of this section. The state treasurer shall place money from this fee in the annual property revaluation grant account created in RCW 84.41.170.

(5)(a) The real estate and property tax administration assistance account is created in the custody of the state treasurer. An appropriation is not required for expenditures and the account is not subject to allotment procedures under chapter 43.88 RCW.

(b) Beginning January 1, 2014, the county treasurer must continue to collect the additional five dollar fee in subsection (3) of this section on all transactions required by this chapter, regardless of whether the transaction requires the payment of tax. The county treasurer shall deposit one-half of this fee in the special real estate and property tax administration assistance account in accordance with (c) of this subsection and remit the balance to the state treasurer at the same time the county treasurer remits funds to the state under subsection (1) of this section. The state treasurer must place money from this fee in the real estate and property tax administration assistance account. By the twentieth day of the subsequent month, the state treasurer must distribute the funds to each county treasurer according to the following formula: One-half of the funds available must be equally distributed among the thirty-nine counties; and the balance must be ratably distributed among the counties in direct proportion to their population as it relates to the total state's population based on most recent statistics by the office of financial management.

(c) When received by the county treasurer, the funds must be placed in a special real estate and property tax administration assistance account held by the county treasurer to be used for:

(i) Maintenance and operation of an annual revaluation system for property tax valuation; and

(ii) Maintenance and operation of an electronic processing and reporting system for real estate excise tax affidavits. [2013 c 251 § 11; 2010 1st sp.s. c 26 § 9; 2009 c 308 § 5; 2006 c 312 § 1. Prior: 2005 c 486 § 2; 2005 c 480 § 2; 1998 c 106 § 11; 1993 sp.s. c 25 § 510; 1991 c 245 § 15; 1982 c 176 § 2; 1981 c 167 § 3; 1980 c 154 § 6.]

Residual balance of funds—Effective date—2013 c 251: See notes following RCW 41.06.280.

Effective date—Severability—2006 c 312: See notes following RCW 82.45.210.

Purpose—2005 c 486: "Over the past decade, traditional school construction funding sources, such as timber revenues, have been declining, while the demand for school facility construction and improvements have been increasing. Washington's youth deserve safe, healthy, and supportive learning environments to help meet their educational needs. To increase state assistance for local school construction projects, the legislature expects to rely more on state bonding authority. The purpose of this act is to expand the constitutional definition of general state revenues by removing the dedication of a portion of the real estate excise tax for common schools. Nothing

in this act is intended to affect the state's current efforts to support common schools in the state's omnibus appropriations act." [2005 c 486 § 1.]

Intent—Findings—Effective date—2005 c 480: See notes following RCW 82.45.210.

Findings—Intent—1993 sp.s. c 25: See note following RCW 82.45.010.

Purpose—Effective dates—Savings—Disposition of certain funds—Severability—1980 c 154: See notes following chapter digest.

Additional notes found at www.leg.wa.gov

**Chapter 82.48 RCW
AIRCRAFT EXCISE TAX**

Sections

82.48.010	Definitions. <i>(Effective January 1, 2014.)</i>
82.48.030	Amount of tax. <i>(Effective January 1, 2014.)</i>
82.48.035	Tax preferences—Expiration dates.
82.48.100	Exempt aircraft. <i>(Effective January 1, 2014, until July 1, 2021.)</i>

82.48.010 Definitions. (Effective January 1, 2014.)

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

(1) "Aircraft" means any weight-carrying device or structure for navigation of the air which is designed to be supported by the air.

(2) "Commuter air carrier" means an air carrier holding authority under Title 14, Part 298 of the code of federal regulations that carries passengers on at least five round trips per week on at least one route between two or more points according to its published flight schedules that specify the times, days of the week, and places between which those flights are performed.

(3) "Large multi-engine fixed wing" means any piston-driven multi-engine fixed wing aircraft with a maximum gross weight as listed by the manufacturer of seventy-five hundred pounds or more.

(4) "Person" includes a firm, partnership, limited liability company, or corporation.

(5) "Secretary" means the secretary of transportation.

(6) "Small multi-engine fixed wing" means any piston-driven multi-engine fixed wing aircraft with a maximum gross weight as listed by the manufacturer of less than seventy-five hundred pounds. [2013 c 56 § 2; 1995 c 318 § 4; 1987 c 220 § 5; 1983 2nd ex.s. c 3 § 21; 1979 c 158 § 239; 1967 ex.s. c 9 § 1; 1961 c 15 § 82.48.010. Prior: 1949 c 49 § 1; Rem. Supp. 1949 § 11219-33.]

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

Effective date—2013 c 56: See note following RCW 84.36.133.

Additional notes found at www.leg.wa.gov

82.48.030 Amount of tax. (Effective January 1, 2014.)

(1)(a) Except as otherwise provided in (b) of this subsection, the amount of the tax imposed by this chapter for each calendar year is as follows:

Type of aircraft	Registration fee
Single engine fixed wing	\$ 50
Small multi-engine fixed wing	65
Large multi-engine fixed wing	80
Turboprop multi-engine fixed wing	100

Turbojet multi-engine fixed wing	125
Helicopter	75
Sailplane	20
Lighter than air	20
Home built	20

(b) The amount of tax imposed by this chapter for each calendar year with respect to aircraft owned and operated by a commuter air carrier that is not an airplane company as defined in RCW 84.12.200 is as follows:

Gross maximum take-off weight of the aircraft	Registration fee
Less than 4,001 lbs.	\$ 500
4,001-6,000 lbs.	\$1,000
6,001-8,000 lbs.	\$2,000
8,001-9,000 lbs.	\$3,000
9,001-12,500 lbs.	\$4,000

(2)(a) The amount of tax imposed under subsection (1) of this section for each calendar year must be divided into twelve parts corresponding to the months of the calendar year and the excise tax upon an aircraft registered for the first time in this state after the last day of any month may only be levied for the remaining months of the calendar year including the month in which the aircraft is being registered. However, the minimum amount payable is three dollars.

(b) An aircraft is deemed registered for the first time in this state when such aircraft was not previously registered by this state for the year immediately preceding the year in which application for registration is made. [2013 c 56 § 3; 1983 2nd ex.s. c 3 § 22; 1967 ex.s. c 9 § 3; 1963 c 199 § 6; 1961 c 15 § 82.48.030. Prior: 1949 c 49 § 3; Rem. Supp. 1949 § 11219-35.]

Effective date—2013 c 56: See note following RCW 84.36.133.

Additional notes found at www.leg.wa.gov

82.48.035 Tax preferences—Expiration dates. See RCW 82.32.805 for the expiration date of new tax preferences for the tax imposed under this chapter. [2013 2nd sp.s. c 13 § 1719.]

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.04.43393.

82.48.100 Exempt aircraft. (Effective January 1, 2014, until July 1, 2021.) This chapter does not apply to:

(1) Aircraft owned by and used exclusively in the service of any government or any political subdivision thereof, including the government of the United States, any state, territory, or possession of the United States, or the District of Columbia, which are not engaged in carrying persons or property for commercial purposes;

(2) Aircraft registered under the laws of a foreign country;

(3) Aircraft that are owned by a nonresident and registered in another state, if the aircraft remains in this state or is based in this state, or both, for a period less than ninety days;

(4)(a) Aircraft engaged principally in commercial flying that constitutes interstate or foreign commerce, except as provided in (b) of this subsection.

(b) The exemption provided by (a) of this subsection does not apply to aircraft engaged principally in commercial flying that constitutes interstate or foreign commerce when such aircraft will be in this state exclusively for the purpose of continual storage of not less than one full calendar year;

(5) Aircraft owned by the manufacturer thereof while being operated for test or experimental purposes, or for the purpose of training crews for purchasers of the aircraft;

(6) Aircraft being held for sale, exchange, delivery, test, or demonstration purposes solely as stock in trade of an aircraft dealer licensed under Title 14 RCW;

(7) Aircraft owned by a nonresident of this state if the aircraft is kept at an airport in this state and that airport is jointly owned or operated by a municipal corporation or other governmental entity of this state and a municipal corporation or other governmental entity of another state, and the owner or operator of the aircraft provides the department with proof that the owner or operator has paid all taxes, license fees, and registration fees required by the state in which the owner or operator resides; and

(8) Aircraft that are: (a) Owned by a nonprofit organization that is exempt from federal income taxation under 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code; and (b) exclusively used to provide emergency medical transportation services. [2013 2nd sp.s. c 13 § 1105; 2010 1st sp.s. c 12 § 2; 1999 c 302 § 3; 1965 ex.s. c 173 § 28; 1961 c 15 § 82.48.100. Prior: 1955 c 150 § 12; 1949 c 49 § 10; Rem. Supp. 1949 § 11219-42.]

Intent—Findings—2013 2nd sp.s. c 13: See note following RCW 47.68.250.

Effective date—Expiration date—2013 2nd sp.s. c 13: See notes following RCW 82.08.215.

Application—Expiration date—2010 1st sp.s. c 12: See notes following RCW 84.36.575.

Additional notes found at www.leg.wa.gov

Chapter 82.50 RCW

TRAVEL TRAILERS AND CAMPERS EXCISE TAX

Sections

82.50.520 Exemptions.

82.50.520 Exemptions. The following travel trailers or campers are specifically exempted from the operation of this chapter:

(1) Any unoccupied travel trailer or camper when it is part of an inventory of travel trailers or campers held for sale by a manufacturer or dealer in the course of his or her business.

(2) A travel trailer or camper owned by any government or political subdivision thereof.

(3) A travel trailer or camper owned by a nonresident and currently licensed in another state, unless such travel trailer or camper is required by law to be licensed in this state.

For the purposes of this subsection only, a camper owned by a nonresident shall be considered licensed in another state if the vehicle to which such camper is attached is currently licensed in another state.

(4) Travel trailers eligible to be used under a dealer's license plate, and taxed under *RCW 82.44.030 while so eli-

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gible. [2013 c 23 § 338; 1983 c 26 § 4; 1979 c 123 § 4; 1971 ex.s. c 299 § 67.]

Reviser's note: (1) See note following RCW 82.50.010.

*(2) RCW 82.44.030 was repealed by 2000 1st sp.s. c 1 § 2.

Chapter 82.56 RCW MULTISTATE TAX COMPACT

Sections

82.56.030 Director may be represented by alternate.
82.56.040 Political subdivisions—Appointment of persons to represent—Consultations with.

82.56.030 Director may be represented by alternate.

The member representing this state on the multistate tax commission may be represented thereon by an alternate designated by him or her. Any such alternate shall be a principal deputy or assistant of the member of the commission in the agency which the member heads. [2013 c 23 § 339; 1967 c 125 § 3.]

82.56.040 Political subdivisions—Appointment of persons to represent—Consultations with.

The governor, after consultation with representatives of local governments, shall appoint three persons who are representative of subdivisions affected or likely to be affected by the multistate tax compact. The member of the commission representing this state, and any alternate designated by him or her, shall consult regularly with these appointees, in accordance with Article VI 1(b) of the compact. [2013 c 23 § 340; 1967 c 125 § 4.]

Chapter 82.64 RCW

SYRUP TAX

(Formerly: Carbonated beverage tax)

Sections

82.64.025 Tax preferences—Expiration dates.

82.64.025 Tax preferences—Expiration dates. See RCW 82.32.805 for the expiration date of new tax preferences for the tax imposed under this chapter. [2013 2nd sp.s. c 13 § 1720.]

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.04.43393.

Chapter 82.70 RCW

COMMUTE TRIP REDUCTION INCENTIVES

Sections

82.70.020 Tax credit authorized. (*Expires July 1, 2014.*)
82.70.040 Tax credit limitations. (*Expires July 1, 2014.*)
82.70.900 Expiration of chapter. (*Expires July 1, 2014.*)

82.70.020 Tax credit authorized. (*Expires July 1, 2014.*) (1) Employers in this state who are taxable under chapter 82.04 or 82.16 RCW and provide financial incentives to their own or other employees for ride sharing, for using public transportation, for using car sharing, or for using non-motorized commuting before July 1, 2014, are allowed a credit against taxes payable under chapters 82.04 and 82.16 RCW for amounts paid to or on behalf of employees for ride

sharing in vehicles carrying two or more persons, for using public transportation, for using car sharing, or for using non-motorized commuting, not to exceed sixty dollars per employee per fiscal year.

(2) Property managers who are taxable under chapter 82.04 or 82.16 RCW and provide financial incentives to persons employed at a worksite in this state managed by the property manager for ride sharing, for using public transportation, for using car sharing, or for using nonmotorized commuting before July 1, 2014, are allowed a credit against taxes payable under chapters 82.04 and 82.16 RCW for amounts paid to or on behalf of these persons for ride sharing in vehicles carrying two or more persons, for using public transportation, for using car sharing, or for using nonmotorized commuting, not to exceed sixty dollars per person per fiscal year.

(3) The credit under this section is equal to the amount paid to or on behalf of each employee multiplied by fifty percent, but may not exceed sixty dollars per employee per fiscal year. No refunds may be granted for credits under this section.

(4) A person may not receive credit under this section for amounts paid to or on behalf of the same employee under both chapters 82.04 and 82.16 RCW.

(5) A person may not take a credit under this section for amounts claimed for credit by other persons. [2013 c 306 § 718; 2005 c 297 § 3; 2003 c 364 § 2.]

Effective date—2013 c 306: See note following RCW 47.64.170.

Effective date—2005 c 297: See note following RCW 82.70.025.

Effective date—Contingency—2003 c 364: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect on July 1, 2003, but only if Engrossed Substitute House Bill No. 2231 becomes law by July 1, 2003. If Engrossed Substitute House Bill No. 2231 does not become law by July 1, 2003, this act is null and void." [2003 c 364 § 13.] Engrossed Substitute House Bill No. 2231 was signed into law by the governor on May 19, 2003.

Captions not law—2003 c 364: "Captions used in this act are not part of the law." [2003 c 364 § 14.]

82.70.040 Tax credit limitations. (Expires July 1, 2014.) (1)(a)(i) The department shall keep a running total of all credits allowed under RCW 82.70.020 during each fiscal year. The department shall not allow any credits that would cause the total amount allowed to exceed two million seven hundred fifty thousand dollars in any fiscal year. This limitation includes any deferred credits carried forward under subsection (2)(b)(i) of this section from prior years.

(ii) During the 2013-2015 fiscal biennium, the department shall not allow any credits that would cause the total amount allowed to exceed one million five hundred thousand dollars in any fiscal year. This limitation includes any deferred credits carried forward under subsection (2)(b)(i) of this section from prior years.

(b) If the total amount of credit applied for by all applicants in any year exceeds the limit in this subsection, the department shall ratably reduce the amount of credit allowed for all applicants so that the limit in this subsection is not exceeded. If a credit is reduced under this subsection, the amount of the reduction may not be carried forward and claimed in subsequent fiscal years.

(2)(a) Tax credits under RCW 82.70.020 may not be claimed in excess of the amount of tax otherwise due under chapter 82.04 or 82.16 RCW.

(b)(i) Through June 30, 2005, a person with taxes equal to or in excess of the credit under RCW 82.70.020, and therefore not subject to the limitation in (a) of this subsection, may elect to defer tax credits for a period of not more than three years after the year in which the credits accrue. No credits deferred under this subsection (2)(b)(i) may be used after June 30, 2008. A person deferring tax credits under this subsection (2)(b)(i) must submit an application as provided in RCW 82.70.025 in the year in which the deferred tax credits will be used. This application is subject to the provisions of subsection (1) of this section for the year in which the tax credits will be applied. If a deferred credit is reduced under subsection (1)(b) of this section, the amount of deferred credit disallowed because of the reduction may be carried forward as long as the period of deferral does not exceed three years after the year in which the credit was earned.

(ii) For credits approved by the department after June 30, 2005, the approved credit may be carried forward to subsequent years until used. Credits carried forward as authorized by this subsection are subject to the limitation in subsection (1)(a) of this section for the fiscal year for which the credits were originally approved.

(3) No person shall be approved for tax credits under RCW 82.70.020 in excess of two hundred thousand dollars in any fiscal year. This limitation does not apply to credits carried forward from prior years under subsection (2)(b) of this section.

(4) No person may claim tax credits after June 30, 2014.

(5) Credits may not be carried forward other than as authorized in subsection (2)(b) of this section.

(6) No person is eligible for tax credits under RCW 82.70.020 if the additional revenues for the multimodal transportation account created by Engrossed Substitute House Bill No. 2231 are terminated. [2013 c 306 § 719; 2005 c 297 § 5; 2003 c 364 § 4.]

Effective date—2013 c 306: See note following RCW 47.64.170.

Effective date—2005 c 297: See note following RCW 82.70.025.

Effective date—Contingency—Captions not law—2003 c 364: See notes following RCW 82.70.020.

82.70.900 Expiration of chapter. (Expires July 1, 2014.) This chapter expires July 1, 2014, except for RCW 82.70.050, which expires January 1, 2015. [2013 c 306 § 720; 2003 c 364 § 8.]

Effective date—2013 c 306: See note following RCW 47.64.170.

Effective date—Contingency—Captions not law—2003 c 364: See notes following RCW 82.70.020.

Chapter 82.72 RCW TELEPHONE PROGRAM EXCISE TAX ADMINISTRATION

Sections

82.72.010 through 82.72.090 Repealed.

82.72.010 through 82.72.090 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 82.80 RCW

LOCAL OPTION TRANSPORTATION TAXES

Sections

- 82.80.010 Motor vehicle and special fuel tax. (*Effective July 1, 2015.*)
 82.80.110 Motor vehicle and special fuel tax—Dedication by county to regional transportation investment district plan. (*Effective July 1, 2015.*)
 82.80.120 Motor vehicle and special fuel tax—Regional transportation investment district. (*Effective July 1, 2015.*)

82.80.010 Motor vehicle and special fuel tax. (*Effective July 1, 2015.*) (1) For purposes of this section:

(a) "Distributor" means every person who imports, refines, manufactures, produces, or compounds motor vehicle fuel and special fuel as defined in RCW 82.38.020, respectively, and sells or distributes the fuel into a county;

(b) "Person" has the same meaning as in RCW 82.04.030.

(2) Subject to the conditions of this section, any county may levy, by approval of its legislative body and a majority of the registered voters of the county voting on the proposition at a general or special election, additional excise taxes equal to ten percent of the statewide motor vehicle fuel tax rate under RCW 82.38.030 on each gallon of motor vehicle fuel as defined in RCW 82.38.020 and on each gallon of special fuel as defined in RCW 82.38.020 sold within the boundaries of the county. Vehicles paying an annual license fee under RCW 82.38.075 are exempt from the county fuel excise tax. An election held under this section must be held not more than twelve months before the date on which the proposed tax is to be levied. The ballot setting forth the proposition must state the tax rate that is proposed. The county's authority to levy additional excise taxes under this section includes the incorporated and unincorporated areas of the county. The additional excise taxes are subject to the same exceptions and rights of refund as applicable to other motor vehicle fuel and special fuel excise taxes levied under chapter 82.38 RCW. The proposed tax may not be levied less than one month from the date the election results are certified by the county election officer. The commencement date for the levy of any tax under this section must be the first day of January, April, July, or October.

(3) The local option motor vehicle fuel tax on each gallon of motor vehicle fuel and on each gallon of special fuel is imposed upon the distributor of the fuel.

(4) A taxable event for the purposes of this section occurs upon the first distribution of the fuel within the boundaries of a county to a retail outlet, bulk fuel user, or ultimate user of the fuel.

(5) All administrative provisions in chapters 82.01, 82.03, and 82.32 RCW, insofar as they are applicable, apply to local option fuel taxes imposed under this section.

(6) Before the effective date of the imposition of the fuel taxes under this section, a county must contract with the department of revenue for the administration and collection of the taxes. The contract must provide that a percentage amount, not to exceed one percent of the taxes imposed under this section, will be deposited into the local tax administration account created in the custody of the state treasurer. The department of revenue may spend money from this account, upon appropriation, for the administration of the local taxes imposed under this section.

(7) The state treasurer must distribute monthly to the levying county and cities contained therein the proceeds of the additional excise taxes collected under this section, after the deductions for payments and expenditures as provided in RCW 46.68.090(1) (a) and (b) and under the conditions and limitations provided in RCW 82.80.080.

(8) The proceeds of the additional excise taxes levied under this section must be used strictly for transportation purposes in accordance with RCW 82.80.070.

(9) A county may not levy the tax under this section if they are levying the tax in RCW 82.80.110 or if they are a member of a regional transportation investment district levying the tax in RCW 82.80.120. [2013 c 225 § 641; 2003 c 350 § 1; 1998 c 176 § 86; 1991 c 339 § 12; 1990 c 42 § 201.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Rules—Findings—Effective date—1998 c 176: See RCW 82.36.800, 82.36.900, and 82.36.901.

82.80.110 Motor vehicle and special fuel tax—Dedication by county to regional transportation investment district plan. (*Effective July 1, 2015.*) (1) For purposes of this section:

(a) "Distributor" means every person who imports, refines, manufactures, produces, or compounds motor vehicle fuel and special fuel as defined in RCW 82.38.020, respectively, and sells or distributes the fuel into a county;

(b) "Person" has the same meaning as in RCW 82.04.030.

(2) For purposes of dedication to a regional transportation investment district plan under chapter 36.120 RCW, subject to the conditions of this section, a county may levy additional excise taxes equal to ten percent of the statewide motor vehicle fuel tax rate under RCW 82.38.030 on each gallon of motor vehicle fuel as defined in RCW 82.38.020 and on each gallon of special fuel as defined in RCW 82.32.020 [82.38.020] sold within the boundaries of the county. The additional excise tax is subject to the approval of the county's legislative body and a majority of the registered voters of the county voting on the proposition at a general or special election. An election held under this section must be held not more than twelve months before the date on which the proposed tax is to be levied. The ballot setting forth the proposition must state that the revenues from the tax will be used for a regional transportation investment district plan. The county's authority to levy additional excise taxes under this section includes the incorporated and unincorporated areas of the county. Vehicles paying an annual license fee under RCW 82.38.075 are exempt from the county fuel excise tax. The additional excise taxes are subject to the same exceptions and rights of refund as applicable to other motor vehicle fuel and special fuel excise taxes levied under chapter 82.38 RCW. The proposed tax may not be levied less than one month from the date the election results are certified by the county election officer. The commencement date for the levy of any tax under this section will be the first day of January, April, July, or October.

(3) The local option motor vehicle fuel tax on each gallon of motor vehicle fuel and on each gallon of special fuel is imposed upon the distributor of the fuel.

(4) A taxable event for the purposes of this section occurs upon the first distribution of the fuel within the bound-

aries of a county to a retail outlet, bulk fuel user, or ultimate user of the fuel.

(5) All administrative provisions in chapters 82.01, 82.03, and 82.32 RCW, insofar as they are applicable, apply to local option fuel taxes imposed under this section.

(6) Before the effective date of the imposition of the fuel taxes under this section, a county must contract with the department of revenue for the administration and collection of the taxes. The contract must provide that a percentage amount, not to exceed one percent of the taxes imposed under this section, will be deposited into the local tax administration account created in the custody of the state treasurer. The department of revenue may spend money from this account, upon appropriation, for the administration of the local taxes imposed under this section.

(7) The state treasurer must distribute monthly to the county levying the tax as part of a regional transportation investment plan, after the deductions for payments and expenditures as provided in RCW 46.68.090(1) (a) and (b).

(8) The proceeds of the additional taxes levied by a county in this section, to be used as a part of a regional transportation investment plan, must be used in accordance with chapter 36.120 RCW, but only for those areas that are considered "highway purposes" as that term is construed in Article II, section 40 of the state Constitution.

(9) A county may not levy the tax under this section if they are a member of a regional transportation investment district that is levying the tax in RCW 82.80.120 or the county is levying the tax in RCW 82.80.010. [2013 c 225 § 642; 2003 c 350 § 2.]

Effective date—2013 c 225: See note following RCW 82.38.010.

82.80.120 Motor vehicle and special fuel tax—Regional transportation investment district. (*Effective July 1, 2015.*) (1) For purposes of this section:

(a) "Distributor" means every person who imports, refines, manufactures, produces, or compounds motor vehicle fuel and special fuel as defined in RCW 82.38.020, respectively, and sells or distributes the fuel into a county;

(b) "Person" has the same meaning as in RCW 82.04.030;

(c) "District" means a regional transportation investment district under chapter 36.120 RCW.

(2) A regional transportation investment district under chapter 36.120 RCW, subject to the conditions of this section, may levy additional excise taxes equal to ten percent of the statewide motor vehicle fuel tax rate under RCW 82.38.030 on each gallon of motor vehicle fuel as defined in RCW 82.38.020 and on each gallon of special fuel as defined in RCW 82.38.020 sold within the boundaries of the district. The additional excise tax is subject to the approval of a majority of the voters within the district boundaries. Vehicles paying an annual license fee under RCW 82.38.075 are exempt from the district's fuel excise tax. The additional excise taxes are subject to the same exceptions and rights of refund as applicable to other motor vehicle fuel and special fuel excise taxes levied under chapter 82.38 RCW. The proposed tax may not be levied less than one month from the date the election results are certified. The commencement date for the levy of any tax under this section will be the first day of January, April, July, or October.

(3) The local option motor vehicle fuel tax on each gallon of motor vehicle fuel and on each gallon of special fuel is imposed upon the distributor of the fuel.

(4) A taxable event for the purposes of this section occurs upon the first distribution of the fuel within the boundaries of the district to a retail outlet, bulk fuel user, or ultimate user of the fuel.

(5) All administrative provisions in chapters 82.01, 82.03, and 82.32 RCW, insofar as they are applicable, apply to local option fuel taxes imposed under this section.

(6) Before the effective date of the imposition of the fuel taxes under this section, a district must contract with the department of revenue for the administration and collection of the taxes. The contract must provide that a percentage amount, not to exceed one percent of the taxes imposed under this section, will be deposited into the local tax administration account created in the custody of the state treasurer. The department of revenue may spend money from this account, upon appropriation, for the administration of the local taxes imposed under this section.

(7) The state treasurer must distribute monthly to the district levying the tax as part of the regional transportation investment district plan, after the deductions for payments and expenditures as provided in RCW 46.68.090(1) (a) and (b).

(8) The proceeds of the additional taxes levied by a district in this section, to be used as a part of a regional transportation investment district plan, must be used in accordance with chapter 36.120 RCW, but only for those areas that are considered "highway purposes" as that term is construed in Article II, section 40 of the state Constitution.

(9) A district may only levy the tax under this section if the district is comprised of boundaries identical to the boundaries of a county or counties. A district may not levy the tax in this section if a member county is levying the tax in RCW 82.80.010 or 82.80.110. [2013 c 225 § 643; 2010 c 106 § 233; 2006 c 311 § 18; 2003 c 350 § 3.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Effective date—2010 c 106: See note following RCW 35.102.145.

Findings—2006 c 311: See note following RCW 36.120.020.

Title 83

ESTATE TAXATION

Chapters

83.100 Estate and transfer tax act.

Chapter 83.100 RCW

ESTATE AND TRANSFER TAX ACT

Sections

- 83.100.020 Definitions.
- 83.100.040 Estate tax imposed—Amount of tax. (*Effective January 1, 2014.*)
- 83.100.047 Marital deduction, qualified domestic trust—Election—Other deductions taken for income tax purposes disallowed. (*Effective until January 1, 2014.*)
- 83.100.047 Marital deduction, qualified domestic trust—Election—State registered domestic partner entitled to deduction—Other deductions taken for income tax purposes disallowed. (*Effective January 1, 2014.*)

- 83.100.048 Deduction—Qualified family-owned business interests.
(*Effective January 1, 2014.*)
- 83.100.120 Liability for failure to pay tax before distribution or delivery.
- 83.100.210 Application of chapter 82.32 RCW—Closing agreements authorized.

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

(1)(a) "Applicable exclusion amount" means:

- (i) One million five hundred thousand dollars for decedents dying before January 1, 2006;
- (ii) Two million dollars for estates of decedents dying on or after January 1, 2006, and before January 1, 2014; and
- (iii) For estates of decedents dying in calendar year 2014 and each calendar year thereafter, the amount in (a)(ii) of this subsection must be adjusted annually, except as otherwise provided in this subsection (1)(a)(iii). The annual adjustment is determined by multiplying two million dollars by one plus the percentage by which the most recent October consumer price index exceeds the consumer price index for October 2012, and rounding the result to the nearest one thousand dollars. No adjustment is made for a calendar year if the adjustment would result in the same or a lesser applicable exclusion amount than the applicable exclusion amount for the immediately preceding calendar year. The applicable exclusion amount under this subsection (1)(a)(iii) for the decedent's estate is the applicable exclusion amount in effect as of the date of the decedent's death.

(b) For purposes of this subsection, "consumer price index" means the consumer price index for all urban consumers, all items, for the Seattle-Tacoma-Bremerton metropolitan area as calculated by the United States bureau of labor statistics.

(2) "Decedent" means a deceased individual.

(3) "Department" means the department of revenue, the director of that department, or any employee of the department exercising authority lawfully delegated to him or her by the director.

(4) "Federal return" means any tax return required by chapter 11 of the internal revenue code.

(5) "Federal tax" means a tax under chapter 11 of the internal revenue code.

(6) "Federal taxable estate" means the taxable estate as determined under chapter 11 of the internal revenue code without regard to: (a) The termination of the federal estate tax under section 2210 of the internal revenue code or any other provision of law, and (b) the deduction for state estate, inheritance, legacy, or succession taxes allowable under section 2058 of the internal revenue code.

(7) "Gross estate" means "gross estate" as defined and used in section 2031 of the internal revenue code.

(8) "Internal revenue code" means the United States internal revenue code of 1986, as amended or renumbered as of January 1, 2005.

(9) "Person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate, or other entity and, to the extent permitted by law, any federal, state, or other governmental unit or subdivision or agency, department, or instrumentality thereof.

(10) "Person required to file the federal return" means any person required to file a return required by chapter 11 of the internal revenue code, such as the personal representative of an estate.

(11) "Property" means property included in the gross estate.

(12) "Resident" means a decedent who was domiciled in Washington at time of death.

(13) "Taxpayer" means a person upon whom tax is imposed under this chapter, including an estate or a person liable for tax under RCW 83.100.120.

(14) "Transfer" means "transfer" as used in section 2001 of the internal revenue code and includes any shifting upon death of the economic benefit in property or any power or legal privilege incidental to the ownership or enjoyment of property. However, "transfer" does not include a qualified heir disposing of an interest in property qualifying for a deduction under RCW 83.100.046 or ceasing to use the property for farming purposes.

(15) "Washington taxable estate" means the federal taxable estate and includes, but is not limited to, the value of any property included in the gross estate under section 2044 of the internal revenue code, regardless of whether the decedent's interest in such property was acquired before May 17, 2005, (a) plus amounts required to be added to the Washington taxable estate under RCW 83.100.047, (b) less: (i) The applicable exclusion amount; (ii) the amount of any deduction allowed under RCW 83.100.046; (iii) amounts allowed to be deducted from the Washington taxable estate under RCW 83.100.047; and (iv) the amount of any deduction allowed under RCW 83.100.048. [2013 2nd sp.s. c 2 § 2; 2013 c 23 § 341; 2005 c 516 § 2; 2001 c 320 § 15; 1999 c 358 § 19; 1998 c 292 § 401; 1994 c 221 § 70; 1993 c 73 § 9; 1990 c 224 § 1; 1988 c 64 § 2; 1981 2nd ex.s. c 7 § 83.100.020 (Initiative Measure No. 402, approved November 3, 1981).]

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

Application—Prospective and retroactive—2013 2nd sp.s. c 2 §§ 2 and 5: See note following RCW 83.100.047.

Findings—Intent—Final judgment—Affect—Effective dates—2013 2nd sp.s. c 2: See notes following RCW 83.100.048.

Finding—Intent—Application—Severability—Effective date—2005 c 516: See notes following RCW 83.100.040.

Additional notes found at www.leg.wa.gov

83.100.040 Estate tax imposed—Amount of tax. (*Effective January 1, 2014.*) (1) A tax in an amount computed as provided in this section is imposed on every transfer of property located in Washington. For the purposes of this section, any intangible property owned by a resident is located in Washington.

(2)(a) Except as provided in (b) of this subsection, the amount of tax is the amount provided in the following table:

If Washington Taxable Estate is at least		But Less Than	The amount of Tax Equals		Of Washington Taxable Estate Value Greater than
			Initial Tax Amount	Plus Tax Rate %	
\$0		\$1,000,000	\$0	10.00%	\$0
\$1,000,000		\$2,000,000	\$100,000	14.00%	\$1,000,000
\$2,000,000		\$3,000,000	\$240,000	15.00%	\$2,000,000
\$3,000,000		\$4,000,000	\$390,000	16.00%	\$3,000,000
\$4,000,000		\$6,000,000	\$550,000	18.00%	\$4,000,000
\$6,000,000		\$7,000,000	\$910,000	19.00%	\$6,000,000
\$7,000,000		\$9,000,000	\$1,100,000	19.50%	\$7,000,000
\$9,000,000			\$1,490,000	20.00%	\$9,000,000

(b) If any property in the decedent's estate is located outside of Washington, the amount of tax is the amount determined in (a) of this subsection multiplied by a fraction. The numerator of the fraction is the value of the property located in Washington. The denominator of the fraction is the value of the decedent's gross estate. Property qualifying for a deduction under RCW 83.100.046 must be excluded from the numerator and denominator of the fraction.

(3) The tax imposed under this section is a stand-alone estate tax that incorporates only those provisions of the internal revenue code as amended or renumbered as of January 1, 2005, that do not conflict with the provisions of this chapter. The tax imposed under this chapter is independent of any federal estate tax obligation and is not affected by termination of the federal estate tax. [2013 2nd sp.s. c 2 § 4; 2010 c 106 § 234; 2005 c 516 § 3; 1988 c 64 § 4; 1981 2nd ex.s. c 7 § 83.100.040 (Initiative Measure No. 402, approved November 3, 1981).]

Application—2013 2nd sp.s. c 2 § 4: "Section 4 of this act applies to estates of decedents dying on or after January 1, 2014." [2013 2nd sp.s. c 2 § 11.]

Findings—Intent—Final judgment—Affect—Effective dates—2013 2nd sp.s. c 2: See notes following RCW 83.100.048.

Retroactive application—2010 c 106 §§ 234 and 235: "Sections 234 and 235 of this act apply both retroactively and prospectively to estates of decedents dying on or after May 17, 2005." [2010 c 106 § 404.]

Effective date—2010 c 106: See note following RCW 35.102.145.

Finding—Intent—2005 c 516: "The legislature recognizes that on February 3, 2005, the Washington state supreme court decided in *Estate of Hemphill v. Dep't of Rev.*, Docket No. 74974-4, that Washington's estate tax is tied to the current federal Internal Revenue Code. The legislature finds that the revenue loss resulting from the *Hemphill* decision will severely affect the legislature's ability to fund programs vital to the peace, health, safety, and support of the citizens of this state. The legislature intends to address the adverse fiscal impact of the *Hemphill* decision and provide funding for education by creating a stand-alone state estate tax." [2005 c 516 § 1.]

Application—2005 c 516: "This act applies prospectively only and not retroactively. Sections 2 through 17 of this act apply only to estates of decedents dying on or after May 17, 2005." [2005 c 516 § 20.]

Severability—2005 c 516: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2005 c 516 § 21.]

Effective date—2005 c 516: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 17, 2005]." [2005 c 516 § 22.]

83.100.047 Marital deduction, qualified domestic trust—Election—Other deductions taken for income tax purposes disallowed. (Effective until January 1, 2014.) (1)

If the federal taxable estate on the federal return is determined by making an election under section 2056 or 2056A of the internal revenue code, or if no federal return is required to be filed, the department may provide by rule for a separate election on the Washington return, consistent with section 2056 or 2056A of the internal revenue code, for the purpose of determining the amount of tax due under this chapter. The election is binding on the estate and the beneficiaries, consistent with the internal revenue code. All other elections or valuations on the Washington return must be made in a manner consistent with the federal return, if a federal return is required, and such rules as the department may provide.

(2) Amounts deducted for federal income tax purposes under section 642(g) of the internal revenue code of 1986 are not allowed as deductions in computing the amount of tax due under this chapter.

(3) Notwithstanding any department rule, if a taxpayer makes an election consistent with section 2056 of the internal revenue code as permitted under this section, the taxpayer's Washington taxable estate, and the surviving spouse's Washington taxable estate, must be adjusted as follows:

(a) For the taxpayer that made the election, any amount deducted by reason of section 2056(b)(7) of the internal revenue code is added to, and the value of property for which a Washington election under this section was made is deducted from, the Washington taxable estate.

(b) For the estate of the surviving spouse, the amount included in the estate's gross estate pursuant to section 2044 (a) and (b)(1)(A) of the internal revenue code is deducted from, and the value of any property for which an election under this section was previously made is added to, the Washington taxable estate. [2013 2nd sp.s. c 2 § 5; 2005 c 516 § 13.]

Application—Prospective and retroactive—2013 2nd sp.s. c 2 §§ 2 and 5: "Sections 2 and 5 of this act apply both prospectively and retroactively to all estates of decedents dying on or after May 17, 2005." [2013 2nd sp.s. c 2 § 9.]

Expiration date—2013 2nd sp.s. c 2 § 5: "Section 5 of this act expires January 1, 2014." [2013 2nd sp.s. c 2 § 13.]

Findings—Intent—Final judgment—Affect—Effective dates—2013 2nd sp.s. c 2: See notes following RCW 83.100.048.

Finding—Intent—Application—Severability—Effective date—2005 c 516: See notes following RCW 83.100.040.

83.100.047 Marital deduction, qualified domestic trust—Election—State registered domestic partner entitled to deduction—Other deductions taken for income tax purposes disallowed. (Effective January 1, 2014.) (1)(a) If the federal taxable estate on the federal return is determined by making an election under section 2056 or 2056A of the internal revenue code, or if no federal return is required to be filed, the department may provide by rule for a separate election on the Washington return, consistent with section 2056 or 2056A of the internal revenue code and (b) of this subsection, for the purpose of determining the amount of tax due under this chapter. The election is binding on the estate and the beneficiaries, consistent with the internal revenue code and (b) of this subsection. All other elections or valuations on the Washington return must be made in a manner consistent with the federal return, if a federal return is required, and such rules as the department may provide.

(b) The department must provide by rule that a state registered domestic partner is deemed to be a surviving spouse and entitled to a deduction from the Washington taxable estate for any interest passing from the decedent to his or her domestic partner, consistent with section 2056 or 2056A of the internal revenue code but regardless of whether such interest would be deductible from the federal gross estate under section 2056 or 2056A of the internal revenue code.

(2) Amounts deducted for federal income tax purposes under section 642(g) of the internal revenue code of 1986 are not allowed as deductions in computing the amount of tax due under this chapter.

(3) Notwithstanding any department rule, if a taxpayer makes an election consistent with section 2056 of the internal revenue code as permitted under this section, the taxpayer's Washington taxable estate, and the surviving spouse's Washington taxable estate, must be adjusted as follows:

(a) For the taxpayer that made the election, any amount deducted by reason of section 2056(b)(7) of the internal revenue code is added to, and the value of property for which a Washington election under this section was made is deducted from, the Washington taxable estate.

(b) For the estate of the surviving spouse, the amount included in the estate's gross estate pursuant to section 2044(a) and (b)(1)(A) of the internal revenue code is deducted from, and the value of any property for which an election under this section was previously made is added to, the Washington taxable estate. [2013 2nd sp.s. c 2 § 6; 2009 c 521 § 192; 2005 c 516 § 13.]

Findings—Intent—Final judgment—Affect—Effective dates—2013 2nd sp.s. c 2: See notes following RCW 83.100.048.

Effective dates—2009 c 521 §§ 5-8, 79, 87-103, 107, 151, 165, 166, 173-175, and 190-192: See note following RCW 2.10.900.

Finding—Intent—Application—Severability—Effective date—2005 c 516: See notes following RCW 83.100.040.

83.100.048 Deduction—Qualified family-owned business interests. (Effective January 1, 2014.) (1) For the purposes of determining the tax due under this chapter, a deduction is allowed for the value of the decedent's qualified family-owned business interests, not to exceed two million five hundred thousand dollars, if:

(a) The value of the decedent's qualified family-owned business interests exceed fifty percent of the decedent's

Washington taxable estate determined without regard to the deduction for the applicable exclusion amount;

(b) During the eight-year period ending on the date of the decedent's death, there have been periods aggregating five years or more during which:

(i) Such interests were owned by the decedent or a member of the decedent's family;

(ii) There was material participation, within the meaning of section 2032A(e)(6) of the internal revenue code, by the decedent or a member of the decedent's family in the operation of the trade or business to which such interests relate;

(c) The qualified family-owned business interests are acquired by any qualified heir from, or passed to any qualified heir from, the decedent, within the meaning of RCW 83.100.046(2), and the decedent was at the time of his or her death a citizen or resident of the United States; and

(d) The value of the decedent's qualified family-owned business interests is not more than six million dollars.

(2)(a) Only amounts included in the decedent's federal taxable estate may be deducted under this subsection.

(b) Amounts deductible under RCW 83.100.046 may not be deducted under this section.

(3)(a) There is imposed an additional estate tax on a qualified heir if, within three years of the decedent's death and before the date of the qualified heir's death:

(i) The material participation requirements described in section 2032A(c)(6)(b)(ii) of the internal revenue code are not met with respect to the qualified family-owned business interest which was acquired or passed from the decedent;

(ii) The qualified heir disposes of any portion of a qualified family-owned business interest, other than by a disposition to a member of the qualified heir's family or a person with an ownership interest in the qualified family-owned business or through a qualified conservation contribution under section 170(h) of the internal revenue code;

(iii) The qualified heir loses United States citizenship within the meaning of section 877 of the internal revenue code or with respect to whom section 877(e)(1) applies, and such heir does not comply with the requirements of section 877(g) of the internal revenue code; or

(iv) The principal place of business of a trade or business of the qualified family-owned business interest ceases to be located in the United States.

(b) The amount of the additional estate tax imposed under this subsection is equal to the amount of tax savings under this section with respect to the qualified family-owned business interest acquired or passed from the decedent.

(c) Interest applies to the tax due under this subsection for the period beginning on the date that the estate tax liability was due under this chapter and ending on the date the additional estate tax due under this subsection is paid. Interest under this subsection must be computed as provided in RCW 83.100.070(2).

(d) The tax imposed by this subsection is due the day that is six months after any taxable event described in (a) of this subsection occurred and must be reported on a return as provided by the department.

(e) The qualified heir is personally liable for the additional tax imposed by this subsection unless he or she has furnished a bond in favor of the department for such amount and for such time as the department determines necessary to

secure the payment of amounts due under this subsection. The qualified heir, on furnishing a bond satisfactory to the department, is discharged from personal liability for any additional tax and interest under this subsection and is entitled to a receipt or writing showing such discharge.

(f) Amounts due under this subsection attributable to any qualified family-owned business interest are secured by a lien in favor of the state on the property in respect to which such interest relates. The lien under this subsection (3)(f) arises at the time the Washington return is filed on which a deduction under this section is taken and continues in effect until: (i) The tax liability under this subsection has been satisfied or has become unenforceable by reason of lapse of time; or (ii) the department is satisfied that no further tax liability will arise under this subsection.

(g) Security acceptable to the department may be substituted for the lien imposed by (f) of this subsection.

(h) For purposes of the assessment or correction of an assessment for additional taxes and interest imposed under this subsection, the limitations period in RCW 83.100.095 begins to run on the due date of the return required under (d) of this subsection.

(i) For purposes of this subsection, a qualified heir may not be treated as disposing of an interest described in section 2057(e)(1)(A) of the internal revenue code by reason of ceasing to be engaged in a trade or business so long as the property to which such interest relates is used in a trade or business by any member of the qualified heir's family.

(4)(a) The department may require a taxpayer claiming a deduction under this section to provide the department with the names and contact information of all qualified heirs.

(b) The department may also require any qualified heir to submit to the department on an ongoing basis such information as the department determines necessary or useful in determining whether the qualified heir is subject to the additional tax imposed in subsection (3) of this section. The department may not require such information more frequently than twice per year. The department may impose a penalty on a qualified heir who fails to provide the information requested within thirty days of the date the department's written request for the information was sent to the qualified heir. The amount of the penalty under this subsection is five hundred dollars and may be collected in the same manner as the tax imposed under subsection (3) of this section.

(5) For purposes of this section, references to section 2057 of the internal revenue code refer to section 2057 of the internal revenue code, as existing on December 31, 2003.

(6) For purposes of this section, the following definitions apply:

(a) "Member of the decedent's family" and "member of the qualified heir's family" have the same meaning as "member of the family" in RCW 83.100.046(10).

(b) "Qualified family-owned business interest" has the same meaning as provided in section 2057(e) of the internal revenue code of 1986.

(c) "Qualified heir" has the same meaning as provided in section 2057(i) of the internal revenue code of 1986.

(7) This section applies to the estates of decedents dying on or after January 1, 2014. [2013 2nd sp.s. c 2 § 3.]

Findings—Intent—2013 2nd sp.s. c 2: "(1) In 2005, to address an unexpected significant loss of tax revenue resulting from the *Estate of Hemp-*

hill decision and to provide additional funding for public education, the legislature enacted a stand-alone estate and transfer tax, effective May 17, 2005. The stand-alone estate and transfer tax applies to the transfer of property at death. By defining the term "transfer" to mean a "transfer as used in section 2001 of the internal revenue code," the legislature clearly expressed its intent that a "transfer" for purposes of determining the federal taxable estate is also a "transfer" for purposes of determining the Washington taxable estate.

(2) In *In re Estate of Bracken*, Docket No. 84114-4, the Washington supreme court narrowly construed the term "transfer" as defined in the Washington estate tax code.

(3) The legislature finds that it is well established that the term "transfer" as used in the federal estate tax code is construed broadly and extends to the "shifting from one to another of any power or privilege incidental to the ownership or enjoyment of property" that occurs at death. *Fernandez v. Wiener*, 326 U.S. 340, 352 (1945).

(4) The legislature further finds that: The Bracken decision held certain qualified terminable interest property (QTIP) of married couples was transferred without incurring Washington state estate tax liability, which: (a) Creates an inequity never intended by the legislature because unmarried individuals did not enjoy any similar opportunities to avoid or greatly reduce their potential Washington estate tax liability; and (b) may create disparate treatment between QTIP property and other property transferred between spouses that is eligible for the marital deduction.

(5) Therefore, the legislature finds that it is necessary to reinstate the legislature's intended meaning when it enacted the estate tax, restore parity between married couples and unmarried individuals, restore parity between QTIP property and other property eligible for the marital deduction, and prevent the adverse fiscal impacts of the Bracken decision by reaffirming its intent that the term "transfer" as used in the Washington estate and transfer tax is to be given its broadest possible meaning consistent with established United States supreme court precedents, subject only to the limits and exceptions expressly provided by the legislature.

(6) As curative, clarifying, and remedial, the legislature intends for this act to apply both prospectively and retroactively to estates of decedents dying on or after May 17, 2005." [2013 2nd sp.s. c 2 § 1.]

Final judgment—Affect—2013 2nd sp.s. c 2: "This act does not affect any final judgment, no longer subject to appeal, entered by a court of competent jurisdiction before June 14, 2013." [2013 2nd sp.s. c 2 § 10.]

Effective dates—2013 2nd sp.s. c 2: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 14, 2013], except for sections 3, 4, and 6 of this act which take effect January 1, 2014." [2013 2nd sp.s. c 2 § 14.]

83.100.120 Liability for failure to pay tax before distribution or delivery. (1)(a) Except as otherwise provided in this subsection, any personal representative who distributes any property without first paying, securing another's payment of, or furnishing security for payment of the taxes due under this chapter is personally liable for the taxes due to the extent of the value of any property that may come or may have come into the possession of the personal representative. Security for payment of the taxes due under this chapter must be in an amount equal to or greater than the value of all property that is or has come into the possession of the personal representative, as of the time the security is furnished.

(b) For the estates of decedents dying prior to April 9, 2006, a personal representative is not personally liable for taxes due on the value of any property included in the gross estate and the Washington taxable estate as a result of section 2044 of the internal revenue code unless the property is located in the state of Washington or the property has or will come into the possession or control of the personal representative.

(2) Any person who has the control, custody, or possession of any property and who delivers any of the property to the personal representative or legal representative of the decedent outside Washington without first paying, securing another's payment of, or furnishing security for payment of

the taxes due under this chapter is liable for the taxes due under this chapter to the extent of the value of the property delivered. Security for payment of the taxes due under this chapter must be in an amount equal to or greater than the value of all property delivered to the personal representative or legal representative of the decedent outside Washington by such a person.

(3) For the purposes of this section, persons who do not have possession of a decedent's property include anyone not responsible primarily for paying the tax due under this section or their transferees, which includes but is not limited to mortgagees or pledgees, stockbrokers or stock transfer agents, banks and other depositories of checking and savings accounts, safe-deposit companies, and life insurance companies.

(4) For the purposes of this section, any person who has the control, custody, or possession of any property and who delivers any of the property to the personal representative or legal representative of the decedent may rely upon the release certificate or the release of nonliability certificate, furnished by the department to the personal representative, as evidence of compliance with the requirements of this chapter, and make such deliveries and transfers as the personal representative may direct without being liable for any taxes due under this chapter. [2013 2nd sp.s. c 2 § 7; 1981 2nd ex.s. c 7 § 83.100.120 (Initiative Measure No. 402, approved November 3, 1981).]

Findings—Intent—Final judgment—Affect—Effective dates—2013 2nd sp.s. c 2: See notes following RCW 83.100.048.

83.100.210 Application of chapter 82.32 RCW—Closing agreements authorized. (1) The following provisions of chapter 82.32 RCW have full force and application with respect to the taxes imposed under this chapter unless the context clearly requires otherwise: RCW 82.32.110, 82.32.120, 82.32.130, 82.32.320, 82.32.330, and 82.32.340. The definitions in this chapter have full force and application with respect to the application of chapter 82.32 RCW to this chapter unless the context clearly requires otherwise.

(2) In addition to the provisions stated in subsection (1) of this section, the following provisions of chapter 82.32 RCW have full force and application with respect to the taxes, penalties, and interest imposed under RCW 83.100.048: RCW 82.32.090, 82.32.117, 82.32.135, 82.32.210, 82.32.220, 82.32.230, 82.32.235, 82.32.237, 82.32.245, and 82.32.265.

(3) The department may enter into closing agreements as provided in RCW 82.32.350 and 82.32.360. [2013 2nd sp.s. c 2 § 8; 2010 c 106 § 111; 2005 c 516 § 15; 1996 c 149 § 18.]

Findings—Intent—Final judgment—Affect—Effective dates—2013 2nd sp.s. c 2: See notes following RCW 83.100.048.

Application—2010 c 106 §§ 104 and 111: See note following RCW 82.32.330.

Effective date—2010 c 106: See note following RCW 35.102.145.

Finding—Intent—Application—Severability—Effective date—2005 c 516: See notes following RCW 83.100.040.

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

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Title 84 PROPERTY TAXES

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- 84.08** General powers and duties of department of revenue.
- 84.09** General provisions.
- 84.12** Assessment and taxation of public utilities.
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Chapter 84.08 RCW GENERAL POWERS AND DUTIES OF DEPARTMENT OF REVENUE

Sections

- 84.08.120 Duty to obey orders of department of revenue.
- 84.08.140 Appeals from levy of taxing district to department of revenue.
- 84.08.190 Assessors to meet with department of revenue.

84.08.120 Duty to obey orders of department of revenue. It shall be the duty of every public officer to comply with any lawful order, rule, or regulation of the department of revenue made under the provisions of this title, and whenever it shall appear to the department of revenue that any public officer or employee whose duties relate to the assessment or equalization of assessments of property for taxation or to the levy or collection of taxes has failed to comply with the provisions of this title or with any other law relating to such duties or the rules of the department made in pursuance thereof, the department after a hearing on the facts may issue its order directing such public officer or employee to comply with such provisions of law or of its rules, and if such public officer or employee for a period of ten days after service on him or her of the department's order shall neglect or refuse to comply therewith, the department of revenue may apply to a judge of the superior court or court commissioner of the county in which said public officer or employee holds office for an order returnable within five days from the date thereof to compel such public officer or employee to comply with such provisions of law or of the department's order, or to show cause why he or she should not be compelled so to do, and any order issued by the judge pursuant thereto shall be final. The remedy herein provided shall be cumulative and shall not exclude the department of revenue from exercising any power or rights otherwise granted. [2013 c 23 § 342;

1975 1st ex.s. c 278 § 155; 1961 c 15 § 84.08.120. Prior: 1939 c 206 § 7; 1927 c 280 § 12; 1925 c 18 § 12; RRS § 11102.]

Additional notes found at www.leg.wa.gov

84.08.140 Appeals from levy of taxing district to department of revenue. Any taxpayer feeling aggrieved by the levy or levies of any taxing district except levies authorized by a vote of the voters of the district may appeal therefrom to the department of revenue as hereinafter provided. Such taxpayer, upon the execution of a bond, with two or more sufficient sureties to be approved by the county auditor, payable to the state of Washington, in the penal sum of two hundred dollars and conditioned that if the petitioner shall fail in his or her appeal for a reduction of said levy or levies the taxpayer will pay the taxable costs of the hearings hereinafter provided, not exceeding the amount of such bond, may file a written complaint with the county auditor wherein such taxing district is located not later than ten days after the making and entering of such levy or levies, setting forth in such form and detail as the department of revenue shall by general rule prescribe, the taxpayer's objections to such levy or levies. Upon the filing of such complaint, the county auditor shall immediately transmit a certified copy thereof, together with a copy of the budget or estimates of such taxing district as finally adopted, including estimated revenues and such other information as the department of revenue shall by rule require, to the department of revenue. The department of revenue shall fix a date for a hearing on said complaint at the earliest convenient time after receipt of said record, which hearing shall be held in the county in which said taxing district is located, and notice of such hearing shall be given to the officials of such taxing district, charged with determining the amount of its levies, and to the taxpayer on said complaint by registered mail at least five days prior to the date of said hearing. At such hearings all interested parties may be heard and the department of revenue shall receive all competent evidence. After such hearing, the department of revenue shall either affirm or decrease the levy or levies complained of, in accordance with the evidence, and shall thereupon certify its action with respect thereto to the county auditor, who, in turn, shall certify it to the taxing district or districts affected, and the action of the department of revenue with respect to such levy or levies shall be final and conclusive. [2013 c 23 § 343; 1994 c 301 § 19; 1975 1st ex.s. c 278 § 157; 1961 c 15 § 84.08.140. Prior: 1927 c 280 § 8; 1925 c 18 § 8; RRS § 11098.]

Additional notes found at www.leg.wa.gov

84.08.190 Assessors to meet with department of revenue. For the purpose of instruction on the subject of taxation, the county assessors of the state shall meet with the department of revenue at the capital of the state, or at such place within the state as they may determine at their previous meeting, on the second Monday of October of each year or on such other date as may be fixed by the department of revenue. Each assessor shall be paid by the county of his or her residence his or her actual expenses in attending such meeting, upon presentation to the county auditor of proper vouchers. [2013 c 23 § 344; 1975 1st ex.s. c 278 § 158; 1961 c 15 §

84.08.190. Prior: 1939 c 206 § 16, part; 1925 ex.s. c 130 § 57, part; 1911 c 12 § 1; RRS § 11140, part.]

Additional notes found at www.leg.wa.gov

Chapter 84.09 RCW GENERAL PROVISIONS

Sections

- | | |
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| 84.09.040 | Penalty for nonperformance of duty by county officers. |
| 84.09.090 | Electronic assessment, notice, or other information provided by assessor. |

84.09.040 Penalty for nonperformance of duty by county officers. Every county auditor, county assessor, and county treasurer who in any case refuses or knowingly neglects to perform any duty enjoined on him or her by this title, or who consents to or connives at any evasion of its provisions whereby any proceeding herein provided for is prevented or hindered, or whereby any property required to be listed for taxation is unlawfully exempted, or the valuation thereof is entered on the tax roll at less than its true taxable value, shall, for every such neglect, refusal, consent, or connivance, forfeit and pay to the state not less than two hundred nor more than one thousand dollars, at the discretion of the court, to be recovered before any court of competent jurisdiction upon the complaint of any citizen who is a taxpayer; and the prosecuting attorney shall prosecute such suit to judgment and execution. [2013 c 23 § 345; 1961 c 15 § 84.09.040. Prior: 1925 ex.s. c 130 § 109; 1897 c 71 § 89; 1893 c 124 § 92; RRS § 11270. Formerly RCW 84.56.410.]

84.09.090 Electronic assessment, notice, or other information provided by assessor. (1) Whenever the assessor is required by the provisions of this title to send any assessment, notice, or any other information to persons by regular mail, the assessor may instead provide the assessment, notice, or other information electronically if the following conditions are met:

(a) The person entitled to receive the information has authorized the assessor, electronically or otherwise, to provide the assessment, notice, or other information electronically; and

(b) If the assessment, notice, or other information is subject to the confidentiality provisions of RCW 82.32.330, 84.08.210, or 84.40.340, the assessor must use methods reasonably designed to protect the information from unauthorized disclosure. The provisions of this subsection (1)(b) may be waived by a taxpayer. The waiver must be in writing and may be provided to the assessor electronically. A waiver continues until revoked in writing by the taxpayer. Such revocation may be provided to the assessor electronically in a manner provided or approved by the assessor.

(2) Electronic notice pursuant to this section will continue until revoked in writing by the taxpayer. Such revocation may be provided to the assessor electronically in a manner provided or approved by the assessor.

(3) Electronic transmittal may be by electronic mail or other electronic means reasonably calculated to apprise the person of the information that is being provided.

(4) Any assessment, notice, or other information provided by the assessor to a person is deemed to have been

mailed by the assessor and received by the person on the date that the assessor electronically sends the information to the person or electronically notifies the person that the information is available to be accessed by the person.

(5) This section also applies to information that is not expressly required by statute to be sent by regular mail, but is customarily sent by the assessor using regular mail, to persons entitled to receive the information.

(6) Information compiled or possessed by the assessor for the purposes of providing notice under this title, including but not limited to taxpayer e-mail addresses, waivers, waiver requests, waiver revocations, and passwords or other methods of protecting taxpayer information as required in subsection (1)(b) of this section, are not subject to disclosure under chapter 42.56 RCW. [2013 c 131 § 1.]

Chapter 84.12 RCW ASSESSMENT AND TAXATION OF PUBLIC UTILITIES

Sections

84.12.200 Definitions. (*Effective January 1, 2014.*)
84.12.240 Access to books and records.

84.12.200 Definitions. (*Effective January 1, 2014.*)

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

(1)(a) "Airplane company" means and includes any person owning, controlling, operating or managing real or personal property, used or to be used for or in connection with or to facilitate the conveyance and transportation of persons and/or property by aircraft, and engaged in the business of transporting persons and/or property for compensation, as owner, lessee or otherwise.

(b) "Airplane company" does not include a "commuter air carrier" as defined in RCW 82.48.010, whose ground property and equipment is located primarily on privately held real property.

(2) "Company" means and includes any railroad company, airplane company, electric light and power company, telegraph company, telephone company, gas company, pipe line company, or logging railroad company; and the term "companies" means and includes all of such companies.

(3) "Department" without other designation means the department of revenue of the state of Washington.

(4) "Electric light and power company" means and includes any person owning, controlling, operating or managing real or personal property, used or to be used for or in connection with or to facilitate the generation, transmission or distribution of electricity in this state, and engaged in the business of furnishing, transmitting, distributing or generating electrical energy for light, heat or power for compensation as owner, lessee or otherwise.

(5) "Gas company" means and includes any person owning, controlling, operating or managing real or personal property, used or to be used for or in connection with or to facilitate the manufacture, transportation, or distribution of natural or manufactured gas in this state, and engaged for compensation in the business of furnishing gas for light, heat, power or other use, as owner, lessee or otherwise.

(6) "Logging railroad company" means and includes any person owning, controlling, operating or managing real or personal property, used or to be used for or in connection with or to facilitate the conveyance and transportation of forest products by rail in this state, and engaged in the business of transporting forest products either as private carrier or carrier for hire.

(7) "Nonoperating property" means all physical property owned by any company, other than that used during the preceding calendar year in the conduct of its operations. It includes all lands and/or buildings wholly used by any person other than the owning company. In cases where lands and/or buildings are used partially by the owning company in the conduct of its operations and partially by any other person not assessable under this chapter under lease, sublease, or other form of tenancy, the operating and nonoperating property of the company whose property is assessed under this section must be determined by the department of revenue in such manner as will, in its judgment, secure the separate valuation of such operating and nonoperating property upon a fair and equitable basis. The amount of operating revenue received from tenants or occupants of property of the owning company may not be considered material in determining the classification of such property.

(8) "Operating property" means and includes all property, real and personal, owned by any company, or held by it as occupant, lessee or otherwise, including all franchises and lands, buildings, rights-of-way, water powers, motor vehicles, wagons, horses, aircraft, aerodromes, hangars, office furniture, water mains, gas mains, pipe lines, pumping stations, tanks, tank farms, holders, reservoirs, telephone lines, telegraph lines, transmission and distribution lines, dams, generating plants, poles, wires, cables, conduits, switch boards, devices, appliances, instruments, equipment, machinery, landing slips, docks, roadbeds, tracks, terminals, rolling stock equipment, appurtenances and all other property of a like or different kind, situate within the state of Washington, used by the company in the conduct of its operations; and, in case of personal property used partly within and partly without the state, it means and includes a proportion of such personal property to be determined as in this chapter provided.

(9) "Person" means and includes any individual, firm, copartnership, joint venture, association, corporation, trust, or any other group acting as a unit, whether mutual, cooperative or otherwise, and/or trustees or receivers appointed by any court.

(10) "Pipe line company" means and includes any person owning, controlling, operating or managing real or personal property, used or to be used for or in connection with or to facilitate the conveyance or transportation of oils, natural or manufactured gas and/or other substances, except water, by pipe line in this state, and engaged in such business for compensation, as owner, lessee or otherwise.

(11) "Railroad company" means and includes any person owning or operating a railroad, street railway, suburban railroad or interurban railroad in this state, whether its line of railroad be maintained at the surface, or above or below the surface of the earth, or by whatever power its vehicles are transported; or owning any station, depot, terminal or bridge for railroad purposes, as owner, lessee or otherwise.

(12) "Telegraph company" means and includes any person owning, controlling, operating or managing any telegraph or cable line in this state, with appliances for the transmission of messages, and engaged in the business of furnishing telegraph service for compensation, as owner, lessee or otherwise.

(13) "Telephone company" means and includes any person owning, controlling, operating or managing real or personal property, used or to be used for or in connection with or to facilitate the transmission of communication by telephone in this state through owned or controlled exchanges and/or switchboards, and engaged in the business of furnishing telephonic communication for compensation as owner, lessee or otherwise. [2013 c 56 § 1; 1998 c 335 § 1; 1994 c 124 § 13; 1987 c 153 § 1; 1975 1st ex.s. c 278 § 159; 1961 c 15 § 84.12.200. Prior: 1935 c 123 § 1; 1925 ex.s. c 130 § 36; 1907 c 131 § 2; 1907 c 78 § 2; RRS § 11156-1. Formerly RCW 84.12.010 and 84.12.020, part.]

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

Effective date—2013 c 56: See note following RCW 84.36.133.

Additional notes found at www.leg.wa.gov

84.12.240 Access to books and records. The department of revenue shall have access to all books, papers, documents, statements, and accounts on file or of record in any of the departments of the state; and it shall have the power to issue subpoenas, signed by the director of the department or any duly authorized employee and served in a like manner as a subpoena issued from courts of record, to compel witnesses to appear and give evidence and to produce books and papers. The director of the department or any employee officially designated by the department is authorized to administer oaths to witnesses. The attendance of any witness may be compelled by attachment issued out of any superior court upon application to said court by the director or any duly authorized employee of the department, upon a proper showing that such witness has been duly served with a subpoena and has refused to appear before the said department. In case of the refusal of a witness to produce books, papers, documents, or accounts, or to give evidence on matters material to the hearing, the department may institute proceedings in the proper superior court to compel such witness to testify or to produce such books or papers, and to punish him or her for such failure or refusal. All process issued by the department shall be served by the sheriff of the proper county or by a duly authorized agent of the department and such service, if made by the sheriff, shall be certified by him or her to the department of revenue without any compensation therefor. Persons appearing before the department in obedience to a subpoena shall receive the same compensation as witnesses in the superior court. The records, books, accounts, and papers of each company shall be subject to visitation, investigation, or examination by the department, or any employee thereof officially designated by the department. All real and/or personal property of any company shall be subject to visitation, investigation, examination, and/or listing at any and all times by the director. [2013 c 23 § 346; 1975 1st ex.s. c 278 § 162; 1973 c 95 § 9; 1961 c 15 § 84.12.240. Prior: 1935 c 123 § 4; 1925

ex.s. c 130 § 37; 1907 c 131 § 3; 1907 c 78 § 3; RRS § 11156-4. Formerly RCW 84.12.080.]

Additional notes found at www.leg.wa.gov

Chapter 84.16 RCW

ASSESSMENT AND TAXATION OF PRIVATE CAR COMPANIES

Sections

84.16.032 Access to books and records.

84.16.032 Access to books and records. The department of revenue shall have access to all books, papers, documents, statements, and accounts on file or of record in any of the departments of the state; and shall have the power, by summons signed by director and served in a like manner as a subpoena issued from courts of record, to compel witnesses to appear and give evidence and to produce books and papers. The director or any employee officially designated by the director is authorized to administer oaths to witnesses. The attendance of any witness may be compelled by attachment issued out of any superior court upon application to said court by the department, upon a proper showing that such witness has been duly served with a summons and has refused to appear before the said department. In case of the refusal of a witness to produce books, papers, documents, or accounts or to give evidence on matters material to the hearing, the department may institute proceedings in the proper superior court to compel such witness to testify, or to produce such books or papers and to punish him or her for the refusal. All summons and process issued by the department shall be served by the sheriff of the proper county and such service certified by him or her to the department of revenue without any compensation therefor. Persons appearing before the department in obedience to a summons, shall, in the discretion of the department, receive the same compensation as witnesses in the superior court. The records, books, accounts, and papers of each company shall be subject to visitation, investigation, or examination by the department, or any employee thereof officially designated by the director. All real and/or personal property of any company shall be subject to visitation, investigation, examination, and/or listing at any and all times by the department, or any person employed by the department. [2013 c 23 § 347; 1975 1st ex.s. c 278 § 176; 1973 c 95 § 10; 1961 c 15 § 84.16.032. Prior: 1933 c 146 § 4; RRS § 11172-4; prior: 1907 c 36 § 6. Formerly RCW 84.16.060.]

Additional notes found at www.leg.wa.gov

Chapter 84.33 RCW

TIMBER AND FOREST LANDS

Sections

84.33.077 Repealed.

84.33.140 Forest land valuation—Notation of forest land designation upon assessment and tax rolls—Notice of continuance—Removal of designation—Compensating tax.

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

84.33.140 Forest land valuation—Notation of forest land designation upon assessment and tax rolls—Notice of continuance—Removal of designation—Compensating tax. (1) When land has been designated as forest land under RCW 84.33.130, a notation of the designation must be made each year upon the assessment and tax rolls. A copy of the notice of approval together with the legal description or assessor's parcel numbers for the land must, at the expense of the applicant, be filed by the assessor in the same manner as deeds are recorded.

(2) In preparing the assessment roll as of January 1, 2002, for taxes payable in 2003 and each January 1st thereafter, the assessor must list each parcel of designated forest land at a value with respect to the grade and class provided in this subsection and adjusted as provided in subsection (3) of this section. The assessor must compute the assessed value of the land using the same assessment ratio applied generally in computing the assessed value of other property in the county. Values for the several grades of bare forest land are as follows:

LAND GRADE	OPERABILITY CLASS	VALUES PER ACRE
	1	\$234
1	2	229
	3	217
	4	157
	1	198
2	2	190
	3	183
	4	132
	1	154
3	2	149
	3	148
	4	113
	1	117
4	2	114
	3	113
	4	86
	1	85
5	2	78
	3	77
	4	52
	1	43
6	2	39
	3	39
	4	37
	1	21
7	2	21
	3	20
	4	20
	1	1

(3) On or before December 31, 2001, the department must adjust by rule under chapter 34.05 RCW, the forest land values contained in subsection (2) of this section in accordance with this subsection, and must certify the adjusted values to the assessor who will use these values in preparing the assessment roll as of January 1, 2002. For the adjustment to be made on or before December 31, 2001, for use in the 2002 assessment year, the department must:

(a) Divide the aggregate value of all timber harvested within the state between July 1, 1996, and June 30, 2001, by the aggregate harvest volume for the same period, as determined from the harvester excise tax returns filed with the department under RCW 84.33.074; and

(b) Divide the aggregate value of all timber harvested within the state between July 1, 1995, and June 30, 2000, by the aggregate harvest volume for the same period, as determined from the harvester excise tax returns filed with the department under RCW 84.33.074; and

(c) Adjust the forest land values contained in subsection (2) of this section by a percentage equal to one-half of the percentage change in the average values of harvested timber reflected by comparing the resultant values calculated under (a) and (b) of this subsection.

(4) For the adjustments to be made on or before December 31, 2002, and each succeeding year thereafter, the same procedure described in subsection (3) of this section must be followed using harvester excise tax returns filed under RCW 84.33.074. However, this adjustment must be made to the prior year's adjusted value, and the five-year periods for calculating average harvested timber values must be successively one year more recent.

(5) Land graded, assessed, and valued as forest land must continue to be so graded, assessed, and valued until removal of designation by the assessor upon the occurrence of any of the following:

(a) Receipt of notice from the owner to remove the designation;

(b) Sale or transfer to an ownership making the land exempt from ad valorem taxation;

(c) Sale or transfer of all or a portion of the land to a new owner, unless the new owner has signed a notice of forest land designation continuance, except transfer to an owner who is an heir or devisee of a deceased owner, does not, by itself, result in removal of designation. The signed notice of continuance must be attached to the real estate excise tax affidavit provided for in RCW 82.45.150. The notice of continuance must be on a form prepared by the department. If the notice of continuance is not signed by the new owner and attached to the real estate excise tax affidavit, all compensating taxes calculated under subsection (11) of this section are due and payable by the seller or transferor at time of sale. The auditor may not accept an instrument of conveyance regarding designated forest land for filing or recording unless the new owner has signed the notice of continuance or the compensating tax has been paid, as evidenced by the real estate excise tax stamp affixed thereto by the treasurer. The seller, transferor, or new owner may appeal the new assessed valuation calculated under subsection (11) of this section to the county board of equalization in accordance with the provisions of RCW 84.40.038. Jurisdiction is hereby conferred on the county board of equalization to hear these appeals;

(d) Determination by the assessor, after giving the owner written notice and an opportunity to be heard, that:

(i) The land is no longer primarily devoted to and used for growing and harvesting timber. However, land may not be removed from designation if a governmental agency, organization, or other recipient identified in subsection (13) or (14) of this section as exempt from the payment of compensating tax has manifested its intent in writing or by other official action to acquire a property interest in the designated forest land by means of a transaction that qualifies for an exemption under subsection (13) or (14) of this section. The governmental agency, organization, or recipient must annually provide the assessor of the county in which the land is located reasonable evidence in writing of the intent to acquire the designated land as long as the intent continues or within sixty days of a request by the assessor. The assessor may not request this evidence more than once in a calendar year;

(ii) The owner has failed to comply with a final administrative or judicial order with respect to a violation of the restocking, forest management, fire protection, insect and disease control, and forest debris provisions of Title 76 RCW or any applicable rules under Title 76 RCW; or

(iii) Restocking has not occurred to the extent or within the time specified in the application for designation of such land.

(6) Land may not be removed from designation if there is a governmental restriction that prohibits, in whole or in part, the owner from harvesting timber from the owner's designated forest land. If only a portion of the parcel is impacted by governmental restrictions of this nature, the restrictions cannot be used as a basis to remove the remainder of the forest land from designation under this chapter. For the purposes of this section, "governmental restrictions" includes: (a) Any law, regulation, rule, ordinance, program, or other action adopted or taken by a federal, state, county, city, or other governmental entity; or (b) the land's zoning or its presence within an urban growth area designated under RCW 36.70A.110.

(7) The assessor has the option of requiring an owner of forest land to file a timber management plan with the assessor upon the occurrence of one of the following:

(a) An application for designation as forest land is submitted; or

(b) Designated forest land is sold or transferred and a notice of continuance, described in subsection (5)(c) of this section, is signed.

(8) If land is removed from designation because of any of the circumstances listed in subsection (5)(a) through (c) of this section, the removal applies only to the land affected. If land is removed from designation because of subsection (5)(d) of this section, the removal applies only to the actual area of land that is no longer primarily devoted to the growing and harvesting of timber, without regard to any other land that may have been included in the application and approved for designation, as long as the remaining designated forest land meets the definition of forest land contained in RCW 84.33.035.

(9) Within thirty days after the removal of designation as forest land, the assessor must notify the owner in writing, setting forth the reasons for the removal. The seller, transferor, or owner may appeal the removal to the county board of

equalization in accordance with the provisions of RCW 84.40.038.

(10) Unless the removal is reversed on appeal a copy of the notice of removal with a notation of the action, if any, upon appeal, together with the legal description or assessor's parcel numbers for the land removed from designation must, at the expense of the applicant, be filed by the assessor in the same manner as deeds are recorded and a notation of removal from designation must immediately be made upon the assessment and tax rolls. The assessor must revalue the land to be removed with reference to its true and fair value as of January 1st of the year of removal from designation. Both the assessed value before and after the removal of designation must be listed. Taxes based on the value of the land as forest land are assessed and payable up until the date of removal and taxes based on the true and fair value of the land are assessed and payable from the date of removal from designation.

(11) Except as provided in subsection (5)(c), (13), or (14) of this section, a compensating tax is imposed on land removed from designation as forest land. The compensating tax is due and payable to the treasurer thirty days after the owner is notified of the amount of this tax. As soon as possible after the land is removed from designation, the assessor must compute the amount of compensating tax and mail a notice to the owner of the amount of compensating tax owed and the date on which payment of this tax is due. The amount of compensating tax is equal to the difference between the amount of tax last levied on the land as designated forest land and an amount equal to the new assessed value of the land multiplied by the dollar rate of the last levy extended against the land, multiplied by a number, in no event greater than nine, equal to the number of years for which the land was designated as forest land, plus compensating taxes on the land at forest land values up until the date of removal and the prorated taxes on the land at true and fair value from the date of removal to the end of the current tax year.

(12) Compensating tax, together with applicable interest thereon, becomes a lien on the land, which attaches at the time the land is removed from designation as forest land and has priority and must be fully paid and satisfied before any recognizance, mortgage, judgment, debt, obligation, or responsibility to or with which the land may become charged or liable. The lien may be foreclosed upon expiration of the same period after delinquency and in the same manner provided by law for foreclosure of liens for delinquent real property taxes as provided in RCW 84.64.050. Any compensating tax unpaid on its due date will thereupon become delinquent. From the date of delinquency until paid, interest is charged at the same rate applied by law to delinquent ad valorem property taxes.

(13) The compensating tax specified in subsection (11) of this section may not be imposed if the removal of designation under subsection (5) of this section resulted solely from:

(a) Transfer to a government entity in exchange for other forest land located within the state of Washington;

(b) A taking through the exercise of the power of eminent domain, or sale or transfer to an entity having the power of eminent domain in anticipation of the exercise of such power;

(c) A donation of fee title, development rights, or the right to harvest timber, to a government agency or organization qualified under RCW 84.34.210 and 64.04.130 for the purposes enumerated in those sections, or the sale or transfer of fee title to a governmental entity or a nonprofit nature conservancy corporation, as defined in RCW 64.04.130, exclusively for the protection and conservation of lands recommended for state natural area preserve purposes by the natural heritage council and natural heritage plan as defined in chapter 79.70 RCW or approved for state natural resources conservation area purposes as defined in chapter 79.71 RCW, or for acquisition and management as a community forest trust as defined in chapter 79.155 RCW. At such time as the land is not used for the purposes enumerated, the compensating tax specified in subsection (11) of this section is imposed upon the current owner;

(d) The sale or transfer of fee title to the parks and recreation commission for park and recreation purposes;

(e) Official action by an agency of the state of Washington or by the county or city within which the land is located that disallows the present use of the land;

(f) The creation, sale, or transfer of forestry riparian easements under RCW 76.13.120;

(g) The creation, sale, or transfer of a conservation easement of private forest lands within unconfined channel migration zones or containing critical habitat for threatened or endangered species under RCW 76.09.040;

(h) The sale or transfer of land within two years after the death of the owner of at least a fifty percent interest in the land if the land has been assessed and valued as classified forest land, designated as forest land under this chapter, or classified under chapter 84.34 RCW continuously since 1993. The date of death shown on a death certificate is the date used for the purposes of this subsection (13)(h); or

(i)(i) The discovery that the land was designated under this chapter in error through no fault of the owner. For purposes of this subsection (13)(i), "fault" means a knowingly false or misleading statement, or other act or omission not in good faith, that contributed to the approval of designation under this chapter or the failure of the assessor to remove the land from designation under this chapter.

(ii) For purposes of this subsection (13), the discovery that land was designated under this chapter in error through no fault of the owner is not the sole reason for removal of designation under subsection (5) of this section if an independent basis for removal exists. An example of an independent basis for removal includes the land no longer being devoted to and used for growing and harvesting timber.

(14) In a county with a population of more than six hundred thousand inhabitants or in a county with a population of at least two hundred forty-five thousand inhabitants that borders Puget Sound as defined in RCW 90.71.010, the compensating tax specified in subsection (11) of this section may not be imposed if the removal of designation as forest land under subsection (5) of this section resulted solely from:

(a) An action described in subsection (13) of this section; or

(b) A transfer of a property interest to a government entity, or to a nonprofit historic preservation corporation or nonprofit nature conservancy corporation, as defined in RCW 64.04.130, to protect or enhance public resources, or to

preserve, maintain, improve, restore, limit the future use of, or otherwise to conserve for public use or enjoyment, the property interest being transferred. At such time as the property interest is not used for the purposes enumerated, the compensating tax is imposed upon the current owner. [2013 2nd sp.s. c 11 § 13; 2012 c 170 § 1. Prior: 2009 c 354 § 2; 2009 c 255 § 3; 2009 c 246 § 2; 2007 c 54 § 24; 2005 c 303 § 13; 2003 c 170 § 5; prior: 2001 c 305 § 2; 2001 c 249 § 3; 2001 c 185 § 5; 1999 sp.s. c 4 § 703; 1999 c 233 § 21; 1997 c 299 § 2; 1995 c 330 § 2; 1992 c 69 § 2; 1986 c 238 § 2; 1981 c 148 § 9; 1980 c 134 § 3; 1974 ex.s. c 187 § 7; 1973 1st ex.s. c 195 § 93; 1972 ex.s. c 148 § 6; 1971 ex.s. c 294 § 14.]

Finding—Intent—2009 c 354: "(1) The legislature finds that the revenue generated from state forest lands is a vital component of the operating budget in many rural counties. The dependence on a natural resource-based economy is especially underscored in counties with lower population levels and large holdings of public land. The high cost of compliance with the federal endangered species act on state forest lands within these smaller counties is disproportionately burdensome when compared to their total county budgets.

(2) The intent of this act is to provide sustainable revenue to smaller counties that are heavily dependent on state forest land revenues while promoting long-term protection, conservation, and recovery of marbled murrelets and northern spotted owls. This act provides the necessary tools for the state to maintain long-term working forests by replacing state forest lands with endangered species-based harvest encumbrances with productive, working forest lands." [2009 c 354 § 6.]

Severability—2007 c 54: See note following RCW 82.04.050.

Effective date—2005 c 303 §§ 1-14: See note following RCW 79A.15.010.

Purpose—Intent—2003 c 170: See note following RCW 84.33.130.

Purpose—Severability—Effective dates—1981 c 148: See notes following RCW 84.33.130.

Additional notes found at www.leg.wa.gov

Chapter 84.34 RCW

OPEN SPACE, AGRICULTURAL, TIMBER LANDS— CURRENT USE—CONSERVATION FUTURES

Sections

84.34.310 Special benefit assessments for farm and agricultural land or timber land—Definitions.

84.34.310 Special benefit assessments for farm and agricultural land or timber land—Definitions. As used in RCW 84.34.300 through 84.34.380, unless a different meaning is required, the words defined in this section shall have the meanings indicated.

(1) The term "average rate of inflation" shall mean the annual rate of inflation as determined by the department of revenue averaged over the period of time as provided in RCW 84.34.330 (1) and (2). Such determination shall be published not later than January 1 of each year for use in that assessment year.

(2) "Farm and agricultural land" shall mean the same as defined in RCW 84.34.020(2).

(3) "Local government" shall mean any city, town, county, water-sewer district, public utility district, port district, flood control district, or any other municipal corporation, quasi-municipal corporation, or other political subdivision authorized to levy special benefit assessments for sanitary and/or storm sewerage systems, domestic water supply and/or distribution systems, or road construction or improvement purposes. "Local government" does not include an irri-

gation district with respect to any local improvement district created or local improvement assessment levied by that irrigation district.

(4) "Local improvement district" shall mean any local improvement district, utility local improvement district, local utility district, road improvement district, or any similar unit created by a local government for the purpose of levying special benefit assessments against property specially benefited by improvements relating to such districts.

(5) "Owner" shall mean the same as defined in RCW 84.34.020(5) or the applicable statutes relating to special benefit assessments.

(6) "Special benefit assessments" shall mean special assessments levied or capable of being levied in any local improvement district or otherwise levied or capable of being levied by a local government to pay for all or part of the costs of a local improvement and which may be levied only for the special benefits to be realized by property by reason of that local improvement.

(7) "Timber land" shall mean the same as defined in RCW 84.34.020(3). [2013 c 177 § 2; 1999 c 153 § 71; 1992 c 52 § 15; 1979 c 84 § 2.]

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

Additional notes found at www.leg.wa.gov

Chapter 84.36 RCW EXEMPTIONS

Sections

84.36.133	Aircraft owned and operated by a commuter air carrier. (<i>Effective January 1, 2014.</i>)
84.36.255	Improvements to benefit fish and wildlife habitat, water quality, and water quantity—Cooperative assistance to landowners—Certification of best management practice—Limitation—Landowner claim and certification.
84.36.300	Stocks of merchandise, goods, wares, or material—Aircraft parts, etc.—When eligible for exemption.
84.36.320	Inspection of books and records for exemption under RCW 84.36.300.
84.36.400	Improvements to single-family dwellings.
84.36.480	Nonprofit fair associations.
84.36.805	Conditions for obtaining exemptions by nonprofit organizations, associations, or corporations.
84.36.813	Change in use—Duty to notify county assessor—Examination—Recommendation.
84.36.850	Review—Appeals.

84.36.133 Aircraft owned and operated by a commuter air carrier. (*Effective January 1, 2014.*) (1) An aircraft owned and operated by a commuter air carrier in respect to which the tax imposed under RCW 82.48.030 has been paid for a calendar year is exempt from property taxation for that calendar year.

(2) For the purposes of this section, "aircraft" and "commuter air carrier" have the same meanings as provided in RCW 82.48.010. [2013 c 56 § 4.]

Effective date—2013 c 56: "This act takes effect January 1, 2014." [2013 c 56 § 5.]

84.36.255 Improvements to benefit fish and wildlife habitat, water quality, and water quantity—Cooperative assistance to landowners—Certification of best management practice—Limitation—Landowner claim and certification. (1) All improvements to real and personal property

that benefit fish and wildlife habitat, water quality, or water quantity are exempt from taxation if the improvements are included under a written conservation plan approved by a conservation district. The conservation districts must cooperate with the federal natural resource conservation service, other conservation districts, the department of ecology, the department of fish and wildlife, and nonprofit organizations to assist landowners by working with them to obtain approved conservation plans so as to qualify for the exemption provided for in this section. As provided in subsection (3) of this section and RCW 89.08.440(2), a conservation district must initially certify that the best management practice benefits fish and wildlife habitat, water quality, or water quantity. A habitat conservation plan under the terms of the federal endangered species act is not considered a conservation plan for purposes of this exemption.

(2) The exemption remains in effect only if improvements identified in the written best management practices agreement are maintained as originally approved or amended. Improvements made as a requirement to mitigate for impacts to fish and wildlife habitat, water quality, or water quantity are not eligible for exemption under this section.

(3) A claim for exemption under this section must be filed annually with the county assessor on or before October 31st during the year for exemption from taxes levied for collection in the following year when submitted on forms prescribed by the department of revenue developed in consultation with the conservation district. The landowner must certify each subsequent year that the improvements for which exemption is sought are maintained as originally approved or amended in the written conservation plan. In the first filing year, the claim must contain the initial certification by the conservation district that the improvements for which exemption is sought were included under a written conservation plan approved by the conservation district including best management practices that benefit fish and wildlife habitat, water quality, or water quantity. Each subsequent filing year, the claim must contain a copy of the conservation district's initial certification made in the first filing year, along with the landowner's own certification for the current filing year. [2013 c 236 § 1; 1997 c 295 § 2.]

Purpose—1997 c 295: "The purpose of this act is to improve fish and wildlife habitat, water quality, and water quantity for the benefit of the public at large. Private property owners should be encouraged to make voluntary improvements to their property as recommended by governmental agencies without the penalty of paying higher property taxes as a result of those improvements." [1997 c 295 § 1.]

Additional notes found at www.leg.wa.gov

84.36.300 Stocks of merchandise, goods, wares, or material—Aircraft parts, etc.—When eligible for exemption. There shall be exempt from taxation a portion of each separately assessed stock of merchandise, as that word is defined in this section, owned or held by any taxpayer on the first day of January of any year computed by first multiplying the total amount of that stock of such merchandise, as determined in accordance with RCW 84.40.020, by a percentage determined by dividing the amount of such merchandise brought into this state by the taxpayer during the preceding year for that stock by the total additions to that stock by the taxpayer during that year, and then multiplying the result of

the latter computation by a percentage determined by dividing the total out-of-state shipments of such merchandise by the taxpayer during the preceding year from that stock (and regardless of whether or not any such shipments involved a sale of, or a transfer of title to, the merchandise within this state) by the total shipments of such merchandise by the taxpayer during the preceding year from that stock. As used in this section, the word "merchandise" means goods, wares, merchandise, or material which were not manufactured in this state by the taxpayer and which were acquired by him or her (in any other manner whatsoever, including manufacture by him or her outside of this state) for the purpose of sale or shipment in substantially the same form in which they were acquired by him or her within this state or were brought into this state by him or her. Breaking of packages or of bulk shipments, packaging, repackaging, labeling, or relabeling shall not be considered as a change in form within the meaning of this section. A taxpayer who has made no shipments of merchandise, either out-of-state or in-state, during the preceding year, may compute the percentage to be applied to the stock of merchandise on the basis of his or her experience from March 1st of the preceding year to the last day of February of the current year, in lieu of computing the percentage on the basis of his or her experience during the preceding year. The rule of strict construction shall not apply to this section.

All rights, title, or interest in or to any aircraft parts, equipment, furnishings, or accessories (but not engines or major structural components) which are manufactured outside of the state of Washington and are owned by purchasers of the aircraft constructed, under construction or to be constructed in the state of Washington, and are shipped into the state of Washington for installation in or use in connection with the operation of such aircraft shall be exempt from taxation prior to and during construction of such aircraft and while held in this state for periods preliminary to and during the transportation of such aircraft from the state of Washington. [2013 c 23 § 348; 1973 c 149 § 2; 1969 ex.s. c 124 § 1.]

Additional notes found at www.leg.wa.gov

84.36.320 Inspection of books and records for exemption under RCW 84.36.300. An owner or agent filing a claim under RCW 84.36.310 shall consent to the inspection of the books and records upon which the claim has been based, such inspection to be similar in manner to that provided by RCW 84.40.340, or if the owner or agent does not maintain records within this state, the consent shall apply to the records of a warehouse, person, or agent having custody of the inventory to which the claim applies. Consent to the inspection of the records shall be executed as a part of the claim. The owner, his or her agent, or other person having custody of the inventory referred to herein shall retain within this state, for a period of at least two years from the date of the claim, the records referred to above. If adequate records are not made available to the assessor within the county where the claim is made, then the exemption shall be denied. [2013 c 23 § 349; 1969 ex.s. c 124 § 3.]

Additional notes found at www.leg.wa.gov

84.36.400 Improvements to single-family dwellings. Any physical improvement to single-family dwellings upon

[2013 RCW Supp—page 1022]

real property shall be exempt from taxation for the three assessment years subsequent to the completion of the improvement to the extent that the improvement represents thirty percent or less of the value of the original structure. A taxpayer desiring to obtain the exemption granted by this section must file notice of his or her intention to construct the improvement prior to the improvement being made on forms prescribed by the department of revenue and furnished to the taxpayer by the county assessor: PROVIDED, That this exemption cannot be claimed more than once in a five-year period.

The department of revenue shall promulgate such rules and regulations as are necessary and convenient to properly administer the provisions of this section. [2013 c 23 § 350; 1972 ex.s. c 125 § 3.]

Additional notes found at www.leg.wa.gov

84.36.480 Nonprofit fair associations. (1) Except as provided otherwise in subsections (2) and (3) of this section, the real and personal property of a nonprofit fair association that sponsors or conducts a fair or fairs that is eligible to receive support from the fair fund, as created in RCW 15.76.115 and allocated by the director of the department of agriculture, is exempt from taxation. To be exempt under this subsection (1), the property must be used exclusively for fair purposes, except as provided in RCW 84.36.805. However, the loan or rental of property otherwise exempt under this section to a private concessionaire or to any person for use as a concession in conjunction with activities permitted under this section shall not nullify the exemption if the concession charges are subject to agreement and the rental income, if any, is reasonable and is devoted solely to the operation and maintenance of the property.

(2)(a) Except as provided otherwise in subsection (3) of this section, the real and personal property owned by a nonprofit fair association organized under chapter 24.06 RCW and used for fair purposes is exempt from taxation if the majority of such property, as determined by assessed value, was purchased or acquired by the same nonprofit fair association from a county or a city between 1995 and 1998.

(b) The exemption under this subsection (2) may not be claimed for taxes levied for collection in 2019 and thereafter.

(3) A nonprofit fair association with real and personal property having an assessed value of more than fifteen million dollars is not eligible for the exemptions under this section. [2013 c 212 § 2; 1984 c 220 § 6; 1975 1st ex.s. c 291 § 22.]

Findings—Intent—2013 c 212: "(1) The legislature finds that nonprofit fairs provide educational opportunities for youth and promote agriculture and the welfare of rural Washington. The legislature further finds that publicly owned fairgrounds can be rented or loaned out on a temporary basis without jeopardizing the property's exempt status for property tax purposes. The legislature further finds that many cities and counties have transferred ownership in fairground properties to nonprofit fair associations to achieve operational efficiencies. The legislature further finds that properties previously owned by cities or counties, and now owned and operated by nonprofit fair associations, may be subject to property tax even though the use of the property has not changed.

(2) It is the intent of the legislature to mitigate an unintended consequence of the property tax code that would otherwise interfere with a city's or county's ability to achieve operational efficiencies and follows best practices by transferring fairgrounds to nonprofit fair associations for an identical use of the property. It is the further intent of the legislature to expire the property tax exemption in five years to evaluate if the exemption has created

any unintended consequences, including any unfair competitive advantage that may be conferred by the property tax exemption over private businesses, and identify other similar tax situations where ownership of property may be transferred from a public entity to a nonprofit association." [2013 c 212 § 1.]

Additional notes found at www.leg.wa.gov

84.36.805 Conditions for obtaining exemptions by nonprofit organizations, associations, or corporations.

(1) In order to qualify for an exemption under this chapter, the nonprofit organizations, associations, or corporations must satisfy the conditions in this section.

(2) The property must be used exclusively for the actual operation of the activity for which exemption is granted, unless otherwise provided, and does not exceed an amount reasonably necessary for that purpose, except:

(a) The loan or rental of the property does not subject the property to tax if:

(i) The rents and donations received for the use of the portion of the property are reasonable and do not exceed the maintenance and operation expenses attributable to the portion of the property loaned or rented; and

(ii) Except for the exemptions under RCW 84.36.030(4), 84.36.037, 84.36.050, and 84.36.060(1) (a) and (b), the property would be exempt from tax if owned by the organization to which it is loaned or rented;

(b) The use of the property for fund-raising activities does not subject the property to tax if the fund-raising activities are consistent with the purposes for which the exemption is granted.

(3) The facilities and services must be available to all regardless of race, color, national origin or ancestry.

(4) The organization, association, or corporation must be duly licensed or certified where such licensing or certification is required by law or regulation.

(5) Property sold to organizations, associations, or corporations with an option to be repurchased by the seller does not qualify for exempt status. This subsection does not apply to property sold to a nonprofit entity, as defined in RCW 84.36.560(7), by:

(a) A nonprofit as defined in RCW 84.36.800 that is exempt from income tax under 26 U.S.C. Sec. 501(c) of the federal internal revenue code;

(b) A governmental entity established under RCW 35.21.660, 35.21.670, or 35.21.730;

(c) A housing authority created under RCW 35.82.030;

(d) A housing authority meeting the definition in RCW 35.82.210(2)(a); or

(e) A housing authority established under RCW 35.82.300.

(6) The department must have access to its books in order to determine whether the nonprofit organization, association, or corporation is exempt from taxes under this chapter.

(7) This section does not apply to exemptions granted under RCW 84.36.020, 84.36.032, 84.36.250, 84.36.260, and 84.36.480(2). [2013 c 212 § 3. Prior: 2006 c 319 § 1; 2006 c 226 § 3; 2003 c 121 § 2; 2001 1st sp.s. c 7 § 2; prior: 1999 c 203 § 2; 1999 c 139 § 3; prior: 1998 c 311 § 25; 1998 c 202 § 3; 1998 c 184 § 2; prior: 1997 c 156 § 8; 1997 c 143 § 3; 1995 2nd sp.s. c 9 § 2; 1993 c 79 § 3; prior: 1990 c 283 § 3

and 7; 1989 c 379 § 4; 1987 c 468 § 1; 1984 c 220 § 7; 1981 c 141 § 4; 1973 2nd ex.s. c 40 § 7.]

Findings—Intent—2013 c 212: See note following RCW 84.36.480.

Findings—Intent—2006 c 226: See note following RCW 84.36.050.

Additional notes found at www.leg.wa.gov

84.36.813 Change in use—Duty to notify county assessor—Examination—Recommendation. An exempt property owner shall notify the department of revenue of any change of use prior to each assessment year. Any other person believing that a change in the use of exempt property has occurred shall report same to the county assessor, who shall examine the property and if the use is not in compliance with chapter 84.36 RCW he or she shall report the information to the department with a recommendation that the exempt status be canceled. The final determination shall be made by the department. [2013 c 23 § 351; 1977 ex.s. c 209 § 3.]

84.36.850 Review—Appeals. Any applicant aggrieved by the department of revenue's denial of an exemption application may petition the state board of tax appeals to review an application for either real or personal property tax exemption and the board shall consider any appeals to determine (1) if the property is entitled to an exemption, and (2) the amount or portion thereof.

A county assessor of the county in which the exempted property is located shall be empowered to appeal to the state board of tax appeals to review any real or personal property tax exemption approved by the department of revenue which he or she feels is not warranted.

Appeals from a department of revenue decision must be made within thirty days after the mailing of the approval or denial. [2013 c 23 § 352; 1989 c 378 § 13; 1973 2nd ex.s. c 40 § 16.]

Additional notes found at www.leg.wa.gov

Chapter 84.37 RCW

PROPERTY TAX DEFERRAL PROGRAM

Sections

84.37.070 State lien on property.

84.37.070 State lien on property. Whenever a person's special assessment or real property tax obligation, or both, is deferred under this chapter, the amount deferred and required to be paid pursuant to RCW 84.38.120 becomes a lien in favor of the state upon his or her property and has priority as provided in chapters 35.49, 35.50, 36.35, and 84.60 RCW. However, the interest of a mortgage or purchase contract holder who requires an accumulation of reserves out of which real estate taxes are paid has priority to said deferred lien. This lien may accumulate up to forty percent of the amount of the claimant's equity value in the property and the rate of interest must be an average of the federal short-term rate as defined in 26 U.S.C. Sec. 1274(d) plus two percentage points. The rate set for each new year is computed by taking an arithmetical average to the nearest percentage point of the federal short-term rate, compounded annually. That average must be calculated using the rates from four months: January, April, and July of the calendar year immediately preceding the new

year, and October of the previous preceding year. The interest is calculated from the time it could have been paid before delinquency until such obligation is paid or the date that the obligation is charged off as finally uncollectible. In the case of a mobile home, the department of licensing must show the state's lien on the certificate of title for the mobile home. In the case of all other property, the department of revenue must file a notice of the deferral with the county recorder or auditor. [2013 c 221 § 7; 2010 c 161 § 1167; 2007 sp.s. c 2 § 7.]

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Chapter 84.38 RCW

DEFERRAL OF SPECIAL ASSESSMENTS AND/OR PROPERTY TAXES

Sections

84.38.040	Declaration to defer special assessments and/or real property taxes—Filing—Contents—Appeal.
84.38.060	Declaration of deferral by agent, guardian, etc.
84.38.080	Right to deferral not reduced by contract or agreement.
84.38.090	Procedure where residence under mortgage or purchase contract.
84.38.100	Lien of state, mortgage or purchase contract holder—Priority—Amount—Interest.
84.38.140	Collection of deferred assessments or taxes.

84.38.040 Declaration to defer special assessments and/or real property taxes—Filing—Contents—Appeal.

(1) Each claimant electing to defer payment of special assessments and/or real property tax obligations under this chapter shall file with the county assessor, on forms prescribed by the department and supplied by the assessor, a written declaration thereof. The declaration to defer special assessments and/or real property taxes for any year shall be filed no later than thirty days before the tax or assessment is due or thirty days after receiving notice under RCW 84.64.050, whichever is later: PROVIDED, That for good cause shown, the department may waive this requirement.

(2) The declaration shall designate the property to which the deferral applies, and shall include a statement setting forth (a) a list of all members of the claimant's household, (b) the claimant's equity value in his or her residence, (c) facts establishing the eligibility for the deferral under the provisions of this chapter, and (d) any other relevant information required by the rules of the department. Each copy shall be signed by the claimant subject to the penalties as provided in chapter 9A.72 RCW for false swearing. The first declaration to defer filed in a county shall include proof of the claimant's age acceptable to the assessor.

(3) The county assessor shall determine if each claimant shall be granted a deferral for each year but the claimant shall have the right to appeal this determination to the county board of equalization, in accordance with the provisions of RCW 84.40.038, whose decision shall be final as to the deferral of that year. [2013 c 23 § 353; 2001 c 185 § 10; 1994 c 301 § 34; 1984 c 220 § 22; 1979 ex.s. c 214 § 7; 1975 1st ex.s. c 291 § 29.]

Additional notes found at www.leg.wa.gov

84.38.060 Declaration of deferral by agent, guardian, etc. If the claimant is unable to make his or her own declara-

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tion of deferral, it may be made by a duly authorized agent or by a guardian or other person charged with care of the person or property of such claimant. [2013 c 23 § 354; 1975 1st ex.s. c 291 § 31.]

84.38.080 Right to deferral not reduced by contract or agreement.

A person's right to defer special assessments and/or property tax obligations on his or her residence shall not be reduced by contract or agreement, from January 1, 1976 onward. [2013 c 23 § 355; 1975 1st ex.s. c 291 § 33.]

84.38.090 Procedure where residence under mortgage or purchase contract.

If any residence is under mortgage or purchase contract requiring accumulation of reserves out of which the holder of the mortgage or contract is required to pay real estate taxes, said holder shall cosign the declaration of deferral either before a notary public or the county assessor or his or her deputy in the county where the real property is located. [2013 c 23 § 356; 1975 1st ex.s. c 291 § 34.]

84.38.100 Lien of state, mortgage or purchase contract holder—Priority—Amount—Interest.

Whenever a person's special assessment and/or real property tax obligation is deferred under the provisions of this chapter, the amount deferred and required to be paid pursuant to RCW 84.38.120 becomes a lien in favor of the state upon his or her property and has priority as provided in chapters 35.49, 35.50, 36.35, and 84.60 RCW. However, the interest of a mortgage or purchase contract holder who is required to cosign a declaration of deferral under RCW 84.38.090, has priority to such deferred lien. This lien may accumulate up to eighty percent of the amount of the claimant's equity value in the property and must bear interest at the rate of five percent per year from the time it could have been paid before delinquency until said obligation is paid. However, when taxes are deferred as provided in RCW 84.64.050, the amount must bear interest at the rate of five percent per year from the date the declaration is filed until the obligation is paid or the date that the obligation is charged off as finally uncollectible. In the case of a mobile home, the department of licensing must show the state's lien on the certificate of title for the mobile home. In the case of all other property, the department of revenue must file a notice of the deferral with the county recorder or auditor. [2013 c 221 § 8; 2010 c 161 § 1168; 2006 c 275 § 1; 2000 c 103 § 26; 1988 c 222 § 12; 1984 c 220 § 23; 1981 c 322 § 1; 1975 1st ex.s. c 291 § 35.]

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Application—2006 c 275: "This act only applies to property tax deferrals granted under RCW 84.38.040 after June 7, 2006, for taxes levied for collection in 2007 and thereafter." [2006 c 275 § 2.]

Finding—DOR report to legislature—2006 c 275: "The legislature finds that the intent of the property tax deferral program is to assist retired persons in maintaining their dignity and a reasonable standard of living by residing in their own homes, providing for their own needs, and managing their own affairs without requiring assistance from public welfare programs. The department of revenue shall review the adequacy and appropriateness of the interest rate provided in RCW 84.38.100 in relation to these objectives. The department shall report its findings to the finance committee of the house of representatives and the ways and means committee of the senate by December 1, 2012." [2006 c 275 § 3.]

Additional notes found at www.leg.wa.gov

84.38.140 Collection of deferred assessments or taxes. (1) The department must collect all the amounts deferred together with interest under this chapter. However, in the event that the department is unable to collect an amount deferred together with interest, that amount deferred together with interest must be collected by the county treasurer in the manner provided for in chapter 84.56 RCW. For purposes of collection of deferred taxes, the provisions of chapters 84.56, 84.60, and 84.64 RCW are applicable.

(2) When any deferred special assessment and/or real property taxes together with interest are collected the moneys must be deposited in the state general fund.

(3) The department may charge off as finally uncollectible any amount deferred under this chapter or chapter 84.37 RCW, including accrued interest, if the department is satisfied that there are no cost-effective means of collecting the amount due. [2013 c 221 § 9; 2001 c 299 § 18; 1984 c 220 § 27; 1975 1st ex.s. c 291 § 39.]

**Chapter 84.40 RCW
LISTING OF PROPERTY**

Sections

- 84.40.045 Notice of change in valuation of real property to be given taxpayer—Copy to person making payments pursuant to mortgage, contract, or deed of trust—Procedure—Penalty.
- 84.40.070 Companies, associations—Listing.
- 84.40.110 Examination under oath—Default listing.
- 84.40.160 Manner of listing real estate—Maps.
- 84.40.175 Listing of exempt property—Proof of exemption—Valuation of publicly owned property.
- 84.40.185 Individuals, corporations, limited liability companies, associations, partnerships, trusts, or estates required to list personally.
- 84.40.210 Personality of manufacturer, listing procedure, statement—"Manufacturer" defined.
- 84.40.220 Merchant's personality held for sale—Consignment from out of state—Nursery stock assessable as growing crops.
- 84.40.240 Annual list of lands sold or contracted to be sold to be furnished assessor.
- 84.40.370 Loss of exempt status—Valuation date—Extension on rolls.

84.40.045 Notice of change in valuation of real property to be given taxpayer—Copy to person making payments pursuant to mortgage, contract, or deed of trust—Procedure—Penalty. (1) The assessor must give notice of any change in the true and fair value of real property for the tract or lot of land and any improvements thereon no later than thirty days after appraisal. However, no such notice may be mailed during the period from January 15th to February 15th of each year. Furthermore, no notice need be sent with respect to changes in valuation of publicly owned property exempt from taxation under provisions of RCW 84.36.010 or of forest land made pursuant to chapter 84.33 RCW.

(2) The notice must contain a statement of both the prior and the new true and fair value, stating separately land and improvement values, and a brief statement of the procedure for appeal to the board of equalization and the time, date, and place of the meetings of the board.

(3) The notice must be mailed by the assessor to the taxpayer.

(4) If any taxpayer, as shown by the tax rolls, holds solely a security interest in the real property which is the subject of the notice, pursuant to a mortgage, contract of sale, or

deed of trust, such taxpayer must, upon written request of the assessor, supply, within thirty days of receipt of such request, to the assessor the name and address of the person making payments pursuant to the mortgage, contract of sale, or deed of trust, and thereafter such person must also receive a copy of the notice provided for in this section. Willful failure to comply with such request within the time limitation provided for in this section makes such taxpayer subject to a maximum civil penalty of five thousand dollars. The penalties provided for in this section are recoverable in an action by the county prosecutor, and when recovered must be deposited in the county current expense fund. The assessor must make the request provided for by this section during the month of January. [2013 c 235 § 1; 2001 c 187 § 19; 1997 c 3 § 107 (Referendum Bill No. 47, approved November 4, 1997); 1994 c 301 § 36; 1977 ex.s. c 181 § 1; 1974 ex.s. c 187 § 8; 1972 ex.s. c 125 § 1; 1971 ex.s. c 288 § 16; 1967 ex.s. c 146 § 10.]

Additional notes found at www.leg.wa.gov

84.40.070 Companies, associations—Listing. The president, secretary, or principal accounting officer or agent of any company or association, whether incorporated or unincorporated, except as otherwise provided for in this title, shall make out and deliver to the assessor a statement of its property, setting forth particularly (1) the name and location of the company or association; (2) the real property of the company or association, and where situated; and (3) the nature and value of its personal property. The real and personal property of such company or association shall be assessed the same as other real and personal property. In all cases of failure or refusal of any person, officer, company, or association to make such return or statement, it shall be the duty of the assessor to make such return or statement from the best information he or she can obtain. [2013 c 23 § 357; 2003 c 302 § 3; 1961 c 15 § 84.40.070. Prior: 1925 ex.s. c 130 § 27; 1897 c 71 § 20; 1893 c 124 § 20; 1891 c 140 § 20; 1890 p 538 § 21; Code 1881 § 2839; RRS § 11131.]

84.40.110 Examination under oath—Default listing. When the assessor shall be of opinion that the person listing property for himself or herself or for any other person, company, or corporation, has not made a full, fair, and complete list of such property, he or she may examine such person under oath in regard to the amount of the property he or she is required to list, and if such person shall refuse to answer under oath, and a full discovery make, the assessor may list the property of such person, or his or her principal, according to his or her best judgment and information. [2013 c 23 § 358; 1961 c 15 § 84.40.110. Prior: 1925 ex.s. c 130 § 24; 1897 c 71 § 17; 1893 c 124 § 17; 1891 c 140 § 17; 1890 p 535 § 15; Code 1881 § 2831; 1867 p 62 § 8; RRS § 11128.]

84.40.160 Manner of listing real estate—Maps. The assessor shall list all real property according to the largest legal subdivision as near as practicable. The assessor shall make out in the plat and description book in numerical order a complete list of all lands or lots subject to taxation, showing the names and owners, if to him or her known and if unknown, so stated; the number of acres and lots or parts of lots included in each description of property and the value per acre or lot: PROVIDED, That the assessor shall give to each

tract of land where described by metes and bounds a number, to be designated as Tax No. . . . , which said number shall be placed on the tax rolls to indicate that certain piece of real property bearing such number, and described by metes and bounds in the plat and description book herein mentioned, and it shall not be necessary to enter a description by metes and bounds on the tax roll of the county, and the assessor's plat and description book shall be kept as a part of the tax collector's records: AND PROVIDED, FURTHER, That the board of county commissioners of any county may by order direct that the property be listed numerically according to lots and blocks or section, township and range, in the smallest platted or government subdivision, and when so listed the value of each block, lot or tract, the value of the improvements thereon and the total value thereof, including improvements thereon, shall be extended after the description of each lot, block or tract, which last extension shall be in the column headed "Total value of each tract, lot or block of land assessed with improvements as returned by the assessor." In carrying the values of said property into the column representing the equalized value thereof, the county assessor shall include and carry over in one item the equalized valuation of all lots in one block, or land in one section, listed consecutively, which belong to any one person, firm, or corporation, and are situated within the same taxing district, and in the assessed value of which the county board of equalization has made no change. Where assessed valuations are changed, the equalized valuation must be extended and shown by item.

The assessor shall prepare and possess a complete set of maps drawn to indicate parcel configuration for lands in the county. The assessor shall continually update the maps to reflect transfers, conveyances, acquisitions, or any other transaction or event that changes the boundaries of any parcel and shall renumber the parcels or prepare new map pages for any portion of the maps to show combinations or divisions of parcels. [2013 c 23 § 359; 1997 c 135 § 1; 1961 c 15 § 84.40.160. Prior: 1925 ex.s. c 130 § 54; 1901 c 79 § 1; 1899 c 141 § 3; 1897 c 71 § 43; 1895 c 176 § 4; 1893 c 124 § 45; 1891 c 140 § 45; 1890 p 548 § 49; RRS § 11137.]

84.40.175 Listing of exempt property—Proof of exemption—Valuation of publicly owned property. At the time of making the assessment of real property, the assessor must enter each description of property exempt under the provisions of chapter 84.36 RCW, and value and list the same in the manner and subject to the same rule as the assessor is required to assess all other property, designating in each case to whom such property belongs. The valuation requirements of this section do not apply to property exempt from taxation under provisions of RCW 84.36.010. However, when the exempt status of such property no longer applies as a result of a sale or change in use, the assessor must value and list such property as of the January 1st assessment date for the year of the status change. The owner or person responsible for payment of taxes may thereafter petition the county board of equalization for a change in the assessed value in accordance with the timing and procedures set forth in RCW 84.40.038. [2013 c 235 § 2; 1994 c 124 § 24; 1986 c 285 § 3; 1975-'76 2nd ex.s. c 61 § 15; 1961 c 15 § 84.40.175. Prior: 1925 ex.s. c 130 § 9; 1891 c 140 § 5; 1890 p 532 § 5; RRS § 11113. Formerly RCW 84.36.220.]

Leasehold excise tax: Chapter 82.29A RCW.

84.40.185 Individuals, corporations, limited liability companies, associations, partnerships, trusts, or estates required to list personalty. Every individual, corporation, limited liability company, association, partnership, trust, or estate shall list all personal property in his or her or its ownership, possession, or control which is subject to taxation pursuant to the provisions of this title. Such listing shall be made and delivered in accordance with the provisions of this chapter. [2013 c 23 § 360; 1995 c 318 § 5; 1967 ex.s. c 149 § 41.]

Additional notes found at www.leg.wa.gov

84.40.210 Personalty of manufacturer, listing procedure, statement—"Manufacturer" defined. Every person who purchases, receives, or holds personal property of any description for the purpose of adding to the value thereof by any process of manufacturing, refining, rectifying, or by the combination of different materials with the view of making gain or profit by so doing shall be held to be a manufacturer, and he or she shall, when required to, make and deliver to the assessor a statement of the amount of his or her other personal property subject to taxes, also include in his or her statement the value of all articles purchased, received, or otherwise held for the purpose of being used in whole or in part in any process or processes of manufacturing, combining, rectifying, or refining. Every person owning a manufacturing establishment of any kind and every manufacturer shall list as part of his or her manufacturer's stock the value of all engines and machinery of every description used or designed to be used in any process of refining or manufacturing except such fixtures as have been considered as part of any parcel of real property, including all tools and implements of every kind, used or designed to be used for the first aforesaid purpose. [2013 c 23 § 361; 1961 c 168 § 1; 1961 c 15 § 84.40.210. Prior: 1939 c 66 § 1; 1927 c 282 § 1; 1925 ex.s. c 130 § 26; 1921 c 60 § 1; 1897 c 71 § 19; 1893 c 124 § 19; 1891 c 140 § 19; 1890 p 538 § 20; RRS § 11130.]

84.40.220 Merchant's personalty held for sale—Consignment from out of state—Nursery stock assessable as growing crops. Whoever owns, or has in his or her possession or subject to his or her control, any goods, merchandise, grain, or produce of any kind, or other personal property within this state, with authority to sell the same, which has been purchased either in or out of this state, with a view to being sold at an advanced price or profit, or which has been consigned to him or her from any place out of this state for the purpose of being sold at any place within the state, shall be held to be a merchant, and when he or she is by this title required to make out and to deliver to the assessor a statement of his or her other personal property, he or she shall state the value of such property pertaining to his or her business as a merchant. No consignee shall be required to list for taxation the value of any property the product of this state, nor the value of any property consigned to him or her from any other place for the sole purpose of being stored or forwarded, if he or she has no interest in such property nor any profit to be derived from its sale. The growing stock of nursery dealers, which is owned by the original producer thereof or which has been held or possessed by the nursery dealers for one hundred

eighty days or more, shall, whether personal or real property, be considered the same as growing crops on cultivated lands: PROVIDED, That the nursery dealers be licensed by the department of agriculture: PROVIDED FURTHER, That an original producer, within the meaning of this section, shall include a person who, beginning with seeds, cuttings, bulbs, corms, or any form of immature plants, grows such plants in the course of their development into either a marketable partially grown product or a marketable consumer product. [2013 c 23 § 362; 1974 ex.s. c 83 § 1; 1971 ex.s. c 18 § 1; 1961 c 15 § 84.40.220. Prior: 1939 c 116 § 1; 1925 ex.s. c 130 § 25; 1897 c 71 § 18; 1893 c 124 § 18; 1891 c 140 § 18; 1890 p 537 § 19; Code 1881 § 2839; RRS § 11129. Formerly RCW 84.40.030, part, and 84.40.220.]

84.40.240 Annual list of lands sold or contracted to be sold to be furnished assessor. The assessor of each county shall, on or before the first day of January of each year, obtain from the department of natural resources, and from the local land offices of the state, lists of public lands sold or contracted to be sold during the previous year in his or her county, and certify them for taxation, together with the various classes of state lands sold during the same year, and it shall be the duty of the department of natural resources to certify a list or lists of all public lands sold or contracted to be sold during the previous year, on application of the assessor of any county applying therefor. [2013 c 23 § 363; 1961 c 15 § 84.40.240. Prior: 1939 c 206 § 10; 1925 ex.s. c 130 § 10; 1897 c 71 § 91; 1893 c 124 § 94; 1891 c 140 § 26; 1890 p 540 § 25; RRS § 11114.]

84.40.370 Loss of exempt status—Valuation date—Extension on rolls. The assessor shall list the property and assess it with reference to its value on the date the property lost its exempt status unless such property has been previously listed and assessed. He or she shall extend the taxes on the tax roll using the rate of percent applicable as if the property had been assessed in the previous year. [2013 c 23 § 364; 1984 c 220 § 15; 1971 ex.s. c 44 § 4.]

**Chapter 84.41 RCW
REVALUATION OF PROPERTY**

Sections

- 84.41.080 Contracts for special assistance.
- 84.41.120 Assessor to keep records—Orders of department of revenue, compliance enjoined, remedies.

84.41.080 Contracts for special assistance. Upon receiving a request from the county assessor, either upon his or her initiation or at the direction of the board of county commissioners, for special assistance in the county’s revaluation program, the department of revenue may, before undertaking to render such special assistance, negotiate a contract with the board of county commissioners of the county concerned. Such contracts as are negotiated shall provide that the county will reimburse the state for fifty percent of the costs of such special assistance within three years of the date of expenditure of such costs. All such reimbursements shall be paid to the department of revenue for deposit to the state general fund. The department of revenue shall keep complete

records of such contracts, including costs incurred, payments received, and services performed thereunder. [2013 c 23 § 365; 1975 1st ex.s. c 278 § 199; 1961 c 15 § 84.41.080. Prior: 1955 c 251 § 8.]

Additional notes found at www.leg.wa.gov

84.41.120 Assessor to keep records—Orders of department of revenue, compliance enjoined, remedies. Each county assessor shall keep such books and records as are required by the rules and regulations of the department of revenue and shall comply with any lawful order, rule, or regulation of the department of revenue.

Whenever it appears to the department of revenue that any assessor has failed to comply with any of the provisions of this chapter relating to his or her duties or the rules of the department of revenue made in pursuance thereof, the department of revenue, after a hearing on the facts, may issue an order directing such assessor to comply with such provisions of this chapter or rules of the department of revenue. Such order shall be mailed by registered mail to the assessor at the county court house. If, upon the expiration of fifteen days from the date such order is mailed, the assessor has not complied therewith or has not taken measures that will insure compliance within a reasonable time, the department of revenue may apply to a judge of the superior court or court commissioner of the county in which such assessor holds office, for an order returnable within five days from the date thereof to compel him or her to comply with such provisions of law or of the order of the department of revenue or to show cause why he or she should not be compelled so to do. Any order issued by the judge pursuant to such order to show cause shall be final. The remedy herein provided shall be cumulative and shall not exclude the department of revenue from exercising any powers or rights otherwise granted. [2013 c 23 § 366; 1975 1st ex.s. c 278 § 202; 1961 c 15 § 84.41.120. Prior: 1955 c 251 § 12.]

Additional notes found at www.leg.wa.gov

**Chapter 84.44 RCW
TAXABLE SITUS**

Sections

- 84.44.080 Owner moving into state or to another county after January 1st.

84.44.080 Owner moving into state or to another county after January 1st. The owner of personal property removing from one county to another between the first day of January and the first day of July shall be assessed in either in which he or she is first called upon by the assessor. The owner of personal property moving into this state from another state between the first day of January and the first day of July shall list the property owned by him or her on the first day of January of such year in the county in which he or she resides: PROVIDED, That if such person has been assessed and can make it appear to the assessor that he or she is held for the tax of the current year on the property in another state or county, he or she shall not be again assessed for such year. [2013 c 23 § 367; 1961 c 15 § 84.44.080. Prior: 1939 c 206 § 13; 1925 ex.s. c 130 § 14; RRS § 11118; prior: 1891 c 140 § 7; 1890 p 534 § 13.]

Chapter 84.48 RCW
EQUALIZATION OF ASSESSMENTS

Sections

84.48.018 County board of equalization—Chair—Quorum.

84.48.018 County board of equalization—Chair—Quorum. The members of each board of equalization shall meet and choose a chair. A majority of the board shall constitute a quorum. [2013 c 23 § 368; 1970 ex.s. c 55 § 4.]

Additional notes found at www.leg.wa.gov

Chapter 84.52 RCW
LEVY OF TAXES

Sections

84.52.0531 Levies by school districts—Maximum dollar amount for maintenance and operation support—Restrictions—Maximum levy percentage—Levy reduction funds—Rules. (*Effective until January 1, 2018.*)

84.52.825 Tax preferences—Expiration dates.

84.52.0531 Levies by school districts—Maximum dollar amount for maintenance and operation support—Restrictions—Maximum levy percentage—Levy reduction funds—Rules. (*Effective until January 1, 2018.*) The maximum dollar amount which may be levied by or for any school district for maintenance and operation support under the provisions of RCW 84.52.053 shall be determined as follows:

(1) For excess levies for collection in calendar year 1997, the maximum dollar amount shall be calculated pursuant to the laws and rules in effect in November 1996.

(2) For excess levies for collection in calendar year 1998 and thereafter, the maximum dollar amount shall be the sum of (a) plus or minus (b), (c), and (d) of this subsection minus (e) of this subsection:

(a) The district's levy base as defined in subsections (3) and (4) of this section multiplied by the district's maximum levy percentage as defined in subsection (7) of this section;

(b) For districts in a high/nonhigh relationship, the high school district's maximum levy amount shall be reduced and the nonhigh school district's maximum levy amount shall be increased by an amount equal to the estimated amount of the nonhigh payment due to the high school district under RCW 28A.545.030(3) and 28A.545.050 for the school year commencing the year of the levy;

(c) Except for nonhigh districts under (d) of this subsection, for districts in an interdistrict cooperative agreement, the nonresident school district's maximum levy amount shall be reduced and the resident school district's maximum levy amount shall be increased by an amount equal to the per pupil basic education allocation included in the nonresident district's levy base under subsection (3) of this section multiplied by:

(i) The number of full-time equivalent students served from the resident district in the prior school year; multiplied by:

(ii) The serving district's maximum levy percentage determined under subsection (7) of this section; increased by:

(iii) The percent increase per full-time equivalent student as stated in the state basic education appropriation section of

the biennial budget between the prior school year and the current school year divided by fifty-five percent;

(d) The levy bases of nonhigh districts participating in an innovation academy cooperative established under RCW 28A.340.080 shall be adjusted by the office of the superintendent of public instruction to reflect each district's proportional share of student enrollment in the cooperative;

(e) The district's maximum levy amount shall be reduced by the maximum amount of state matching funds for which the district is eligible under RCW 28A.500.010.

(3) For excess levies for collection in calendar year 2005 and thereafter, a district's levy base shall be the sum of allocations in (a) through (c) of this subsection received by the district for the prior school year and the amounts determined under subsection (4) of this section, including allocations for compensation increases, plus the sum of such allocations multiplied by the percent increase per full time equivalent student as stated in the state basic education appropriation section of the biennial budget between the prior school year and the current school year and divided by fifty-five percent. A district's levy base shall not include local school district property tax levies or other local revenues, or state and federal allocations not identified in (a) through (c) of this subsection.

(a) The district's basic education allocation as determined pursuant to RCW 28A.150.250, 28A.150.260, and 28A.150.350;

(b) State and federal categorical allocations for the following programs:

(i) Pupil transportation;

(ii) Special education;

(iii) Education of highly capable students;

(iv) Compensatory education, including but not limited to learning assistance, migrant education, Indian education, refugee programs, and bilingual education;

(v) Food services; and

(vi) Statewide block grant programs; and

(c) Any other federal allocations for elementary and secondary school programs, including direct grants, other than federal impact aid funds and allocations in lieu of taxes.

(4) For levy collections in calendar years 2005 through 2017, in addition to the allocations included under subsection (3)(a) through (c) of this section, a district's levy base shall also include the following:

(a)(i) For levy collections in calendar year 2010, the difference between the allocation the district would have received in the current school year had *RCW 84.52.068 not been amended by chapter 19, Laws of 2003 1st sp. sess. and the allocation the district received in the current school year pursuant to **RCW 28A.505.220;

(ii) For levy collections in calendar years 2011 through 2017, the allocation rate the district would have received in the prior school year using the Initiative 728 rate multiplied by the full-time equivalent student enrollment used to calculate the Initiative 728 allocation for the prior school year; and

(b) The difference between the allocations the district would have received the prior school year using the Initiative 732 base and the allocations the district actually received the prior school year pursuant to RCW 28A.400.205.

(5) For levy collections in calendar years 2011 through 2017, in addition to the allocations included under subsec-

tions (3)(a) through (c) and (4)(a) and (b) of this section, a district's levy base shall also include the difference between an allocation of fifty-three and two-tenths certificated instructional staff units per thousand full-time equivalent students in grades kindergarten through four enrolled in the prior school year and the allocation of certificated instructional staff units per thousand full-time equivalent students in grades kindergarten through four that the district actually received in the prior school year, except that the levy base for a school district whose allocation in the 2009-10 school year was less than fifty-three and two-tenths certificated instructional staff units per thousand full-time equivalent students in grades kindergarten through four shall include the difference between the allocation the district actually received in the 2009-10 school year and the allocation the district actually received in the prior school year.

(6) For levy collections beginning in calendar year 2014 and thereafter, in addition to the allocations included under subsections (3)(a) through (c), (4)(a) and (b), and (5) of this section, a district's levy base shall also include the funds allocated by the superintendent of public instruction under RCW 28A.715.040 to a school that is the subject of a state-tribal education compact and that formerly contracted with the school district to provide educational services through an interlocal agreement and received funding from the district.

(7)(a) A district's maximum levy percentage shall be twenty-four percent in 2010 and twenty-eight percent in 2011 through 2017 and twenty-four percent every year thereafter;

(b) For qualifying districts, in addition to the percentage in (a) of this subsection the grandfathered percentage determined as follows:

(i) For 1997, the difference between the district's 1993 maximum levy percentage and twenty percent; and

(ii) For 2011 through 2017, the percentage calculated as follows:

(A) Multiply the grandfathered percentage for the prior year times the district's levy base determined under subsection (3) of this section;

(B) Reduce the result of (b)(ii)(A) of this subsection by any levy reduction funds as defined in subsection (8) of this section that are to be allocated to the district for the current school year;

(C) Divide the result of (b)(ii)(B) of this subsection by the district's levy base; and

(D) Take the greater of zero or the percentage calculated in (b)(ii)(C) of this subsection.

(8) "Levy reduction funds" shall mean increases in state funds from the prior school year for programs included under subsections (3) and (4) of this section: (a) That are not attributable to enrollment changes, compensation increases, or inflationary adjustments; and (b) that are or were specifically identified as levy reduction funds in the appropriations act. If levy reduction funds are dependent on formula factors which would not be finalized until after the start of the current school year, the superintendent of public instruction shall estimate the total amount of levy reduction funds by using prior school year data in place of current school year data. Levy reduction funds shall not include moneys received by school districts from cities or counties.

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

(a) "Prior school year" means the most recent school year completed prior to the year in which the levies are to be collected.

(b) "Current school year" means the year immediately following the prior school year.

(c) "Initiative 728 rate" means the allocation rate at which the student achievement program would have been funded under chapter 3, Laws of 2001, if all annual adjustments to the initial 2001 allocation rate had been made in previous years and in each subsequent year as provided for under chapter 3, Laws of 2001.

(d) "Initiative 732 base" means the prior year's state allocation for annual salary cost-of-living increases for district employees in the state-funded salary base as it would have been calculated under chapter 4, Laws of 2001, if each annual cost-of-living increase allocation had been provided in previous years and in each subsequent year.

(10) Funds collected from transportation vehicle fund tax levies shall not be subject to the levy limitations in this section.

(11) The superintendent of public instruction shall develop rules and inform school districts of the pertinent data necessary to carry out the provisions of this section.

(12) For calendar year 2009, the office of the superintendent of public instruction shall recalculate school district levy authority to reflect levy rates certified by school districts for calendar year 2009. [2013 c 242 § 8; 2012 1st sp.s. c 10 § 8. Prior: 2010 c 237 § 1; 2010 c 99 § 11; (2010 c 99 § 10 expired January 1, 2012); 2009 c 4 § 908; 2006 c 119 § 2; 2004 c 21 § 2; 1997 c 259 § 2; 1995 1st sp.s. c 11 § 1; 1994 c 116 § 2; 1993 c 465 § 1; 1992 c 49 § 1; 1990 c 33 § 601; 1989 c 141 § 1; 1988 c 252 § 1; 1987 1st ex.s. c 2 § 101; 1987 c 185 § 40; 1985 c 374 § 1; prior: 1981 c 264 § 10; 1981 c 168 § 1; 1979 ex.s. c 172 § 1; 1977 ex.s. c 325 § 4.]

Reviser's note: *(1) RCW 84.52.068 was repealed by 2009 c 479 § 75.

***(2) RCW 28A.505.220 was repealed by 2012 1st sp.s. c 10 § 9.

Expiration date—2013 c 242 § 8: "Section 8 of this act expires January 1, 2018." [2013 c 242 § 10.]

Purpose—Construction—2012 1st sp.s. c 10: "(1) Legislation enacted in 2009 (chapter 548, Laws of 2009) and in 2010 (chapter 236, Laws of 2010) revised the definition of the program of basic education, established new methods for distributing state funds to school districts to support this program of basic education, and provided an outline of specific enhancements to the program of basic education that are required to be implemented by 2018. In order to meet the required deadlines to implement full funding of the enhancements, the joint task force in section 2 of this act is created to develop and recommend options for a permanent funding mechanism.

(2) Initiative Measure No. 728 (chapter 3, Laws of 2001) dedicated a portion of state revenues to fund class size reductions and other education improvements. Because class size reductions and similar improvements are incorporated in the reforms that were enacted in chapter 548, Laws of 2009, and chapter 236, Laws of 2010, and that are being incrementally implemented through 2018, Initiative Measure No. 728 is repealed in order to make these dedicated revenues available for implementation of basic education reform and to facilitate the funding reform recommendations of the joint task force in section 2 of this act.

(3) Nothing in chapter 10, Laws of 2012 1st sp. sess. alters or amends the elements included in the school district levy base set forth in RCW 84.52.0531." [2012 1st sp.s. c 10 § 1.]

Expiration date—2012 1st sp.s. c 10 § 8: "Section 8 of this act expires January 1, 2018." [2012 1st sp.s. c 10 § 10.]

Expiration date—2010 c 237 §§ 1, 5, and 6: "Sections 1, 5, and 6 of this act expire January 1, 2018." [2010 c 237 § 9.]

Effective date—2010 c 237 §§ 1 and 3-9: "Sections 1 and 3 through 9 of this act are necessary for the immediate preservation of the public peace,

health, or safety, or support of the state government and its existing public institutions, and take effect immediately [March 29, 2010]. [2010 c 237 § 11.]

Intent—2010 c 237: "The legislature recognizes that school districts request voter approval for two-year through four-year levies based on their projected levy capacities at the time that the levies are submitted to the voters. It is the intent of the legislature to permit school districts with voter-approved maintenance and operation levies to seek an additional approval from the voters, if subsequently enacted legislation would permit a higher levy." [2010 c 237 § 3.]

Effective date—2010 c 99 § 11: "Section 11 of this act takes effect January 1, 2012." [2010 c 99 § 15.]

Expiration date—2010 c 99 § 10: "Section 10 of this act expires January 1, 2012." [2010 c 99 § 14.]

Findings—Intent—2010 c 99: See note following RCW 28A.340.080.

Effective date—2009 c 4: See note following RCW 43.79.460.

Expiration date—2009 c 4 § 908: "Section 908 of this act expires January 1, 2012." [2009 c 4 § 909.]

Expiration date—2010 c 237; 2006 c 119; 2004 c 21: "This act expires January 1, 2018." [2010 c 237 § 8; 2006 c 119 § 3; 2004 c 21 § 3.]

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

Intent—1987 1st ex.s. c 2: "The legislature intends to establish the limitation on school district maintenance and operations levies at twenty percent, with ten percent to be equalized on a statewide basis. The legislature further intends to establish a modern school financing system for compensation of school staff and provide a class size reduction in grades kindergarten through three. The legislature intends to give the highest funding priority to strengthening support for existing school programs.

The legislature finds that providing for the adoption of a statewide salary allocation schedule for certificated instructional staff will encourage recruitment and retention of able individuals to the teaching profession, and limit the administrative burden associated with implementing state teacher salary policies." [1987 1st ex.s. c 2 § 1.]

Intent—Severability—1987 c 185: See notes following RCW 51.12.130.

Payments to high school districts for educating nonhigh school district students: Chapter 28A.545 RCW.

Purposes: RCW 28A.545.030.

Rules to effect purposes and implement provisions: RCW 28A.545.110.

Superintendent's annual determination of estimated amount due—Process: RCW 28A.545.070.

Additional notes found at www.leg.wa.gov

84.52.825 Tax preferences—Expiration dates. (1) See RCW 82.32.805 for the expiration date of new tax preferences for the tax imposed under RCW 84.52.065.

(2) See RCW 82.32.808 for reporting requirements for any new tax preference for the tax imposed under RCW 84.52.065. [2013 2nd sp.s. c 13 § 1721.]

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.04.43393.

**Chapter 84.56 RCW
COLLECTION OF TAXES**

Sections

84.56.020	Taxes collected by treasurer—Dates of delinquency—Tax statement notice concerning payment by check—Interest—Penalties—Extensions during state of emergency.
84.56.070	Personal property—Distraint and sale, notice, property incapable of manual delivery, property about to be removed or disposed of.
84.56.090	Distraint and sale of property about to be removed, dissipated, sold, or disposed of—Computation of taxes, entry on rolls, tax liens.
84.56.210	Severance of standing timber assessed as realty—Timber tax may be collected as personalty tax.

84.56.270	Court cancellation of personalty taxes more than four years delinquent.
84.56.320	Recovery by occupant or tenant paying realty taxes.
84.56.335	Manufactured/mobile home or park model trailer landlord tax responsibility.

84.56.020 Taxes collected by treasurer—Dates of delinquency—Tax statement notice concerning payment by check—Interest—Penalties—Extensions during state of emergency. (1) The county treasurer must be the receiver and collector of all taxes extended upon the tax rolls of the county, whether levied for state, county, school, bridge, road, municipal or other purposes, and also of all fines, forfeitures or penalties received by any person or officer for the use of his or her county. No treasurer may accept tax payments or issue receipts for the same until the treasurer has completed the tax roll for the current year's collection and provided notification of the completion of the roll. Notification may be accomplished electronically, by posting a notice in the office, or through other written communication as determined by the treasurer. All taxes upon real and personal property made payable by the provisions of this title are due and payable to the treasurer on or before the thirtieth day of April and, except as provided in this section, shall be delinquent after that date.

(2) Each tax statement must include a notice that checks for payment of taxes may be made payable to "Treasurer of County" or other appropriate office, but tax statements may not include any suggestion that checks may be made payable to the name of the individual holding the office of treasurer nor any other individual.

(3) When the total amount of tax or special assessments on personal property or on any lot, block or tract of real property payable by one person is fifty dollars or more, and if one-half of such tax be paid on or before the thirtieth day of April, the remainder of such tax is due and payable on or before the thirty-first day of October following and shall be delinquent after that date.

(4) When the total amount of tax or special assessments on any lot, block or tract of real property or on any mobile home payable by one person is fifty dollars or more, and if one-half of such tax be paid after the thirtieth day of April but before the thirty-first day of October, together with the applicable interest and penalty on the full amount of tax payable for that year, the remainder of such tax is due and payable on or before the thirty-first day of October following and is delinquent after that date.

(5) Except as provided in (c) of this subsection, delinquent taxes under this section are subject to interest at the rate of twelve percent per annum computed on a monthly basis on the full year amount of tax unpaid from the date of delinquency until paid. Interest must be calculated at the rate in effect at the time of payment of the tax, regardless of when the taxes were first delinquent. In addition, delinquent taxes under this section are subject to penalties as follows:

(a) A penalty of three percent of the full year amount of tax unpaid is assessed on the tax delinquent on June 1st of the year in which the tax is due.

(b) An additional penalty of eight percent is assessed on the amount of tax delinquent on December 1st of the year in which the tax is due.

(c) If a taxpayer is successfully participating in a payment agreement under subsection (11)(b) of this section, the county treasurer may not assess additional penalties on delinquent taxes that are included within the payment agreement. Interest and penalties that have been assessed prior to the payment agreement remain due and payable as provided in the payment agreement.

(6)(a) When real property taxes become delinquent and prior to the filing of the certificate of delinquency, the treasurer is authorized to assess and collect tax foreclosure avoidance costs.

(b) For the purposes of this section, "tax foreclosure avoidance costs" means those costs that can be identified specifically with the administration of properties subject to and prior to foreclosure. Tax foreclosure avoidance costs include:

(i) Compensation of employees for the time devoted and identified specifically to administering the avoidance of property foreclosure; and

(ii) The cost of materials, services, or equipment acquired, consumed, or expended specifically for the purpose of administering tax foreclosure avoidance prior to the filing of a certificate of delinquency.

(c) When tax foreclosure avoidance costs are collected, the tax foreclosure avoidance costs must be credited to the county treasurer service fund account, except as otherwise directed.

(d) For purposes of chapter 84.64 RCW, any taxes, interest, or penalties deemed delinquent under this section remain delinquent until such time as all taxes, interest, and penalties for the tax year in which the taxes were first due and payable have been paid in full.

(7) Subsection (5) of this section notwithstanding, no interest or penalties may be assessed during any period of armed conflict on delinquent taxes imposed on the personal residences owned by active duty military personnel who are participating as part of one of the branches of the military involved in the conflict and assigned to a duty station outside the territorial boundaries of the United States.

(8) During a state of emergency declared under RCW 43.06.010(12), the county treasurer, on his or her own motion or at the request of any taxpayer affected by the emergency, may grant extensions of the due date of any taxes payable under this section as the treasurer deems proper.

(9) For purposes of this chapter, "interest" means both interest and penalties.

(10) All collections of interest on delinquent taxes must be credited to the county current expense fund; but the cost of foreclosure and sale of real property, and the fees and costs of distraint and sale of personal property, for delinquent taxes, must, when collected, be credited to the operation and maintenance fund of the county treasurer prosecuting the foreclosure or distraint or sale; and must be used by the county treasurer as a revolving fund to defray the cost of further foreclosure, distraint and sale for delinquent taxes without regard to budget limitations.

(11)(a) For purposes of this chapter, and in accordance with this section and RCW 36.29.190, the treasurer may collect taxes, assessments, fees, rates, interest, and charges by electronic bill presentment and payment. Electronic bill presentment and payment may be utilized as an option by the

taxpayer, but the treasurer may not require the use of electronic bill presentment and payment. Electronic bill presentment and payment may be on a monthly or other periodic basis as the treasurer deems proper for delinquent tax year payments only or for prepayments of current tax. All prepayments must be paid in full by the due date specified in (c) of this subsection. Payments on past due taxes must include collection of the oldest delinquent year, which includes interest and taxes within a twelve-month period, prior to filing a certificate of delinquency under chapter 84.64 RCW or distraint pursuant to RCW 84.56.070.

(b) The treasurer must provide, by electronic means or otherwise, a payment agreement that provides for payment of current year taxes, inclusive of prepayment collection charges. The treasurer may provide, by electronic means or otherwise, a payment agreement for payment of past due delinquencies, which must also require current year taxes to be paid timely. The payment agreement must be signed by the taxpayer and treasurer prior to the sending of an electronic or alternative bill, which includes a payment plan for current year taxes.

(c) All taxes upon real and personal property made payable by the provisions of this title are due and payable to the treasurer on or before the thirtieth day of April and are delinquent after that date. The remainder of the tax is due and payable on or before the thirty-first day of October following and is delinquent after that date. All other assessments, fees, rates, and charges are delinquent after the due date.

(d) A county treasurer may authorize payment of past due property taxes, penalties, and interest under this chapter by electronic funds transfer payments on a monthly basis. Delinquent taxes are subject to interest and penalties, as provided in subsection (5) of this section.

(e) The treasurer must pay any collection costs, investment earnings, or both on past due payments or prepayments to the credit of a county treasurer service fund account to be created and used only for the payment of expenses incurred by the treasurer, without limitation, in administering the system for collecting prepayments.

(12) For purposes of this section unless the context clearly requires otherwise, the following definitions apply:

(a) "Electronic bill presentment and payment" means statements, invoices, or bills that are created, delivered, and paid using the internet. The term includes an automatic electronic payment from a person's checking account, debit account, or credit card.

(b) "Internet" has the same meaning as provided in RCW 19.270.010. [2013 c 239 § 3; 2010 c 200 § 1; 2008 c 181 § 510; 2007 c 105 § 2; 2005 c 502 § 7; 2004 c 161 § 6; 1996 c 153 § 1. Prior: 1991 c 245 § 16; 1991 c 52 § 1; 1988 c 222 § 30; 1987 c 211 § 1; 1984 c 131 § 1; 1981 c 322 § 2; 1974 ex.s. c 196 § 1; 1974 ex.s. c 116 § 1; 1971 ex.s. c 288 § 3; 1969 ex.s. c 216 § 3; 1961 c 15 § 84.56.020; prior: 1949 c 21 § 1; 1935 c 30 § 2; 1931 c 113 § 1; 1925 ex.s. c 130 § 83; Rem. Supp. 1949 § 11244; prior: 1917 c 141 § 1; 1899 c 141 § 6; 1897 c 71 § 68; 1895 c 176 § 14; 1893 c 124 § 69; 1890 p 561 § 84; Code 1881 § 2892. Formerly RCW 84.56.020 and 84.56.030.]

Findings—2013 c 239: "The legislature finds that it is difficult for many property owners to pay property taxes under the current system where past due property tax payments must be paid in full, including penalties and interest. The legislature further finds that providing counties and property owners some flexibility in structuring past due property tax payments may provide some relief for property owners with delinquent tax payments." [2013 c 239 § 2.]

Part headings not law—2008 c 181: See note following RCW 43.06.220.

Application—2005 c 502 § 7: "Section 7 of this act applies to all taxes levied for collection in 2005 and thereafter." [2005 c 502 § 10.]

Effective date—2005 c 502: See note following RCW 1.12.070.

Effective date—2004 c 161: See note following RCW 28B.10.270.

Advance deposit of taxes on certain platted property: RCW 58.08.040.

Payment of taxes upon loss of exempt status: RCW 84.40.380.

Additional notes found at www.leg.wa.gov

84.56.070 Personal property—Distraint and sale, notice, property incapable of manual delivery, property about to be removed or disposed of. (1) The county treasurer must proceed to collect all personal property taxes after first completing the tax roll for the current year's collection.

(2) The treasurer must give notice by mail to all persons charged with personal property taxes, and if such taxes are not paid before they become delinquent, the treasurer must commence delinquent collection efforts. A delinquent collection charge for costs incurred by the treasurer may be added to the account.

(3) In the event that the treasurer is unable to collect the taxes when due under this section, the treasurer must prepare papers in distraint, which must contain a description of the personal property, the amount of taxes, the amount of the accrued interest at the rate provided by law from the date of delinquency, and the name of the owner or reputed owner.

(a) The treasurer must without demand or notice distraint sufficient goods and chattels belonging to the person charged with such taxes to pay the same, with interest at the rate provided by law from the date of delinquency, together with all accruing costs, and must proceed to advertise the same by posting written notices in three public places in the county in which such property has been distrained, one of which places must be at the county courthouse, such notice to state the time when and place where such property will be sold.

(b) The county treasurer, or the treasurer's deputy, must tax the same fees for making the distraint and sale of goods and chattels for the payment of taxes as are allowed by law to sheriffs for making levy and sale of property on execution; traveling fees to be computed from the county seat of the county to the place of making distraint.

(c) If the taxes for which such property is distrained, and the interest and costs accruing thereon, are not paid before the date appointed for such sale, which may not be less than ten days after the taking of such property, such treasurer or treasurer's designee must proceed to sell such property at public auction, or so much thereof as is sufficient to pay such taxes, with interest and costs, and if there be any excess of money arising from the sale of any personal property, the treasurer must pay such excess less any cost of the auction to the owner of the property so sold or to his or her legal representative.

(d) If necessary to distraint any standing timber owned separately from the ownership of the land upon which the same may stand, or any fish trap, pound net, reef net, set net, or drag seine fishing location, or any other personal property as the treasurer determines to be incapable or reasonably impracticable of manual delivery, it is deemed to have been distrained and taken into possession when the treasurer has, at least thirty days before the date fixed for the sale thereof, filed with the auditor of the county wherein such property is located a notice in writing reciting that the treasurer has distrained such property, describing it, giving the name of the owner or reputed owner, the amount of the tax due, with interest, and the time and place of sale. A copy of the notice must also be sent to the owner or reputed owner at his or her last known address, by registered letter at least thirty days prior to the date of sale.

(e) If the county treasurer has reasonable grounds to believe that any personal property, including mobile homes, manufactured homes, or park model trailers, upon which taxes have been levied, but not paid, is about to be removed from the county where the same has been assessed, or is about to be destroyed, sold, or disposed of, the county treasurer may demand such taxes, without the notice provided for in this section, and if necessary may distraint sufficient goods and chattels to pay the same. [2013 c 239 § 4; 2009 c 350 § 2; 2007 c 295 § 5; 1991 c 245 § 19; (1975-'76 2nd ex.s. c 10 § 2 expired December 31, 1976); 1961 c 15 § 84.56.070. Prior: 1949 c 21 § 2; 1935 c 30 § 4; 1933 c 33 § 1; 1925 ex.s. c 130 § 86; Rem. Supp. 1949 § 11247; prior: 1915 c 137 § 1; 1911 c 24 § 2; 1899 c 141 § 7; 1897 c 71 § 71; 1895 c 176 § 15; 1893 c 124 § 72; 1890 p 561 § 87; Code 1881 § 2903. Formerly RCW 84.56.070, 84.56.080, and 84.56.100.]

Findings—2013 c 239: See note following RCW 84.56.020.

Issuance of warrant: RCW 84.56.075.

84.56.090 Distraint and sale of property about to be removed, dissipated, sold, or disposed of—Computation of taxes, entry on rolls, tax liens. Whenever in the judgment of the assessor or the county treasurer personal property is being removed or is about to be removed without the limits of the state, or is being dissipated or about to be dissipated, or is being or about to be sold, disposed of, or removed from the county so as to jeopardize collection of taxes, the treasurer shall immediately prepare papers in distraint, which shall contain a description of the personal property, including mobile homes, manufactured homes, or park model trailers, being or about to be removed, dissipated, sold, disposed of, or removed from the county so as to jeopardize collection of taxes, the amount of the tax, the amount of accrued interest at the rate provided by law from the date of delinquency, and the name of the owner or reputed owner, and he or she shall without demand or notice distraint sufficient goods and chattels belonging to the person charged with such taxes to pay the same with interest at the rate provided by law from the date of delinquency, together with all accruing costs, and shall advertise and sell said property as provided in RCW 84.56.070.

If said personal property is being removed or is about to be removed from the limits of the state, is being dissipated or about to be dissipated, or is being or about to be sold, disposed of, or removed from the county so as to jeopardize col-

lection of taxes, at any time subsequent to the first day of January in any year, and prior to the levy of taxes thereon, the taxes upon such property so distrained shall be computed upon the rate of levy for state, county, and local purposes for the preceding year; and all taxes collected in advance of levy under this section and RCW 84.56.120, together with the name of the owner and a brief description of the property assessed shall be entered forthwith by the county treasurer upon the personal property tax rolls of such preceding year, and all collections thereon shall be considered and treated in all respects, and without recourse by either the owner or any taxing unit, as collections for such preceding year. Property on which taxes are thus collected shall thereupon become discharged from the lien of any taxes that may thereafter be levied in the year in which payment or collection is made.

Whenever property has been removed from the county wherein it has been assessed, on which the taxes have not been paid, then the county treasurer, or his or her deputy, shall have the same power to distrain and sell said property for the satisfaction of said taxes as he or she would have if said property were situated in the county in which the property was taxed, and in addition thereto said treasurer, or his or her deputy, in the distraint and sale of property for the payment of taxes, shall have the same powers as are now by law given to the sheriff in making levy and sale of property on execution. [2013 c 23 § 369; 2007 c 295 § 6; 1985 c 83 § 1; 1961 c 15 § 84.56.090. Prior: 1949 c 21 § 3; 1939 c 206 § 43; 1937 c 20 § 1; 1925 ex.s. c 130 § 89; Rem. Supp. 1949 § 11250; prior: 1907 c 29 § 1. Formerly RCW 84.56.090, 84.56.110, 84.56.130, and 84.56.140.]

Issuance of warrant: RCW 84.56.075.

84.56.210 Severance of standing timber assessed as realty—Timber tax may be collected as personalty tax. Whenever standing timber which has been assessed as real estate is severed from the land as part of which it was so assessed, it may be considered by the county assessor as personal property, and the county treasurer shall thereafter be entitled to pursue all of the rights and remedies provided by law for the collection of personal property taxes in the collection of taxes levied against such timber: PROVIDED, That whenever the county assessor elects to treat severed timber as personalty under the provisions of this section, he or she shall immediately give notice by mail to the person or persons charged with the tax of the fact of his or her election, and the amount of tax standing against the timber. [2013 c 23 § 370; 1961 c 15 § 84.56.210. Prior: 1939 c 206 § 42; 1929 c 70 § 1; RRS § 11247-1.]

84.56.270 Court cancellation of personalty taxes more than four years delinquent. The county treasurer of any county of the state of Washington, after he or she has first received the approval of the board of county commissioners of such county, through a resolution duly adopted, is hereby empowered to petition the superior court in or for his or her county to finally cancel and completely extinguish the lien of any delinquent personal property tax which appears on the tax rolls of his or her county, which is more than four years delinquent, which he or she attests to be beyond hope of collection, and the cancellation of which will not impair the obligation of any bond issue nor be precluded by any other legal

impediment that might invalidate such cancellation. The superior court shall have jurisdiction to hear any such petition and to enter such order as it shall deem proper in the premises. [2013 c 23 § 372; 1984 c 132 § 5; 1961 c 15 § 84.56.270. Prior: 1945 c 59 § 1; Rem. Supp. 1945 § 11265-1.]

84.56.320 Recovery by occupant or tenant paying realty taxes. When any tax on real property is paid by or collected of any occupant or tenant, or any other person, which, by agreement or otherwise, ought to have been paid by the owner, lessor, or other party in interest, such occupant, tenant, or other person may recover by action the amount which such owner, lessor, or party in interest ought to have paid, with interest thereon at the rate of ten percent per annum, or he or she may retain the same from any rent due or accruing from him or her to such owner or lessor for real property on which such tax is so paid; and the same shall, until paid, constitute a lien upon such real property. [2013 c 23 § 373; 1961 c 15 § 84.56.320. Prior: 1925 ex.s. c 130 § 102; RRS § 11263; prior: 1897 c 71 § 81; 1893 c 124 § 86; 1890 p 583 § 133.]

84.56.335 Manufactured/mobile home or park model trailer landlord tax responsibility. (1) Except as provided in subsection (2) of this section, if the landlord of a manufactured/mobile home park takes ownership of a manufactured/mobile home or park model trailer with the intent to resell or rent the same after (a) the manufactured/mobile home or park model trailer has been abandoned; or (b) a final judgment for restitution of the premises under RCW 59.18.410 has been executed in favor of the landlord with regard to the manufactured/mobile home or park model trailer and title has been lawfully transferred to the landlord, the outstanding taxes become the responsibility of the landlord. After the outstanding taxes, interest, and penalties are removed from the tax rolls under subsection (2) of this section, all future taxes are the responsibility of the owner of the manufactured/mobile home or park model trailer.

(2) Upon notification by the assessor, the county treasurer must remove from the tax rolls any outstanding taxes, as well as interest and penalties, on a manufactured/mobile home or park model trailer if the landlord of a manufactured/mobile home park:

(a) Submits a signed affidavit to the assessor indicating that the landlord has taken ownership of the manufactured/mobile home or park model trailer with the intent to resell or rent after: (i) The manufactured/mobile home or park model trailer has been abandoned; or (ii) a final judgment for restitution of the premises under RCW 59.18.410 has been executed in favor of the landlord with regard to the manufactured/mobile home or park model trailer and title has been lawfully transferred to the landlord; and

(b) The most current assessed value of the manufactured/mobile home or park model trailer is less than eight thousand dollars.

(3) For the purposes of this section, "abandoned," "manufactured/mobile home," and "park model" have the same meanings as provided in RCW 59.20.030. [2013 c 198 § 1.]

Chapter 84.60 RCW LIEN OF TAXES

Sections

84.60.010	Priority of tax lien.
84.60.040	Charging personalty tax against realty.

84.60.010 Priority of tax lien. All taxes and levies which may hereafter be lawfully imposed or assessed are declared to be a lien respectively upon the real and personal property upon which they may hereafter be imposed or assessed, which liens include all charges and expenses of and concerning the taxes which, by the provisions of this title, are directed to be made. The lien has priority to and must be fully paid and satisfied before any recognizance, mortgage, judgment, debt, obligation, or responsibility to or with which the real and personal property may become charged or liable, except that the lien is of equal rank with liens for amounts deferred under chapter 84.37 or 84.38 RCW. [2013 c 221 § 10; 1969 ex.s. c 251 § 1; 1961 c 15 § 84.60.010. Prior: 1925 ex.s. c 130 § 99; RRS § 11260; prior: 1897 c 71 § 78; 1895 c 176 § 19; 1893 c 124 § 79; 1890 p 584 § 135.]

84.60.040 Charging personalty tax against realty. When it becomes necessary, in the opinion of the county treasurer, to charge the tax on personal property against real property, in order that such personal property tax may be collected, such county treasurer shall select for that purpose some particular tract or lots of real property owned by the person owing such personal property tax, and in his or her tax roll and certificate of delinquency shall designate the particular tract or lots of real property against which such personal property tax is charged, and such real property shall be chargeable therewith. [2013 c 23 § 374; 1961 c 15 § 84.60.040. Prior: 1925 ex.s. c 130 § 112, part; RRS § 11273, part; prior: 1897 c 71 § 93, part; 1893 c 124 § 97, part.]

Chapter 84.64 RCW LIEN FORECLOSURE (Formerly: Certificates of delinquency)

Sections

84.64.005	Definitions.
84.64.040	Prosecuting attorney to foreclose on request.
84.64.050	Certificate to county—Foreclosure—Notice—Sale of certain residential property eligible for deferral prohibited.
84.64.130	Certified copies of records as evidence.
84.64.180	Deeds as evidence—Estoppel by judgment.

84.64.005 Definitions. Unless the context clearly requires otherwise, for purposes of this chapter:

- (1) "Interest" means interest and penalties; and
- (2) "Taxes;" "taxes, interest and costs;" and "taxes, interest, or costs" include any assessments and amounts deferred under chapters 84.37 and 84.38 RCW, where such assessments and deferred amounts are included in a certificate of delinquency by the county treasurer. [2013 c 221 § 11.]

84.64.040 Prosecuting attorney to foreclose on request. The county prosecuting attorney shall furnish to holders of certificates of delinquency, at the expense of the county, forms of applications for judgment and forms of notice and summons when the same are required, and shall

prosecute to final judgment all actions brought by holders of certificates under the provisions of this chapter for the foreclosure of tax liens, when requested so to do by the holder of any certificate of delinquency: PROVIDED, Said holder has duly paid to the clerk of the court the sum of two dollars for each action brought as per RCW 84.64.120: PROVIDED, FURTHER, That nothing herein shall be construed to prevent said holder from employing other and additional counsel, or prosecuting said action independent of and without assistance from the prosecuting attorney, if he or she so desires, but in such cases, no other and further costs or charge whatever shall be allowed than the costs provided in this section and RCW 84.64.120: AND PROVIDED, ALSO, That in no event shall the county prosecuting attorney collect any fee for the services herein enumerated. [2013 c 23 § 375; 1961 c 15 § 84.64.040. Prior: 1925 ex.s. c 130 § 116; RRS § 11277; prior: 1903 c 165 § 1; 1899 c 141 § 14.]

84.64.050 Certificate to county—Foreclosure—Notice—Sale of certain residential property eligible for deferral prohibited. (1) After the expiration of three years from the date of delinquency, when any property remains on the tax rolls for which no certificate of delinquency has been issued, the county treasurer must proceed to issue certificates of delinquency on the property to the county for all years' taxes, interest, and costs. However, the county treasurer, with the consent of the county legislative authority, may elect to issue a certificate for fewer than all years' taxes, interest, and costs to a minimum of the taxes, interest, and costs for the earliest year.

(2) Certificates of delinquency are prima facie evidence that:

- (a) The property described was subject to taxation at the time the same was assessed;
- (b) The property was assessed as required by law;
- (c) The taxes or assessments were not paid at any time before the issuance of the certificate;
- (d) Such certificate has the same force and effect as a lis pendens required under chapter 4.28 RCW.

(3) The county treasurer may include in the certificate of delinquency any assessments which are due on the property and are the responsibility of the county treasurer to collect. However, if the department of revenue has previously notified the county treasurer in writing that the property has a lien on it for deferred property taxes, the county treasurer must include in the certificate of delinquency any amounts deferred under chapters 84.37 and 84.38 RCW that remain unpaid, including accrued interest and costs.

(4) The treasurer must file the certificates when completed with the clerk of the court at no cost to the treasurer, and the treasurer must thereupon, with legal assistance from the county prosecuting attorney, proceed to foreclose in the name of the county, the tax liens embraced in such certificates. Notice and summons must be served or notice given in a manner reasonably calculated to inform the owner or owners, and any person having a recorded interest in or lien of record upon the property, of the foreclosure action to appear within thirty days after service of such notice and defend such action or pay the amount due. Either (a) personal service upon the owner or owners and any person having a recorded interest in or lien of record upon the property, or (b) publica-

tion once in a newspaper of general circulation, which is circulated in the area of the property and mailing of notice by certified mail to the owner or owners and any person having a recorded interest in or lien of record upon the property, or, if a mailing address is unavailable, personal service upon the occupant of the property, if any, is sufficient. If such notice is returned as unclaimed, the treasurer must send notice by regular first-class mail. The notice must include the legal description on the tax rolls, the year or years for which assessed, the amount of tax and interest due, and the name of owner, or reputed owner, if known, and the notice must include the local street address, if any, for informational purposes only. The certificates of delinquency issued to the county may be issued in one general certificate in book form including all property, and the proceedings to foreclose the liens against the property may be brought in one action and all persons interested in any of the property involved in the proceedings may be made codefendants in the action, and if unknown may be therein named as unknown owners, and the publication of such notice is sufficient service thereof on all persons interested in the property described therein, except as provided above. The person or persons whose name or names appear on the treasurer's rolls as the owner or owners of the property must be considered and treated as the owner or owners of the property for the purpose of this section, and if upon the treasurer's rolls it appears that the owner or owners of the property are unknown, then the property must be proceeded against, as belonging to an unknown owner or owners, as the case may be, and all persons owning or claiming to own, or having or claiming to have an interest therein, are hereby required to take notice of the proceedings and of any and all steps thereunder. However, prior to the sale of the property, the treasurer must order or conduct a title search of the property to be sold to determine the legal description of the property to be sold and the record title holder, and if the record title holder or holders differ from the person or persons whose name or names appear on the treasurer's rolls as the owner or owners, the record title holder or holders must be considered and treated as the owner or owners of the property for the purpose of this section, and are entitled to the notice provided for in this section. Such title search must be included in the costs of foreclosure.

(5) If the title search required by subsection (4) of this section reveals a lien in favor of the state for deferred taxes on the property under RCW 84.37.070 or 84.38.100 and such deferred taxes are not already included in the certificate of delinquency, the county treasurer must issue an amended certificate of delinquency on the property to include the outstanding amount of deferred taxes, including accrued interest. The amended certificate of delinquency must be filed with the clerk of the court as provided in subsection (4) of this section.

(6) The county treasurer may not sell property that is eligible for deferral of taxes under chapter 84.38 RCW but must require the owner of the property to file a declaration to defer taxes under chapter 84.38 RCW. [2013 c 221 § 12; 1999 c 18 § 7; 1991 c 245 § 25; 1989 c 378 § 37; 1986 c 278 § 64. Prior: 1984 c 220 § 19; 1984 c 179 § 2; 1981 c 322 § 4; 1972 ex.s. c 84 § 2; 1961 c 15 § 84.64.050; prior: 1937 c 17 § 1; 1925 ex.s. c 130 § 117; RRS § 11278; prior: 1917 c 113 § 1; 1901 c 178 § 3; 1899 c 141 § 15; 1897 c 71 § 98.]

Additional notes found at www.leg.wa.gov

84.64.130 Certified copies of records as evidence.

The books and records belonging to the office of county treasurer, certified by said treasurer, shall be deemed prima facie evidence to prove the issuance of any certificate, the sale of any land or lot for taxes, the redemption of the same or payment of taxes thereon. The county treasurer shall, at the expiration of his or her term of office, pay over to his or her successor in office all moneys in his or her hands received for redemption from sale for taxes on real property. [2013 c 23 § 376; 1961 c 15 § 84.64.130. Prior: 1925 ex.s. c 130 § 123; RRS § 11284; prior: 1897 c 71 § 108; 1893 c 124 § 123.]

84.64.180 Deeds as evidence—Estoppel by judgment.

Deeds executed by the county treasurer, as aforesaid, shall be prima facie evidence in all controversies and suits in relation to the right of the purchaser, his or her heirs and assigns, to the real property thereby conveyed of the following facts: First, that the real property conveyed was subject to taxation at the time the same was assessed, and had been listed and assessed in the time and manner required by law; second, that the taxes were not paid at any time before the issuance of deed; third, that the real property conveyed had not been redeemed from the sale at the date of the deed; fourth, that the real property was sold for taxes, interest, and costs, as stated in the deed; fifth, that the grantee in the deed was the purchaser, or assignee of the purchaser; sixth, that the sale was conducted in the manner required by law. And any judgment for the deed to real property sold for delinquent taxes rendered after January 9, 1926, except as otherwise provided in this section, shall estop all parties from raising any objections thereto, or to a tax title based thereon, which existed at or before the rendition of such judgment, and could have been presented as a defense to the application for such judgment in the court wherein the same was rendered, and as to all such questions the judgment itself shall be conclusive evidence of its regularity and validity in all collateral proceedings, except in cases where the tax has been paid, or the real property was not liable to the tax. [2013 c 23 § 377; 1961 c 15 § 84.64.180. Prior: 1925 ex.s. c 130 § 127; RRS § 11288; prior: 1897 c 71 § 114; 1893 c 124 § 132; 1890 p 574 § 114.]

Chapter 84.68 RCW

RECOVERY OF TAXES PAID OR PROPERTY SOLD FOR TAXES

Sections

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| 84.68.110 | Small claims recoveries—Recovery of erroneous taxes without court action. |
| 84.68.120 | Small claims recoveries—Petition—Procedure of county officers—Transmittal of findings to department of revenue. |
| 84.68.150 | Small claims recoveries—Limitation as to time and amount of refund. |

84.68.110 Small claims recoveries—Recovery of erroneous taxes without court action. Whenever a taxpayer believes or has reason to believe that, through error in description, double assessments, or manifest errors in assessment which do not involve a revaluation of the property, he or she has been erroneously assessed or that a tax has been incorrectly extended against him or her upon the tax rolls,

and the tax based upon such erroneous assessment or incorrect extension has been paid, such taxpayer may initiate a proceeding for the cancellation or reduction of the assessment of his or her property and the tax based thereon or for correction of the error in extending the tax on the tax rolls, and for the refund of the claimed erroneous tax or excessive portion thereof, by filing a petition therefor with the county assessor of the county in which the property is or was located or taxed, which petition shall legally describe the property, show the assessed valuation and tax placed against the property for the year or years in question and the taxpayer's reasons for believing that there was an error in the assessment within the meaning of RCW 84.68.110 through 84.68.150, or in extending the tax upon the tax rolls and set forth the sum to which the taxpayer desires to have the assessment reduced or the extended tax corrected. [2013 c 23 § 378; 1961 c 15 § 84.68.110. Prior: 1939 c 16 § 1; RRS § 11241-1.]

84.68.120 Small claims recoveries—Petition—Procedure of county officers—Transmittal of findings to department of revenue. Upon the filing of the petition with the county assessor that officer shall proceed forthwith to conduct such investigation as may be necessary to ascertain and determine whether or not the assessment in question was erroneous or whether or not the tax was incorrectly extended upon the tax rolls and if he or she finds there is probable cause to believe that the property was erroneously assessed, and that such erroneous assessment was due to an error in description, double assessment, or manifest error in assessment which does not involve a revaluation of the property, or that the tax was incorrectly extended upon the tax rolls, he or she shall endorse his or her findings upon the petition, and thereupon within ten days after the filing of the petition by the taxpayer forward the same to the county treasurer. If the assessor's findings be in favor of cancellation or reduction or correction he or she shall include therein a statement of the amount to which he or she recommends that the assessment and tax be reduced. It shall be the duty of the county treasurer, upon whom a petition with endorsed findings is served, as in RCW 84.68.110 through 84.68.150 provided, to endorse thereon a statement whether or not the tax against which complaint is made has in fact been paid and, if paid, the amount thereof, whereupon the county treasurer shall immediately transmit the petition to the prosecuting attorney and the prosecuting attorney shall make such investigation as he or she deems necessary and, within ten days after receipt of the petition and findings by him or her, transmit the same to the state department of revenue with his or her recommendation in respect to the granting or denial of the petition. [2013 c 23 § 379; 1975 1st ex.s. c 278 § 208; 1961 c 15 § 84.68.120. Prior: 1939 c 16 § 2; RRS § 11241-2.]

Additional notes found at www.leg.wa.gov

84.68.150 Small claims recoveries—Limitation as to time and amount of refund. No petition for cancellation or reduction of assessment or correction of tax rolls and the refund of taxes based thereon under RCW 84.68.110 through 84.68.150 shall be considered unless filed within three years after the year in which the tax became payable or purported to become payable. The maximum refund under the authority of RCW 84.68.110 through 84.68.150 for each year involved

in the taxpayer's petition shall be two hundred dollars. Should the amount of excess tax for any such year be in excess of two hundred dollars, a refund of two hundred dollars shall be allowed under RCW 84.68.110 through 84.68.150, without prejudice to the right of the taxpayer to proceed as may be otherwise provided by law to recover the balance of the excess tax paid by him or her. [2013 c 23 § 380; 1961 c 15 § 84.68.150. Prior: 1949 c 158 § 1; 1941 c 154 § 1; 1939 c 16 § 5; Rem. Supp. 1949 § 11241-5.]

Chapter 84.69 RCW REFUNDS

Sections

- 84.69.090 To whom refund may be paid.
84.69.180 Property tax authority for funding refunds and abatements.

84.69.090 To whom refund may be paid. The payment of refunds shall be made payable, at the election of the appropriate treasurer, to the taxpayer, his or her guardian, executor, or administrator or the owner of record of the property taxed, his or her guardian, executor, or administrator. [2013 c 23 § 381; 1961 c 15 § 84.69.090. Prior: 1957 c 120 § 9.]

84.69.180 Property tax authority for funding refunds and abatements. (1) Taxing districts other than the state may levy a tax upon all the taxable property within the district for the purpose of:

(a) Funding refunds paid or to be paid under this chapter, except for refunds under RCW 84.69.020(1), including interest, as ordered by the county treasurer or county legislative authority within the preceding twelve months; and

(b) Reimbursing the taxing district for taxes abated or cancelled, offset by any supplemental taxes collected under this title, other than amounts collected under RCW 84.52.018 within the preceding twelve months. This subsection (1)(b) only applies to abatements and cancellations that do not require a refund under this chapter. Abatements and cancellations that require a refund are included within the scope of (a) of this subsection.

(2) As provided in RCW 84.55.070, the provisions of chapter 84.55 RCW do not apply to a levy made by or for a taxing district under this section. [2013 c 239 § 1; 2009 c 350 § 10.]

Findings—2013 c 239: See note following RCW 84.56.020.

Application—2009 c 350 §§ 10 and 11: "Sections 10 and 11 of this act apply retroactively to January 1, 2009, and apply to taxes levied under section 10 of this act for collection in 2010 and thereafter." [2009 c 350 § 12.]

Title 85 DIKING AND DRAINAGE

Chapters

- 85.05 Diking districts.**
85.06 Drainage districts and miscellaneous drainage provisions.
85.07 Miscellaneous diking and drainage provisions.
85.08 Diking, drainage, and sewerage improvement districts.

- 85.15 **Diking, drainage, sewerage improvement districts—1967 act.**
- 85.16 **Maintenance costs and levies—Improvement districts.**
- 85.18 **Levy for continuous benefits—Diking districts.**
- 85.24 **Diking and drainage districts in two or more counties.**
- 85.28 **Private ditches and drains.**
- 85.32 **Drainage district revenue act of 1961.**

**Chapter 85.05 RCW
DIKING DISTRICTS**

Sections

- 85.05.076 Resolution to construct drainage system—Appeal to supreme court—Trial de novo.
- 85.05.100 Petition for improvement—Employment of assistants—Compensation as costs in suits.
- 85.05.120 Appearance of defendants—Jury—Verdict—Decree.
- 85.05.130 Assessment of benefited lands formerly omitted—Procedure—Appeals.
- 85.05.150 Procedure to claim awards.
- 85.05.160 Transcript of benefits to auditor—Assessments—Collection.
- 85.05.180 Construction—Contractors—Performance bonds.

85.05.076 Resolution to construct drainage system—Appeal to supreme court—Trial de novo. Any person deeming himself or herself aggrieved by the assessment for benefits made against any lot or parcel of land owned by him or her, may appeal therefrom to the superior court for the county in which the diking district is situated; such appeal shall be taken within the time and substantially in the manner prescribed by the laws of this state for appeals from justices' courts and all notices of appeal shall be filed with the said board, and the board of diking commissioners shall at the appellant's expense certify to the superior court so much of the record as appellant may request, and the hearing in said superior court shall be de novo, and the superior court shall have power and authority to reverse or modify the determination of the commissioners and to certify the result of its determination to the county auditor and shall have full power and authority to do anything in the premises necessary to adjust the assessment upon the lots or parcels of land involved in the appeal in accordance with the benefits. [2013 c 23 § 382; 1915 c 153 § 7; RRS § 4249. Formerly RCW 85.04.475, part.]

85.05.100 Petition for improvement—Employment of assistants—Compensation as costs in suits. In the preparation of the facts and data to be inserted in said petition and filed therewith for the purpose of presenting the matter to the said superior court, the board of commissioners of said diking district may employ one or more good and competent surveyors and drafters to assist them in compiling data required to be presented to the court with said petition as hereinbefore provided, and such legal assistance as may be necessary, with full power to bind said district for the compensation of such assistants or employees employed by them, and such services shall be taxed as costs in the suit. [2013 c 23 § 383; 1895 c 117 § 10; RRS § 4259. Formerly RCW 85.04.055, part.]

85.05.120 Appearance of defendants—Jury—Verdict—Decree. Any or all of said defendants may appear jointly or separately, and admit or deny the allegations of said

petition, and plead any affirmative matter in defense thereof, at the time and place appointed for hearing said petition, or to which the same may have been adjourned. If the court or judge thereof shall have satisfactory proof that all of the defendants in said action have been duly served with said summons, as above provided, and shall be further satisfied by competent proof that said improvement is practicable, and conducive to the public health, welfare, and convenience, and will increase the value of said lands for the purpose of public revenue, and that the contemplated use for which the land, real estate, premises, or other property sought to be appropriated is really a public use, and that the land, real estate, premises, or other property sought to be appropriated are required and necessary for the establishment of said improvement, the court or judge thereof shall cause a jury of twelve qualified persons to be impaneled to assess the damages and benefits as herein provided, if in attendance upon his or her court; and if not, he or she may, if satisfied that the public interests require the immediate construction of said improvement, direct the sheriff of his or her county to summon from the citizens of the county in which said petition is filed as many qualified persons as may be necessary in order to form a jury of twelve persons, unless the parties to the proceedings consent to a less number, such number to be not less than three, and such consent shall be entered by the clerk in the minutes of the trial. If necessary to complete the jury in any case, the sheriff, under direction of the court or judge thereof, shall summon as many qualified persons as may be required to complete the jury from the citizens of the county in which the petition is filed. In case a special jury is summoned, the cost thereof shall be taxed as part of the costs in the proceeding, and paid by the district seeking to appropriate said land, the same as other costs in the case; and no person shall be competent as a juror who is a resident of, or landowner in, the district seeking to appropriate said land. The jurors at such trial shall make in each case a separate assessment of damages which shall result to any person, corporation or company, or to the state, by reason of the appropriation and use of such land, real estate, premises, or other property for said improvement, and shall ascertain, determine, and award the amount of damages to be paid to said owner or owners, respectively, and to all tenants, incumbrancers, and others interested, for the taking or injuriously affecting such land, real estate, premises, or other property for the establishment of said improvement; and shall further find the maximum amount of benefits, per acre, to be derived by each of the landowners from the construction of said improvement. And upon a return of the verdict into court, the same shall be recorded as in other cases; whereupon a decree shall be entered in accordance with the verdict so rendered, setting forth all the facts found by the jury, and decreeing that said right-of-way be appropriated, and directing the commissioners of said diking district to draw their warrant on the county treasurer for the amount awarded by the jury to each person, for damages sustained by reason of the establishment of said improvement, payable out of the funds of said diking district. [2013 c 23 § 384; 1895 c 117 § 12; RRS § 4261. Formerly RCW 85.04.065, part.]

85.05.130 Assessment of benefited lands formerly omitted—Procedure—Appeals. If at any time it shall

appear to the board of diking commissioners that any lands within or without said district as originally established are being benefited by the diking system of said district and that said lands are not being assessed for the benefits received, or that any lands within said district are being assessed out of or not in proportion to the benefits which said lands are receiving from the maintenance of the diking system of said district, and said board of diking commissioners shall determine that certain lands, either within or without the boundaries of the district as originally established, should be assessed for the purpose of raising funds for the future maintenance of the diking system of the district, or that the assessments on land already assessed should be equalized by diminishing or increasing the same so that said lands shall be assessed in proportion to the benefits received, said commissioners shall file a petition in the superior court in the original cause, setting forth the facts, describing the lands not previously assessed and the lands the assessments on which should be equalized, stating the estimated amount of benefits per acre being received by each tract of land respectively, giving the name of the owner or reputed owner of each such tract of land, and praying that such original cause be opened for further proceedings for the purpose of subjecting new lands to assessment or equalizing the assessments upon lands already assessed, or both.

Upon the filing of such petition, summons shall issue thereon and be served on the owners of all lands affected, in the same manner as summons is issued and served in original proceedings, as near as may be, and if such new lands lie within the boundaries of any other diking district, said summons shall also be served upon the commissioners of such other diking district.

In case any of the new lands sought to be assessed in said proceeding lie within the boundaries of any other diking district, and the diking commissioners of such other district believe that the maintenance of the dike or dikes of such other district is benefiting lands within the district instituting the proceedings, said diking commissioners of such other districts shall intervene in such proceedings by petition, setting forth the facts, describing the lands in the district instituting the proceeding which they believe are being benefited by the maintenance of the diking system of their district, and praying that the benefits to such lands may be determined and such lands subjected to assessment for the further maintenance of the diking system of their district, to the end that all questions of benefits to lands in the respective districts may be settled and determined in one proceeding, and such petitioners in intervention shall cause summons to be issued upon such petition in intervention and served upon the commissioners of the diking district instituting the proceeding and upon the owners of all lands sought to be affected by such petition in intervention.

In case the owner of any such new lands sought to be assessed in said proceedings shall be maintaining a private dike against salt or freshwater for the benefit of said lands, and shall believe that the maintenance of such private dike is benefiting any lands within or without the district instituting the proceedings, or in case any such new lands sought to be assessed are included within the boundaries of some other diking district and are being assessed for the maintenance of the dikes of such other district, and the owner of such lands

believes that the maintenance of the dike or dikes of such other district is benefiting lands included within the district instituting said proceedings, such owner or owners may by answer and cross-petition set forth the facts and pray that at the hearing upon said petition and cross-petition the benefits accruing from the maintenance of the respective dikes may be considered, to the end that a fair and equitable adjustment of the benefits being received by any lands from the maintenance of the various dikes benefiting the same, may be determined for the purpose of fixing the assessments for the future maintenance of such dikes, and may interplead in said proceeding such other diking district in which his or her lands sought to be assessed in said proceeding are being assessed for the maintenance of the dike or dikes of such other district.

No answer to any petition or petition in intervention shall be required, unless the party served with summons desires to offset benefits or to ask other affirmative relief, and no default judgment shall be taken for failure to answer any petition or petition in intervention, but the petitioners or petitioners in intervention shall be required to establish the facts alleged by competent evidence.

Upon the issues being made up, or upon the lapse of time within which the parties served are required to appear by any summons, the court shall impanel a jury to hear and determine the matters in issue, and the jury shall determine and assess the benefits, if any, which the respective tracts of land are receiving or will receive from the maintenance of the dike or dikes to be maintained, taking into consideration any and all matters relating to the benefits, if any, received or to be received from any dike, structure, or improvement, and to credit, or charge, as the case may be, to each tract so situated as to affect any other tract or tracts, or having improvements or structures thereon or easements granted in connection therewith affecting any other tract or tracts included in such proceedings and shall specify in their verdict the respective amount of benefits per acre, if any, assessed to each particular tract of land, by legal subdivisions. Upon the return of the verdict of the jury, the court shall enter its judgment in accordance therewith, as supplemental to the original decree, or in case a petition in intervention be filed by the diking commissioners of some other district than that instituting the proceeding, such judgment to be supplemental to all such original decrees, and thereafter, all assessments and levies for the future maintenance of any dike or dikes described in said judgment shall be based upon the respective benefits determined and assessed against the respective tracts of land as specified in said judgment. Every person or corporation feeling himself or herself or itself aggrieved by any such judgment may appeal to the supreme court or the court of appeals within thirty days after the entry thereof, and such appeal shall bring before the supreme court or the court of appeals the propriety and justness of the verdicts of the jury in respect to the parties to the appeal. No bonds shall be allowed on such appeals. Nothing in this section contained shall be construed as affecting the right of diking districts to consolidation in any manner provided by law. [2013 c 23 § 385; 1971 c 81 § 157; 1913 c 89 § 1; 1901 c 111 § 1; 1895 c 117 § 13; RRS § 4262.]

Rules of court: *Cf. RAP 5.2, 8.1, 18.22.*

Reviser's note: This section was declared unconstitutional in *Malim v. Benthien*, 114 Wash. 533 (1921). Prior enactments are set forth below:

1901 c 111 § 1. "If the board of diking commissioners shall, at any time, discover that any lands within said district are being benefited by the diking system and the same were by mistake, inadvertence or other cause omitted from the assessment of benefits as provided for in *the last preceding section, or which were omitted for the reason that they were not at the time of assessing the benefits as provided for in said preceding section, for any cause, subject to a legal assessment, said commissioners shall file a petition in the Superior Court in the original cause setting forth the fact of such benefits, describing the lands omitted, the reason the same were omitted in said original proceedings and giving the name of the owners or reputed owners thereof and praying that said original cause, as to such lands, be opened up for further proceedings for the assessment of the alleged benefits, and upon the filing of said petition summons shall issue thereon and be served on the defendants named in said petition the same as summons is served and issued in original proceedings, as near as may be, except the court may, to avoid costs, and in its discretion, call a jury of not less than three jurors, and the jury, in assessing the benefits, shall take into consideration the length of time said lands are to receive the benefits from said improvement and its future maintenance, estimating said time from the date when said lands first became legally assessable, which date must be found by the jury in their verdict as to each tract or parcel found to be benefited: AND PROVIDED FURTHER, That in case the expense and costs of the improvement have been paid for by assessments levied against the lands assessed in the original proceeding before the lands provided for in this section are assessed, as provided for herein, then, in such case, the assessments levied from time to time on said last mentioned land shall be paid into the maintenance fund of said district. Every person or corporation feeling himself or itself aggrieved by any judgment for damages or any assessment of benefits provided in this act, may appeal to the Supreme Court of the state within thirty days after the entry of the judgment, and such appeal shall bring before the Supreme Court the propriety and justness of the amount of damage or assessment of benefit in respect to the parties to the appeal. Upon such appeal no bond shall be required and no stay shall be allowed."

*Reviser's note: "the last preceding section" refers to 1895 c 117 § 12 codified as RCW 85.05.120.

1895 c 117 § 13. "Every person or corporation feeling himself or itself aggrieved by the judgment for damages, or the assessment of benefits, may appeal to the supreme court of this state, within thirty days after the entry of the judgment, and such appeal shall bring before the supreme court the propriety and justness of the amount of damage or assessment of benefit in respect to the parties to the appeal. Upon such appeal no bond shall be required and no stay shall be allowed."

85.05.150 Procedure to claim awards. Any person or corporation claiming to be entitled to any money ordered paid by the court, as provided in this act, may apply to the court therefor, and upon furnishing evidence satisfactory to the court that he or she is entitled to the same, the court shall make an order directing the payment to such claimant of the portion of such money as he or she or it may be found entitled to; but if, upon application, the court or judge thereof shall decide that the title to the land, real estate, or premises specified in the application of such claimant is in such condition as to require that an action be commenced to determine the title of claimants thereto, it shall refuse such order until such action is commenced and the conflicting claims to such land, real estate, or premises be determined according to law. [2013 c 23 § 386; 1895 c 117 § 15; RRS § 4264. Formerly RCW 85.04.210, part.]

85.05.160 Transcript of benefits to auditor—Assessments—Collection. Upon the entry of the judgment upon the verdict of the jury, the clerk of said court shall immediately prepare a transcript, which shall contain a list of the names of all the persons and corporations benefited by said improvement and the amount of benefit derived by each, respectively, and shall duly certify the same, together with a list of the lands benefited by said improvement belonging to each person or corporation, and shall file the same with the

auditor of the county, who shall immediately enter the same upon the tax rolls of his or her office, as provided by law for the entry of other taxes, against the land of each of the said persons named in said list, together with the amounts thereof, and the same shall be subject to the same interest and penalties in case of delinquency as in case of general taxes, and shall be collected in the same manner as other taxes and subject to the same right of redemption and the lands sold for the collection of said taxes shall be subject to the same right of redemption as in the sale of lands for general taxes: PROVIDED, That said assessment shall not become due and payable except at such time or times and in such amount as may be designated by the board of commissioners of said dike district, which designation shall be made to the county auditor by said board of commissioners of said diking district, by serving a written notice upon the county auditor designating the time and the amount of the assessment, said assessment to be in proportion to benefits, to become due and payable, which amount shall fall due at the time of the falling due of general taxes, and the amount so designated shall be added by the auditor to the general taxes of said person, persons, or corporations, according to said notice, upon the assessment rolls in his or her said office, and collected therewith: AND PROVIDED FURTHER, That no one call for assessments by said commissioners shall be in an amount to exceed twenty-five percent of the actual amount necessary to pay the costs of the proceedings, and the establishment of said district and system of dikes and the cost of construction of said work. [2013 c 23 § 387; 1895 c 117 § 16; RRS § 4265. Formerly RCW 85.04.080, part.]

85.05.180 Construction—Contractors—Performance bonds. After the filing of said certificate said commissioners of such diking district shall proceed at once in the construction of said improvements, and in carrying on said construction or any extension thereof they shall have full charge and management thereof, and shall have the power to employ such assistance as they may deem necessary, and purchase all material that may be necessary in the construction and carrying on of the work of said improvement, and shall have power to let the whole or any portion of said work to any responsible contractor, and shall in such case enter into all necessary agreements with such contractor that may be necessary in the premises: PROVIDED, That in case the whole or any portion of said improvement is let to any contractor, said commissioners shall require such contractor to give a bond in double the amount of the contract price of the whole or of such portion of said work covered by such contract, with two or more good and sufficient sureties to be approved by the board of commissioners of said diking district and running to said district as obligee therein, conditioned for the faithful and accurate performance of said contract by said contractor, his or her executors, administrators, or assigns, according to the terms and conditions of said agreement, and shall cause said contractor to enter into a further and additional bond in the same amount, with two or more good and sufficient sureties to be approved by said board of commissioners of said diking district in the name of said district as obligee therein, conditioned that said contractor, his or her executors, administrators, or assigns, or subcontractor, his or her executors, administrators, or assigns, shall perform the

whole or any portion of said work under contract of said original contractor; shall pay or cause to be paid all just claims of all persons performing labor or rendering services in the construction of said work, or furnishing materials, merchandise, or provisions of any kind or character used by said contractor or subcontractor, or any employee thereof in the construction of said improvement: PROVIDED FURTHER, That no sureties on said last mentioned bond shall be liable thereon unless the persons or corporations performing said labor and furnishing said materials, goods, wares, merchandise, and provisions, shall, within ninety days after the completion of such improvement, file their claim, duly verified, that the amount is just and due and remains unpaid, with the commissioners of said diking district. [2013 c 23 § 388; 1895 c 117 § 18; RRS § 4267. Formerly RCW 85.04.095, part.]

Chapter 85.06 RCW
DRAINAGE DISTRICTS AND
MISCELLANEOUS DRAINAGE PROVISIONS

Sections

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85.06.100 Petition for improvement—Employment of assistants—Compensation as costs in suit. In the preparation of the facts and data to be inserted in said petition and filed therewith for the purpose of presenting the matter to the superior court, the board of commissioners of said drainage district may employ one or more good and competent surveyors and drafters to assist them in compiling data required to be presented to the court with said petition, as hereinbefore provided, and such legal assistance as may be necessary, with full power to bind said district for the compensation of such assistants or employees employed by them, and such services shall be taxed as costs in the suit. [2013 c 23 § 389; 1895 c 115 § 10; RRS § 4259. Formerly RCW 85.04.055, part.]

85.06.120 Appearance of defendants—Jury—Verdict—Assessment of damages and benefits—Decree. Any or all of said defendants may appear jointly or separately and admit or deny the allegations of said petition and plead any affirmative matter in defense thereof at the time and place appointed for hearing said petition, or to which the same may have been adjourned. If the court or judge thereof shall have

satisfactory proof that all of the defendants in said action have been duly served with said summons, as above provided, and shall be further satisfied by competent proof that said improvement is practicable and conducive to the public health, welfare, and convenience, and will increase the value of said lands for the purpose of public revenue, and that the contemplated use for which the land, real estate, premises, or other property sought to be appropriated is really a public use, and that the land, real estate, premises, or other property sought to be appropriated are required and necessary for the establishment of said improvement, and that said improvement has a good and sufficient outlet, the court or judge thereof shall cause a jury of twelve qualified persons to be impaneled to assess the damages and benefits, as herein provided, if in attendance upon his or her court; and if not he or she may, if satisfied that the public interests require the immediate construction of said improvement, direct the sheriff of his or her county to summons from the citizens of the county in which petition is filed as many qualified persons as may be necessary in order to form a jury of twelve persons, unless the parties to the proceedings consent to a less number, such number to be not less than three, and such consent shall be entered by the clerk in the minutes of the trial. If necessary, to complete the jury in any case, the sheriff, under the directions of the court or the judge thereof shall summon as many qualified persons as may be required to complete the jury from the citizens of the county in which the petition is filed. In case a special jury is summoned the cost thereof shall be taxed as part of the cost in the proceedings and paid by the district seeking to appropriate said land, the same as other costs in the case; and no person shall be competent as a juror who is a resident of, or landowner in, the district seeking to appropriate said land. The jurors at such trial shall make in each case a separate assessment of damages which shall result to any person, corporation, or company, or to the state, by reason of the appropriation and use of such land, real estate, premises, or other property for said improvements and shall ascertain, determine and award the amount of damages to be paid to said owner or owners, respectively, and to all tenants, incumbrancers, and others interested, for the taking or injuriously affecting such land, real estate, premises, or other property for the establishment of said improvement; and shall further find a maximum amount of benefits per acre to be derived by each of the landowners, and also the maximum amount of benefits resulting to any municipality, public highway, corporate road, or district from construction of said improvement. And upon a return of the verdict into court the same shall be reported as in other cases; whereupon, a decree shall be entered in accordance with the verdict so rendered setting forth all the facts found by the jury, and decreeing that said right-of-way be appropriated, and directing the commissioners of said drainage district to draw their warrant on the county treasurer for the amount awarded by the jury to each person for damages sustained by reason of the establishment of said improvement, payable out of the funds of said drainage district. [2013 c 23 § 390; 1909 c 143 § 2; 1895 c 115 § 12; RRS § 4310. Formerly RCW 85.04.065, part.]

85.06.130 Assessment of benefited lands formerly omitted—Procedure—Appeals. If at any time it shall appear to the board of drainage commissioners that any lands

within or without said district as originally established are being benefited by the drainage system of said district and that said lands are not being assessed for the benefits received, or if after the construction of any drainage system, it appears that lands embraced therein have in fact received or are receiving benefits different from those found in the original proceedings, and which could not reasonably have been foreseen before the final completion of the improvement, or that any lands within said district are being assessed out of or not in proportion to the benefits which said lands are receiving from the maintenance of the drainage system of said district, and said board of drainage commissioners shall determine that certain lands, either within or without the boundaries of the district as originally established, should be assessed for the purpose of raising funds for the future maintenance of the drainage system of the district, or that the assessments on land already assessed should be equalized by diminishing or increasing the same so that said lands shall be assessed in proportion to the benefits received, said commissioners shall file a petition in the superior court in the original cause, setting forth the facts, describing the lands not previously assessed and the lands the assessment on which should be equalized, stating the estimated amount of benefits per acre being received by each tract of land respectively, giving the name of the owner or reputed owner of each such tract of land and praying that such original cause be opened for further proceedings for the purpose of subjecting new lands to assessments or equalizing the assessments upon lands already assessed, or both. Upon the filing of such petition, summons shall issue thereon and be served on the owners of all lands affected, in the same manner as summons is issued and served in original proceedings, as near as may be, and if such new lands lie within the boundaries of any other drainage district, said summons shall also be served upon the commissioners of such other drainage district. In case any of the new lands sought to be assessed in said proceeding lie within the boundaries of any other drainage district, and the drainage commissioners of such other district believe that the maintenance of the drain or drains of such other district is benefiting lands within the district instituting the proceeding, said drainage commissioners of such other districts shall intervene in such proceedings by petition, setting forth the facts, describing the lands in the district instituting the proceeding which they believe are being benefited by the maintenance of the drainage system of their district, and praying that the benefits to such lands may be determined and such lands subjected to assessment for the further maintenance of the drainage system of their district, to the end that all questions of benefits to lands in the respective districts may be settled and determined in one proceeding, and such petitioners in intervention shall cause summons to be issued upon such petition in intervention and served upon the commissioners of the drainage district instituting the proceeding and upon the owners of all lands sought to be affected by such petition in intervention. In case the owner of any such new lands sought to be assessed in said proceedings shall be maintaining a private drain against salt or freshwater for the benefit of said lands, and shall believe that the maintenance of such private drain is benefiting any lands within or without the district instituting the proceedings, or in case any such new lands sought to be assessed are included within the boundaries of some other

drainage district and are being assessed for the maintenance of the drains of such other district, and the owner of such lands believes that the maintenance of the drain or drains of such other district is benefiting lands included within the district instituting said proceedings, such owner or owners may by answer and cross-petition set forth the facts and pray that at the hearing upon said petition and cross-petition the benefits accruing from the maintenance of the respective drains may be considered, to the end that a fair and equitable adjustment of the benefits being received by any lands from the maintenance of the various drains benefiting the same, may be determined for the purpose of fixing the assessments for the future maintenance of such drains, and may interplead in said proceeding such other drainage district in which his or her lands sought to be assessed in said proceeding are being assessed for the maintenance of the drain or drains of such other district. No answer to any petition or petition in intervention shall be required, unless the party served with summons desires to offset benefits or to ask other affirmative relief, and no default judgment shall be taken for failure to answer any petition or petition in intervention, but the petitioners or petitioners in intervention shall be required to establish the facts alleged by competent evidence. Upon the issues being made up, or upon the lapse of time within which the parties served are required to appear by any summons, the court shall impanel a jury to hear and determine the matters in issue, and the jury shall determine and assess the benefits, if any, which the respective tracts of land are receiving or will receive from the maintenance of the drain or drains to be maintained, taking into consideration any and all matters relating to the benefits, if any, received or to be received from any drain, structure or improvement, and to credit or charge, as the case may be, to each tract so situated as to affect any other tract or tracts, or having improvement or structures thereon or easements granted in connection therewith, affecting any other tract or tracts included in such proceedings, and shall specify in their verdict the respective amount of benefits per acre, if any, assessed to each particular tract of land, by legal subdivisions. Upon the return of the verdict of the jury, the court shall enter its judgment in accordance therewith, as supplemental to the original decree, or in case a petition in intervention be filed by the drainage commissioners of some other district than that instituting the proceeding, such judgment to be supplemental to all such original decrees, and thereafter, all assessments and levies for the cost of construction or future maintenance of any drain or drains described in said judgment shall be based upon the respective benefits determined and assessed against the respective tracts of land as specified in said judgment. Every person or corporation feeling himself or herself or itself aggrieved by any such judgment may appeal to the supreme court or the court of appeals within thirty days after the entry thereof, and such appeal shall bring before the supreme court or the court of appeals the propriety and justness of the verdicts of the jury in respect to the parties to the appeal. No bonds shall be required on such appeals. Nothing in this section contained shall be construed as affecting the right of drainage districts to consolidation in any manner provided by law. [2013 c 23 § 391; 1971 c 81 § 159; 1917 c 133 § 1; 1901 c 86 § 1; 1895 c 115 § 13; RRS § 4311.]

Rules of court: *Cf. RAP 5.2, 8.1, 18.22.*

85.06.150 Procedure to claim awards. Any person or corporation claiming to be entitled to any money ordered paid by the court, as provided in this chapter, may apply to the court therefor, and upon furnishing evidence satisfactory to the court that he or she is entitled to the same, the court shall make an order directing the payment to such claimant of the portion of such money as he or she or it may be found entitled to; but if, upon application, the court or judge thereof shall decide that the title to the land, real estate, or premises specified in the application of such claimant is in such condition as to require that an action be commenced to determine the title of claimants thereto, it shall refuse such order until such action is commenced and the conflicting claims to such land, real estate, or premises be determined according to law. [2013 c 23 § 392; 1895 c 115 § 15; RRS § 4313. Formerly RCW 85.04.210, part.]

85.06.160 Transcript of benefits to auditor—Assessments—Collection—Supplemental assessment. Upon the entry of the judgment upon the verdict of the jury, the clerk of said court shall immediately prepare a transcript, which shall contain a list of the names of all the persons and corporations benefited by said improvement and the amount of benefit derived by each, respectively, and shall duly certify the same, together with a list of the lands benefited by said improvement belonging to each person and corporation, and shall file the same with the auditor of the county, who shall immediately enter the same upon the tax rolls of his or her office, as provided by law for the entry of other taxes, against the land of each of the said persons named in said list, together with the amounts thereof, and the same shall be subject to the same interest and penalties in case of delinquency as in case of general taxes, and shall be collected in the same manner as other taxes and subject to the same right of redemption, and the lands sold for the collection of said taxes shall be subject to the same right of redemption as the sale of lands for general taxes: PROVIDED, That said assessments shall not become due and payable except at such time or times and in such amounts as may be designated by the board of commissioners of said drainage district, which designation shall be made to the county auditor by said board of commissioners of said drainage district, by serving written notice upon the county auditor designating the time and the amount of the assessment, said assessment to be in proportion to benefits to become due and payable, which amount shall fall due at the time of the falling due of general taxes, and the amount so designated shall be added by the auditor to the general taxes of said person, persons, or corporation, according to said notice, upon the assessment rolls in his or her said office, and collected therewith; PROVIDED FURTHER, That no one call for assessments by said commissioners shall be in an amount to exceed twenty-five percent of the amount estimated by the board of commissioners to be necessary to pay the costs of the proceedings, and the establishment of said district and drainage system and the cost of construction of said work; PROVIDED FURTHER, That where the amount realized from the original assessment and tax shall not prove sufficient to complete the original plans and specifications of any drainage system, alterations, extensions, or changes therein, for which the said original assessment was made, the board of commissioners of said district shall make such fur-

ther assessment as may be necessary to complete said system according to the original plans and specifications, which assessment shall be made and collected in the manner provided in this section for the original assessment. [2013 c 23 § 393; 1907 c 242 § 1; 1895 c 115 § 16; RRS § 4316. Formerly RCW 85.04.080, part.]

85.06.180 Construction—Contractors—Performance bonds. After the filing of said certificate said commissioners of such drainage district shall proceed at once in the construction of said improvement, and in carrying on said construction or any extensions thereof they shall have full charge and management thereof, and shall have the power to employ such assistance as they may deem necessary and purchase all material that may be necessary in the construction and carrying on of the work of said improvement, and shall have power to let the whole or any portion of said work to any responsible contractor, and shall in such case enter into all necessary agreements with such contractor that may be necessary in the premises: PROVIDED, That in case the whole or any portion of said improvement is let to any contractor said commissioners shall require said contractor to give a bond in double the amount of the contract price of the whole or of such portion of said work covered by said contract, with two or more sureties to be approved by the board of commissioners of said drainage district and running to said district as obligee therein, conditioned for the faithful and accurate performance of said contract by said contractor, his or her executors, administrators, or assigns, according to the terms and conditions of said agreement, and shall cause said contractor to enter into a further or additional bond in the same amount, with two or more good and sufficient sureties to be approved by said board of commissioners of said drainage district in the name of said district as obligee therein, conditioned that said contractor, his or her executors, administrators, or assigns, or subcontractor, his or her executors, administrators, or assigns, performing the whole or any portion of said work under contract of said original contractor, shall pay or cause to be paid all just claims for all persons performing labor or rendering services in the construction of said work, or furnishing materials, merchandise, or provisions of any kind or character used by said contractor or subcontractor, or any employee thereof in the construction of said improvement: PROVIDED FURTHER, That no sureties on said last mentioned bond shall be liable thereon unless the persons or corporation performing said labor and furnishing said materials, goods, wares, merchandise, and provisions, shall, within ninety days after the completion of said improvement, file their claim, duly verified; that the amount is just and due and remains unpaid, with the board of commissioners of said drainage district. [2013 c 23 § 394; 1895 c 115 § 18; RRS § 4318. Formerly RCW 85.04.095, part.]

85.06.210 Connecting private drains—Procedure—Costs. Any person or corporation owning land within said district shall have a right to connect any private drains or ditches for the proper drainage of such land with said system, and in case any persons or corporations shall desire to drain such lands into said system and shall find it necessary, in order to do so, to procure the right-of-way over the land of another, or others, and if consent thereto cannot be procured

from such person or persons, then such landowner may present in writing a request to the board of commissioners of said district, setting forth therein the necessity of being able to connect his or her private drainage with said system, and pray therein that said system be extended to such point as he or she may designate in said writing, and immediately thereon said board of commissioners shall cause a petition to be filed in the superior court, for and in the name of said drainage district, requesting in said petition that said system be extended as requested, setting forth therein the necessity thereof and praying that leave be granted by the board to extend the system in accordance with the prayer of said petition, and the proceedings in such case, upon the presentation of such petition and the hearing thereof, shall be, in all matters, the same as in the hearing and presentation of the original petition for the establishment of the original system of drainage in said district, as far as applicable. That the costs in such proceedings shall be paid from the assessment of benefits to be made on the lands of the person or persons benefited by such extension, and the assessment and compensation for the right-of-way, damages and benefits, and payment of damages and compensation, and the collection of the assessments for benefits, shall be the same as in the proceedings under the original petition, and the construction of the said extension shall be made under the same provisions as the construction of the original improvement; and all things that may be done or performed in connection therewith shall be, as near as may be applicable, in accordance with the provisions already set forth herein for the establishment and construction of said original improvement: PROVIDED, That such petitioner or petitioners shall, at the time of filing such petition by said drainage commissioners, enter into a good and sufficient bond to said drainage district in the full penal sum of five hundred dollars, with two or more sureties, to be approved by the court, conditioned for the payment of all costs in case the prayer of said petition should not be granted, which bond shall be filed in said cause. [2013 c 23 § 395; 1895 c 115 § 21; RRS § 4321. Formerly RCW 85.04.640.]

85.06.250 Organization of board—Warrants, how issued. The board of commissioners of such district shall elect one of their number chair and shall either elect one of their number, or appoint a voter of the district, as secretary, who shall keep minutes of all the district's proceedings. The board of commissioners may issue warrants of such district in payment of all claims of indebtedness against such district, which shall be in form and substance the same as county warrants, or as near the same as may be practicable, and shall draw the legal rate of interest from the date of their presentation to the treasurer for payment, as hereinafter provided, and shall be signed by the chair and attested by the secretary of said board: PROVIDED, That no warrants shall be issued by said board of commissioners in payment of any indebtedness of such district for less than the face or par value. [2013 c 23 § 396; 1985 c 396 § 42; 1895 c 115 § 25; RRS § 4325. Formerly RCW 85.04.040, part and 85.04.165, part.]

Additional notes found at www.leg.wa.gov

85.06.330 Warrants presented for indorsement—When and how paid. All warrants issued under the provisions of this chapter shall be presented by the owners thereof

to the county treasurer, who shall indorse thereon the day of presentation for payment, with the additional indorsement thereon, in case of nonpayment, that they are not paid for want of funds; and no warrant shall draw interest under the provisions of this chapter until it is so presented and indorsed by the county treasurer. And it shall be the duty of such treasurer, from time to time, when he or she has sufficient funds in his or her hands for that purpose, to advertise in the newspaper doing the county printing for the presentation to him or her for payment of as many of the outstanding warrants as he or she may be able to pay: PROVIDED, That thirty days after the first publication of said notice of the treasurer calling in any of said outstanding warrants said warrants shall cease to bear interest, which shall be stated in the notice. Said notice shall be published two weeks consecutively, and said warrants shall be called in and paid in the order of their indorsement. [2013 c 23 § 397; 1986 c 278 § 30; 1895 c 115 § 33; RRS § 4333. Formerly RCW 85.04.170, part.]

Additional notes found at www.leg.wa.gov

85.06.550 Payment of preliminary expense where proceedings are dropped. When any drainage district has been or shall be established and created under the provisions of an act of the legislature of the state of Washington, entitled "An act to provide for the establishment and creation of drainage districts, and the construction and maintenance of a system of drainage, and to provide for the means of payment thereof, and declaring an emergency", approved *March 20, 1895, and when the drainage commissioners of such district have employed surveyors or drafters, or legal assistance as provided in RCW 85.06.100, and have incurred expenses for the compensation of such surveyors, drafters, and legal assistance, and have issued to such surveyors, drafters, or persons rendering said legal assistance any warrants, orders, vouchers, or other evidence of indebtedness for said expenses so incurred, and when such warrants, orders, vouchers, or other evidences of indebtedness remain outstanding and unpaid, and when from any cause no further proceedings are had as provided for in said act approved *March 20, 1895, within a reasonable time, it shall be the duty of the county commissioners of the county in which such drainage district is located to assess in accordance with the provisions of RCW 85.06.550 through 85.06.630, the lands constituting and embraced within such drainage district for the purpose of paying such outstanding warrants, orders, vouchers, or other evidences of indebtedness, together with interest thereon. [2013 c 23 § 398; 1903 c 67 § 1; RRS § 4492. Formerly RCW 85.04.710.]

*Reviser's note: The act of "March 20, 1895" is chapter 115, Laws of 1895, the basic drainage district law, codified as Part 1 of chapter 85.06 RCW as it has been amended and added to.

85.06.560 Payment of preliminary expense where proceedings are dropped—Notice to present claims—Registration. The county auditor of any county in which such drainage district is located upon the written request of any holder or owner of any such warrant, order, voucher, or other evidence of indebtedness, mentioned in the preceding section, shall forthwith cause to be published in the newspaper doing the county printing, if any such there be, and if not, then in some newspaper of general circulation in the county,

a notice directing any and all holders or owners of any such warrants, orders, vouchers, or other evidences of indebtedness, to present the same to him or her, at his or her office, for registration within ninety days from the date of the first publication of such notice; and such notice shall be published once a week for six consecutive weeks. Said notice shall be directed to all holders and owners of warrants, orders, vouchers, or other evidences of indebtedness issued by the drainage commissioners of the particular district giving its name and number, and shall designate the character of the warrants, orders, vouchers, or other evidences of indebtedness, the registration of which is called for by said notice. Upon the presentation to him or her of such warrants, orders, vouchers, or other evidences of indebtedness, the county auditor shall register the same in a separate book to be kept for that purpose, showing the date of registration, the date of issue, the purpose of issue when the same is shown upon the face, the name of the person by whom presented, and the face value thereof. Any such warrants, orders, vouchers, or other evidences of indebtedness, not presented within the time prescribed in such notice, shall not share in the benefits of RCW 85.06.550 through 85.06.630, and no assessment or reassessment shall thereafter be made for the purpose of paying the same. [2013 c 23 § 399; 1903 c 67 § 2; RRS § 4493. Formerly RCW 85.04.715.]

85.06.570 Payment of preliminary expense where proceedings are dropped—Petition to court for assessment—Contents. At any time after the expiration of the time within which warrants, orders, vouchers, or other evidences of indebtedness, may be registered as provided in the preceding section, the holder or owner of any such registered warrant, order, voucher, or other evidence of indebtedness, may for himself or herself and in behalf of all other holders or owners of such registered warrants, orders, vouchers, or other evidences of indebtedness, file a petition in the superior court of the county in which such drainage district is located praying for an order directing the publication and posting of the notice hereinafter provided for, and for a hearing upon said petition, and for an order directing the board of county commissioners to assess the lands embraced within said drainage district for the purpose of paying such registered warrants, orders, vouchers, or other evidences of indebtedness and the costs of the proceedings provided for in RCW 85.06.550 through 85.06.630. Said petition shall set forth:

(1) That said drainage district was duly established and created, giving the time.

(2) The facts in connection with the expenses incurred by the drainage commissioners in the employment of surveyors, drafters, or legal assistance and the issuance of such registered warrants, orders, vouchers, or other evidences of indebtedness.

(3) The facts in connection with the compliance with the provisions of RCW 85.06.550 through 85.06.630.

(4) A list of such registered warrants, orders, vouchers, or other evidences of indebtedness showing the names of owners or holders, the amounts, the date of issuance, the purpose for which issued, when shown upon the face thereof, and the date of presentation for payment, respectively. [2013 c 23 § 400; 1903 c 67 § 3; RRS § 4494. Formerly RCW 85.04.720.]

85.06.600 Payment of preliminary expense where proceedings are dropped—Hearing—Order for levy—Costs. At the time and place fixed in said order for the hearing of said petition, or at such time to which the court may continue said hearing, the court shall proceed to a hearing upon said petition and upon any objections or exceptions which have been filed thereto. And upon it appearing to the satisfaction of the court from the proofs offered in support thereof that the allegations of said petition are true, the said court shall ascertain the total amount of said registered warrants, orders, vouchers, or other evidences of indebtedness with the accrued interest and the costs of said proceedings, and thereupon the said court shall enter an order directing the board of county commissioners to levy a tax upon all the real estate within said drainage district exclusive of improvements, taking as a basis the last equalized assessment of said real estate for state and county purposes, sufficient to pay said outstanding registered warrants, orders, vouchers, or other evidences of indebtedness with interest as aforesaid and the costs of said proceeding, and the cost of levying said tax, and further directing the county auditor to issue a warrant on the county treasurer to the petitioner for the costs advanced by him or her in such proceeding, which shall be paid in the same manner as the said registered warrants, orders, vouchers, or other evidences of indebtedness. [2013 c 23 § 401; 1903 c 67 § 6; RRS § 4497. Formerly RCW 85.04.735.]

85.06.630 Payment of preliminary expense where proceedings are dropped—Appellate review. From any final order entered by the said superior court as above provided for, any party to said proceeding feeling himself or herself aggrieved thereby may seek appellate review, as provided by the general appeal law of this state. [2013 c 23 § 402; 1988 c 202 § 74; 1903 c 67 § 9; RRS § 4500. Formerly RCW 85.04.750.]

Additional notes found at www.leg.wa.gov

85.06.750 Costs in excess of estimate—Judgment—Appellate review. Upon the return of the verdict of the jury as provided in the preceding section, if it shall appear to the court that the total benefits found by the jury to have accrued to the lands of the district is equal to or exceeds the actual cost of the improvement including the increased cost of completing the same, the court shall enter its judgment in accordance therewith, as supplemental to and in lieu of the original decree fixing the benefits to the respective tracts of land, and thereafter the assessment and levy for the original cost of the construction of the improvement, including the indebtedness incurred for completing the improvement together with interest at the legal rate on the warrants issued therefor, and all assessments and levies if any, for the future maintenance of the drainage system described in the judgment shall be based upon the respective benefits determined and assessed against the respective tracts of land as specified in the judgment. Every person or corporation feeling himself or herself or itself aggrieved by any such judgment may seek appellate review within thirty days after the entry thereof, and such review shall bring before the appellate court the propriety and justness of the verdict of the jury in respect to the parties to the proceeding. [2013 c 23 § 403; 1988 c 202 § 76; 1971 c 81 § 161; 1921 c 187 § 5; RRS § 4464.]

Additional notes found at www.leg.wa.gov

Chapter 85.07 RCW
MISCELLANEOUS DIKING AND
DRAINAGE PROVISIONS

Sections

85.07.070	Funding bonds—Form, term, execution, interest.
85.07.090	Funding bonds—Outstanding warrants due when sale proceeds received—Call.
85.07.120	Funding bonds—Call—Payment.
85.07.140	Civil action to strike land from assessment roll—Court decree—Subsequent restoration to rolls, procedure.

85.07.070 Funding bonds—Form, term, execution, interest. (1) Said bonds shall be numbered consecutively from one upwards and shall be in denominations of not less than one hundred dollars nor more than one thousand dollars each. They shall bear the date of issue, shall be made payable in not more than ten years from the date of their issue, and shall bear interest at a rate or rates as authorized by the board of commissioners, payable annually. The bonds may be in any form, including bearer bonds or registered bonds as provided in RCW 39.46.030. The bonds and any coupon shall be signed by the chair of the board of commissioners of each district and shall be attested by the secretary of said board. The seal, if any, of such district shall be affixed to each bond, but it need not be affixed to any coupon.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [2013 c 23 § 404; 1983 c 167 § 190; 1970 ex.s. c 56 § 91; 1969 ex.s. c 232 § 53; 1935 c 103 § 2; RRS § 4459-12. Formerly RCW 85.04.145.]

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

Additional notes found at www.leg.wa.gov

85.07.090 Funding bonds—Outstanding warrants due when sale proceeds received—Call. All outstanding warrants of such district so sought to be redeemed shall become due and payable immediately upon receipt by the county treasurer of the money from the sale of said bonds; and upon a call of such outstanding warrants or obligations issued by him or her, the same shall cease to draw interest at the end of thirty days after the date of the first publication of such call. The call shall be made by the treasurer by publishing notice thereof for two consecutive weeks in the county paper authorized to do the county printing. The notice shall designate the number of each warrant sought to be redeemed. [2013 c 23 § 405; 1935 c 103 § 4; RRS § 4459-14. Formerly RCW 85.04.175.]

85.07.120 Funding bonds—Call—Payment. It shall be the duty of the county treasurer of each county in which there may be a district issuing bonds under the provisions of RCW 85.07.060 through 85.07.120, whenever he or she has on hand one thousand dollars over and above interest requirements in the special fund for the payment of said bonds and interest, to advertise in the newspaper doing the county printing, for the presentation to him or her for payment of as many of the bonds issued under the provisions of RCW 85.07.060 through 85.07.120 as he or she may be able to pay with the funds in his or her hands. The bonds shall be redeemed and

paid in their numerical order, beginning with bond No. 1 and continuing until all of said bonds are paid. The treasurer's call for presentation and redemption of such bonds shall state the number of the bond or bonds so called. Thirty days after the first publication of said notice of the treasurer calling any of said bonds by their numbers, such bonds shall cease to bear interest, and the notice of call shall so state. If any bond so called is not presented, the treasurer shall hold in said fund until presentation of such bond is made, the amount of money sufficient to redeem the same with interest thereon to the date interest was terminated by such call. [2013 c 23 § 406; 1935 c 103 § 7; RRS § 4459-17. Formerly RCW 85.04.150.]

85.07.140 Civil action to strike land from assessment roll—Court decree—Subsequent restoration to rolls, procedure. If the court is satisfied that the status of said property has changed so that it is no longer susceptible to benefit from the improvement of such district and should be removed from the assessment roll thereof, and it be established that all benefits assessed against said lands up to the date of trial have been paid, such court may enter a decree striking such land from the assessment roll of said district, and it shall not be subject to future assessment for benefits or maintenance by such district, unless, thereafter, it is again brought into such districts by the proceedings provided by law to extend the district or include benefited property which is not assessed. Nothing herein shall prevent such property from being again brought into said district in the manner provided by law generally for the inclusion of benefited property, if it appear at a future date that said property will receive benefits from the improvement in such district. Upon entry of such decree of the court a certified copy thereof shall be filed in the office of the auditor of such county wherein the property is situated, and upon receipt thereof, he or she shall correct the assessment roll of said district accordingly and strike the property therefrom. [2013 c 23 § 407; 1935 c 102 § 2; RRS § 4360-2. Formerly RCW 85.04.185.]

Chapter 85.08 RCW
DIKING, DRAINAGE, AND SEWERAGE
IMPROVEMENT DISTRICTS

Sections

85.08.340	Crossing roads or public utilities—Procedure—Costs.
85.08.360	Total costs—Apportionment—Board of appraisers.
85.08.400	Hearing on schedule—Notice—Levy of assessment—State lands.
85.08.410	Schedule approved or modified—Maintenance assessment.
85.08.420	Assessment roll—Form—Notice—Publication.
85.08.440	Appeal from apportionment—Procedure—Appellate review.
85.08.490	Title acquired at sale—Foreclosure for general taxes—Lien of assessments preserved.
85.08.500	Resale or lease by county—Disposition of proceeds—Tax statements.
85.08.570	Districts in two or more counties—Notice—Hearings.
85.08.820	Drainage bonds owned by state—Cancellation of interest and assessments—Levy omitted.
85.08.840	Merger of improvement district with irrigation district—Jurisdiction to hear, supervise, and conduct proceedings—Clerk, notice, records.

85.08.340 Crossing roads or public utilities—Procedure—Costs. Whenever in the progress of the construction of the system of improvement it shall become necessary to construct a portion of such system across any public or other

road or public utility, the board of supervisors, or in case the work is being done by contract the board of county commissioners, shall serve notice in writing upon the public officers, corporation, or person having charge of, or controlling or owning such road or public utility, as the case may be, of the present necessity of such crossing, giving the location, kind, dimensions, and requirement thereof, for the purpose of the system of improvement, and stating a reasonable time, to be fixed by the county engineer, within which plans for such crossing must be filed for approval in case the public officers, corporation, or person controlling or owning such road or public utility desire to construct such crossing. As soon as convenient, within the time fixed in the notice, the public officers, corporation, or person shall, if they desire to construct such crossing, prepare and submit to the county engineer for approval duplicate detailed plans and specifications for such crossing. Upon submission of such plans, the county engineer shall examine and may modify the same to meet the requirements of the system of improvement, and when such plans or modified plans are satisfactory to the county engineer, he or she shall approve the same and return one thereof to the public officers, corporation, or person submitting the same, and file the duplicate in his or her office, and shall notify such public officers, corporation, or person of the time within which said crossing must be constructed. Upon the return of such approved plans, the public officers, corporation, or person controlling such road or public utility shall, within the time fixed by the county engineer, construct such crossing in accordance with the approved plans, and shall thereafter maintain the same. In case such public officers, corporation, or person controlling or owning such road or public utility shall fail to file plans for such crossing within the time prescribed in the notice, the board of supervisors or of county commissioners, as the case may be, shall proceed with the construction of such crossing in such manner as will cause no unnecessary injury to or interference with such road or public utility. The cost of construction and maintenance of only such crossings or such portion of such cost as would not have been necessary but for the construction of the system of improvement shall be a proper charge against the improvement district, and only so much of such cost as the board of county commissioners shall deem reasonable shall be allowed as a charge against the district in the case of crossings constructed by others than the district. The amount of costs of construction allowed as a charge against the district by the board of county commissioners shall be credited on the assessments against the property on which the crossing is constructed, and any excess over such assessment shall be paid out of the funds of the district. [2013 c 23 § 408; 1917 c 130 § 29; 1913 c 176 § 24; RRS § 4429. Formerly RCW 85.08.340 and 85.08.350.]

85.08.360 Total costs—Apportionment—Board of appraisers. When the improvement is fully completed and accepted by the county engineer, the clerk of the board shall compile and file with the board of county commissioners an itemized statement of the total cost of construction, including engineering and election expenses, the cost of publishing and posting notices, damages, and costs allowed or awarded for property taken or damaged, including compensation of attorneys, including the costs of crossings constructed by the dis-

trict and the cost of crossings constructed by others and allowed by the board of county commissioners, and including the sum paid or to be paid to the United States, and the discount, if any, on the bonds and warrants sold and including all other costs and expenses, including fees, per diem, and necessary expenses of nonsalaried officers incurred in connection with the improvement, together with interest on such costs and expenses from the time when incurred at the rate of interest borne by the warrants issued for the cost of construction. There shall also be included in said statement, in case the county engineer is a salaried officer, a statement of the services performed by him or her in connection with said improvement at a per diem of five dollars per day and his or her necessary expenses, and a reasonable sum to be fixed by the board of county commissioners on account of the services rendered by the prosecuting attorney. Upon the filing of such statement of costs and expenses the board of county commissioners shall revise and correct the same if necessary and add thereto a reasonable sum which shall be not less than five percent nor more than ten percent of the total thereof in drainage improvement districts, and not less than ten percent nor more than fifteen percent of the total thereof in diking improvement districts, to cover possible errors in the statement or the apportionment hereinafter provided for, and the cost of such apportionment and other subsequent expenses, and interest on the costs of construction from the date of the statement until fifty days after the filing of the assessment roll with the treasurer; and unless the same have been previously appointed, shall appoint a board of appraisers consisting of the county engineer and two other competent persons, to apportion the grand total as contained in said statement as hereinafter provided. Each member of said board of appraisers shall take, subscribe, and file with the board of county commissioners an oath to faithfully and impartially perform his or her duties to the best of his or her ability in making said apportionment, and said board of appraisers shall proceed to carefully examine the system and the public and private property within the district and fairly, justly, and equitably apportion the grand total cost of the improvement against the property and the county or counties, cities, and towns within the district, in proportion to the benefits accruing thereto. [2013 c 23 § 409; 1917 c 130 § 30; 1913 c 176 § 25; RRS § 4430.]

85.08.400 Hearing on schedule—Notice—Levy of assessment—State lands. Upon the filing of the schedule of apportionment, the county legislative authority shall fix the time and place for a hearing thereon, which time shall be not more than sixty days from the date of the filing of the schedule. Notice of the hearing shall be given in the manner provided for giving notice of a hearing in *RCW 85.08.150. The notice shall fix the time and place of the hearing on the roll, and shall state that the schedule of apportionment showing the amount of the cost of the improvement apportioned to each county, city, town, and piece of property benefited by the improvement is on file in the office of the county legislative authority and is open to public inspection, and shall notify all persons who may desire to object thereto that they may make their objections in writing and file them with the clerk of the county legislative authority at or before the date fixed for the hearing. The notice shall also state that at the time and place fixed and at such other times and places as the

hearing may be continued to, the county legislative authority will sit as a board of equalization for the purpose of considering the schedule and at the hearing or hearings will also consider any objections made thereto, or any part thereof, and will correct, revise, raise, lower, change, or modify the schedule or any part thereof, or set aside the schedule and order that the apportionment be made de novo as to such body shall appear just and equitable, and that at the hearing the board will confirm the schedule as finally approved by them and will levy an assessment against the property described thereon for the amounts as fixed by them. The county legislative authority shall serve by mail, at least ten days before the hearing, upon the commissioner of public lands of the state of Washington a like notice, in duplicate, showing the amount of the cost of the improvements apportioned against all state, school, granted, or other lands owned by the state of Washington in the district. The county legislative authority shall serve a like notice upon the state secretary of transportation showing the amount apportioned against any state primary or secondary highways. Upon receipt of the notice the commissioner of public lands or the secretary of transportation, as the case may be, shall endorse thereon a statement either that he or she elects to accept or that he or she elects to contest the apportionment, and shall return the notice, so endorsed, to the county legislative authority. At or before the hearing any person interested may file with the clerk of the county legislative authority written objections to any item or items of the apportionment. [2013 c 23 § 410; 1984 c 7 § 377; 1923 c 46 § 9, part; 1917 c 130 § 32; 1913 c 176 § 30; RRS § 4435-1.]

Reviser's note: *(1) RCW 85.08.150 was repealed by 1985 c 396 § 87. See RCW 85.38.040, 85.38.050.

(2) The powers and duties of the commissioner of public lands have been transferred to the department of natural resources. See 1957 c 38 §§ 1, 13; RCW 43.30.010, 43.30.411.

Additional notes found at www.leg.wa.gov

85.08.410 Schedule approved or modified—Maintenance assessment. At such hearing, which may be adjourned from time to time and from place to place, until finally completed, the board of county commissioners shall carefully examine and consider said schedule and any objections filed or made thereto and shall correct, revise, raise, lower, change, or modify such schedule or any part thereof, or strike therefrom any property not benefited, or set aside such schedule and order that such apportionment be made de novo, as to such body shall appear equitable and just. The board shall cause the clerk of the board to enter on such schedule all such additions, cancellations, changes, modifications, and reapportionments, all credits for damages allowed or awarded to the owner of any piece of property benefited, but not paid, as provided in RCW 85.08.200; also a credit in favor of the county on any apportionment against the county, of all sums paid on account of said improvement, as provided in RCW 85.08.210; and all sums allowed the county on account of services rendered by the county engineer or prosecuting attorney, as provided in RCW 85.08.360; and all credits allowed to property owners constructing crossings as provided in RCW 85.08.340. When the board of county commissioners shall have finally determined that the apportionment as filed or as changed and modified by the board is

a fair, just and equitable apportionment, and that the proper credits have been entered thereon, the members of the board approving the same shall sign the schedule and cause the clerk of the board to attest their signature under his or her seal, and shall enter an order on the journal approving the final apportionment and all proceedings leading thereto and in connection therewith, and shall levy the amounts so apportioned against the property benefited, and the determination by the board of county commissioners in fixing and approving such apportionment and making such levy shall be final and conclusive.

The board of county commissioners shall also at said hearing, levy, in the manner hereinafter provided for the levy of maintenance assessments, such assessment as they shall deem necessary to provide funds for the maintenance of the system of improvement until the first annual assessment for maintenance shall fall due. [2013 c 23 § 411; 1983 c 3 § 230; 1923 c 46 § 9, part; 1917 c 130 § 32; 1913 c 176 § 30; RRS § 4435-2.]

85.08.420 Assessment roll—Form—Notice—Publication. Upon the approval of said roll the county auditor shall immediately prepare a completed assessment roll which shall contain, first, a map of the district showing each separate description of property assessed; second, an index of the schedule of apportionments; third, an index of the record of the proceedings had in connection with the improvement; fourth, a copy of the resolution of the board of county commissioners fixing the method of payment of assessments; fifth, the warrant of the auditor authorizing the county treasurer to collect assessments; and sixth, the approved schedule of apportionments of assessments; and shall charge the county treasurer with the total amount of assessment and turn the roll over to the treasurer, for collection in accordance with the resolution of the board of county commissioners fixing the method of payment of assessments. As soon as the assessment roll has been turned over to the treasurer for collection, he or she shall publish a notice in the official newspaper of the county for once a week for at least two consecutive weeks, that the said roll is in his or her hands for collection and that any assessment thereon or any portion of any such assessment may be paid at any time on or before a date stated in such notice, which date shall be thirty days after the date of the first publication, without interest, and the treasurer shall accept such payment as in said notice provided. Upon the expiration of such thirty-day period the county treasurer shall certify to the county auditor the total amount of assessments so collected by him or her and the total amount of assessments remaining unpaid upon said roll. [2013 c 23 § 412; 1923 c 46 § 9, part; 1917 c 130 § 32; 1913 c 176 § 30; RRS § 4435-3.]

85.08.440 Appeal from apportionment—Procedure—Appellate review. The decision of the board of county commissioners upon any objections made within the time and in the manner prescribed in RCW 85.08.400 through 85.08.430, may be reviewed by the superior court upon an appeal thereto taken in the following manner. Such appeal shall be made by filing written notice of appeal with the clerk of such board and with the clerk of the superior court of the county in which such drainage or diking

improvement district is situated, or in case of joint drainage or diking improvement districts with the clerk of the court of the county in which the greater length of such drainage or diking improvement system lies, within ten days after the order confirming such assessment roll shall have become effective, and such notice shall describe the property and set forth the objections of such appellant to such assessment; and, within ten days from the filing of such notice of appeal with the clerk of the superior court, the appellant shall file with the clerk of said court a transcript consisting of the assessment roll and his or her objections thereto, together with the order confirming such assessment roll, and the record of the board of county commissioners with reference to said assessment, which transcript, upon payment of the necessary fees therefor, shall be furnished by such clerk of the board of county commissioners, and by him or her certified to contain full, true, and correct copies of all matters and proceedings required to be included in such transcript. Such fees shall be the same as the fees payable to the county clerk for the preparation and certification of transcripts on appeal to the supreme court or the court of appeals in civil actions. At the time of the filing of the notice of appeal with the clerk of the superior court, the appellant shall execute and file with the clerk of the superior court a sufficient bond in the penal sum of two hundred dollars, with good and sufficient surety, to be approved by the judge of said court, conditioned to prosecute such appeal without delay, and if unsuccessful, to pay all costs to which the county or the drainage or diking improvement district is put by reason of such appeal. The court may order the appellant upon application therefor, to execute and file such additional bond or bonds as the necessity of the case may require; within three days after such transcript is filed in the superior court as aforesaid, the appellant shall give written notice to the prosecuting attorney of the county, and to the clerk of the board of county commissioners that such transcript is filed. Said notice shall state a time (not less than three days from the service thereof) when the appellant will call up the said cause for hearing; and the superior court of said county shall, at said time or at such further time as may be fixed by order of the court, hear and determine such appeal without a jury. The judgment of the court shall confirm, correct, modify, or annul the assessment insofar as the same affects the property of the appellant. A certified copy of the decision of the court shall be filed with the officer who shall have custody of the assessment roll, and he or she shall modify and correct such assessment roll in accordance with such decision. Appellate review of the judgment of the superior court may be sought as in other civil cases. However, the review must be sought within fifteen days after the date of the entry of the judgment of such superior court. A certified copy of the order of the supreme court or the court of appeals upon such appeal shall be filed with the officer having custody of such assessment roll, who shall thereupon modify and correct such assessment roll in accordance with such decision. [2013 c 23 § 413; 1988 c 202 § 77; 1971 c 81 § 162; 1921 c 157 § 1; RRS § 4436.]

Rules of court: *Cf. RAP 5.2, 8.1, 18.22.*

Additional notes found at www.leg.wa.gov

85.08.490 Title acquired at sale—Foreclosure for general taxes—Lien of assessments preserved. The pur-

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chaser, upon the foreclosure of any certificate of delinquency for any assessment or installment thereof, shall acquire title to such property subject to the installments of the assessment not yet due at the date of the decree of foreclosure, and the complaint, decree of foreclosure, order of sale, sale, certificate of sale and deed shall so state.

The holder of any certificate of delinquency for general taxes may, before commencing any action to foreclose the lien of such certificate, pay in full all drainage or diking or sewerage improvement district assessments or any installment thereof due and outstanding against the whole or any portion of the property included in such certificate of delinquency and the amount of all assessments so paid together with interest at ten percent per annum thereon shall be included in the amount for which foreclosure may be had; or, if he or she elects to foreclose such certificate without paying such assessments in full, the purchaser at such foreclosure sale shall acquire title to such property subject to all such drainage or diking or sewerage improvement district assessments. Any property in any drainage or diking or sewerage improvement district sold under foreclosure for general taxes shall remain subject to the lien of all drainage and diking or sewerage improvement district assessments or installments thereof not yet due at the time of the decree of foreclosure and the complaint, decree of foreclosure, order of sale, sale, certificate of sale and deed shall so state. [2013 c 23 § 414; 1923 c 46 § 11, part; 1917 c 130 § 33; 1913 c 176 § 31; RRS § 4439-3.]

85.08.500 Resale or lease by county—Disposition of proceeds—Tax statements. Property subject to a drainage or diking or sewerage improvement district assessment, acquired by a county pursuant to a foreclosure and sale for general taxes, when offered for sale by the county, shall be offered for the amount of the general taxes for which the same was struck off to the county, together with all drainage or diking or sewerage improvement district assessments or installments thereof, due at the time of such resale, including maintenance assessments, and supplemental assessments levied pursuant to the provisions of RCW 85.08.520, coming due while the property was held in the name of the county; and the property shall be sold subject to the lien of all drainage or diking or sewerage improvement district assessments or installments thereof not yet due at the time of such sale, and the notice of sale and deed shall so state. PROVIDED, That the county board may in its discretion, sell said property at a lesser sum than the amount for which the property is offered in the notice of sale. The proceeds of such sale shall be applied first to discharge in full the lien or liens for general taxes for which said property was sold, and the remainder, or such portion thereof as may be necessary, shall be applied toward the discharge of all drainage or diking or sewerage improvement district assessment liens upon such property, and the surplus, if any, shall be applied toward the payment of any delinquent or due local assessments or local assessment installments outstanding against the property levied by any authority other than that of the county, taking them in the order of their maturities, beginning with the earliest; after which if any money remains the treasurer shall hold the same for the person whose interest in the property entitles him or her thereto. If there be no purchaser, the property shall again

be offered for sale within one year thereafter, and shall be successively offered for sale each year until a sale thereof be effected.

Property struck off to or bid in by a county may be leased pursuant to resolution of the county commissioners on such terms as the commissioners shall determine for a period ending not later than the time at which such property shall again be offered for sale as required by law. Rentals received under such lease shall be applied in the manner hereinabove provided for the proceeds of sale of such property.

All statements of general state taxes where drainage, diking, or sewer improvement district assessments against the land described therein are due shall include a notation thereon or be accompanied by a statement showing such fact. [2013 c 23 § 415; 1923 c 46 § 11, part; 1917 c 130 § 33; 1913 c 176 § 31; RRS § 4439-4.]

85.08.570 Districts in two or more counties—Notice—Hearings. When a drainage, diking, or sewerage system is proposed which will require a location, or the assessment of lands, in more than one county, application therefor shall be made to the board of county commissioners in each of said counties, and the county engineers shall make preliminary reports for their respective counties. The lines of such proposed improvement shall be examined by the county engineers of the counties wherein said improvements will lie, jointly. The hearings in regard to such improvements, provided for by RCW *85.08.150, and 85.08.400 through 85.08.430 shall be had by the boards of county commissioners of the two counties in joint sessions, and all other matters required to be done by the county commissioners in regard to such improvement and the improvement district shall be had and done by the boards of county commissioners of the counties wherein such system of improvements shall lie, either in joint session at such place as the said board shall order, or by concurrent order entered into by the said boards at their respective offices. Notice of the hearings shall be given by the auditors of both counties jointly by publication in the official paper of each of said counties. The county engineer of the county wherein the greatest length of drainage, diking, or sewerage system will lie, shall have charge of the engineering work and be ex officio a member of the boards in this chapter provided for. The schedule of apportionment shall be prepared in separate parts for the land in the respective counties; and that part of said roll containing the assessments upon the lands in each respective county shall be transmitted to the treasurer thereof, and the treasurer of said county shall give notice of said assessments as provided in RCW 85.08.400 through 85.08.430, and shall collect the assessments therein contained and shall also extend and collect the annual maintenance levies of said district upon the lands of said district lying in his or her county. The auditor of the county in which the greater length of the drainage, diking, or sewerage system shall lie shall act as clerk of the joint session of the boards of county commissioners, and shall issue the warrants of the improvement district, and shall attest the signatures of the two boards of county commissioners on the bonds. He or she shall furnish to the auditor of the other county duplicate copies of the records of proceedings of such joint sessions. Duplicate records of all proceedings had and papers filed in connection with such improvements shall be kept, one with

the auditor of each county. Protests or other papers filed with the auditor who is not clerk of the joint sessions shall be forwarded forthwith by him or her to the auditor who acts as clerk of such joint sessions. The treasurer of said county shall register and certify and pay the warrants and the bonds, and shall have charge of the funds of the district; and to him or her, the treasurer of the county in which the lesser portion of such system of improvements lie, shall remit semiannually, in time for the semiannual warrant and bond calls, all such collections made in such other county. A drainage, diking, or sewerage improvement district lying in more than one county shall be designated "joint drainage (or diking) or sewerage improvement district No. . . . of and counties." All proceedings in regard to joint drainage, diking improvement districts, which have heretofore been had and done substantially in accordance with the amendatory provisions of this chapter are hereby approved and declared to be valid. [2013 c 23 § 416; 1923 c 46 § 13; 1921 c 157 § 6; 1913 c 176 § 38; RRS § 4446.]

*Reviser's note: RCW 85.08.150 was repealed by 1985 c 396 § 87. See RCW 85.38.040, 85.38.050.

85.08.820 Drainage bonds owned by state—Cancellation of interest and assessments—Levy omitted. Whenever the department of ecology shall have purchased and the state of Washington owns the entire issue of any series of bonds of any county in the state, the payment of which is to be made from and is secured by assessments upon the property included within any drainage improvement district organized and existing in such county, and it shall appear to the satisfaction of the director of ecology that owing to and by reason of the nature of the soil within and the topography of such drainage improvement district the lands contained therein were not or will not be drained sufficiently to permit the cultivation thereof within the time when assessments for the payment of the interest on said bonds and to constitute a sinking fund to retire said bonds as provided by law became or will become due, and that by reason thereof the owners of said lands were or will be unable to meet said assessment, the director of ecology shall have the power and he or she is hereby authorized under such terms and conditions as he or she shall deem advisable to enter into a contract in writing with the board of county commissioners of the county issuing such bonds, waiving the payment of interest upon such bonds from the date of their issue for not to exceed five years, and extending the time of payment of said bonds for not to exceed five years; and upon the execution of said contract the board of county commissioners of said county shall have the power and is hereby authorized to cancel all assessments made upon the lands included within such drainage improvement district for the payment of principal and/or interest on said bonds prior to the date of said contract, and to omit the levy of any assessments for said purposes until the expiration of the time of the waiver of interest payments upon said bonds specified in said contract. [2013 c 23 § 417; 1988 c 127 § 38; 1925 ex.s. c 140 § 1; RRS § 4332-1.]

85.08.840 Merger of improvement district with irrigation district—Jurisdiction to hear, supervise, and conduct proceedings—Clerk, notice, records. The boards of county commissioners of the counties in which a joint drain-

age improvement district is situated shall have jurisdiction in joint session to hear, supervise, and conduct the merger proceedings relating to such a district. The auditor of the county in which the greater length of the system of improvements lies shall act as clerk of the joint sessions of the boards of county commissioners, and shall give the notice provided for in RCW 85.08.870. He or she shall furnish to the auditor of the other county duplicate copies of the records of proceedings of the joint sessions. Duplicate records of all proceedings had and papers filed in connection with the merger of a joint drainage improvement district shall be kept with the auditor of each county. The board of county commissioners of the county in which a drainage improvement district or consolidated drainage improvement district is situated shall have exclusive jurisdiction to hear, supervise, and conduct merger proceedings relating to such districts. [2013 c 23 § 418; 1957 c 94 § 3.]

Chapter 85.15 RCW

DIKING, DRAINAGE, SEWERAGE IMPROVEMENT DISTRICTS—1967 ACT

Sections

85.15.030	Property roll—Basis and requisites—Separate levies for prior indebtedness.
85.15.090	Review by superior court—How taken.
85.15.110	Review by superior court—Filing fees—Bond—Priority of cause.
85.15.150	Annual estimate of costs—Levy added to general taxes—Delinquencies—Disposition of revenue.

85.15.030 Property roll—Basis and requisites—Separate levies for prior indebtedness. To operate under this chapter, the board of commissioners of the improvement district shall cause to be prepared and filed with the board of county commissioners a property roll. The roll shall contain: (1) A description of all properties benefited and improvements thereon which receive protection and service from the systems of the district with the name of the owner or the reputed owner thereof and his or her address as shown on the tax rolls of the assessor or treasurer of the county wherein the property is located and (2) the determined value of such land and improvements thereon as last assessed and equalized by the assessor of such county or counties. Such assessed and equalized values shall be deemed prima facie to be just, fair, and correct valuations against which annual taxes shall be levied for the operation of the district and the maintenance and expansion of its facilities.

If property outside of the limits of the original district are upon the roll as adopted ultimately, and the original district has outstanding bonds or long-term warrants, the board of county commissioners shall set up separate dollar rate levies for the full retirement thereof. [2013 c 23 § 419; 1973 1st ex.s. c 195 § 111; 1967 c 184 § 4.]

Additional notes found at www.leg.wa.gov

85.15.090 Review by superior court—How taken. The decision of the board of county commissioners upon any objection made within the time and in the manner prescribed may be reviewed by the superior court of the county wherein the property in question is located, upon appeal thereto taken in the following manner: Any person aggrieved must file his

or her petition for writ of review with the clerk of the superior court wherein the property is located within ten days after the roll affecting such aggrieved party was adopted by resolution, and serve a copy thereof upon the county treasurer. The petition shall describe the property in question, shall set forth the written objections which were made to the decision, and the date of filing of such objections, and shall be signed by such party or someone in his or her behalf. The court shall forthwith grant such petition if correct as to form and filed in accordance with this chapter. [2013 c 23 § 420; 1967 c 184 § 10.]

85.15.110 Review by superior court—Filing fees—Bond—Priority of cause. The county clerk shall charge the same filing fees for petitions for review as in civil actions. At the time of the filing of such a petition with the clerk, the appellant shall execute and file a bond in the penal sum of two hundred dollars, with at least two sureties, to be approved by the judge of the court, conditioned upon his or her prosecuting his or her appeal without delay and to guarantee all costs which may be assessed against him or her by reason of such review. The court shall, on motion of either party to the cause, with notice to the other party, set the cause for trial at the earliest time available to the court, fixing a date for hearing and trial without a jury. The cause shall have preference over all civil actions pending in the court except eminent domain and forcible entry and detainer proceedings. [2013 c 23 § 421; 1967 c 184 § 12.]

85.15.150 Annual estimate of costs—Levy added to general taxes—Delinquencies—Disposition of revenue. The board of any improvement district proceeding under this chapter shall, on or before the first day of September of each year, make an estimate of the costs reasonably anticipated to be required for the effective functioning of the district during the ensuing year and until further revenue therefor can be made available, and shall cause its chair or secretary to file the same with the board of county commissioners of the county containing the district and other benefited area. The board of county commissioners shall, on or before the first Monday in October next ensuing, certify the amount of the district's estimate, or such amount as it shall deem advisable, to the county treasurer. The amount so certified shall be applied by the regular taxing agencies against the benefit valuation of lands, buildings and improvements as shown by the then current complete roll of such properties certified to and filed with such county treasurer by the board of county commissioners. When thus levied, the amount of assessment produced thereby shall be added by the general taxing authorities to the general taxes against said lands and collected therewith as a part thereof. If unpaid, any delinquencies in such assessments shall bear interest at the same rate and in the same manner as general taxes and they shall be included in and be made a part of any general tax foreclosure proceedings, according to the provisions of law with relation to such foreclosures. As assessment collections are made, the county treasurer shall credit the same to the funds of the district. [2013 c 23 § 422; 1967 c 184 § 16.]

Chapter 85.16 RCW
MAINTENANCE COSTS AND LEVIES—
IMPROVEMENT DISTRICTS

Sections

- 85.16.130 Conduct of hearing on appraisers' report—Correction, etc., of schedules.
85.16.150 Approval of schedules—Separate funds for diking, drainage systems.
85.16.210 Conduct of hearing on special benefits—Modification of schedules—Judicial review.
85.16.230 Erroneous assessment—Correction.

85.16.130 Conduct of hearing on appraisers' report—Correction, etc., of schedules. At the hearing upon the report of the appraisers, which may be adjourned from time to time until finally completed, the board shall carefully examine and consider the special benefits and the apportionment of estimated costs determined by the appraisers and reported in the schedule or schedules, and any objections thereto which shall have been made in writing and filed with the board on or prior to ten o'clock a.m. of the date fixed for such hearing. Each objector shall be given reasonable time and opportunity to submit evidence and be heard on the merits of his or her objections. At the conclusion of such hearing, the board shall so correct, revise, raise, lower, change, or modify such schedule or schedules, or any part thereof, or strike therefrom any property not specially benefited, as to said board shall appear equitable and just. The board shall cause the clerk of the board to enter on each such schedule or schedules all such additions, cancellations, changes, and modifications made by it. [2013 c 23 § 423; 1949 c 26 § 9; Rem. Supp. 1949 § 4459-28. Formerly RCW 85.16.130 and 85.16.140.]

85.16.150 Approval of schedules—Separate funds for diking, drainage systems. When the board shall have determined that the schedule or schedules of benefits and/or apportionment of costs as filed or as changed and modified by it are fair, just and equitable and, if estimated costs have been apportioned, that said benefits equal or exceed said costs apportioned, the members of the board approving the same shall sign said schedule or schedules and cause the clerk of the board to attest their signatures under his or her seal, and shall enter an order in the journal approving and confirming the final determination of such benefits and apportionment of costs and all proceedings leading thereto and in connection therewith. If separate schedules be established for maintenance of the diking system and of the drainage system, the board shall by order establish two separate maintenance funds, one for the maintenance of the diking system and one for the maintenance of the drainage system. [2013 c 23 § 424; 1949 c 26 § 10; Rem. Supp. 1949 § 4459-29.]

85.16.210 Conduct of hearing on special benefits—Modification of schedules—Judicial review. At such hearing, which may be adjourned from time to time as may be necessary to give all persons interested or affected a reasonable opportunity to be heard, and after consideration of all evidence offered and all factors, situations, and conditions bearing upon or determinative of the benefits accruing and to accrue to such pieces or parcels of property, the board shall correct, revise, raise, lower, or otherwise change or confirm

the benefits as theretofore determined, in respect of such pieces or parcels of property, as to it shall seem fair, just, and equitable under the circumstances, and thereafter such proceedings shall be had with respect to the confirmation or determination of the benefits and making and filing of a roll thereof, as are in RCW 85.16.130, 85.16.150, and 85.16.160 provided. Any property owner affected by any change thus made in the determination of benefits accruing to his or her property who shall have appeared at the hearing by the board and made written objections thereto as provided in RCW 85.16.130, may appeal from the action of the board to the superior court and seek appellate review by the supreme court or the court of appeals, within the time, in the manner and upon the conditions, so far as applicable, provided in RCW 85.08.440, with respect to appeals from the order of the board confirming the apportionment of the original cost of construction. [2013 c 23 § 426; 1988 c 202 § 80; 1971 c 81 § 165; 1949 c 26 § 16; Rem. Supp. 1949 § 4459-35.]

Additional notes found at www.leg.wa.gov

85.16.230 Erroneous assessment—Correction. Whenever any payer of a diking, drainage, or sewerage improvement district maintenance assessment believes that, through obvious error in name, number, description, amount of benefit valuation, double assessment, or extension, or other obvious error, property on which he or she has paid an assessment has been erroneously assessed, he or she may pay such assessment under protest. If, within thirty days after such payment under protest, he or she files with the board a written verified petition setting out his or her name, address, and legal description of the property, the nature of the obvious error alleged to have been made, and the date and amount of any assessment paid thereon, the board shall cause such claim to be investigated. If upon investigation any assessment is found to be erroneous through obvious error, the board shall order such assessment to be corrected if no bond or long term warrant issue is affected. Where correction is ordered of an erroneous assessment already collected, the auditor, upon receipt of a certified copy of the board's order of correction, shall refund to the person paying the assessment the difference between the correct assessment and the erroneous assessment, plus legal interest on such difference from date of payment, by a warrant drawn on the maintenance fund of the district. [2013 c 23 § 427; 1951 c 63 § 3.]

Chapter 85.18 RCW
LEVY FOR CONTINUOUS BENEFITS—
DIKING DISTRICTS

Sections

- 85.18.040 Notice of hearing.
85.18.100 Review by superior court—How taken.
85.18.120 Review by superior court—Filing fee—Bond—Priority of cause.
85.18.160 Annual estimate of costs—Levy as part of general taxes.

85.18.040 Notice of hearing. The notice of the time and place of hearing shall be given to any owner, or reputed owner, of the property which is listed on the roll as aforesaid, by mailing a copy thereof at least thirty days before the date fixed for the hearing to the owner or owners at his or her or their address as shown on the tax rolls of the county treasurer

for the property described. In addition thereto, the notice shall be published at least once a week for three consecutive weeks in a newspaper of general circulation in the district. At least fifteen days must elapse between the last date of publication thereof and the date fixed for the hearing. [2013 c 23 § 428; 1985 c 469 § 76; 1951 c 45 § 5.]

85.18.100 Review by superior court—How taken.

The decision of the board of commissioners upon any objection made within the time and in the manner prescribed may be reviewed by the superior court of the county wherein the property in question is located, upon appeal thereto taken in the following manner: Any person aggrieved must file his or her petition for writ of review with the clerk of the superior court wherein the property is located within ten days after the roll affecting such aggrieved party was adopted by resolution, and serve a copy thereof upon the commissioners. The petition shall describe the property in question, set forth the written objections which were made to the decision, the date of filing of such objections, and be signed by such party or one in his or her behalf. The court shall forthwith grant such petition if correct as to form and filed in accordance with this chapter. [2013 c 23 § 429; 1951 c 45 § 11.]

85.18.120 Review by superior court—Filing fee—

Bond—Priority of cause. The county clerk shall charge the same filing fees for petitions for review as in civil actions. At the time of the filing of such petition with the clerk, the appellant shall execute and file a bond in the penal sum of two hundred dollars, with at least two sureties, to be approved by the judge of said court, conditioned upon his or her prosecuting his or her appeal without delay and to guarantee all costs which may be assessed against him or her by reason of such review. The court shall, on motion of either party to the cause, with notice to the other party, set said cause for trial at the earliest time available to the court, fixing a date for hearing and trial without a jury. Said cause shall have preference over all civil actions pending in said court except eminent domain and forcible entry and detainer proceedings. [2013 c 23 § 430; 1951 c 45 § 13.]

85.18.160 Annual estimate of costs—Levy as part of

general taxes. The board of commissioners of any diking district proceeding under this chapter shall, on or before the first day of November of each year, make an estimate of the costs reasonably anticipated to be required for the effective functioning of such district during the ensuing year and until further revenue therefor can be made available, and cause its chair or secretary to certify the same on or before said date to the county auditor, and the amount so certified shall be levied by the regular taxing agencies against the base benefits to the lands and buildings within such district as shown by the then current complete roll of such properties and the determined benefits thereto as therefore certified to and filed with such county auditor by the commissioners of such district. When thus levied, the amount of assessment produced thereby shall be added by the general taxing authorities to the general taxes against said lands and collected therewith as a part thereof. If unpaid, any delinquencies in such assessments shall bear interest at the same rate and in the same manner as general taxes and they shall be included in and be made a part of any

general tax foreclosure proceedings, according to the provisions of law with relation to such foreclosures. As assessment collections are made, the county treasurer shall credit the same to the funds of such district. [2013 c 23 § 425; 1951 c 45 § 17.]

**Chapter 85.24 RCW
DIKING AND DRAINAGE DISTRICTS IN
TWO OR MORE COUNTIES**

Sections

- 85.24.070 Board of commissioners—Oath, bond—Plan of improvement—Levy of assessment, procedure.
- 85.24.075 Board of commissioners—Duties of board officers—Quorum.
- 85.24.130 Objections to assessment—Procedure.
- 85.24.140 Judicial review.
- 85.24.150 Lien of assessments—Notice and collection.
- 85.24.160 Payment of assessment without interest.
- 85.24.170 District treasurer—Collection, remittance and disbursement of assessments.
- 85.24.180 Sale of property for delinquency—Procedure—Purchaser’s interest.
- 85.24.290 Service of notices on agent of owner.

85.24.070 Board of commissioners—Oath, bond—Plan of improvement—Levy of assessment, procedure.

A three-member board of commissioners shall be the governing body of an intercounty diking and drainage district. The initial commissioners shall be appointed, and the elected commissioners elected, as provided in chapter 85.38 RCW.

The members of such board, before entering upon their duties, shall take and subscribe on oath substantially as follows:

State of Washington }
 County of } ss.

I, the undersigned, a member of the board of commissioners of the diking and drainage district No., in and counties, do solemnly swear (or affirm) that I will faithfully discharge my duties as a member of the commission.

Upon the taking of such oath and the entering into a bond, as provided in RCW 85.38.080, the county legislative authority shall enter an order upon its records that the three persons named have qualified as the board of commissioners for diking and drainage district No., in and counties, and that those persons and their successors do and shall constitute a board of commissioners for the diking and drainage district. The order when made shall be conclusive of the regularity of the election and qualification of the board of diking and drainage commissioners for the particular district, and the persons named therein shall constitute the board of diking and drainage commissioners.

The board of diking and drainage commissioners shall thereupon immediately organize and elect one of their number as chair and may either appoint a voter of the district or another diking and drainage commissioner to act as secretary. The board shall then proceed to make and cause to be made specifications and details of a system which may be adopted by the board for the improvements to be made, together with an estimate of the total cost thereof; and shall, upon the adoption of the plan of improvement of the district, proceed to acquire the necessary property and property rights for the

construction, establishment, and maintenance of the system either by purchase or by power of eminent domain as herein-after provided. Upon such acquisition being had, the board shall then proceed with the construction of the diking and drainage system and in doing so shall have the power to do the work directly or in its discretion to have all or any part of the work done by contract. In case the board shall decide upon doing the same by contract, it shall advertise for bids for the construction work, or such part thereof as they may determine to have done by contract, and shall have the authority to let a contract to the lowest responsible bidder after advertising for bids.

Any contractor doing work hereunder shall be required to furnish a bond as provided by the laws of the state of Washington relating to contractors of public work.

The board shall have the right, power, and authority to issue vouchers or warrants in payment or evidence of payment of any and all expenses incurred under this chapter, and shall have the power to issue the same to any contractor as the work progresses, the same to be based upon the partial estimates furnished from time to time by engineers of the district. All warrants issued hereunder shall draw interest at a rate determined by the board.

Upon the completion of the construction of the system, and ascertainment of the total cost thereof including all compensation and damages and costs and expenses incident to the acquiring of the necessary property and property right, the board shall then proceed to levy an assessment upon the taxable real property within the district which the board may find to be specially benefited by the proposed improvements; and shall make and levy such assessment upon each piece, lot, parcel, and separate tract of real estate in proportion to the particular and special benefits thereto. Upon determining the amount of the assessment against each particular tract of real estate as aforesaid, the commissioners shall make or cause to be made an assessment roll, in which shall appear the names of the owners of the property assessed, so far as known, and a general description of each lot, block, parcel, or tract of land within the district, and the amount assessed against the same, as separate, special, or particular benefits. The board shall thereupon make an order setting and fixing a day for hearing any objections to the assessment roll by any one affected thereby, which day shall be at least twenty days after the mailing of notices thereof, postage prepaid, as herein provided. The board shall send or cause to be sent by mail to each owner of the premises assessed, whose name and place of residence is known, a notice, substantially in the following form:

To: Your property (here describe the property) is assessed \$ A hearing on the assessment roll will be had before the undersigned at the office of the board at on the day of at which time you are notified to be and appear and to make any and all objections which you may have as to the amount of the assessment against your property, or as to whether it should be assessed at all; and to make any and all objections which you may have to the assessment against your lands, or any part or portion thereof.

The failure to send or cause to be sent such notice shall not be fatal to the proceedings herein described. The secretary of the board on the mailing of the notices shall certify generally that he or she has mailed such notices to the known

address of all owners, and such certificate shall be prima facie evidence of the mailing of all such notices at the date mentioned in the certificate.

The board shall cause at least ten days' notice of the hearing to be given by posting notice in at least ten public places within the boundaries of the district, and by publishing the same at least five successive times in a daily newspaper published in each of the counties affected; and for at least two successive weeks in one or more weekly newspapers within the boundaries of the district, in each county if there are such newspapers published therein, and if there is no such newspaper published, then in one or more weekly newspapers, having a circulation in the district, for two successive weeks. The notice shall be signed by the chair or secretary of the board of commissioners, and shall state the date and place of hearing of objections to the assessment roll and levy, and of all other objections; and that all interested parties will be heard as to any objection to the assessment roll and the levies as therein made. [2013 c 23 § 431; 1985 c 396 § 53; 1981 c 156 § 26; 1923 c 140 § 4; 1909 c 225 § 5; RRS § 4365. FORMER PART OF SECTION: 1909 c 225 §§ 9, 11, 21, 28, 32 now codified as RCW 85.24.071, 85.24.073, 85.24.075, 85.24.077, and 85.24.079. Formerly RCW 85.24.070, 85.24.090, 85.24.100, 85.24.110, and 85.24.120.]

Additional notes found at www.leg.wa.gov

85.24.075 Board of commissioners—Duties of board officers—Quorum. The chair of the board shall preside at all meetings and shall have the right to vote upon all questions the same as other members, and shall perform such duties in addition to those in this chapter prescribed as may be fixed by the board. The secretary of the board shall perform the duties in this chapter prescribed, and such other duties as may be fixed by the board. A majority of the board shall constitute a quorum for the transaction of business, but it shall require a majority of the entire board to authorize any action by the board. [2013 c 23 § 432; 1909 c 225 § 21; RRS § 4381. Formerly RCW 85.24.070, part.]

85.24.130 Objections to assessment—Procedure. Any person interested in any real estate affected by said assessment may, within the time fixed, appear and file objections. As to all parcels, lots, or blocks as to which no objections are filed, within the time as aforesaid, the assessment thereon shall be confirmed and shall be final. On the hearing, each person may offer proof, and proof may also be offered on behalf of the assessment, and the board shall affirm, modify, change, and determine the assessment, in such sum as to the board appears just and right. The commissioners may increase the assessment during such hearing upon any particular tract by mailing notice to the owner at his or her last known address, to be and appear within a time not less than ten days after the date of the notice, to show cause why his or her assessment should not be increased. When the assessment is finally equalized and fixed by the board, the secretary thereof shall certify the same to the county treasurer of each county in which the lands are situated, for collection; or if appeal has been taken from any part thereof, then so much thereof as has not been appealed from shall be certified. In case any owner of property appeals to the superior court in relation to the assessment or other matter when the amount of

the assessment is determined by the court finally, either upon determination of the superior court, or review by the supreme court or the court of appeals, then the assessment as finally fixed and determined by the court shall be certified by the clerk of the proper court to the county treasurer of the county in which the lands are situated and shall be spread upon and become a part of the assessment roll hereinbefore referred to. [2013 c 23 § 433; 1988 c 202 § 82; 1971 c 81 § 167; 1909 c 225 § 6; RRS § 4366.]

Additional notes found at www.leg.wa.gov

85.24.140 Judicial review. Any person who feels aggrieved by the final assessment made against any lot, block, or parcel of land owned by him or her, may appeal therefrom to the superior court of the county in which the land is situated. Such appeal shall be taken within the time and substantially in the manner prescribed by the laws of this state for appeals from justices' courts. All notice of appeal shall be filed with the said board, and shall be served upon the prosecuting attorney of the county in which the action is brought. The secretary of the board shall, at appellant's expense, certify to the superior court so much of the record as appellant may request, and the cause shall be tried in the superior court de novo.

Any person aggrieved by any final order or judgment made by the superior court concerning any assessment authorized by this chapter, may seek appellate review of the order or judgment as in other civil cases. [2013 c 23 § 434; 1988 c 202 § 83; 1971 c 81 § 168; 1909 c 225 § 7; RRS § 4367.]

Additional notes found at www.leg.wa.gov

85.24.150 Lien of assessments—Notice and collection. The final assessment shall be a lien paramount to all other liens except liens for taxes and other special assessments upon the property assessed, from the time the assessment roll shall have been finally approved by the board, and placed in the hands of the county treasurers as collectors. After the roll shall have been delivered to the county treasurers for collection, each treasurer shall proceed to collect the amounts due in the manner that other taxes are collected as to all lands situated within the county of which he or she is treasurer. The treasurer shall give at least ten days' notice in one or more newspapers of general circulation in the counties in which the lands are situated for two successive weeks, that the roll has been certified to him or her for collection, and that unless payment be made within thirty days from the date of the notice, that the sum charged against each lot or parcel of land shall be paid in not more than ten equal annual payments, with interest upon the whole sum so charged, at a rate not to exceed seven percent per annum. The interest shall be paid annually. The county treasurer shall proceed to collect the amount due each year upon the publication of notice as hereinafter provided. In such publication notice it shall not be necessary to give a description of each tract, piece or parcel of land, or of the names of the owners thereof.

The treasurer shall also mail a copy of the notice to the owner of the property assessed, when the post office address of the owner is known to the treasurer; but the failure to mail the notice shall not be necessary to the validity of the collection of the tax. [2013 c 23 § 435; 1985 c 469 § 83; 1909 c 225 § 8; RRS § 4368.]

[2013 RCW Supp—page 1054]

85.24.160 Payment of assessment without interest.

The owner of any lot or parcel of land charged with any assessment, as hereinbefore provided, may redeem the same from all liability by paying the entire assessment charged against such lot or parcel of land, or part thereof, without interest, within thirty days after notice to him or her of such assessment, as herein provided. [2013 c 23 § 436; 1986 c 278 § 38; 1983 c 167 § 199; 1909 c 225 § 17; RRS § 4377.]

Additional notes found at www.leg.wa.gov

85.24.170 District treasurer—Collection, remittance and disbursement of assessments.

The treasurer of each county shall collect the taxes levied and assessed hereunder upon all that portion of the property situated within the county for which the treasurer is acting. The treasurer of the county in which the smaller or minor portion of the taxes are to be collected shall forward the amount collected by him or her quarterly each year on the first Monday in January, April, July, and October, to the treasurer of the county in which the larger or major portion of the taxes are to be collected. The treasurer of the county in which the larger portion of the taxes have been levied and assessed shall be the disbursing officer of such diking and drainage district, and shall pay out the funds of such district upon orders drawn by the chair and secretary of the board acting under authority of the board, and shall be the treasurer of the fund. [2013 c 23 § 437; 1909 c 225 § 22; RRS § 4382.]

85.24.180 Sale of property for delinquency—Procedure—Purchaser's interest.

If any of the installment of taxes are not paid as herein provided, the county treasurer shall sell all lots or parcels of land on which taxes have been levied and assessed, whether in the name of the designated owner or the name of an unknown owner, to satisfy all delinquent and unpaid assessments, interest, penalties, and costs. The treasurer must commence the sale of property upon which taxes are delinquent within sixty days after the same become delinquent, and continue such sale from day to day thereafter until all the lots and parcels of land upon which taxes have not been paid are sold. Such sales shall take place at the front door of the court house. The proper treasurer shall give notice of such sales by publishing a notice thereof once a week for two successive weeks in two or more newspapers published within the district, or if no such newspaper is published, within the district, then within any two or more newspapers having a general circulation in such district; such notice shall contain a list of all lots and parcels of land upon which such assessments are delinquent, with the amount of interest, penalty, and cost at the date of sale, including costs of advertising had upon each of such lots, pieces, or parcels of land, together with the names of the owners thereof, if known to the treasurer, or the word "unknown" if unknown to the treasurer, and shall specify the time and place of sale, and that the several lots or parcels of land therein described, or so much as may be necessary, will be sold to satisfy the assessment, interest, penalty, and cost due upon each. All such sales shall be made between the hours of ten o'clock a.m. and three o'clock p.m. Such sales shall be made in the manner now prescribed by the general laws of this state for the sale of property for delinquent taxes, and certificates and deeds shall be made to the purchasers and redemptions made as is now

prescribed by the general laws of this state in the manner and upon the terms therein specified: PROVIDED, That no tax deeds shall be made until after the expiration of one year after the issuance of the certificate, and during such year any person interested may redeem. A certificate of purchase shall be issued to the district for all lots and parcels of land not sold. Certificates issued to the district shall be delivered to the board of commissioners of the district. The board of commissioners of the district may sell and transfer any such certificate to any person who is willing to pay to the district the amount for which the lot or parcel of land therein described was stricken off to the district, with the interest subsequently accrued thereon. Within ten days after the completion of sale of all lots, pieces, and parcels of land authorized to be sold as aforesaid, the treasurer must make a return to the board of commissioners with a statement of the doings thereon, showing all lots and parcels of land sold by him or her, to whom sold and the sum paid therefor. The purchaser at improvement sales acquires a lien on the lot, piece, or parcel of land sold for the amount paid by him or her at such sales for all delinquent taxes and assessments, and all costs and charges thereon, whether levied previously or subsequently to such sale, subsequently paid by him or her on the lot or parcel of land, and shall be entitled to interest thereon at the rate of ten percent per annum from the date of such payment. [2013 c 23 § 438; 1909 c 225 § 23; RRS § 4383. Formerly RCW 85.24.180 and 85.24.190, part.]

85.24.290 Service of notices on agent of owner. When any notice is required to be given to the owner under any of the provisions of this chapter, such notice shall be given to the agent instead of the owner, in case the owner prior to the giving of the notice required by the board or proper officer has filed with the board or proper officer the name of the agent with his or her post office address. [2013 c 23 § 439; 1909 c 225 § 29; RRS § 4389.]

**Chapter 85.28 RCW
PRIVATE DITCHES AND DRAINS**

Sections

- 85.28.030 Cost bond by petitioner.
- 85.28.040 Viewers to be appointed—Duties.
- 85.28.060 Summons to landowners—Contents and form.
- 85.28.080 Service by publication.
- 85.28.090 Trial—Findings or verdict—Decree—Time for payment of award.

85.28.030 Cost bond by petitioner. The petitioner, or someone in his or her behalf, shall enter into a bond in the penal sum of one hundred dollars, with two or more sureties, to be approved by the clerk of said court, payable to the state of Washington, conditioned that the petitioner or petitioners will pay all costs and expenses incurred in the proceeding; which said bond shall be filed with the petition. [2013 c 23 § 440; 1899 c 125 § 3; RRS § 4396. Prior: 1883 p 77 § 2, part.]

85.28.040 Viewers to be appointed—Duties. Upon the filing of said petition the court shall appoint three viewers, two of whom shall be resident freeholders of said county, and not interested in the result of the proceeding, and the other the *county surveyor of the county in which the lands

are situated (unless said *county surveyor shall be a party in interest, in which case some other competent surveyor shall be appointed in his or her place who shall receive the same compensation as is allowed by law to *county surveyors) who shall, upon a day to be fixed by the court, in the order appointing them, view the lands of the petitioner and the lands which said proposed ditch or drain is to cross, for the purpose of determining: First, whether there is a necessity for the establishment of a ditch; and, second, the most practicable route for said ditch to run, if the same be necessary. The clerk of said court shall furnish to said viewers a certified copy of the order appointing them, which shall warrant them entering upon the lands described in the petition for the purpose of viewing the same. [2013 c 23 § 441; 1899 c 125 § 4; RRS § 4397. Prior: 1883 p 78 § 4; Code 1881 § 2504; 1877 p 314 § 2; 1875 p 93 § 3; 1863 p 485 § 1; 1858 p 31 § 1.]

***Reviser’s note:** This section refers to the "county surveyor." 1907 c 160 § 1 designated the county surveyor as county engineer; 1925 ex.s. c 167 § 1 abolished the elective office of engineer, except in Class A and first-class counties, and the powers and duties were transferred to the county commissioners with power to employ an engineer; 1937 c 187 § 4 provided duties to vest in county commissioners who were directed to employ a county road engineer. See RCW 36.75.050 and chapter 36.80 RCW.

85.28.060 Summons to landowners—Contents and form. Upon the filing of the report of the viewers aforesaid, a summons shall be issued in the same manner as summons are issued in civil actions, and served upon each person owning or interested in any lands over which the proposed ditch or drain will pass. Said summons must inform the person to whom it is directed of the appointment and report of the viewers; a description of the land over which said ditch will pass of which such person is the owner, or in which he or she has an interest; the width and depth of said proposed ditch, and the distance which it traverses said land, also an accurate description of the course thereof. It must also show the amount of damages to said land as estimated by said viewers; and that unless the person so summoned appears and files objections to the report of the viewers, within twenty days after the service of said summons upon him or her, exclusive of the day of service, the same will be approved by the court, which summons may be in the following form:

In the Superior Court of the State of Washington, for County.

In the matter of the application of for a private ditch.

The state of Washington to

Whereas, on the day of 19. . . . filed his or her petition in the above entitled court praying that a private ditch or drain be established across the following described lands, to wit:

.
for the purpose of draining certain lands belonging to said, and whereas, on the day of, 19. . . ., Messrs. and with *county surveyor of county, were appointed to view said premises in the manner provided by law, and said viewers having, on the day of, 19. . . ., filed their report in this court, finding in favor of said ditch and locating the same upon the following course: for a distance of upon said land, and of a width of feet and a depth of feet;

and they further find that said land will be damaged by the establishing and construction of said ditch in the sum of \$ Now therefore, you are hereby summoned to appear within twenty days after the service of this summons, exclusive of the day of service, and file your objections to said petition and the report of said viewers, with this court; and in case of your failure so to do, said report will be approved and said petition granted.

.....
Plaintiff's Attorney.
P.O. Address

[2013 c 23 § 442; 1899 c 125 § 6; RRS § 4399. Formerly RCW 85.28.060 and 85.28.070.]

*Reviser's note: "county surveyor," see note following RCW 85.28.040.

85.28.080 Service by publication. In case any person interested in any of the lands to be crossed by such ditch, as aforesaid, does not reside in the county, or cannot be found therein, or conceals himself or herself so that personal service cannot be had upon him or her, upon proof thereof being made satisfactorily to appear to said court, said summons may be served by publication, in the same manner and with like effect as is done in civil actions: PROVIDED, That no other or different form of summons shall be required for publication than is required for personal service. [2013 c 23 § 443; 1899 c 125 § 7; RRS § 4400.]

85.28.090 Trial—Findings or verdict—Decree—Time for payment of award. Upon the expiration of the time within which exceptions may be filed to the report of the viewers aforesaid, the court shall set a day upon which the petition and the report of the viewers shall be heard and considered by the court. In case exceptions have been filed by any party or parties, which exceptions must have been served upon the petitioner or petitioners prior to the hearing, the court shall hear evidence in regard thereto, and without a jury, pass upon the questions of the necessity for said ditch and the location thereof. If the court finds that such ditch is necessary, and the route selected is the best and most practicable, and that the compensation allowed by the viewers is just and reasonable, then the court shall file his or her findings to this effect and cause an order to be entered approving the petition and report of the viewers. If, within twenty days from the filing of the findings of facts aforesaid, the petitioner or petitioners shall pay into court all the costs and sums awarded to the owner or owners of the land over which said ditch shall pass, a decree shall be entered establishing the same: PROVIDED, If any party shall except to the amount of damages found by the viewers, then the amount of such damages shall be tried by jury, unless a jury trial be waived by the parties, in which case trial thereof may be had by the court. Such trial shall be at a regular term of said court, at which a jury shall be present, and shall be conducted and verdict rendered in the same manner as in civil actions: PROVIDED FURTHER, That it shall not be incumbent on the petitioner to pay into court the amount of the award or awards of said jury, until within twenty days after said verdict shall have been rendered and entered. [2013 c 23 § 444; 1899 c 125 § 8; RRS § 4401.]

Chapter 85.32 RCW

DRAINAGE DISTRICT REVENUE ACT OF 1961

Sections

- 85.32.050 Contents of roll—Assessed, equalized value prima facie correct—Separate levies for prior indebtedness—Adjustment of roll.
- 85.32.060 Notice of hearing—Contents.
- 85.32.170 Judicial review—Petition to superior court.

85.32.050 Contents of roll—Assessed, equalized value prima facie correct—Separate levies for prior indebtedness—Adjustment of roll. The roll of properties referred to in this chapter shall contain (1) a description of all properties and improvements thereon, with the name of the owner or the reputed owner thereof and his or her address as shown on the tax rolls of the assessor or treasurer of the county wherein the property is located, and (2) the determined value of such land and improvements thereon as last assessed and equalized by the taxing agencies of such county. Such assessed and equalized values shall be deemed prima facie as a just, fair, and correct base of value for consideration by the board in its determination ultimately of the just and correct base of value in each instance against which annual dollar rates shall be levied by the district for the operation of the district and the expansion and maintenance of its facilities.

If property outside of the territorial limits of the district are upon the roll as adopted ultimately, and the district has prior indebtedness existing, the board shall set up separate dollar rate levies for the retirement thereof until it is extinguished, which levies shall be applied solely against the properties within the territorial limits of the district. Adjustments of the roll shall be made before final adoption in such a manner that the money raised through annual dollar rate levies for maintenance, expansion, and operational costs of the district in no instance shall exceed the value of the service rendered or to be rendered and the benefit received and to be received by the property involved. [2013 c 23 § 445; 1973 1st ex.s. c 195 § 122; 1961 c 131 § 6.]

Additional notes found at www.leg.wa.gov

85.32.060 Notice of hearing—Contents. When the board causes a property roll to be filed with it and a hearing to be held thereon as provided in this chapter, it shall give notice of the hearing in the following manner:

The notice shall be published at least three times in consecutive issues in a weekly newspaper, or once a week for three consecutive weeks in a daily newspaper having general circulation in the area involved. The last publication shall be more than fifteen days prior to date of hearing. The board also shall cause a copy of the notice to be mailed in regular course of the federal mail at least thirty days prior to the date of the hearing to the owner or reputed owner of the property at his or her address, all as shown on the tax rolls or records of the county taxing agencies of the county wherein the property is situated, such notice being deemed adequate and sufficient. The sworn affidavit of the one doing such mailing shall be deemed conclusive of the fact that the notice was mailed.

The notice shall state the following:

- (1) That the board has tentatively determined that the property of the owner or reputed owner named is receiving

and will receive service and benefit from the facilities of the district;

(2) That the board has caused a tentative roll of the properties with any improvements thereon which are receiving and will receive service and benefit to be filed with it; and that the roll shows a base of valuation thereon for the properties against which annual dollar rates will be levied and collected in the same manner as general taxes to pay the fair value of the benefit and service received and to be received by the property through use of the facilities of the district, and to pay the annual cost of operation, development, and maintenance of the district and its facilities;

(3) That on a date, time, and place stated, the board will give consideration to the facts and the roll, will hear all objections filed, will review the roll and alter, modify, or change the same consistent with facts established and with equity and fair dealing concerning the properties involved to the end that just levies will be made for service and benefits received and to be received against each property for the purposes mentioned; and at the hearing or continuance thereof, it will adopt the roll in final form and certify and file a copy thereof with the assessor and treasurer of the county wherein the property is located; and will cause annual millage to be levied against such established valuations for the purposes stated;

(4) That all persons desiring to object to the proceedings, to the proposed base valuations, or to any other thing or matter in connection with the proceedings, must file written objections with the board stating clearly the basis of the objection before the time of the hearing, or all objections will be deemed waived. [2013 c 23 § 446; 1985 c 469 § 84; 1973 1st ex.s. c 195 § 123; 1961 c 131 § 7.]

Additional notes found at www.leg.wa.gov

85.32.170 Judicial review—Petition to superior court. The decision of the board upon any objection made within the time and in the manner prescribed in this chapter may be reviewed by the superior court of the county wherein the property in question is located. Any person aggrieved must file his or her petition for writ of review with the clerk of the superior court wherein the property is located within ten days after the roll affecting such aggrieved party was adopted by resolution, and he or she shall serve a copy thereof upon the board. The petition shall describe the property in question, set forth the written objections which were made to the decision, give the date of filing of such objections, and shall be signed by such party or someone in his or her behalf. The court shall forthwith grant such petition if correct as to form and filed in accordance with this section. [2013 c 23 § 447; 1961 c 131 § 18.]

Title 86

FLOOD CONTROL

Chapters

- 86.09** Flood control districts—1937 act.
- 86.13** Flood control by counties jointly.
- 86.15** Flood control zone districts.
- 86.16** Floodplain management.

- 86.24** Flood control by state in cooperation with federal agencies, etc.
- 86.26** State participation in flood control maintenance.

Chapter 86.09 RCW

FLOOD CONTROL DISTRICTS—1937 ACT

Sections

- 86.09.259 Board of directors—Number—Officers.
- 86.09.292 Board of directors—Chair of county commissioners may act when quorum not present.
- 86.09.301 Board of directors—Oath.
- 86.09.304 Bond of officer or employee handling funds.
- 86.09.310 Delivery of property to successor.
- 86.09.319 Treasurer's liability.
- 86.09.325 Disbursement of funds by district treasurer.
- 86.09.328 Monthly report by district treasurer.
- 86.09.391 Assessments—Appraisers' board, chair, and secretary—Compensation and expenses.
- 86.09.430 Assessments—Contents of notice of hearing.
- 86.09.433 Assessments—Conduct of hearing—Order.
- 86.09.448 Assessments—Appeal to courts.
- 86.09.466 Assessments—District budget—Approval—Basis for assessment roll.
- 86.09.493 Payment of assessment—Date of delinquency—Notice to pay—Assessment book—Statements.
- 86.09.496 Delinquency list—Posting and publication.
- 86.09.499 Sale for delinquent assessments—Postponement.
- 86.09.502 Sale for delinquent assessments—How conducted—Certificate of sale—District as purchaser—Fee.
- 86.09.508 Sale for delinquent assessments—Redemption, when and how made.
- 86.09.511 Sale for delinquent assessments—Entry of redemption—Deed on demand if not redeemed in two years—Fee.
- 86.09.556 Claims against district.
- 86.09.562 District funds paid by warrant—Exception.
- 86.09.619 District directors to make provision for payment—Procedure on failure of directors.
- 86.09.703 Revision of district—Establishment of revised district—Review of benefits—Liability of original district—Segregation of funds.

86.09.259 Board of directors—Number—Officers. A flood control district shall be managed by a board of directors consisting of three members. The initial directors shall be appointed, and the elected directors elected, as provided in chapter 85.38 RCW. The directors shall elect a chair from their number and shall either elect one of their number, or appoint a voter of the district, as secretary to hold office at its pleasure and who shall keep a record of its proceedings. [2013 c 23 § 448; 1985 c 396 § 58; 1967 c 154 § 7; 1937 c 72 § 87; RRS § 9663E-87. Formerly RCW 86.08.390, part.]

Provisions cumulative: "The provisions of this act are cumulative with and shall not amend, repeal or supersede any other powers heretofore or hereafter granted such districts." [1967 c 154 § 5.]

Additional notes found at www.leg.wa.gov

86.09.292 Board of directors—Chair of county commissioners may act when quorum not present. In case any member of the district board is absent at the time of any regular monthly meeting of said board, and a quorum of said board cannot be obtained by reason of the absence of said member, it shall be the duty of the chair of the board of county commissioners of the county in which the office of the district board is located to act in place of said absent member, and the acts of the district board at said meeting shall be valid so far as a quorum is concerned and shall have the same effect as though said absent member were present and acting thereat. [2013 c 23 § 449; 1937 c 72 § 98; RRS § 9663E-98. Formerly RCW 86.08.205, part.]

86.09.301 Board of directors—Oath. Every district officer, upon taking office, shall take and subscribe an official oath for the faithful discharge of the duties of his or her office during the term of his or her incumbency. [2013 c 23 § 450; 1985 c 396 § 62; 1937 c 72 § 101; RRS § 9663E-101. Formerly RCW 86.08.195, part.]

Additional notes found at www.leg.wa.gov

86.09.304 Bond of officer or employee handling funds. Every district officer or employee handling any district funds shall execute a surety bond payable to the district in the sum of double the estimated amount of funds handled monthly, conditioned that the principal will strictly account for all moneys or credit received by him or her for the use of the district. Each bond and the amount thereof shall be approved by the county legislative authority of the county within which the major portion of the district is situated, and thereafter filed with the secretary of the district. [2013 c 23 § 451; 1985 c 396 § 63; 1937 c 72 § 102; RRS § 9663E-102. Formerly RCW 86.08.220, part.]

Additional notes found at www.leg.wa.gov

86.09.310 Delivery of property to successor. Every person, upon the expiration or sooner termination of his or her term of office as an officer of the district, shall immediately turn over and deliver, under oath, to his or her successor in office, all records, books, papers, and other property under his or her control and belonging to such office. In case of the death of any officer, his or her legal representative shall turn over and deliver such records, books, papers, and other property to the successor in office of such deceased person. [2013 c 23 § 452; 1937 c 72 § 104; RRS § 9663E-104.]

86.09.319 Treasurer's liability. Any county treasurer collecting or handling funds of the district shall be liable upon his or her official bond and to criminal prosecution for malfeasance, misfeasance, or nonfeasance in office relative to any of his or her duties prescribed herein. [2013 c 23 § 453; 1937 c 72 § 107; RRS § 9663E-107. Formerly RCW 86.08.230.]

86.09.325 Disbursement of funds by district treasurer. The ex officio district treasurer shall pay out moneys collected or deposited with him or her in behalf of the district, or portions thereof, upon warrants issued by the county auditor against the proper funds of the districts, except the sums to be paid out of the bond fund for interest and principal payments on bonds. [2013 c 23 § 454; 1983 c 167 § 201; 1937 c 72 § 109; RRS § 9663E-109. Formerly RCW 86.08.250, part.]

Additional notes found at www.leg.wa.gov

86.09.328 Monthly report by district treasurer. The said ex officio district treasurer shall report in writing on or before the fifteenth day of each month to the district board, the amount of money held by him or her, the amount in each fund, the amount of receipts for the month preceding in each fund, and the amount or amounts paid out of each fund, and said report shall be filed with the secretary of the board. [2013 c 23 § 455; 1937 c 72 § 110; RRS § 9663E-110. Formerly RCW 86.08.250, part.]

[2013 RCW Supp—page 1058]

86.09.391 Assessments—Appraisers' board, chair, and secretary—Compensation and expenses. The board of appraisers shall elect a member as chair and the secretary of the district or his or her deputy shall be ex officio secretary of the board of appraisers. The appraisers shall receive such compensation and expenses as the board of directors of the district, with the approval of the county legislative authority of the county within which the major portion of the district is situated, shall determine, and which may forthwith be paid by the issuance of district warrants. [2013 c 23 § 456; 1985 c 396 § 66; 1937 c 72 § 131; RRS § 9663E-131. Formerly RCW 86.08.420, part.]

Additional notes found at www.leg.wa.gov

86.09.430 Assessments—Contents of notice of hearing. Said notice of hearing on said determination of assessment ratios shall state that the base assessment map designating the classes in which the lands in the district have been placed for assessment purposes on the ratios authorized by law, has been prepared by the board of appraisers and is on file at the office of the district board and may be inspected at any time during office hours; that a hearing on said map will be held before the county legislative authority at the office of the district board on, the day of,, at the hour of o'clock (naming the time), where any person may appear and present such objections, if any, he or she may have to said map, and shall be signed by the secretary of the district. [2013 c 23 § 457; 1986 c 278 § 43; 1937 c 72 § 144; RRS § 9663E-144. Formerly RCW 86.08.480.]

Additional notes found at www.leg.wa.gov

86.09.433 Assessments—Conduct of hearing—Order. At the time set for said hearing the county legislative authority shall be present at the place designated in the notice and if it appears that due notice of the hearing has been given, shall proceed to hear such objections to the base map as shall be presented and shall hear all pertinent evidence that may be offered. The county legislative authority shall have authority to adjourn said hearings from time to time to study the record and evidence presented, to make such independent investigation as it shall deem necessary and to correct, modify, or confirm the things set out on said base map or any part thereof and to determine all questions concerning the matter and shall finally make an order confirming said map with such substitutions, changes, or corrections, if any, as may have been made thereon, which order shall be signed by the chair of the county legislative authority and attached to said map. [2013 c 23 § 458; 1985 c 396 § 69; 1937 c 72 § 145; RRS § 9663E-145. Formerly RCW 86.08.485, part.]

Additional notes found at www.leg.wa.gov

86.09.448 Assessments—Appeal to courts. Any person, firm, or corporation feeling aggrieved at any determination by said county legislative authority of the classification or relative percentage of his or her or its lands, aforesaid, may have the same reviewed by a proceeding for that purpose, in the nature of an appeal, initiated in the superior court of the county in which the land affected is situated. The matter shall be heard and tried by the court and shall be informal and summary but full opportunity to be heard and present evidence shall be given before judgment is pronounced. [2013 c 23 §

459; 1985 c 396 § 71; 1937 c 72 § 150; RRS § 9663E-150. Formerly RCW 86.08.490, part.]

Additional notes found at www.leg.wa.gov

86.09.466 Assessments—District budget—Approval—Basis for assessment roll. The secretary of the district on or before the first day of November in each year shall estimate the amount of money necessary to be raised for any and all district purposes during the ensuing year based upon a budget furnished him or her by the district board and submit the same to the county legislative authority of the county within which the major portion of the district is situated for its suggestions, approval, and revision and upon the approval of the budget by said county legislative authority, either as originally submitted or as revised, the secretary shall prepare an assessment roll with appropriate headings in which must be listed all the lands in each assessment classification shown on the base assessment map. [2013 c 23 § 460; 1985 c 396 § 75; 1937 c 72 § 156; RRS § 9663E-156. Formerly RCW 86.08.510, part.]

Additional notes found at www.leg.wa.gov

86.09.493 Payment of assessment—Date of delinquency—Notice to pay—Assessment book—Statements. On or before the fifteenth day of January in each year the secretary must deliver the assessment roll or the respective segregations thereof to the county treasurer of each respective county in which the lands described are located, with a statement of the amounts and/or percentages of the collections on said roll which shall be apportioned to the respective district funds, and said assessments shall become due and payable at the time or times general taxes accrue payable.

One-half of all assessments on said roll shall become delinquent on the first day of June following the filing of the roll unless said one-half is paid on or before the thirty-first day of May of said year, and the remaining one-half shall become delinquent on the first day of December following, unless said one-half is paid on or before the thirtieth day of November. All delinquent assessments shall bear interest at the rate of ten percent per annum from the date of delinquency until paid.

Within twenty days after the filing of the assessment roll as aforesaid the respective county treasurers shall each publish a notice in a newspaper published in their respective counties in which any portion of the district may lie, that said assessments are due and payable at the office of the county treasurer of the county in which said land is located and will become delinquent unless paid as herein provided. Said notice shall state the dates of delinquency as fixed in this chapter and the rate of interest charged thereon and shall be published once a week for four successive weeks and shall be posted within said period of twenty days in some public place in said district in each county in which any portion of the district is situated.

Upon receiving the assessment roll, the county treasurer shall prepare therefrom an assessment book in which shall be written the description of the land as it appears in the assessment roll, the name of the owner or owners where known, and if assessed to the unknown owners, then the word "unknown", and the total assessment levied against each tract of land. Proper space shall be left in said book for the entry

therein of all subsequent proceedings relating to the payment and collection of said assessments.

Upon payment of any assessment the county treasurer must enter the date of said payment in said assessment book opposite the description of the land and the name of the person paying, and give a receipt to such person specifying the amount of the assessment and the amount paid with the description of the property assessed.

It shall be the duty of the county treasurer of the county in which any land in the district is located to furnish upon request of the owner, or any person interested, a statement showing any and all assessments levied as shown by the assessment roll in his or her office upon land described in such request, and all statements of general taxes covering any land in the district shall be accompanied by a statement showing the condition of district assessments against such lands: PROVIDED, That the failure of the county treasurer to render any statement herein required of him or her shall not render invalid any assessments made by any district or proceedings had for the enforcement and collection of district assessments pursuant to this chapter. [2013 c 23 § 461; 1937 c 72 § 165; RRS § 9663E-165. Formerly RCW 86.08.540, part, 86.08.560, part, and 86.08.570.]

86.09.496 Delinquency list—Posting and publication. On or before the thirty-first day of December of each year, the county treasurer of the county in which the land is located shall cause to be posted the delinquency list which must contain the names of persons to whom the property is assessed and a description of the property delinquent and the amount of the assessment and costs due, opposite each name and description.

He or she must append to and post with the delinquency list a notice that unless the assessments delinquent, together with costs and accrued interest, are paid, the real property upon which such assessments are a lien will be sold at public auction. The said notice and delinquent list shall be posted at least twenty days prior to the time of sale. Concurrent as nearly as possible with the date of the posting aforesaid, the said county treasurer shall publish the location of the place where said notice is posted and in connection therewith a notice that unless delinquent assessments together with costs and accrued interest are paid, the real property upon which such assessments are a lien will be sold at public auction. Such notice must be published once a week for three successive weeks in a newspaper of general circulation published in the county within which the land is located; but said notice of publication need not comprise the delinquent list where the same is posted as herein provided. Both notices must designate the time and place of sale. The time of sale must not be less than twenty-one nor more than twenty-eight days from the date of posting and from the date of the first publication of the notice thereof, and the place must be at some point designated by the treasurer. [2013 c 23 § 462; 1937 c 72 § 166; RRS § 9663E-166. Formerly RCW 86.08.580.]

86.09.499 Sale for delinquent assessments—Postponement. The treasurer of the county in which the land is situated shall conduct the sale of all lands situated therein and must collect in addition to the assessment due as shown on the delinquent list the costs and expenses of sale and interest

at the rate of ten percent per annum from the date or dates of delinquency as hereinbefore provided. On the day fixed for the sale, or some subsequent day to which he or she may have postponed it, and between the hours of ten o'clock a.m. and three o'clock p.m., the county treasurer making the sale must commence the same, beginning at the head of the list, and continuing alphabetically, or in the numerical order of the parcels, lots, or blocks, until completed. He or she may postpone the day of commencing the sale, or the sale from day to day, by giving oral notice thereof at the time of the postponement, but the sale must be completed within three weeks from the first day fixed. [2013 c 23 § 463; 1937 c 72 § 167; RRS § 9663E-167. Formerly RCW 86.08.590.]

86.09.502 Sale for delinquent assessments—How conducted—Certificate of sale—District as purchaser—Fee. The owner or person in possession of any real estate offered for sale for assessments due thereon may designate in writing to the county treasurer, by whom the sale is to be made, and prior to the sale, what portion of the property he or she wishes sold, if less than the whole; but if the owner or possessor does not, then the treasurer may designate it, and the person who will take the least quantity of the land, or in case an undivided interest is assessed, then the smallest portion of the interest, and pay the assessment and costs due, including one dollar to the treasurer for duplicate of the certificate of sale, is the purchaser. The treasurer shall account to the district for said one dollar. If the purchaser does not pay the assessment and costs before ten o'clock a.m. the following day, the property must be resold on the next sale day for the assessments and costs. In case there is no purchaser in good faith for the same on the first day that the property is offered for sale, and if there is no purchaser in good faith when the property is offered thereafter for sale, the whole amount of the property assessed shall be struck off to the district as the purchaser, and the duplicate certificate shall be delivered to the secretary of the district, and filed by him or her in the office of the district. No charge shall be made for the duplicate certificate where the district is the purchaser, and in such case the treasurer shall make an entry, "Sold to the district", and he or she will be credited with the amount thereof in settlement. The district, as a purchaser at said sale, shall be entitled to the same rights as a private purchaser, and may assign or transfer the certificate of sale upon the payment of the amount which would be due if redemption were being made by the owner. If no redemption is made of land for which the district holds a certificate of purchase, the district will be entitled to receive the treasurer's deed therefor in the same manner as a private person would be entitled thereto.

After receiving the amount of assessments and costs, the county treasurer must make out in duplicate a certificate, dated on the day of sale, stating (when known) the names of the persons assessed, a description of the land sold, the amount paid therefor, that it was sold for assessments, giving the amount and the year of assessment, and specifying the time when the purchaser will be entitled to a deed. The certificate must be signed by the treasurer making the sale and one copy delivered to the purchaser, and the other filed in the office of the county treasurer of the county in which the land is situated: PROVIDED, That upon the sale of any lot, par-

cel, or tract of land not larger than an acre, the fee for a duplicate certificate shall be twenty-five cents and in case of a sale to a person or a district, of more than one parcel or tract of land, the several parcels or tracts may be included in one certificate. [2013 c 23 § 464; 1937 c 72 § 168; RRS § 9663E-168. Formerly RCW 86.08.600.]

86.09.508 Sale for delinquent assessments—Redemption, when and how made. A redemption of the property sold may be made by the owner or any person on behalf and in the name of the owner or by any party in interest at any time before deed issues, by paying the amount of the purchase price and interest as in this chapter provided, and the amount of any assessments which such purchaser may have paid thereon after purchase by him or her and during the period of redemption in this section provided, together with like interest on such amount, and if the district is the purchaser, the redemptioner shall not be required to pay the amount of any district assessment levied subsequent to the assessment for which said land was sold, but all subsequent and unpaid assessments levied upon said land to the date of such redemption shall remain a lien and be payable and the land be subject to sale and redemption at the times applicable to such subsequent annual district assessment. Redemption must be made in legal tender, as provided for the collection of state and county taxes, and the county treasurer must credit the amount paid to the person named in the certificate and pay it on demand to such person or his or her assignees. No redemption shall be made except to the county treasurer of the county in which the land is situated. [2013 c 23 § 465; 1937 c 72 § 170; RRS § 9663E-170. Formerly RCW 86.08.620.]

86.09.511 Sale for delinquent assessments—Entry of redemption—Deed on demand if not redeemed in two years—Fee. Upon completion of redemption, the county treasurer to whom redemption has been made shall enter the word "redeemed", the date of redemption and by whom redeemed on the certificate and on the margin of the assessment book where the entry of the certificate is made. If the property is not redeemed within two years, after the fifteenth day of January of the year in which such property was sold, the county treasurer of the county in which the land sold is situated must thereafter, upon demand of the owner of the certificate of sale, make to the purchaser, or his or her assignees a deed of the property, reciting in the deed substantially the matters contained in the certificate, and that no person redeemed the property during the time allowed by law for its redemption. The treasurer shall receive from the purchaser, for the use of the district, one dollar for making such deed: PROVIDED, If redemption is not made of any lot, parcel, or tract of land not larger than one acre, the fee for a deed shall be twenty-five cents and when any person or district holds a duplicate certificate covering more than one tract of land, the several parcels, or tracts of lands, mentioned in the certificate may be included in one deed. [2013 c 23 § 466; 1937 c 72 § 171; RRS § 9663E-171. Formerly RCW 86.08.630.]

86.09.556 Claims against district. Any claim against the district shall be presented to the district board for allowance or rejection. Upon allowance, the claim shall be

attached to a voucher verified by the claimant or his or her agent and approved by the chair of the board and countersigned by the secretary and directed to the county auditor of the county in which the office of the district treasurer is located, for the issuance of a warrant against the proper fund of the district in payment of said claim. [2013 c 23 § 467; 1937 c 72 § 186; RRS § 9663E-186. Formerly RCW 86.08.720, part.]

86.09.562 District funds paid by warrant—Exception. Said county treasurer shall pay out the moneys received or deposited with him or her or any portion thereof upon warrants issued by the county auditor of the same county of which the district treasurer is an officer against the proper funds of the district except the sums to be paid out of the special funds for interest and principal payments on bonds or notes. [2013 c 23 § 468; 1986 c 278 § 45; 1983 c 167 § 202; 1937 c 72 § 188; RRS § 9663E-188. Formerly RCW 86.08.710, part.]

Additional notes found at www.leg.wa.gov

86.09.619 District directors to make provision for payment—Procedure on failure of directors. It shall be the duty of the board of directors of the district to make adequate provision for the payment of all district bonds in accordance with their terms by levy and collection of assessments or otherwise and upon its failure so to do said levy and collection of assessments shall be made as follows:

(1) If the annual assessment roll has not been delivered to the county treasurer on or before the fifteenth day of January, he or she shall notify the secretary by registered mail that the roll must be delivered to him or her forthwith.

(2) If the roll is not delivered within ten days from the date of mailing the notice, or if the roll has not been equalized and the levy made, the treasurer shall immediately notify the county commissioners of the county in which the office of the directors is situated, and such commissioners shall cause an assessment roll for the district to be prepared and shall equalize it if necessary, and make the levy in the same manner and with like effect as if it had been made and equalized by the directors, and all expenses incident thereto shall be borne by the district.

(3) In case of neglect or refusal of the secretary to perform his or her duties, the district treasurer shall perform them, and shall be accountable therefor, on his or her official bond, as in other cases. [2013 c 23 § 469; 1965 c 26 § 12; 1937 c 72 § 207; RRS § 9663E-207. Formerly RCW 86.08.820, part.]

86.09.703 Revision of district—Establishment of revised district—Review of benefits—Liability of original district—Segregation of funds. If funds are available the county legislative authority shall, at the expense of the county, refer the petition to the county engineer for a preliminary investigation as to the feasibility of the objects sought by the petition. If the investigation discloses that the matter petitioned for is feasible, conducive to the public welfare, consistent with a comprehensive plan of development and in the best interest of the district and will promote the purposes for which the district was organized, the county legislative authority shall so find, approve the petition, enter an order in

his or her records declaring the establishment of the new boundaries as petitioned for, or as modified by him or her, and file a certified copy of the order with each county auditor, without filing fee, and with the board.

The board shall forthwith cause a review of the classifications and ratio of benefits, in the same manner and with the same effect as for the determination of such matters in the first instance.

The lands in the original district shall remain bound for the whole of the original unpaid assessment thereon for the payment of any outstanding warrants or bonds to be paid by such assessments. Until the assessments are collected and all indebtedness of the original district paid, separate funds shall be maintained for the original district and the revised district. [2013 c 23 § 470; 1985 c 396 § 86; 1965 c 26 § 15.]

Additional notes found at www.leg.wa.gov

Chapter 86.13 RCW

FLOOD CONTROL BY COUNTIES JOINTLY

Sections

86.13.030	Tax levy in each county—Intercounty river improvement fund.
86.13.050	Joint county meeting—Procedure.
86.13.060	Special commissioner—Powers and duties—Compensation.
86.13.090	Issuance of warrants.
86.13.100	Lease or disposal of property—Disposition of proceeds.

86.13.030 Tax levy in each county—Intercounty river improvement fund. When such a contract shall have been entered into it shall be the duty of each of the boards of county commissioners to make for their respective counties, each year, a tax levy at a rate sufficient to meet the requirements of the contract to be performed by the county, or sufficient to provide such lesser amount as the boards of county commissioners shall agree upon for such year, to be evidenced by separate resolution of each board, and when such levy shall be made the same shall be extended upon the tax rolls of the county levying the same as other taxes shall be extended, and shall be collected in the same manner and shall be a lien upon the property as in the case of other taxes. The fund realized in each county by such tax levy shall go into a separate fund in the treasury of the county collecting the same, to be designated intercounty river improvement fund, and the entire fund so collected in the two counties shall be devoted to and be disbursed for the purposes specified in such contract and as in this chapter provided, and for no other purpose, but without regard to the particular county in which the work is performed, material required or expenditure made, it being the intent that the entire fund realized in the two counties shall be devoted to the one common purpose as if the two counties were one county and the two funds one fund. The fund in each county shall be disbursed by the county treasurer of such county upon warrants signed by the county auditor of that county. Such warrants shall be issued by order of the board of county commissioners of such county, or a majority thereof. Each county auditor shall, whenever requested by the county auditor of the other county, furnish the county auditor of the other county a statement of payments into and warrants drawn upon the fund of his or her county from time to time, and in addition thereto, each county auditor shall on the first Monday of January, April, July and October each

year during the life of the contract furnish the other a complete statement thereof. Obligations incurred in the prosecution of such improvement and warrants issued shall be payable only out of said special funds, and no general obligation against or debt of either county shall be created thereby or by any contract entered into by virtue of this chapter, but it is not the intent of this chapter to deny to either county the right to have in the courts any proper proceeding to compel compliance with such contract on the part of the other county. [2013 c 23 § 471; 1913 c 54 § 3; RRS § 9653. Formerly RCW 86.12.100.]

Limitation on levies: State Constitution Art. 7 § 2 (Amendments 55 and 59); chapter 84.52 RCW.

86.13.050 Joint county meeting—Procedure. When such a contract shall have been entered into and occasion shall arise for the joint action of the two boards of county commissioners whether such joint action is provided for in this chapter or otherwise desired upon any matter having relation to such contract or the prosecution of such improvement, such joint action may be secured by a notice calling a joint meeting signed by two county commissioners, designating the time and place in either county of such meeting, served by one of the two county auditors upon the remaining county commissioners at least seven days (exclusive of the date of service or mailing) prior to the time so designated. If the notice is signed by two county commissioners of the same county the place of meeting shall be at some place in the other county designated in the notice. Such service may be personal or by mail addressed to the member in care of the county auditor of his or her county. The six county commissioners may constitute a legal meeting without notice by being present together for that purpose. The auditor's certificate of such personal service or mailing, attached to a copy of the notice, shall be made a part of the records of the meeting and be competent proof of the fact. Except in the case hereinafter provided for, the presence of four of the county commissioners shall be necessary to constitute a legal meeting. Each meeting shall be presided over by one of those present selected by vote. The county auditor of the county wherein the meeting is held shall be secretary of the meeting, and shall make duplicate record of its proceedings, one of which, with his or her certificate thereon, shall be forwarded to the county auditor of the other county, and such record shall be a part of the record of the board of county commissioners of each county. A majority vote of those present at any legal meeting shall be determinative upon any question properly considered at the meeting, and shall be binding upon each county as if enacted or adopted by its own board of county commissioners separately, but no joint meeting whatsoever shall in any manner continue, extend, change, alter, modify, or abrogate the contract when made or any of the terms and conditions contained therein. Each county commissioner shall be paid out of said fund in his or her own county all disbursements made by him or her for traveling and other expenses incurred in attending any joint meeting or in any way connected with the prosecution of the improvement. Any legal meeting shall have power to adjourn to another time and place. An adjourned meeting shall have all the powers of the meeting of which it is an adjournment, but shall have no power after the end of the thirtieth day follow-

ing the date of the original meeting of which it is an adjournment. If the three county commissioners of either county shall fail to attend any two meetings consecutively called, the notice for the next succeeding meeting may be also served upon the special commissioner hereinafter provided for, and if he or she and three county commissioners attend pursuant to such notice the four shall constitute a legal meeting, but if he or she does not so attend and three county commissioners do attend, the same shall constitute a legal meeting: PROVIDED, All notices calling a joint meeting shall specify distinctly and separately each question to be considered at said meeting; and it shall be unlawful to consider any question at such meeting or at any adjourned meeting thereof except those which have been distinctly and separately specified, except in cases where all six county commissioners are present or five county commissioners present are unanimous on the question, and in any action which may be taken on any question other than those specified in the notice shall be void and shall not be binding on either county, except in cases where all six county commissioners are present or the action was by unanimous vote of five county commissioners present at such meeting. [2013 c 23 § 472; 1913 c 54 § 5; RRS § 9655. Formerly RCW 86.12.060, part, and 86.12.120 through 86.12.140.]

86.13.060 Special commissioner—Powers and duties—Compensation. When such a contract shall have been entered into there shall be designated at the first legal joint meeting, or adjournment thereof, held in each calendar year a special commissioner to serve as such until the first joint meeting held in the ensuing year. If such designation shall not be made at any such first annual meeting, the United States engineer in charge of the district in which such improvement is located shall be such special commissioner until the next succeeding first annual meeting. If a special commissioner shall for any reason fail to serve as such officer, or be removed by unanimous vote of any legal meeting, a successor to him or her may be chosen at any subsequent legal joint meeting during his or her term. Such special commissioner shall have power to attend and vote at any joint meeting in the following cases and none other, to wit: (1) In cases specially so provided in RCW 86.13.050 hereof; (2) in any case where the vote of any such joint meeting shall stand equally divided upon any question arising under this chapter or such contract or in the prosecution of the work of improvement. The special commissioner shall have no voice or vote except upon questions on which the vote of the county commissioners is equally divided. The procedure in cases covered by the foregoing subdivision (2) of this section shall be substantially as follows: It shall be the duty of the secretary of the meeting at which the division shall occur, if the attendance of the special commissioner at that meeting is not secured, to forthwith transmit to the special commissioner written notice of the fact of disagreement and the question involved, and of the time and place to which the meeting shall have been adjourned or at which the question will recur. If there shall be no such adjournment of the meeting, or if the secretary shall not give such notice, any two commissioners may in the manner provided in RCW 86.13.050 call a joint meeting for the consideration of the question in dispute, and in such event either county auditor may give such notice to

the special commissioner. No informality in the mode of securing the attendance of the special commissioner shall invalidate the proceedings of or any vote taken at any meeting which he or she shall attend and which he or she is empowered to attend by the provisions of this chapter. The special commissioner shall receive, to be paid equally out of the two funds, his or her traveling and other expenses incurred in attending meetings or otherwise in connection with the work of improvement, and such compensation for his or her services as shall be fixed by the joint meeting which shall have selected him or her, or failing to be so fixed, his or her compensation shall be ten dollars per day of actual service. [2013 c 23 § 473; 1913 c 54 § 6; RRS § 9656. Formerly RCW 86.12.150 and 86.12.160.]

86.13.090 Issuance of warrants. When such a contract shall have been entered into, it shall be lawful to issue warrants upon said fund though there be at the time of such issuance no money in the fund, but in such cases the aggregate of such warrants so issued in any year shall not exceed one-half the amount of the next annual tax levy required by such contract. Such warrants shall be stamped by the county treasurer when presented to him or her for payment, to bear interest at a certain rate thereafter until paid, such rate to be the then current rate as determined by the county auditor. [2013 c 23 § 474; 1913 c 54 § 9; RRS § 9659. Formerly RCW 86.12.110.]

86.13.100 Lease or disposal of property—Disposition of proceeds. Whenever two counties of this state, acting under a contract made pursuant to RCW 86.13.010 through 86.13.090, shall make an improvement in connection with the course, channel, or flow of a river, shall acquire property by statute, purchase, gift, or otherwise, said counties, acting through their boards of county commissioners jointly shall have the power, and are hereby authorized to sell, transfer, trade, lease, or otherwise dispose of said property by public or private, negotiation or sale. The deeds to the property so granted, transferred, leased, or sold shall be executed by the chair of the meeting of the joint boards of county commissioners, and attested by the secretary of said joint meeting where the sale is authorized. The proceeds of the sale of said property shall be used by said counties for the carrying on, completion or maintenance of said improvement, as directed by the boards of county commissioners of said counties acting jointly. [2013 c 23 § 475; 1915 c 103 § 1; RRS § 9660. Formerly RCW 86.12.080.]

Additional notes found at www.leg.wa.gov

Chapter 86.15 RCW FLOOD CONTROL ZONE DISTRICTS

Sections

86.15.060 Administration.
86.15.130 Zone treasurer—Funds.

86.15.060 Administration. (1) Except as provided in subsection (2) of this section, administration of the affairs of zones shall be in the county engineer. The engineer may appoint such deputies and engage such employees, specialists, and technicians as may be required by the zone and as are authorized by the zone's budget. Subject to the approval

of the supervisors, the engineer may organize, or reorganize as required, the zone into such departments, divisions, or other administrative relationships as he or she deems necessary to its efficient operation.

(2) In a zone with supervisors elected pursuant to RCW 86.15.050, the supervisors may provide for administration of the affairs of the zone by other than the county engineer, pursuant to the authority established in RCW 86.15.095 to hire employees, staff, and services and to enter into contracts. [2013 c 23 § 476; 2005 c 127 § 1; 1961 c 153 § 6.]

Effective date—2005 c 127: See note following RCW 86.15.055.

86.15.130 Zone treasurer—Funds. The treasurer of each zone shall be the county treasurer. He or she shall establish within his or her office a zone flood control fund for each zone into which shall be deposited the proceeds of all tax levies, assessments, gifts, grants, loans, or other revenues which may become available to a zone.

The treasurer shall also establish the following accounts within the zone fund:

(1) For each flood control improvement financed by a bond issue, an account to which shall be deposited the proceeds of any such bond issue; and

(2) An account for each outstanding bond issue to which will be deposited any revenues collected for the retirement of such outstanding bonds or for the payment of interest or charges thereon; and

(3) A general account to which all other receipts of the zone shall be deposited. [2013 c 23 § 477; 1961 c 153 § 13.]

Chapter 86.16 RCW FLOODPLAIN MANAGEMENT (Formerly: Flood control zones by state)

Sections

86.16.035 Department of ecology—Control of dams and obstructions.

86.16.035 Department of ecology—Control of dams and obstructions. Subject to RCW 43.21A.068, the department of ecology shall have supervision and control over all dams and obstructions in streams, and may make reasonable regulations with respect thereto concerning the flow of water which he or she deems necessary for the protection to life and property below such works from flood waters. [2013 c 23 § 478; 1995 c 8 § 5. Prior: 1987 c 523 § 9; 1987 c 109 § 53; 1935 c 159 § 8; RRS § 9663A-8. Formerly RCW 86.16.030, part.]

Findings—1995 c 8: See note following RCW 43.21A.064.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

Chapter 86.24 RCW FLOOD CONTROL BY STATE IN COOPERATION WITH FEDERAL AGENCIES, ETC.

Sections

86.24.030 Contracts authorized—Extent of participation.

86.24.030 Contracts authorized—Extent of participation. The state director of ecology, when state funds shall be available therefor, shall have authority on behalf of the

state to enter into contracts with the United States or any agency thereof and/or with any such flood control district, county, or counties so acting jointly, for flood control purposes for any such flood control district, county, or counties so acting jointly, the amount of the state's participation in any such contract to be such sum as may be appropriated therefor, or, in event of unallocated state appropriations for flood control purposes, in such necessary sum as to any such contract as he or she shall determine. [2013 c 23 § 479; 1988 c 127 § 39; 1935 c 163 § 4; RRS § 9662-4.]

Chapter 86.26 RCW
STATE PARTICIPATION IN
FLOOD CONTROL MAINTENANCE

Sections

86.26.007 Flood control assistance account—Use.

86.26.007 Flood control assistance account—Use.

The flood control assistance account is hereby established in the state treasury. At the beginning of the 2005-2007 fiscal biennium, the state treasurer shall transfer three million dollars from the general fund to the flood control assistance account. Each biennium thereafter the state treasurer shall transfer four million dollars from the general fund to the flood control assistance account, except that during the 2011-2013 fiscal biennium, the state treasurer shall transfer one million dollars from the general fund to the flood control assistance account. Moneys in the flood control assistance account may be spent only after appropriation for purposes specified under this chapter. During the 2013-2015 fiscal biennium, the legislature may transfer from the flood control assistance account to the state general fund such amounts as reflect the excess fund balance of the account. [2013 2nd sp.s. c 4 § 1005; 2012 2nd sp.s. c 7 § 932; 2011 1st sp.s. c 50 § 976; 2009 c 564 § 961; 2005 c 518 § 947; 2003 1st sp.s. c 25 § 943; 1997 c 149 § 914; 1996 c 283 § 903; 1995 2nd sp.s. c 18 § 915; 1993 sp.s. c 24 § 928; 1991 sp.s. c 13 § 24; 1986 c 46 § 1; 1985 c 57 § 88; 1984 c 212 § 1.]

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

Effective date—2012 2nd sp.s. c 7: See note following RCW 2.68.020.

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

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

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

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

Additional notes found at www.leg.wa.gov

Title 87
IRRIGATION

Chapters

- 87.03 Irrigation districts generally.**
87.04 Director divisions.
87.06 Delinquent assessments.
87.22 Refunding bonds—1929 act.
87.25 Certification of bonds.

- 87.28 Revenue bonds for water, power, drains, etc.**
87.52 Dissolution of districts without bonds.
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87.56 Dissolution of insolvent districts.
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Chapter 87.03 RCW
IRRIGATION DISTRICTS GENERALLY

Sections

- 87.03.025 State lands situated in or taken into district—Procedure—Assessments, collection.
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- 87.03.245 Deputy secretaries for assessment.
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- 87.03.272 Secretary may act as collection agent of nondelinquent assessments—Official bond—Collection procedure—Delinquency list.
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- 87.03.570 Adding lands to district—Hearing—Assent.
- 87.03.610 Adding lands to district—Guardian, administrator or executor may act.
- 87.03.660 Exclusion of lands from district—Hearing—Assent.
- 87.03.690 Exclusion of lands from district—Guardian, executor or administrator may sign and acknowledge.
- 87.03.760 Exclusion of nonirrigable land when state holds all outstanding bonds—Adoption of resolution—Appellate review.
- 87.03.765 Exclusion of nonirrigable land when state holds all outstanding bonds—Indebtedness may be reduced.
- 87.03.820 Disposal of real property—Right of adjacent owners.

87.03.025 State lands situated in or taken into district—Procedure—Assessments, collection. Whenever public lands of the state are situated in or taken into an irrigation district they shall be treated the same as other lands, except as hereinafter provided. The commissioner of public lands shall be served with a copy of the petition proposing to include such lands, together with a map of the district and notice of the time and place of hearing thereon, at least thirty days before the hearing, and if he or she determines that such lands will be benefited by being included in the district he or she shall give his or her consent thereto in writing. If he or she determines that they will not be benefited he or she shall file with the board a statement of his or her objections thereto.

Any public lands of the state which are situated within the boundaries of an irrigation district, but which were not included in the district at the time of its organization, may be included after a hearing as herein provided.

Whenever the commissioner or any interested person desires to have state public lands included in an existing district, he or she shall file a request to that effect in writing with the district board, which shall thereupon fix a time and place for hearing the request and post notice thereof in three public conspicuous places in the district, one of which shall be at the place of hearing, at least twenty days before the hearing, and send by registered mail a copy of the notice to the commissioner. The notice shall describe the lands to be included and direct all persons objecting to such inclusion to appear at the time and place stated and present their objections. At the hearing the district board shall consider all objections and may adjourn to a later date, and by resolution determine the matter, and its determination shall be final: PROVIDED, That no such lands shall be included in a district without the written consent of the commissioner of public lands.

Any public lands of the state situated in any irrigation district shall be subject to the provisions of the laws of this state relating to the collection of irrigation district assessments to the same extent and in the same manner in which lands of like character held under private ownership are subject thereto, but collection and payment of the assessments shall be governed solely by the provisions of chapter 79.44 RCW. [2013 c 23 § 480; 1963 c 20 § 13; 1951 2nd ex.s. c 15 § 1; 1951 c 212 § 1; 1923 c 138 § 4; 1921 c 129 § 2; 1919 c 180 § 2; RRS § 7419. Formerly RCW 87.01.060.]

Irrigation district assessments: RCW 87.03.240 through 87.03.305.

87.03.031 Absentee voting—Certification of inconvenience. Any qualified district elector who certifies as provided in RCW 87.03.032 through 87.03.034 that he or she cannot conveniently be present to cast his or her ballot at his or her proper election precinct on the day of any irrigation district election shall be entitled to vote by absentee ballot in such election in the manner herein provided. [2013 c 23 § 481; 1961 c 105 § 2. Formerly RCW 87.01.096.]

87.03.032 Absentee voting—Notice of election, contents—Ballot and form of certificate of qualifications to be furnished. The notice of election shall conform to the requirements for election notices provided by Title 87 RCW for the election being held, and shall specify in addition that any qualified district elector who certifies that he or she cannot conveniently be present at his or her proper election pre-

cinct on the day of election may vote by absentee ballot, and that a ballot and form of certificate of qualifications will be furnished to him or her on written request being made of the district's secretary. The requisite ballot and a form of certificate of qualifications shall be furnished by the district's secretary to any person who prior to the date of election makes written request therefor, stating that he or she is a qualified district elector. Such ballot and form may be furnished also to qualified district electors in any way deemed to be convenient without regard to requests having been made therefor. [2013 c 23 § 482; 1961 c 105 § 3. Formerly RCW 87.01.097.]

87.03.033 Absentee voting—Requirements for ballot to be counted—Statement of qualifications—Form of ballot. (1) To be counted in a given election, an absentee ballot must conform to these requirements:

(a) It must be sealed in an unmarked envelope and delivered to the district's principal office prior to the close of the polls on the day of that election; or be sealed in an unmarked envelope and mailed to the district's secretary, postmarked not later than midnight of that election day and received by the secretary within five days of that date.

(b) The sealed envelope containing the ballot shall be accompanied by a certificate of qualifications stating, with respect to the voter, his or her name, age, citizenship, residence, that he or she holds title or evidence of title to lands within the district which, under RCW 87.03.045 entitles him or her to vote in the election, and that he or she cannot conveniently be present to cast his or her ballot at his or her proper election precinct on election day.

(c) The statements in the certificate of qualifications shall be certified as correct by the voter by the affixing of his or her signature thereto in the presence of a witness who is acquainted with the voter, and the voter shall enclose and seal his or her ballot in the unmarked envelope in the presence of this witness but without disclosing his or her vote. The witness, by affixing his or her signature to the certificate of qualifications, shall certify that he or she is acquainted with the voter, that in his or her presence the voter's signature was affixed and the ballot enclosed as required in this paragraph.

(2) The form of statement of qualifications and its certification shall be substantially as prescribed by the district's board of directors. This form may also provide that the voter shall describe all or some part of his or her lands within the district which, under RCW 87.03.045 entitles him or her to vote in the election, but a voter otherwise qualified shall not be disqualified because of the absence or inaccuracy of the description so given. The regular form of irrigation district ballot shall be used by absentee voters. [2013 c 23 § 483; 1961 c 105 § 4. Formerly RCW 87.01.098.]

87.03.045 Qualifications of voters and directors—Districts of two hundred thousand acres. In districts with two hundred thousand acres or more, a person eighteen years old, being a citizen of the United States and a resident of the state and who holds title or evidence of title to land in the district or proposed district shall be entitled to vote therein. He or she shall be entitled to one vote for the first ten acres of said land or fraction thereof and one additional vote for all of said land over ten acres. A majority of the directors shall be

residents of the county or counties in which the district is situated and all shall be electors of the district. If more than one elector residing outside the county or counties is voted for as director, only that one who receives the highest number of votes shall be considered in ascertaining the result of the election. Where land is community property both the husband and wife may vote if otherwise qualified. An agent of a corporation owning land in the district, duly authorized in writing, may vote on behalf of the corporation by filing with the election officers his or her instrument of authority. An elector resident in the district shall vote in the precinct in which he or she resides, all others shall vote in the precinct nearest their residence. [2013 c 23 § 484; 1985 c 66 § 1; 1971 ex.s. c 292 § 72; 1961 c 192 § 12; 1955 c 57 § 4. Prior: 1953 c 122 § 1; 1921 c 129 § 3, part; 1917 c 162 § 2, part; 1913 c 165 § 2, part; 1889-90 p 672 § 3; RRS § 7420, part. Formerly RCW 87.01.090.]

Certain elections—Districts of two hundred thousand acres: RCW 87.68.060.

Additional notes found at www.leg.wa.gov

87.03.075 Ballots in all elections—Declaration of candidacy—Petition of nomination—When election not required. Voting in an irrigation district shall be by ballot. Ballots shall be of uniform size and quality, provided by the district, and for the election of directors shall contain only the names of the candidates who have filed with the secretary of the district a declaration in writing of their candidacy, or a petition of nomination as hereinafter provided, not later than five o'clock p.m. on the first Monday in November. Ballots shall contain space for sticker voting or for the writing in of the name of an undeclared candidate. Ballots shall be issued by the election board according to the number of votes an elector is entitled to cast. A person filing a declaration of candidacy, or petition of nomination as hereinafter provided, shall designate therein the position for which he or she is a candidate. No ballots on any form other than the official form shall be received or counted.

In any election for directors where the number of votes which may be received will have no bearing on the length of the term to be served, the candidates for the position of director, in lieu of filing a declaration of candidacy hereunder, shall file with the secretary of the district a petition of nomination signed by at least ten qualified electors of the district, or of the division if the district has been divided into director divisions, not later than five o'clock p.m. on the first Monday in November. If, after the expiration of the date for filing petitions of nomination, it appears that only one qualified candidate has been nominated thereby for each position to be filled it shall not be necessary to hold an election, and the board of directors shall at their next meeting declare such candidate elected as director. The secretary shall immediately make and deliver to such person a certificate of election signed by him or her and bearing the seal of the district. The procedure set forth in this paragraph shall not apply to any other irrigation district elections. [2013 c 23 § 485; 1985 c 66 § 4; 1981 c 345 § 1; 1981 c 208 § 1; 1963 c 68 § 1; 1961 c 105 § 1; 1941 c 171 § 2; Rem. Supp. 1941 § 7420-1. Formerly RCW 87.01.110.]

Additional notes found at www.leg.wa.gov

87.03.080 Directors—Election—Terms—Increase and decrease. An election of directors in an irrigation district shall be held on the second Tuesday of December of each year, and the term of each director shall be three years from the first Tuesday of January following his or her election. The directors elected at the organization election shall serve until their successors are elected and qualified. At the first annual election occurring thirty days or more after the date of the order establishing the district, there shall be elected directors to succeed those chosen at the organization election. If the board consists of three directors the candidate receiving the highest number of votes shall serve a term of three years; the next highest, two years; and the next highest, one year. In case of five directors, the two candidates receiving the highest number of votes shall each serve a term of three years; the next two highest, two years; and the next highest, one year; or until successors are elected and qualified. In case of seven directors, the three candidates receiving the highest number of votes shall each serve a term of three years, the next two highest, two years, and the next two highest, one year, or until their successors are elected and qualified. Whenever a district with three directors desires to increase the number of its directors to five directors or whenever a district with five directors desires to increase the number of its directors to seven directors, the board of directors, acting on its own initiative or on the written petition of at least twenty electors of the district, shall submit the question to the electors of the district at a regular or special district election. In the event the electors by a majority of the votes cast favor an increase in the number of directors, there shall be elected at the next annual district election two additional directors. The person receiving the highest number of votes shall serve for a three year term and the next highest, a two year term.

The number of directors may be decreased to five or three, as the case may be, substantially in the same manner as that provided for the increase of directors. In case of three directors the term of one director only shall expire annually. [2013 c 23 § 486; 1961 c 192 § 14. Prior: 1931 c 41 § 1, part; 1921 c 129 § 4, part; 1919 c 180 § 3, part; 1915 c 179 § 3, part; 1913 c 165 § 3, part; 1895 c 165 § 3, part; 1889-90 p 673 § 4, part; RRS § 7421, part. Formerly RCW 87.01.100.]

87.03.081 Directors—Vacancies, how filled. A vacancy in the office of director shall be filled by appointment by the board of county commissioners of the county in which the proceedings for the organization of the district were had. At the next annual election occurring thirty days or more after the date of the appointment, a successor shall be elected who shall take office on the first Tuesday in January following and shall serve for the remainder of the unexpired term.

A director appointed to fill a vacancy occurring after the expiration of the term of a director shall serve until his or her successor is elected and qualified. At the next election of directors occurring thirty days or more after the appointment, a successor shall be elected who shall take office on the first Tuesday in January next and shall serve for the term for which he or she was elected.

Failure on the part of any irrigation district to hold one or more annual elections for selection of officers, or otherwise

to provide district officers shall not dissolve the district or impair its powers, where later officers for the district are appointed or elected and qualify as such and exercise the powers and duties of their offices in the manner provided by law. [2013 c 23 § 487; 1961 c 192 § 15. Prior: 1931 c 41 § 1, part; 1921 c 129 § 4, part; 1919 c 180 § 3, part; 1915 c 179 § 3, part; 1913 c 165 § 3, part; 1895 c 165 § 3, part; 1889-90 p 673 § 4, part; RRS § 7421, part. Formerly RCW 87.01.120.]

87.03.082 Directors—Oaths of office and official bonds—Secretary. Each director shall take and subscribe an official oath for the faithful discharge of the duties of his or her office, and shall execute a bond to the district in the sum of one thousand dollars, conditioned for the faithful discharge of his or her duties, which shall be approved by the judge of the superior court of the county where the district was organized, and the oath and bond shall be recorded in the office of the county clerk of that county and filed with the secretary of the board of directors. The secretary shall take and subscribe a written oath of office and execute a bond in the sum of not less than one thousand dollars to be fixed by the directors, which shall be approved and filed as in the case of the bond of a director. If a district is appointed fiscal agent of the United States to collect money for it, the secretary and directors and the district treasurer shall each execute such additional bonds as the secretary of the interior may require, conditioned for the faithful discharge of their duties which shall be approved, recorded, and filed as other official bonds. All such bonds shall be secured at the cost of the district. [2013 c 23 § 488; 1961 c 192 § 16. Prior: 1931 c 41 § 1, part; 1921 c 129 § 4, part; 1919 c 180 § 3, part; 1915 c 179 § 3, part; 1913 c 165 § 3, part; 1895 c 165 § 3, part; 1889-90 p 673 § 4, part; RRS § 7421, part. Formerly RCW 87.01.130.]

Conflicts of interest, irrigation district officers: RCW 42.23.030.

Conviction of public officer forfeits trust: RCW 9.92.120.

Director divisions: Chapter 87.04 RCW.

Misconduct of public officers: Chapter 42.20 RCW.

87.03.090 Post-organization district elections—Election officers—Voting hours. The inspector is chair of the election board, and may

First: Administer all oaths required in the progress of an election.

Second: Appoint judges and clerks, if, during the progress of the election, any judge or clerk cease to act. Any member of the board of election, or any clerk thereof, may administer and certify oaths required to be administered during the progress of an election. The board of election for each precinct may, if they deem it necessary, before opening the polls, appoint two persons to act as clerks of the election. Before opening the polls, each member of the board and each clerk must take and subscribe an oath to faithfully perform the duties imposed upon them by law. Any elector of the precinct may administer and certify such oath. The polls must be opened at one o'clock p.m. on the afternoon of the election, and be kept open until eight o'clock p.m., when the same must be closed. The provisions of the general election law of this state, concerning the form of ballots to be used shall not apply to elections held under this act: PROVIDED, That any district elections called *before this act shall take effect shall

be noticed and conducted in the manner prescribed by law in effect at the time the election is called. [2013 c 23 § 489; 1931 c 60 § 1; 1889-90 p 674 § 6; RRS § 7423. Formerly RCW 87.01.150.]

***Reviser's note:** The language "before this act shall take effect" in the proviso refers to 1931 c 60 which became effective on midnight June 10, 1931; see preface, 1931 session laws.

87.03.100 Post-organization district elections—Certification of returns—Preservation for recount. As soon as all the votes are read off and counted, a certificate shall be drawn upon each of the papers containing the poll list and tallies, or attached thereto, stating the number of votes each one voted for has received, and designating the office to fill which he or she was voted for, which number shall be written in figures and in words at full length. Each certificate shall be signed by the clerks, judges, and the inspector. One of said certificates, with the poll list and the tally paper to which it is attached, shall be retained by the inspector, and preserved by him or her at least six months. The ballots, together with the other of said certificates, with the poll list and tally paper to which it is attached, shall be sealed by the inspector, in the presence of the judges and clerks, and endorsed "Election returns of [naming the precinct] precinct," and be directed to the secretary of the board of directors, and shall be immediately delivered by the inspector, or by some other safe and responsible carrier designated by said inspector, to said secretary, and the ballots shall be kept unopened for at least six months, and if any person be of the opinion that the vote of any precinct has not been correctly counted, he or she may appear on the day appointed for the board of directors to open and canvass the returns, and demand a recount of the vote of the precinct that is so claimed to have been incorrectly counted. [2013 c 23 § 490; 1981 c 345 § 2; 1981 c 208 § 2; 1889-90 p 675 § 8; RRS § 7425. Formerly RCW 87.01.170 and 87.01.210, part.]

87.03.110 Post-organization district elections—Statement of result of election—Certificate of election. The secretary of the board of directors must, as soon as the result is declared, enter in the records of such board a statement of such result, which statement must show:

- (1) The whole number of votes cast in the district;
- (2) The name of the persons voted for;
- (3) The office to fill which each person was voted for;
- (4) The number of votes given in each precinct to each of such persons;
- (5) The number of votes given in each precinct for and against any proposition voted upon.

The board of directors must declare elected the person having the highest number of votes given for each office. The secretary must immediately make out, and deliver to such person a certificate of election signed by him or her and authenticated by the seal of the district. [2013 c 23 § 491; 1913 c 165 § 4; 1895 c 165 § 4; 1889-90 p 676 § 10; RRS § 7427. Formerly RCW 87.01.190.]

Statement of result covering both absentee and regular ballots: RCW 87.03.034.

87.03.115 Organization of board—Meetings—Quorum—Certain powers and duties. The directors of the dis-

district shall organize as a board and shall elect a president from their number, and appoint a secretary, who shall keep a record of their proceedings. The office of the directors and principal place of business of the district shall be at some place in the county in which the organization was effected, to be designated by the directors. The directors serving districts of five thousand acres or more shall hold a regular monthly meeting at their office on the first Tuesday in every month, or on such other day in each month as the board shall direct in its bylaws, and may adjourn any meeting from time to time as may be required for the proper transaction of business. Directors serving districts of less than five thousand acres shall hold at least quarterly meetings on a day designated by the board's bylaws, and may adjourn any meeting from time to time as may be required for the proper transaction of business. Special meetings shall be called and conducted in the manner required by chapter 42.30 RCW. All meetings of the directors must be public. A majority of the directors shall constitute a quorum for the transaction of business, and in all matters requiring action by the board there shall be a concurrence of at least a majority of the directors. All records of the board shall be open to the inspection of any electors during business hours. The board shall have the power, and it shall be its duty, to adopt a seal of the district, to manage and conduct the business and affairs of the district, to make and execute all necessary contracts, to employ and appoint such agents, officers, and employees as may be necessary and prescribe their duties, and to establish equitable bylaws, rules, and regulations for the government and management of the district, and for the equitable distribution of water to the lands within the district, upon the basis of the beneficial use thereof, and generally to perform all such acts as shall be necessary to fully carry out the provisions of this chapter: PROVIDED, That all water, the right to the use of which is acquired by the district under any contract with the United States shall be distributed and apportioned by the district in accordance with the acts of congress, and rules and regulations of the secretary of the interior until full reimbursement has been made to the United States, and in accordance with the provisions of said contract in relation thereto. The bylaws, rules, and regulations must be on file and open to inspection of any elector during regular business hours. All leases, contracts, or other form of holding any interest in any state or other public lands shall be, and the same are hereby declared to be title to and evidence of title to lands and for all purposes within *this act, shall be treated as the private property of the lessee or owner of the contractual or possessory interest: PROVIDED, That nothing in this section shall be construed to affect the title of the state or other public ownership, nor shall any lien for such assessment attach to the fee simple title of the state or other public ownership. The board of directors shall have authority to develop and to sell, lease, or rent the use of: (1) Water derived from the operation of the district water facilities to such municipal and quasi municipal entities, the state of Washington, and state entities and agencies, public and private corporations and individuals located within and outside the boundaries of the district and on such terms and conditions as the board of directors shall determine; and (2) power derived from hydroelectric facilities authorized by RCW 87.03.015(1) as now or hereafter amended, to such municipal or quasi municipal corporations

and cooperatives authorized to engage in the business of distributing electricity, electrical companies subject to the jurisdiction of the utilities and transportation commission, and other irrigation districts and on such terms and conditions as the board of directors shall determine: PROVIDED, No water shall be furnished for use outside of said district until all demands and requirements for water for use in said district are furnished and supplied by said district: AND PROVIDED FURTHER, That as soon as any public lands situated within the limits of the district shall be acquired by any private person, or held under any title of private ownership, the owner thereof shall be entitled to receive his or her proportion of water as in case of other land owners, upon payment by him or her of such sums as shall be determined by the board, and at the time to be fixed by the board, which sums shall be such equitable amount as such lands should pay having regard to placing said lands on the basis of equality with other lands in the district as to benefits received, and giving credit if equitable for any sums paid as water rent by the occupant of said lands prior to the vesting of private ownership, and such lands shall also become subject to all taxes and assessments of the district thereafter imposed. [2013 c 23 § 492; 1983 c 262 § 1; 1979 ex.s. c 185 § 3; 1921 c 129 § 5; 1919 c 180 § 4; 1915 c 179 § 4; 1913 c 165 § 5; 1889-90 p 677 § 11; RRS § 7428. Formerly RCW 87.01.200 and 87.32.010, part.]

*Reviser's note: "This act" first appears in 1921 c 129 § 5.

Director divisions: Chapter 87.04 RCW.

Additional notes found at www.leg.wa.gov

87.03.175 Proposed works—Director's findings to district board. Said director shall forthwith consider said certified report and if he or she deem it advisable make, through the appropriate divisions of his or her department, additional studies of the project at the expense of the district, and as soon as practicable thereafter, but in any event within ninety days from the receipt of said certified report, make his or her findings and submit the same to the district board. [2013 c 23 § 493; 1923 c 138 § 7, part; RRS § 7431 1/2-2. Formerly RCW 87.12.020, part.]

87.03.180 Proposed works—Substance of director's findings. In his or her findings said state director shall give generally his or her conclusions regarding the supply of water available for the project, the nature of the soil proposed to be irrigated and its susceptibility to irrigation, the duty of water for irrigation and the probable need of drainage, the probable cost of works, water rights, and other property necessary for the project, the conditions of land settlement therein, and the proper amount and dates of maturity of the bonds proposed to be issued, and such other matters as he or she deems pertinent to the success of the project, provided that said findings and conclusions shall be advisory only and shall not be binding upon the directors of the irrigation district. [2013 c 23 § 494; 1923 c 138 § 7, part; RRS § 7431 1/2-3. Formerly RCW 87.12.030.]

87.03.245 Deputy secretaries for assessment. The board of directors must allow the secretary as many deputies, to be appointed by them, as will, in the judgment of the board, enable him or her to complete the assessment within the time herein prescribed. The board must fix the compensation of

such deputies for the time actually engaged. [2013 c 23 § 495; 1919 c 180 § 8; 1895 c 165 § 9; 1889-90 p 682 § 19; RRS § 7437. Formerly RCW 87.08.180.]

87.03.250 Assessment roll to be filed—Notice of equalization. On or before the first Tuesday in September in each year to and including the year 1923, and on or before the first Tuesday in November beginning with the year 1924 and each year thereafter, the secretary must complete his or her assessment roll and deliver it to the board, who must immediately give a notice thereof, and of the time the board of directors, acting as a board of equalization will meet to equalize assessments, by publication in a newspaper published in each of the counties comprising the district. The time fixed for the meeting shall not be less than twenty nor more than thirty days from the first publication of the notice, and in the meantime the assessment roll must remain in the office of the secretary for the inspection of all persons interested. [2013 c 23 § 496; 1921 c 129 § 12; 1919 c 180 § 9; 1895 c 165 § 10; 1889-90 p 682 § 20; RRS § 7438. Formerly RCW 87.32.030.]

87.03.255 Equalization of assessments. Upon the day specified in the notice required by RCW 87.03.250 for the meeting, the board of directors, which is hereby constituted a board of equalization for that purpose, shall meet and continue in session from day to day as long as may be necessary, not to exceed ten days, exclusive of Sundays, to hear and determine such objections to the said assessment roll as may come before them; and the board may change the same as may be just. The secretary of the board shall be present during its session, and note all changes made at said hearing; and on or before the 30th day of October in each year to and including the year 1923, and on or before the 15th day of January beginning with the year 1925 and each year thereafter he or she shall have the assessment roll completed as finally equalized by the board. [2013 c 23 § 497; 1921 c 129 § 13; 1919 c 180 § 10; 1915 c 179 § 11; 1889-90 p 682 § 21; RRS § 7439. Formerly RCW 87.32.040.]

87.03.260 Levies, amount—Special funds—Failure to make levy, procedure. The board of directors shall in each year before said roll is delivered by the secretary to the respective county treasurers, levy an assessment sufficient to raise the ensuing annual interest on the outstanding bonds, and all payments due or to become due in the ensuing year to the United States or the state of Washington under any contract between the district and the United States or the state of Washington accompanying which bonds of the district have not been deposited with the United States or the state of Washington as in this act provided. Beginning in the year preceding the maturity of the first series of the bonds of any issue, the board must from year to year increase said assessment for the ensuing years in an amount sufficient to pay and discharge the outstanding bonds as they mature. Similar levy and assessment shall be made for the expense fund which shall include operation and maintenance costs for the ensuing year. The board shall also at the time of making the annual levy, estimate the amount of all probable delinquencies on said levy and shall thereupon levy a sufficient amount to cover the same and a further amount sufficient to cover any

deficit that may have resulted from delinquent assessments for any preceding year. The board shall also, at the time of making the annual levy, estimate the amount of the assessments to be made against lands owned by the district, including local improvement assessments, and shall levy a sufficient amount to pay said assessments. All lands owned by the district shall be exempt from general state and county taxes: PROVIDED, HOWEVER, That in the event any lands, and any improvements located thereon, acquired by the district by reason of the foreclosure of irrigation district assessments, shall be by said district resold on contract, then and in that event, said land, and any such improvements, shall be by the county assessor immediately placed upon the tax rolls for taxation as real property and shall become subject to general property taxes from and after the date of said contract, and the secretary of the said irrigation district shall be required to immediately report such sale within ten days from the date of said contract to the county assessor who shall cause the property to be entered on the tax rolls as of the first day of January following.

The board may also at the time of making the said annual levy, levy an amount not to exceed twenty-five percent of the whole levy for the said year for the purpose of creating a surplus fund. This fund may be used for any of the district purposes authorized by law. The assessments, when collected by the county treasurer, shall constitute a special fund, or funds, as the case may be, to be called respectively, the "Bond Fund of Irrigation District," the "Contract Fund of Irrigation District," the "Expense Fund of Irrigation District," the "Warrant Fund of Irrigation District," the "Surplus Fund of Irrigation District".

If the annual assessment roll of any district has not been delivered to the county treasurer on or before the 15th day of January in the year 1927, and in each year thereafter, he or she shall notify the secretary of the district by registered mail that said assessment roll must be delivered to the office of the county treasurer forthwith. If said assessment roll is not delivered within ten days from the date of mailing of said notice to the secretary of the district, or if said roll when delivered is not equalized and the required assessments levied as required by law, or if for any reason the required assessment or levy has not been made, the county treasurer shall immediately notify the legislative authority of the county in which the office of the board of directors is situated, and said county legislative authority shall cause an assessment roll for the said district to be prepared and shall equalize the same if necessary and make the levy required by this chapter in the same manner and with like effect as if the same had been equalized and made by the said board of directors, and all expenses incident thereto shall be borne by the district. In case of neglect or refusal of the secretary of the district to perform the duties imposed by law, then the treasurer of the county in which the office of the board of directors is situated must perform such duties, and shall be accountable therefor, on his or her official bond, as in other cases.

At the time of making the annual levy in the year preceding the final maturity of any issue of district bonds, the board of directors shall levy a sufficient amount to pay and redeem all bonds of said issue then remaining unpaid. All surplus

remaining in any bond fund after all bonds are paid in full must be transferred to the surplus fund of the district.

Any surplus moneys in the surplus fund or any surplus moneys in the bond fund when so requested by the board of directors shall be invested by the treasurer of said county under the direction of said board of directors in United States bonds or bonds of the state of Washington, or any bonds pronounced by the treasurer of the state of Washington as valid security for the deposit of public funds, and in addition thereto any bonds or warrants of said district, all of which shall be kept in the surplus fund until needed by the district for the purposes authorized by law. [2013 c 23 § 498; 1983 c 167 § 216; 1967 c 169 § 1; 1941 c 157 § 1; 1929 c 185 § 1; 1927 c 243 § 1; 1923 c 138 § 10; 1921 c 129 § 14; 1919 c 180 § 11; 1915 c 179 § 12; 1913 c 165 § 10; 1895 c 165 § 11; 1889-90 p 683 § 22; Rem. Supp. 1941 § 7440. Formerly RCW 87.32.060, 87.32.070, 87.32.080, and 87.32.090.]

Board's powers and duties generally—Condemnation procedure: RCW 87.03.140.

Bonds—Election for, etc.: RCW 87.03.200.

Certain excess lands, assessment against: RCW 87.04.100.

Irrigation district L.I.D. guarantee fund: RCW 87.03.510.

Limit of levy until water is received (federal contracts—director districts): RCW 87.04.090.

Payment of bonds and interest, other indebtedness—Lien, enforcement of—Scope of section: RCW 87.03.215.

Power as to incurring indebtedness: RCW 87.03.475.

Rights of federal agencies as to certain district bonds: RCW 87.03.235.

Sale or lease of district personal property: RCW 87.03.135.

Sale or pledge of bonds: RCW 87.03.210.

Additional notes found at www.leg.wa.gov

87.03.270 Assessments, when delinquent—Assessment book, purpose—Statement of assessments due—Collection—Additional fee for delinquency. The assessment roll, before its equalization and adoption, shall be checked and compared as to descriptions and ownerships, with the county treasurer's land rolls. On or before the fifteenth day of January in each year the secretary must deliver the assessment roll or the respective segregation thereof to the county treasurer of each respective county in which the lands therein described are located, and said assessments shall become due and payable after the county treasurer has completed the property tax roll for the current year's collection and provided the notification required by RCW 84.56.020.

All assessments on said roll shall become delinquent on the first day of May following the filing of the roll unless the assessments are paid on or before the thirtieth day of April of said year: PROVIDED, That if an assessment is ten dollars or more for said year and if one-half of the assessment is paid on or before the thirtieth day of April, the remainder shall be due and payable on or before the thirty-first day of October following and shall be delinquent after that date. All delinquent assessments shall bear interest at the rate of twelve percent per annum, computed on a monthly basis and without compounding, from the date of delinquency until paid.

Upon receiving the assessment roll the county treasurer shall prepare therefrom an assessment book in which shall be written the description of the land as it appears in the assessment roll, the name of the owner or owners where known,

and if assessed to the unknown owners, then the word "unknown", and the total assessment levied against each tract of land. Proper space shall be left in said book for the entry therein of all subsequent proceedings relating to the payment and collection of said assessments.

On or before April 1st of each year, the treasurer of the district shall send a statement of assessments due. County treasurers who collect irrigation district assessments may send the statement of irrigation district assessments together with the statement of general taxes.

Upon payment of any assessment the county treasurer must enter the date of said payment in said assessment book opposite the description of the land and the name of the person paying and give a receipt to such person specifying the amount of the assessment and the amount paid with the description of the property assessed.

It shall be the duty of the treasurer of the district to furnish upon request of the owner, or any person interested, a statement showing any and all assessments levied as shown by the assessment roll in his or her office upon land described in such request. All statements of irrigation district assessments covering any land in the district shall show the amount of the irrigation district assessment, the dates on which the assessment is due, the place of payment, and, if the property was sold for delinquent assessments in a prior year, the amount of the delinquent assessment and the notation "certificate issued": PROVIDED, That the failure of the treasurer to render any statement herein required of him or her shall not render invalid any assessments made by any irrigation district.

It shall be the duty of the county treasurer of any county, other than the county in which the office of the board of directors is located, to make monthly remittances to the county treasurer of the county in which the office of the board of directors is located covering all amounts collected by him or her for the irrigation district during the preceding month.

When the treasurer collects a delinquent assessment, the treasurer shall collect any other amounts due by reason of the delinquency, including accrued costs, which shall be deposited to the treasurer's operation and maintenance fund. [2013 c 23 § 499; 2009 c 350 § 6; 1988 c 134 § 13; 1982 c 102 § 1; 1981 c 209 § 1; 1967 c 169 § 2; 1939 c 171 § 3; 1933 c 43 § 4; 1931 c 60 § 2; 1929 c 181 § 1; 1921 c 129 § 16; 1919 c 180 § 12; 1917 c 162 § 5; 1915 c 179 § 14; 1913 c 165 § 12; 1913 c 13 § 2; 1895 c 165 § 12; 1889-90 p 684 § 24; RRS § 7442. Formerly RCW 87.32.050.]

Assessments

districts under contract with United States: Chapter 87.68 RCW. how and when made—Assessment roll: RCW 87.03.240.

Equalization of assessments: RCW 87.03.255.

Evidence of assessment, what is: RCW 87.03.420.

Additional notes found at www.leg.wa.gov

87.03.272 Secretary may act as collection agent of nondelinquent assessments—Official bond—Collection procedure—Delinquency list. Notwithstanding the provisions of RCW 87.03.260, 87.03.270, 87.03.440, and 87.03.445, the board of directors of any district acting as fiscal agent for the United States or the state of Washington for the collection of any irrigation charges may authorize the secretary of the district to act as the exclusive collection agent

for the collection of all nondelinquent irrigation assessments of the district pursuant to such rules and regulations as the board of directors may adopt.

When the secretary acts as collection agent, his or her official bond shall be of a sufficient amount as determined by the board of directors of the district to cover any amounts he or she may be handling while acting as collection agent, in addition to any other amount required by reason of his or her other duties.

The assessment roll of such district shall be delivered to the county treasurer in accordance with the provisions of RCW 87.03.260 and 87.03.270 and the assessment roll shall be checked and verified by the county treasurer as provided in RCW 87.03.270.

After the assessment roll has been checked and verified by the county treasurer, the secretary of the district shall proceed to publish the notice as required under RCW 87.03.270; except that the notice shall provide that until the assessments and tolls become delinquent on November 1st they shall be due and payable in the office of the secretary of the district.

When the secretary of such district receives payments, he or she shall issue a receipt for such payments and shall be accountable on his or her official bond for the safekeeping of such funds and shall remit the same, along with an itemized statement of receipts, at least once each month to the county treasurer wherein the land is located on which the payment was made.

When the county treasurer receives the monthly statement of receipts from the secretary, he or she shall enter the payments shown thereon on the assessment roll maintained in his or her office.

On the fifteenth day of November of each year it shall be the duty of the secretary to transmit to the county treasurer the delinquency list which shall include the names, amounts, and such other information as the county treasurer shall require, and thereafter the secretary shall not accept any payment on the delinquent portion of any account. Upon receipt of the list of delinquencies, the county treasurer shall proceed under the provisions of this chapter as though he or she were the collection agent for such district to the extent of such delinquent accounts. [2013 c 23 § 500; 1982 c 102 § 2; 1967 c 169 § 3.]

Additional notes found at www.leg.wa.gov

87.03.280 Cancellation of assessments due United States—Procedure. Where any district under contract with the United States has levied any assessment for the collection of money payable to the United States under such contract, and the secretary of the interior has by agreement with the board of directors of said district, authorized the extension or cancellation of any payments due to the United States by the cancellation of assessments already levied therefor but remaining unpaid, the board of directors of such district shall certify to the county treasurer of the county in which the land is located, a statement of the year and amounts assessed against each tract for which such cancellation has been authorized, and the county treasurer, upon receipt of such certificate, shall, in all cases where the assessment remains unpaid and the lands have not been sold, endorse upon the district's assessment roll, "Corrected under Certificate of Board of Directors" and shall deduct and cancel from the assessment

against each such tract the amount of such assessment so authorized to be canceled; and in all cases where such cancellations have been certified to the county treasurer after such lands assessed have been sold and before the period of redemption shall have expired, the county treasurer shall, in those cases where the tract assessed has been sold to the district, and the district is the owner of the certificate of sale, require the district to surrender its certificate of sale and shall thereupon deduct the amount of such cancellation plus the penalties thereon upon the original assessment roll with an endorsement, "Corrected under Certificate of Board of Directors" and he or she shall thereupon issue to the district in lieu of the certificate surrendered, a substitute certificate of sale for the corrected amount of such assessment, if any, remaining uncanceled, and shall file a copy thereof in the office of the county auditor as in the case of the original certificate surrendered, and such substitute certificate shall entitle the holder thereof to all rights possessed under the original certificate so corrected as to amount: PROVIDED, HOWEVER, That such cancellation shall have the same effect as though the lands had originally not been assessed for the amounts so deducted and shall not operate to bar the district of the right in making subsequent annual assessments to levy and collect against such tracts the amount of any money due the United States, including the amount of any assessments so canceled. [2013 c 23 § 501; 1925 c 3 § 1; RRS § 7442-2. Formerly RCW 87.32.130.]

Board's powers and duties (contracts with state and United States): RCW 87.03.140.

87.03.440 Treasurer—County treasurer as ex officio district treasurer—Designated district treasurer—Duties and powers—Bond—Claims—Preliminary notice requirements when claim for crop damage. The treasurer of the county in which is located the office of the district shall be ex officio treasurer of the district, and any county treasurer handling district funds shall be liable upon his or her official bond and to criminal prosecution for malfeasance and misfeasance, or failure to perform any duty as county or district treasurer. The treasurer of each county in which lands of the district are located shall collect and receipt for all assessments levied on lands within his or her county. There shall be deposited with the district treasurer all funds of the district. The district treasurer shall pay out such funds upon warrants issued by the county auditor against the proper funds of the district, except the sums to be paid out of the bond fund for interest and principal payments on bonds: PROVIDED, That in those districts which designate their own treasurer, the treasurer may issue the warrants or any checks when the district is authorized to issue checks. All warrants shall be paid in the order of their issuance. The district treasurer shall report, in writing, on the first Monday in each month to the directors, the amount in each fund, the receipts for the month preceding in each fund, and file the report with the secretary of the board. The secretary shall report to the board, in writing, at the regular meeting in each month, the amount of receipts and expenditures during the preceding month, and file the report in the office of the board.

The preceding paragraph of this section notwithstanding, the board of directors or board of control of an irrigation district which lies in more than one county and which had

assessments in each of two of the preceding three years equal to at least five hundred thousand dollars, or a board of joint control created under chapter 87.80 RCW, may designate some other person having experience in financial or fiscal matters as treasurer of the district. In addition, the board of directors of an irrigation district which lies entirely within one county may designate some other person having experience in financial or fiscal matters as treasurer of the district if the district had assessments, tolls, and miscellaneous collections in each of two of the preceding three years equal to at least two million dollars or if the board has the approval of the county treasurer to designate some other person. If a board designates a treasurer, it shall require a bond with a surety company authorized to do business in the state of Washington in an amount of two hundred fifty thousand dollars conditioned that he or she will faithfully perform the duties of his or her office as treasurer of the district. The premium on the bond shall be paid by the district. The designated treasurer shall collect and receipt for all irrigation district assessments on lands within the district and shall act with the same powers and duties and be under the same restrictions as provided by law for county treasurers acting in matters pertaining to irrigation districts, except the powers, duties, and restrictions in RCW *87.56.110 and 87.56.210 which shall continue to be those of county treasurers.

In those districts which have designated their own treasurers, the provisions of law pertaining to irrigation districts which require certain acts to be done and which refer to and involve a county treasurer or the office of a county treasurer or the county officers charged with the collection of irrigation district assessments, except RCW *87.56.110 and 87.56.210 shall be construed to refer to and involve the designated district treasurer or the office of the designated district treasurer.

Any claim against the district for which it is liable under existing laws shall be presented to the board as provided in RCW 4.96.020 and upon allowance it shall be attached to a voucher and approved by the chair and signed by the secretary and directed to the proper official for payment: PROVIDED, That in the event claimant's claim is for crop damage, the claimant in addition to filing his or her claim within the applicable period of limitations within which an action must be commenced and in the manner specified in RCW 4.96.020 must file with the secretary of the district, or in the secretary's absence one of the directors, not less than three days prior to the severance of the crop alleged to be damaged, a written preliminary notice pertaining to the crop alleged to be damaged. Such preliminary notice, so far as claimant is able, shall advise the district; that the claimant has filed a claim or intends to file a claim against the district for alleged crop damage; shall give the name and present residence of the claimant; shall state the cause of the damage to the crop alleged to be damaged and the estimated amount of damage; and shall accurately locate and describe where the crop alleged to be damaged is located. Such preliminary notice may be given by claimant or by anyone acting in his or her behalf and need not be verified. No action may be commenced against an irrigation district for crop damages unless claimant has complied with the provisions of RCW 4.96.020 and also with the preliminary notice requirements of this section. [2013 c 23 § 502. Prior: 1996 c 320 § 18; 1996 c 214 § 1; 1993 c 449 § 12; 1983 c 167 § 218; 1979 c 83 § 1; 1977

ex.s. c 367 § 1; 1969 c 89 § 1; 1967 c 164 § 15; 1961 c 276 § 2; prior: 1937 c 216 § 1, part; 1929 c 185 § 3, part; 1923 c 138 § 13, part; 1921 c 129 § 23, part; 1913 c 165 § 19, part; 1895 c 165 § 22, part; 1889-90 p 690 § 36, part; RRS § 7453, part. Formerly RCW 87.08.030.]

*Reviser's note: RCW 87.56.110 was repealed by 2004 c 165 § 47.

Purpose—Severability—1993 c 449: See notes following RCW 4.96.010.

Purpose—Severability—1967 c 164: See notes following RCW 4.96.010.

"County treasurer," "treasurer of the county," defined: RCW 87.03.438, 87.28.005.

Tortious conduct of political subdivisions, municipal corporations and quasi municipal corporations, liability for damages, procedure: Chapter 4.96 RCW.

Additional notes found at www.leg.wa.gov

87.03.442 Bonds of secretary and depositaries. The secretary or other authorized person shall issue receipts for all moneys received for deposit in such funds and he or she and any other person handling the funds shall furnish a surety bond to be approved by the board and the attorney for the district, in such amount as the board may designate and conditioned for the safekeeping of such funds and the premium thereon shall be paid by the district.

Upon depositing any district funds the secretary shall demand and the depositary bank shall furnish a surety bond, to be approved by the board and the attorney, in an amount equal to the maximum deposit, conditioned for the prompt payment of the deposits upon demand, and the bond shall not be canceled during the time for which it was written. Or the depositary may deposit with the secretary or in some bank to the credit of the district in lieu of the bond, securities approved by the board of a market value in an amount not less than the amount of the maximum deposit. All depositaries which have qualified for insured deposits under any federal deposit insurance act need not furnish bonds or securities, except for so much of the deposit as is not so insured. [2013 c 23 § 503; 1961 c 276 § 4. Prior: 1937 c 216 § 1, part; 1929 c 185 § 3, part; 1923 c 138 § 13, part; 1921 c 129 § 23, part; 1913 c 165 § 19, part; 1895 c 165 § 22, part; 1889-90 p 690 § 36, part; RRS § 7453, part. Formerly RCW 87.08.050.]

Conviction of public officer forfeits trust: RCW 9.92.120.

Income from sale of electricity: RCW 87.03.450.

Misconduct of public officers: Chapter 42.20 RCW.

Office to be declared vacant on conviction: RCW 36.18.180.

Penalty for

failure to pay over fees: RCW 36.18.170.

taking illegal fees: RCW 36.18.160.

Power as to incurring indebtedness: RCW 87.03.475.

Public officers—Forfeiture or impeachment, rights preserved: RCW 42.04.040.

Suspension of treasurer: RCW 36.29.090.

87.03.480 Local improvement districts—Petition. Any desired special construction, reconstruction, betterment or improvement or purchase or acquisition of improvements already constructed, for any authorized district service, including but not limited to the safeguarding of open canals or ditches for the protection of the public therefrom, which are for the special benefit of the lands tributary thereto and

within an irrigation district may be constructed or acquired and provision made to meet the cost thereof as follows:

The holders of title or evidence of title to one-quarter of the acreage proposed to be assessed, may file with the district board their petition reciting the nature and general plan of the desired improvement and specifying the lands proposed to be specially assessed therefor. A local improvement district may include adjoining, vicinal, or neighboring improvements even though the improvements and the properties benefited are not connected or continuous. Such improvements may be owned by the United States, the state of Washington, the irrigation district, or another local government. Upon approval of the board of an adjoining irrigation district, an irrigation district may form local improvement districts or utility local improvement districts that are composed entirely or in part of territory within that adjoining district. Upon the filing of the petition the board, with the assistance of a competent engineer, shall make an investigation of the feasibility, cost, and need of the proposed local improvement together with the ability of the lands to pay the cost, and if it appears feasible, they may elect to have plans and an estimate of the cost prepared. If a protest against the establishment of the proposed improvement signed by a majority of the holders of title in the proposed local district is presented at or before the hearing, or if the proposed improvement should be found not feasible, too expensive, or not in the best interest of the district, or the lands to be benefited insufficient security for the costs, they shall dismiss the petition. [2013 c 177 § 3; 1959 c 75 § 9; 1941 c 171 § 1; 1919 c 180 § 15; 1917 c 162 § 10; Rem. Supp. 1941 § 7460. Formerly RCW 87.36.010.]

Safeguarding open canals or ditches: RCW 35.43.040, 35.43.045, 35.44.045, 36.88.015, 36.88.350, 36.88.380 through 36.88.400, and 87.03.526.

87.03.485 Local improvement districts—Notice—Hearing—Initiation by board, procedure. In the event that the board approves the petition, the board shall fix a time and place for the hearing thereof and shall publish a notice once a week for two consecutive weeks preceding the date of such hearing and the last publication shall not be more than seven days before such date and shall mail such a notice on or before the second publication date by first-class mail, postage prepaid, to each owner or reputed owner of real property within the proposed local improvement district, as shown on the rolls of the county treasurer as of a date not more than twenty days immediately prior to the date such notice was mailed. Such notice must be published in a newspaper of general circulation in each county in which any portion of the land proposed to be included in such local improvement district lies. Such notice shall state that the lands within the described boundaries are proposed to be organized as a local improvement district, stating generally the nature of the proposed improvement; that bonds for such local improvement district are proposed to be issued as the bonds of the irrigation district, or that a contract is proposed to be entered into between the district and the United States or the state of Washington, or both, that the lands within the local improvement district are to be assessed for such improvement, that such bonds or contract will be the obligation of such local improvement district and stating a time and place of hearing thereon. At the time and place of hearing named in the

notice, all persons interested may appear before the board and show cause for or against the formation of the proposed improvement district and the issuance of bonds or the entering into of a contract as aforesaid. The board may designate a hearing officer to conduct the hearing, and the hearing officer shall report recommendations on the establishment of the local improvement district to the board for final action. Upon the hearing the board shall determine as to the establishment of the proposed local improvement district. Any landowner whose lands can be served or will be benefited by the proposed improvement, may make application to the board at the time of hearing to include such land and the board of directors in such cases shall, at its discretion, include such lands within such district. The board of directors may exclude any land specified in the notice from the district provided, that in the judgment of the board, the inclusion thereof will not be practicable.

As an alternative plan and subject to all of the provisions of this chapter, the board of directors may initiate the organization of a local improvement district as herein provided. To so organize a local improvement district the board shall adopt and record in its minutes a resolution specifying the lands proposed to be included in such local improvement district or by describing the exterior boundaries of such proposed district or by both. The resolution shall state generally the plan, character and extent of the proposed improvements, that the land proposed to be included in such improvement district will be assessed for such improvements; and that local improvement district bonds of the irrigation district will be issued or a contract entered into as hereinabove in this section provided to meet the cost thereof and that such bonds or contract will be the obligation of such local improvement district. The resolution shall fix a time and place of hearing thereon and shall state that unless a majority of the holders of title or of evidence of title to lands within the proposed local improvement district file their written protest at or before the hearing, consent to the improvement will be implied.

A notice containing a copy of the resolution must be published once a week for two consecutive weeks preceding the date of such hearing and the last publication shall not be more than seven days before such date, and shall be mailed on or before the second publication date by first-class mail, postage prepaid, to each owner or reputed owner of real property within the proposed local improvement district, as shown on the rolls of the county treasurer as of a date not more than twenty days immediately prior to the date such notice was mailed, and the hearing thereon shall not be held in less than twenty days from the adoption of such resolution. Such notice must be published in one newspaper, of general circulation, in each county in which any portion of the land proposed to be included in such local improvement district lies. The hearing shall be held and all subsequent proceedings conducted in accordance with the provisions of this act relating to the organization of local improvement districts initiated upon petition. [2013 c 177 § 4; 1983 c 167 § 222; 1979 ex.s. c 185 § 7; 1970 ex.s. c 70 § 1; 1921 c 129 § 26; 1917 c 162 § 11; RRS § 7461. Formerly RCW 87.36.020 and 87.36.030.]

Additional notes found at www.leg.wa.gov

87.03.490 Local improvement districts—Adoption of plan—Bonds, form and contents—New lands may be included. (1) If decision shall be rendered in favor of the improvement, the board shall enter an order establishing the boundaries of the improvement district and shall adopt plans for the proposed improvement and determine the number of annual installments not exceeding fifty in which the cost of the improvement shall be paid. The cost of the improvement shall be provided for by the issuance of local improvement district bonds of the district from time to time, therefor, either directly for the payment of the labor and material or for the securing of funds for such purpose, or by the irrigation district entering into a contract with the United States or the state of Washington, or both, to repay the cost of the improvement. The bonds shall bear interest at a rate or rates determined by the board, payable semiannually, and shall state upon their face that they are issued as bonds of the irrigation district; that all lands within the local improvement district shall be liable to assessment for the principal and interest of the local improvement district bonds. The bonds may be in such denominations as the board of directors may in its discretion determine, except that bonds other than bond number one of any issue shall be in a denomination that is a multiple of one thousand dollars. Such bonds may be in any form, including bearer bonds or registered bonds as provided in RCW 39.46.030.

(2) No election shall be necessary to authorize the issuance of such local improvement bonds or the entering into of such a contract.

(3) The proceeds from the sale of such bonds shall be deposited with the treasurer of the district, who shall place them in a special fund designated "Construction fund of local improvement district number"

(4) Whenever such improvement district has been organized, the board may enlarge the boundaries of the improvement district to include other lands which can be served or will be benefited by the proposed improvement upon petition of the owners thereof and the consent of the United States or the state of Washington, or both, in the event the irrigation district has contracted with the United States or the state of Washington, or both, to repay the cost of the improvement: PROVIDED, That at such time the lands so included shall pay their equitable proportion upon the basis of benefits of the improvement theretofore made by the local improvement district and shall be liable for the indebtedness of the local improvement district in the same proportion and same manner and subject to assessment as if the lands had been incorporated in the improvement district at the beginning of its organization.

(5) Notwithstanding this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [2013 c 177 § 5; 2003 c 53 § 412; 1983 c 167 § 223; 1981 c 156 § 30; 1977 ex.s. c 119 § 2; 1970 ex.s. c 70 § 2; 1921 c 129 § 27; 1919 c 180 § 16; 1917 c 162 § 12; RRS § 7462. Formerly RCW 87.36.040.]

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

Additional notes found at www.leg.wa.gov

87.03.492 Local improvement districts—Bonds, valid claim—General indebtedness. Any local improve-

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ment district bonds, and interest thereon, issued against a bond redemption fund of a local improvement district pursuant to RCW 87.03.485 shall be a valid claim of the owner thereof only as against the local improvement guarantee fund, the local improvement district redemption fund, and the assessments or revenues pledged to such fund or funds and do not constitute a general indebtedness against the issuing irrigation district unless the board of directors by resolution expressly provides for a pledge of general indebtedness. Except where the board provides for a pledge of general indebtedness, each such bond must state upon its face that it is payable from the local improvement district redemption fund and the local improvement guarantee fund only. [2013 c 177 § 1.]

87.03.495 Local improvement districts—Costs of the improvement—Assessments—Disposal of bonds. (1)(a) The cost of the improvement and of the operation and maintenance thereof, if any, shall be especially assessed against the lands within such local improvement district in proportion to the benefits accruing thereto, and shall be levied and collected in the manner provided by law for the levy and collection of land assessments or toll assessments or both such form of assessments.

(b) The costs of the improvement must include, but not be limited to:

(i) The cost of all of the construction or improvement authorized for the district;

(ii) The estimated cost and expense of all engineering and surveying necessary for the improvement done under the supervision of the irrigation district engineer;

(iii) The estimated cost and expense of ascertaining the ownership of the lots or parcels of land included in the assessment district;

(iv) The estimated cost and expense of advertising, mailing, and publishing all necessary notices;

(v) The estimated cost and expense of accounting and clerical labor, and of books and blanks extended or used on the part of the irrigation district treasurer in connection with the improvement;

(vi) All cost of the acquisition of rights-of-way, property, easements, or other facilities or rights, including without limitation rights to use property, facilities, or other improvements appurtenant, related to, or useful in connection with the local improvement, whether by eminent domain, purchase, gift, payment of connection charges, capacity charges, or other similar charges or in any other manner; and

(vii) The cost for legal, financial, and appraisal services and any other expenses incurred by the irrigation district for the district or in the formation thereof, or by irrigation district in connection with such construction or improvement and in the financing thereof, including the issuance of any bonds and the cost of providing for increases in the local improvement guaranty fund, or providing for a separate reserve fund or other security for the payment of principal of and interest on such bonds.

(c) Any of the costs set forth in this section may be excluded from the cost and expense to be assessed against the property in the local improvement district and may be paid from any other moneys available therefor if the board of directors so designates by resolution at any time.

(d) The board may give credit for all or any portion of any property or other donation against an assessment, charge, or other required financial contribution for improvements within a local improvement district.

(2) All provisions for the assessment, equalization, levy, and collection of assessments for irrigation district purposes shall be applicable to assessments for local improvements except that no election shall be required to authorize the improvement or the expenditures therefor or the bonds issued to meet the cost thereof or the contract authorized in RCW 87.03.485 to repay the cost thereof. In addition or as an alternative, an irrigation district may elect to apply all or a portion of the provisions for the assessment, equalization, levy, and collection of assessments applicable to city or town local improvement districts; however any duties of the city or town treasurer shall be the duties of the treasurer of the county in which the office of the district is located or other treasurer of the district if appointed pursuant to RCW 87.03.440. In connection with a hearing on the assessment roll, the board may designate a hearing officer to conduct the hearing, and the hearing officer must report recommendations on the assessment roll to the board for final action. Assessments when collected by the county treasurer for the payment for the improvement of any local improvement district shall constitute a special fund to be called "bond redemption or contract repayment fund of local improvement district No."

(3) Bonds issued under this chapter shall be eligible for disposal to and purchase by the director of ecology under the provisions of the state reclamation act.

(4) The cost or any unpaid portion thereof, of any such improvement, charged or to be charged or assessed against any tract of land may be paid in one payment under and pursuant to such rules as the board of directors may adopt, and all such amounts shall be paid over to the county treasurer who shall place the same in the appropriate fund. No such payment shall thereby release such tract from liability to assessment for deficiencies or delinquencies of the levies in such improvement district until all of the bonds or the contract, both principal and interest, issued or entered into for such local improvement district have been paid in full. The receipt given for any such payment shall have the foregoing provision printed thereon. The amount so paid shall be included on the annual assessment roll for the current year, provided, such roll has not then been delivered to the treasurer, with an appropriate notation by the secretary that the amount has been paid. If the roll for that year has been delivered to the treasurer then the payment so made shall be added to the next annual assessment roll with appropriate notation that the amount has been paid. [2013 c 177 § 6; 1988 c 127 § 45; 1970 ex.s. c 70 § 3; 1957 c 68 § 1; 1949 c 103 § 2; 1921 c 129 § 28; 1917 c 162 § 13; Rem. Supp. 1949 § 7463. Formerly RCW 87.36.050.]

Assessment, equalization, levy and collection of assessments for irrigation district purposes: RCW 87.03.240 through 87.03.280.

87.03.510 Local improvement districts—Irrigation district L.I.D. guarantee fund. There is hereby established for each irrigation district in this state having local improvement districts therein a fund for the purpose of guaranteeing to the extent of such fund and in the manner herein provided, the payment of its local improvement bonds and warrants

issued or contract entered into to pay for the improvements provided for in this act. Such fund shall be designated "local improvement guarantee fund" and for the purpose of maintaining the same, every irrigation district shall hereafter levy from time to time, as other assessments authorized by RCW 87.03.240 are levied, such sums as may be necessary to meet the financial requirements thereof: PROVIDED, That such sums so assessed pursuant to RCW 87.03.240 in any year shall not be more than sufficient to pay the outstanding warrants or contract indebtedness on the fund and to establish therein a balance which shall not exceed ten percent of the outstanding obligations thereby guaranteed. The balance may also be established from the deposit of prepaid local improvement assessments or proceeds of local improvement district bonds. Whenever any bond redemption payment, interest payment, or contract payment of any local improvement district shall become due and there is insufficient funds in the local improvement district fund for the payment thereof, there shall be paid from the local improvement district guarantee fund, by warrant or by such other means as is called for in the contract, a sufficient amount, which together with the balance in the local improvement district fund shall be sufficient to redeem and pay the bond or coupon or contract payment in full. The warrants against the guarantee fund shall draw interest at a rate determined by the board and the bonds and interest payments shall be paid in their order of presentation or serial order. Whenever there shall be paid out of the guarantee fund any sum on account of principal or interest of a local improvement bond or warrant or contract the irrigation district, as trustee for the fund, shall be subrogated to all of the rights of the owner of the bond or contract amount so paid, and the proceeds thereof, or of the assessment underlying the same shall become part of the guarantee fund. There shall also be paid into such guarantee fund any interest received from bank deposits of the fund, as well as any surplus remaining in any local improvement district fund, after the payment of all of its outstanding bonds or warrants or contract indebtedness which are payable primarily out of such local improvement district fund. [2013 c 177 § 7; 1983 c 167 § 224; 1981 c 156 § 31; 1970 ex.s. c 70 § 6; 1935 c 128 § 2; RRS § 7464-2. Formerly RCW 87.36.090.]

Levies, amount—Special funds: RCW 87.03.260.

Additional notes found at www.leg.wa.gov

87.03.515 Local improvement districts—Refunding bonds. It shall be lawful for any irrigation district which has issued local improvement district bonds for the improvements, as in this chapter provided, to issue in place thereof an amount of local improvement district or revenue refunding bonds of the irrigation district in accordance with chapter 39.53 RCW: PROVIDED, HOWEVER, That the issuance of the bonds shall not release the lands of the local improvement district or districts from liability for special assessments for the payment thereof: AND PROVIDED FURTHER, That the lien of any issue of bonds of the district prior in point of time to the issue of bonds or local improvement district bonds herein provided for shall be deemed a prior lien. [2013 c 177 § 8; 1983 c 167 § 225; 1921 c 129 § 30; 1917 c 162 § 15; RRS § 7465. Formerly RCW 87.36.100.]

Additional notes found at www.leg.wa.gov

87.03.527 Local improvement districts—Alternative methods of formation. Whenever the board establishes a local improvement district, in addition or as an alternative to the procedures provided in RCW 87.03.480 through 87.03.525, there may be employed any method authorized by law for the formation of improvement districts and the levying, collection, and enforcement by foreclosure of assessments therein, including without limitation the formation method employed by cities or towns. [2013 c 177 § 9; 1959 c 104 § 7. Formerly RCW 87.36.140.]

87.03.570 Adding lands to district—Hearing—Assent. The board of directors, at the time and place mentioned in said notice, or at such other time or times to which the hearing of said petition may be adjourned, shall proceed to hear the petition and all the objections thereto presented in writing by any person showing cause, as aforesaid, why said proposed change of the boundaries of the district should not be made. The failure by any person interested in said district, or in the matter of the proposed change of its boundaries, to show cause in writing, as aforesaid, shall be deemed and taken as an assent on his or her part to a change of the boundaries of the district as prayed for in said petition, or to such a change thereof as will include a part of said lands. And the filing of such petition with said board, as aforesaid, shall be deemed and taken as an assent on the part of each and all of such petitioners to such a change of said boundaries that they may include the whole or any portion of the lands described in said petition. [2013 c 23 § 504; 1889-90 p 695 § 50; RRS § 7477. Formerly RCW 87.44.040.]

87.03.610 Adding lands to district—Guardian, administrator or executor may act. A guardian, an executor or administrator of an estate, who is appointed as such under the laws of this state, and who, as such guardian, executor or administrator, is entitled to the possession of the lands belonging to the estate which he or she represents, may, on behalf of his or her ward or the estate which he or she represents, upon being thereunto authorized by the proper court, sign and acknowledge the petition in this act mentioned, and may show cause, as in this act mentioned, why the boundaries of the district should not be changed. [2013 c 23 § 505; 1889-90 p 698 § 58; RRS § 7485. Formerly RCW 87.44.020, part.]

Reviser's note: (1) "Petition in this act mentioned" apparently refers to the petition provided for in RCW 87.03.560.

(2) "Show cause, as in this act mentioned" apparently refers to the show cause provided for in RCW 87.03.565.

Guardians, etc., when land excluded from district: RCW 87.03.690.

87.03.660 Exclusion of lands from district—Hearing—Assent. The board of directors, at the time and place mentioned in the notice, or at the time or times to which the hearing of said petition may be adjourned, shall proceed to hear the petition, and all objections thereto presented in writing, by any person showing cause, as aforesaid, why the prayer of said petition should not be granted. The failure of any person interested in said district or consolidated district to show cause, in writing, why the tract or tracts of land mentioned in said petition should not be excluded from said district, or the former district mentioned should not be excluded from the consolidated district, as the case may be, shall be deemed and taken as an assent by him or her to such exclu-

sion, and the filing of such petition with such board, as aforesaid, shall be deemed and taken as an assent by each and all of such petitioners to such exclusion. [2013 c 23 § 506; 1921 c 129 § 38; 1889-90 p 700 § 63; RRS § 7489. Formerly RCW 87.44.180.]

87.03.690 Exclusion of lands from district—Guardian, executor or administrator may sign and acknowledge. A guardian, and executor or an administrator of an estate who is appointed as such under the laws of this state, and who, as such guardian, executor or administrator, is entitled to the possession of the lands belonging to the estate which he or she represents, may, on behalf of his or her ward or the estate which he or she represents, upon being thereto properly authorized by the proper court, sign and acknowledge the petition in this act mentioned, and may show cause, as in this act provided, why the boundaries of the district should not be changed. [2013 c 23 § 507; 1889-90 p 703 § 71; RRS § 7496. Formerly RCW 87.44.160, part.]

Reviser's note: (1) "Petition in this act mentioned" apparently refers to the petition provided for in RCW 87.03.650.

(2) "Show cause, as in this act provided" apparently refers to the show cause provided for in RCW 87.03.655.

Guardians, etc., when land added to district: RCW 87.03.610.

87.03.760 Exclusion of nonirrigable land when state holds all outstanding bonds—Adoption of resolution—Appellate review. At the conclusion, or final adjournment, of the hearing provided for in RCW 87.03.755, the board of directors of the district shall have the power, by unanimous resolution to adopt the proposed plan, or such modification thereof as may be determined by the board, and reduce the boundaries of the district to such area as, in the judgment of the board, can be furnished with sufficient water for successful irrigation by the irrigation system of the district, and to exclude from the district all lands lying outside of such reduced boundaries, and provide for the repayment to the owners of any such excluded lands, respectively, of any sums paid for assessments levied by the district, and to cancel all unpaid assessments levied by the district against the lands excluded and release such lands from further liability therefor. Any person interested and feeling himself or herself aggrieved by the adoption of such final resolution reducing the boundaries of the district and excluding lands therefrom, shall have a right of appeal from the action of the board to the superior court of the county in which the district is situated, which appeal may be taken in the manner provided by law for appeals from justices' courts, and if upon the hearing of such appeal it shall be determined by the court that the irrigation system of the district will not furnish sufficient water for the successful irrigation of the lands included within the reduced boundaries of the district, or that any lands have been excluded from the district unnecessarily, arbitrarily, capriciously, or fraudulently or without substantial reason for such exclusion, the court shall enter a decree canceling and setting aside the proceedings of the board of directors, otherwise the court shall enter a decree confirming the action of the board. Any party to the proceedings on appeal in the superior court, feeling himself or herself aggrieved by the decree of the superior court confirming the action of the board of directors of the district reducing the boundaries of the district and exclud-

ing lands therefrom, may seek appellate review within thirty days after the entry of the decree of the superior court in the manner provided by law. If, at the expiration of thirty days from the entry of the final resolution of the board of directors of the district reducing the boundaries of the district and excluding lands therefrom, no appeal has been taken to the superior court of the county in which the district is situated, or if, after hearing upon appeal the superior court shall confirm the action of the district, and at the expiration of thirty days from the entry of such decree, no appellate review is sought, the boundaries of the district shall thereafter be in accordance with the resolution of the board reducing the boundaries, and all lands excluded from the district by such resolution shall be relieved from all further liability for any indebtedness of the district or any unpaid assessments theretofore levied against such lands, and the owners of excluded lands, upon which assessments have been paid, shall be entitled to warrants of the district for all sums paid by reason of such assessments, payable from a special fund created for that purpose, for which levies shall be made upon the lands remaining in the district, as the board of directors may provide. [2013 c 23 § 508; 1988 c 202 § 86; 1971 c 81 § 171; 1925 ex.s. c 138 § 3; RRS § 7505-3. Formerly RCW 87.44.270.]

District courts—Civil procedure—Appeals: Chapter 12.36 RCW.

Additional notes found at www.leg.wa.gov

87.03.765 Exclusion of nonirrigable land when state holds all outstanding bonds—Indebtedness may be reduced. Whenever it shall appear, to the satisfaction of the director of ecology, that the irrigation system of any irrigation district, to which the department of ecology of the state of Washington under a contract with the district for the purchase of its bonds, has advanced funds for the purpose of constructing an irrigation system for the district, has been found incapable of furnishing sufficient water for the successful irrigation of all of the lands of such district, and that the board of directors of such district has reduced the boundaries thereof and excluded from the district, as provided in RCW 87.03.750 through 87.03.760, sufficient lands to render such irrigation system adequate for the successful irrigation of the lands of the district, and that more than thirty days have elapsed since the adoption of the resolution by the board of directors reducing the boundaries of the district and excluding lands therefrom, and no appeal has been taken from the action of the board, or that the action of the board has been confirmed by the superior court of the county in which the district is situated and no appeal has been taken to the supreme court or the court of appeals, or that upon review by the supreme court or the court of appeals the action of the board of directors of the district has been confirmed, the director of ecology shall be and he or she is hereby authorized to cancel and reduce the obligation of the district to the department of ecology, for the repayment of moneys advanced for the construction of an irrigation system for the district, to such amount as, in his or her judgment, the district will be able to pay from revenues derived from assessments upon the remaining lands of the district, and to accept, in payment of the balance of the obligation of the district, the authorized bonds of the district, in numerical order beginning with the lowest number, on the basis of the percentage of the face

value thereof fixed in contracts between the district and the department of ecology, in an amount equal to said balance of the obligation of the district, in full and complete satisfaction of all claims of the department of ecology against the district. [2013 c 23 § 509; 1988 c 202 § 87; 1971 c 81 § 172; 1925 ex.s. c 138 § 4; RRS § 7505-4. Formerly RCW 87.44.280.]

Additional notes found at www.leg.wa.gov

87.03.820 Disposal of real property—Right of adjacent owners. Whenever as the result of abandonment of an irrigation district right-of-way real property held by an irrigation district is to be sold or otherwise disposed of, notice shall be given to the owners of lands adjoining that real property and such owners shall have a right of first refusal to purchase at the appraised price all or any part of the real property to be sold or otherwise disposed of which adjoins or is adjacent to their land.

Real property to be sold or otherwise disposed of under this section shall have been first appraised by the county assessor or by a person designated by him or her.

Notice under this section shall be sufficient if sent by registered mail to the owner, and at the address, as shown in the tax records of the county in which the land is situated. Notice under this section shall be in addition to any other notice required by law.

After sixty days from the date of sending of notice, if no applications for purchase have been received by the irrigation district or other person or entity sending notice, the rights of first refusal of owners of adjoining lands shall be deemed to have been waived, and the real property may be sold or otherwise disposed of.

If two or more owners of adjoining lands apply to purchase the same real property, or apply to purchase overlapping parts of the real property, the respective rights of the applicants may be determined in the superior court of the county in which the real property is situated; and the court may divide the real property in question between some or all of the applicants or award the whole to one applicant, as justice may require.

Any sale or other disposal of real property pursuant to chapters 87.52, 87.53, and 87.56 RCW shall be made in accordance with the requirements of this section. [2013 c 23 § 510; 1973 c 150 § 1; 1971 ex.s. c 125 § 2.]

Chapter 87.04 RCW DIRECTOR DIVISIONS

Sections

87.04.010 Divisions of certain districts required—Number—Directors—Who are electors.

87.04.010 Divisions of certain districts required—Number—Directors—Who are electors. An irrigation district comprising two hundred thousand or more acres, or irrigation districts comprising less than two hundred thousand acres which have followed the optional procedure specified in *this amendatory act, shall be divided into divisions of as nearly equal area as practical, consistent with being fair and equitable to the electors of the district. The number of divisions shall be the same as the number of directors, which shall be numbered first, second, third, etc. One director, who

shall be an elector of the division, shall be elected for each division of the district by the electors of his or her division. A district elector shall be considered an elector of the division in which he or she holds title to or evidence of title to land. An elector holding title to or evidence of title to land in more than one division shall be considered an elector of the division nearest his or her place of residence. [2013 c 23 § 511; 1961 c 192 § 1; 1939 c 13 § 1; RRS § 7505-5a.]

***Reviser's note:** The language "this amendatory act" refers to 1961 c 192 codified as RCW 87.04.010 through 87.04.900, 87.03.045, 87.03.080, 87.03.081, and 87.03.082.

Directors—Election, terms, etc.: RCW 87.03.080 through 87.03.082.

Organization of board, meetings, etc.: RCW 87.03.115.

Qualifications of voters and directors: RCW 87.03.045.

Chapter 87.06 RCW DELINQUENT ASSESSMENTS

Sections

87.06.020 Certificates of delinquency—Posting of certificates.

87.06.020 Certificates of delinquency—Posting of certificates. (1) After thirty-six calendar months from the month of the date of delinquency, or twenty-four months from the month of the date of delinquency with respect to any local improvement district assessment, the treasurer shall prepare certificates of delinquency on the property for the unpaid irrigation district assessments, and for costs and interest. An individual certificate of delinquency may be prepared for each property or the individual certificates may be compiled and issued in one general certificate including all delinquent properties. Each certificate shall contain the following information:

- (a) Description of the property assessed;
- (b) Street address of property, if available;
- (c) Years for which assessed;
- (d) Amount of delinquent assessments, costs, and interest;
- (e) Name appearing on the treasurer's most current assessment roll for the property; and
- (f) A statement that interest will be charged on the amount listed in (d) of this subsection at a rate of twelve percent per year, computed monthly and without compounding, from the date of the issuance of the certificate and that additional costs, incurred as a result of the delinquency, will be imposed, including the costs of a title search.

(2) The treasurer may provide for the posting of the certificates or other measures designed to advertise the certificates and encourage the payment of the amounts due. [2013 c 177 § 10; 1988 c 134 § 2.]

Chapter 87.22 RCW REFUNDING BONDS—1929 ACT

Sections

87.22.065 Notice—Contents.
87.22.215 Payment to agent.

87.22.065 Notice—Contents. Said notice shall state that the district (naming it) proposes to issue and dispose of a refunding bond issue specifying the amount; that proceedings

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have been instituted in the superior court of the state of Washington in and for the specified county to determine the maximum benefits to be received by the lands within the operation of said district from the issuance and disposal of said proposed bond issue, and further to determine the irrigable acreage which will be assessed for the payment of said bonds, shall state that a schedule of the lands involved together with a statement of the amount of maximum benefits received by the amount of irrigable acreage in each respectively, is on file in said proceedings and may be inspected by any interested person, shall state the time and place fixed for the hearing of the petition and shall state that any person interested in such proceedings may on or before the day fixed for said hearing file his or her written objections thereto with the clerk of said court, or he or she will be forever bound by such orders as the court shall make in such proceedings. [2013 c 23 § 512; 1929 c 120 § 7; RRS § 7530-7. Formerly RCW 87.22.060, part.]

87.22.215 Payment to agent. Any bondholder or group of bondholders shall have the right to request said county treasurer in writing to pay the interest and installments of principal of his or her or their bond or bonds to such agent as may be designated in said request and payment to said agent shall constitute a valid payment to the record owner or owners of said bond or bonds within the provisions of this chapter. [2013 c 23 § 513; 1929 c 120 § 30; RRS § 7530-30. Formerly RCW 87.22.210, part.]

Chapter 87.25 RCW CERTIFICATION OF BONDS

Sections

87.25.030 Transcript to attorney general—Report filed with secretary of state.
87.25.060 Supplemental report.
87.25.100 Expenditures of bond proceeds—Employment and payment of attorneys.

87.25.030 Transcript to attorney general—Report filed with secretary of state. If, after the investigation herein provided for, the director finds that the project of the district is feasible, that the bond issue proposed to be certified is necessary and in sufficient amount to complete the improvement contemplated and that the district shows a clear probability of successful operation, he or she shall submit a complete transcript, to be furnished and certified by the district, of the proceedings relating to the organization and establishment of the district and relating to or affecting the validity of the bond issue involved, to the attorney general, for his or her written opinion as to the legality of the same. If the attorney general finds that any of the matters submitted in the transcript are not legally sufficient he or she shall so state in his or her opinion to the director of ecology. The district shall then be given an opportunity, if possible, to correct the proceeding or thing complained of to the satisfaction of the attorney general. If the attorney general finds that all the matters submitted in the transcript as originally submitted or as subsequently corrected are legally sufficient said director shall thereupon file his or her report with the secretary of state and forward a copy to the secretary of the district, to be

kept among the records of the district. [2013 c 23 § 514; 1988 c 127 § 51; 1923 c 51 § 3; RRS § 7432-3.]

87.25.060 Supplemental report. When the proposed bond issue has been finally approved by the director, he or she shall file a supplemental report with the secretary of state giving the numbers, date or dates of issue, and denominations of said bonds which shall then be entitled to certification as herein provided. [2013 c 23 § 515; 1923 c 51 § 6; RRS § 7432-6.]

87.25.100 Expenditures of bond proceeds—Employment and payment of attorneys. Whenever the bonds of any irrigation district have been certified, as provided in this chapter, no expenditures shall be made from the proceeds of such bonds, nor shall any liability chargeable against such proceeds be incurred, until there shall have been filed with and approved by the director of ecology a schedule of proposed expenditures in such form as said director shall prescribe, and no expenditures from the proceeds of said bonds shall be made for any purpose in excess of the amount allowed therefor in such schedule without the written consent of said director: PROVIDED, FURTHER, That, if it shall be necessary, the attorney general may employ competent attorneys to assist him or her in the performance of his or her duties under this chapter, said attorneys to be paid by the irrigation district for which services are rendered from any of the funds of said district at such time and in such manner as the attorney general shall require. [2013 c 23 § 516; 1988 c 127 § 55; 1923 c 51 § 9; RRS § 7432-9.]

Chapter 87.28 RCW REVENUE BONDS FOR WATER, POWER, DRAINS, ETC.

Sections

87.28.103	Election on proposed bond issue—Exception.
87.28.200	Utility local improvement districts—Authorized—Special assessments—Limitations.

87.28.103 Election on proposed bond issue—Exception. When the directors of the district have decided to issue revenue bonds as herein provided, they shall call a special election in the irrigation district at which election shall be submitted to the electors thereof possessing the qualifications prescribed by law the question whether revenue bonds of the district in the amount and payable according to the plan of payment adopted by the board and for the purposes therein stated shall be issued. The election shall be called, noticed, conducted, and canvassed in the same manner as provided by law for irrigation district elections to authorize an original issue of bonds payable from revenues derived from annual assessments upon the real property in the district: PROVIDED, That the board of directors shall have full authority to issue revenue bonds as herein provided payable within a maximum period of forty years without a special election. [2013 c 177 § 11; 1979 ex.s. c 185 § 14; 1949 c 57 § 9; Rem. Supp. 1949 § 7434-17. Formerly RCW 87.28.050.]

Bonds, election for, etc.: RCW 87.03.200.

Qualification of voters: RCW 87.03.045.

Additional notes found at www.leg.wa.gov

87.28.200 Utility local improvement districts—Authorized—Special assessments—Limitations. Any irrigation district shall have the power to establish utility local improvement districts within its territory and to levy special assessments within such utility local improvement districts in the same manner as provided for irrigation district local improvement districts: PROVIDED, That it must be specified in any petition for the establishment of a utility local improvement district that the sole purpose of the assessments levied against the real property located within the utility local improvement district shall be the payment of the proceeds of those assessments into a revenue bond fund for the payment of revenue bonds, that no warrants or bonds shall be issued in any such utility local improvement district, and that the collection of interest and principal on all assessments in such utility local improvement district, when collected, shall be paid into that revenue bond fund, except that special assessments paid before the issuance and sale of bonds may be deposited in a fund for the payment of costs of improvements in the utility local improvement district. [2013 c 177 § 12; 1979 ex.s. c 185 § 19.]

Additional notes found at www.leg.wa.gov

Chapter 87.52 RCW DISSOLUTION OF DISTRICTS WITHOUT BONDS

Sections

87.52.030	Election—Ballots—Qualified electors.
87.52.040	Vote required—Petition to court—Notice and publication of hearing—Court order.
87.52.060	Board of directors as trustees—Duties—Records to be delivered to clerk.

87.52.030 Election—Ballots—Qualified electors. Upon the delivery of said petition the board of directors of said irrigation district shall, at their next succeeding regular monthly meeting, order an election, the date of which election shall be within twenty days from the date of said meeting of the board of directors and which election shall be conducted as other elections of irrigation districts are conducted. At said election the qualified electors of said irrigation district shall cast ballots which shall contain the words "Disorganize, Yes," or "Disorganize, No." No person shall be entitled to vote at any election held under the provisions of RCW 87.52.010 through 87.52.060 unless he or she is a qualified voter under the election laws of the state, and holds title or evidence of title to land in said district. [2013 c 23 § 517; 1897 c 79 § 3; RRS § 7528. FORMER PART OF SECTION: 1939 c 149 § 3, part; RRS § 7527-3, part, now codified in RCW 87.52.090.]

Irrigation district elections: RCW 87.03.030 through 87.03.110.

Voter registration: Chapter 29A.08 RCW.

87.52.040 Vote required—Petition to court—Notice and publication of hearing—Court order. If three-fifths of the votes cast at any election under the provisions of RCW 87.52.010 through 87.52.060 shall contain the words "Disorganize, Yes," then the board of directors shall present to the superior judge of the county in which said irrigation district is located an application for an order of said superior court that such irrigation district be declared disorganized and dissolved, and that its affairs be liquidated and wound up, as

provided for in RCW 87.52.010 through 87.52.060, and reciting that at an election of such irrigation district, held as provided in RCW 87.52.010 through 87.52.060, three-fifths of the votes cast contained the words "Disorganize, Yes," and such petition shall be certified to by the directors of said district. They shall also file with said superior court a statement, sworn to by the directors of said irrigation district, showing all outstanding indebtedness of said irrigation district, or if there be no such indebtedness, then the directors shall make oath to that effect. Notice of said application shall be given by the clerk, which notice shall set forth the nature of the application, and shall specify the time and place at which it is to be heard, and shall be published in a newspaper of the county printed and published nearest to said irrigation district, once each week for four weeks, or if no newspaper is published in the county, by publication in the newspaper nearest thereto in the state. At the time and place appointed in the notice, or at any other time to which it may be postponed by the judge, he or she shall proceed to consider the application, and if satisfied that the provisions of RCW 87.52.010 through 87.52.060 have been complied with he or she shall enter an order declaring said irrigation district dissolved and disorganized. [2013 c 23 § 518; 1897 c 79 § 4; RRS § 7529. Formerly RCW 87.52.040 and 87.52.050. FORMER PART OF SECTION: 1939 c 149 § 3, part; RRS § 7527-3, part, now codified in RCW 87.52.090.]

87.52.060 Board of directors as trustees—Duties—Records to be delivered to clerk. Upon the disorganization of any irrigation district under the provisions of RCW 87.52.010 through 87.52.060, the board of directors at the time of the disorganization shall be trustees of the creditors and of the property holders of said district for the purpose of collecting and paying all indebtedness of said district, in which actual construction work has been done, and shall have the power to sue and be sued. It shall be the duty of said board of directors, and they shall have the power and authority, to levy and collect a tax sufficient to pay all such indebtedness, which tax shall be levied and collected in the manner prescribed by law for the levying and collection of taxes of irrigation districts. Any balance of moneys of said district remaining over after all outstanding indebtedness and the cost of the proceedings under RCW 87.52.010 through 87.52.060 have been paid shall be divided and refunded to the assessment payers in said irrigation district, to each in proportion to the amount contributed by him or her to the total amount of assessments collected by said district. Said board of directors shall report to the court from time to time as the court may direct, and upon a showing to the court that all indebtedness has been paid, an order shall be entered discharging said board of directors. Upon the entry of such order said board of directors and all the officers of said district shall deliver over to the clerk of said court all books, papers, records, and documents belonging to said district, or under their control as officers thereof: PROVIDED, That nothing herein contained shall be construed to validate or authorize the payment of any indebtedness of said district exceeding the legal limitation of indebtedness specified by law for irrigation districts; or any indebtedness contracted by such irrigation district or its officers without lawful authority. [2013 c 23 § 519; 1897 c 79 § 5; RRS § 7530.]

Assessments, levy and collection of taxes: RCW 87.03.240 through 87.03.305.

Powers as to incurring indebtedness: RCW 87.03.475.

Chapter 87.53 RCW

DISSOLUTION OF DISTRICTS WITH BONDS

Sections

87.53.100	Trustee—Appointment—Compensation—Bond.
87.53.120	Report of sale—Rights of purchasers.
87.53.150	State's consent to dissolution.

87.53.100 Trustee—Appointment—Compensation—Bond. Upon the entry of final judgment, the court shall issue an order appointing a trustee for the district and shall deliver to him or her a certified copy of the order. The court shall fix the compensation of the trustee and the amount of his or her bond to be obtained at the cost of the district. [2013 c 23 § 520; 1951 c 237 § 10. Prior: 1899 c 102 § 10, part; RRS § 7540, part.]

87.53.120 Report of sale—Rights of purchasers. The trustee shall file with the clerk a report of the disposition made of the cash funds and of the sale and if the court finds the sale was fairly conducted, it shall enter an order confirming the sale, and the trustee shall execute and deliver to the purchaser an instrument conveying to him or her all property and rights of the district, free from all claims of the district or its creditors, which shall entitle the purchaser to immediate possession. [2013 c 23 § 521; 1951 c 237 § 12. Prior: 1899 c 102 § 11; RRS § 7541.]

87.53.150 State's consent to dissolution. Whenever any bonds of the district are held in the state reclamation revolving account, and, in the opinion of the director of ecology, the district is or will be unable to meet its obligations, and that the state's investment can be best preserved by the dissolution of the district the director may give his or her consent to dissolution under such stipulations and adjustments of the indebtedness as he or she deems best for the state. [2013 c 23 § 522; 1988 c 127 § 62; 1951 c 237 § 15.]

Chapter 87.56 RCW

DISSOLUTION OF INSOLVENT DISTRICTS

Sections

87.56.040	Service of process.
87.56.180	Trustee for creditors—Bond—Duties.
87.56.190	Enforcement of judgment.
87.56.203	Compensation of trustee.
87.56.210	Judgment upon stipulation—Evidences of indebtedness to be canceled.

87.56.040 Service of process. Such action shall be one in rem and personal service of process shall not be required to be made on any interested person: PROVIDED, That the court shall be authorized in proper instances to order issuance and personal service of process specifying such time for appearance as the court shall require, AND PROVIDED FURTHER, That any owner of land within the district or any creditor of the district or their respective attorneys may file with the receiver provided for in this chapter, a written request that his or her name and address be placed on the

receiver's mailing list and thereafter the receiver shall mail to such person at his or her given address at least ten days' written notice of all subsequent hearings before the court. Personal service of said notice may be made in any instance in lieu of mailing at the option of the receiver. [2013 c 23 § 523; 1925 ex.s. c 124 § 4; RRS § 7543-4.]

87.56.180 Trustee for creditors—Bond—Duties. The judgment shall also name a trustee to be nominated by the creditors representing a majority of the indebtedness who shall give bond conditioned for the faithful performance of his or her duties and the strict accounting of all funds received by him or her in such amount as the court shall determine, and who shall have authority to receive payment on account of said judgment and to satisfy said judgment against the several lands at the time payment thereon is made by the landowners in proportion to the amount of said payment. When any landowner shall make full payment of the amount of the judgment apportioned against his or her land, he or she shall be entitled to full satisfaction thereof of record. [2013 c 23 § 524; 1925 ex.s. c 124 § 23; RRS § 7543-23.]

87.56.190 Enforcement of judgment. In case any landowner fails to pay the judgment against his or her land or any installment thereof, when the same shall become due and payable, said judgment may be enforced by the trustee named in the decree in the manner provided by law for the enforcement of judgments in the superior court, and the costs of execution and sale shall be charged to the defaulting land. [2013 c 23 § 525; 1925 ex.s. c 124 § 24; RRS § 7543-24.]

Enforcement of judgments: Title 6 RCW.

87.56.203 Compensation of trustee. The trustee named in the decree shall receive such compensation for his or her services as the court shall determine to be paid at such times as the court shall fix from funds collected on account of said judgment. [2013 c 23 § 526; 1925 ex.s. c 124 § 26; RRS § 7543-26. Formerly RCW 87.56.220.]

87.56.210 Judgment upon stipulation—Evidences of indebtedness to be canceled. If the judgment rendered by the court, upon stipulation, be not appealed from as in this chapter provided and the time for appeal has expired, or having been appealed from has been finally determined upon appeal, the court shall upon application of the receiver, order all evidences of indebtedness filed in the registry of the court under the provisions relating to judgment upon stipulation to be delivered to the office of the county treasurer, who shall have authority and it shall be his or her duty to cancel the same, and said evidences of indebtedness shall thereafter cease to be obligations of the district, and the district thereafter shall be discharged of said indebtedness. [2013 c 23 § 527; 1925 ex.s. c 124 § 28; RRS § 7543-28.]

Chapter 87.64 RCW

ADJUSTMENT OF IRRIGATION, DIKING, AND DRAINAGE DISTRICT INDEBTEDNESS

Sections

87.64.010 State authorized to adjust indebtedness—When state owns entire bond issue.

87.64.020 State authorized to adjust indebtedness—When state owns part of bond issue.

87.64.040 Claim for moneys expended may be settled and compromised.

87.64.010 State authorized to adjust indebtedness—When state owns entire bond issue. Whenever the state shall now or hereafter own, the entire issue of the bonds of any irrigation, diking or drainage district, and in the judgment of the director of ecology such district is, or will be, unable to meet its obligations to the state as they mature, and in the judgment of the director of ecology the investment of the state can be made more secure by extending, without refunding, the time of payment of any or all said bonds and interest payments, or by the exchange of the bonds held by the state for refunding bonds of such district issued as in the manner provided by law at the same or a lower rate of interest and/or for a longer term, or by the cancellation of a portion of the bonds held by the state and/or interest accrued thereon, and the exchange of the remaining bonds held by the state for the refunding bonds of the district issued in the manner provided by law at the same or a lower rate of interest and/or for the same or a longer term, the director of ecology shall be and is hereby authorized and empowered to enter into contract with the district so extending the time of payment of said bonds and interest payments, without refunding or to so exchange the bonds held by the state for such refunding bonds or to cancel a portion of the bonds held by the state and/or interest accrued thereon, and exchange the remaining bonds held by the state for such refunding bonds as in his or her judgment will be for the best interest of the state. [2013 c 23 § 528; 1983 c 167 § 243; 1941 c 39 § 1; 1929 c 121 § 2; Rem. Supp. 1941 § 7530-41. FORMER PART OF SECTION: 1941 c 39 § 3, part, last am'ds 1929 c 121 § 3; Rem. Supp. 1941 § 7530-42, part, now codified in RCW 87.64.020.]

Dissolution: Chapter 87.53 RCW.

Refunding bonds: Chapters 87.19 and 87.22 RCW.

Additional notes found at www.leg.wa.gov

87.64.020 State authorized to adjust indebtedness—When state owns part of bond issue. Whenever the state shall, now or hereafter, own a portion of the bonds of any irrigation, diking, or drainage district, and in the judgment of the director of ecology such district is, or will be, unable to meet its obligations as they mature, and in the judgment of the director of ecology the investment of the state can be made more secure by extending, without refunding, the time of payment of any or all said bonds and interest payments or by exchanging the bonds held by the state for the refunding bonds of the district issued in the manner provided by law at the same or a lower rate of interest and/or for a longer term, or by the cancellation of a portion of the bonds held by the state and/or interest accrued thereon, and the exchange of the remaining bonds held by the state for the refunding bonds of the district issued in the manner provided by law at the same or a lower rate of interest and/or for a longer term, the director of ecology shall be and is hereby authorized and empowered to enter into contract with the district so extending the time of payment of said bonds and interest payments, without refunding, or to so exchange the bonds held by the state for such refunding bonds or to cancel a portion of the bonds held by the state and/or interest accrued thereon, and exchange the

remaining bonds held by the state for such refunding bonds as in his or her judgment will be for the best interest of the state: PROVIDED, That the owners of at least ninety percent of all the other bonds of said district shall make and execute the same arrangement with the district: AND PROVIDED FURTHER, That when, in addition to owning a portion of the first issue of bonds of any such irrigation, diking, or drainage district, the state also owns all the outstanding second issue of bonds of such district, the director of ecology shall be and he or she is hereby authorized and empowered to surrender and cancel said second issue of bonds held by the state upon whatsoever terms and conditions he or she shall deem to be the best interest of the state: AND PROVIDED FURTHER, That whenever the owners of at least ninety percent of all other bonds of such district and/or other evidences of indebtedness are willing to release their existing obligations against said district and to substitute therefor a contract to pay such existing indebtedness in whole or in part from the proceeds of the sale of lands owned by the district at the time of such settlement, or acquired by the district through levies then existing, the director of ecology shall be and he or she is hereby authorized and empowered to cancel the bonds held by the state upon whatsoever terms that he or she shall deem most beneficial for the state, or if deemed beneficial to the state, he or she may release the state's bonds and join with the other holders in the above mentioned contract for the sale of the district land as hereinbefore stated: AND PROVIDED FURTHER, That the director of ecology be and he or she is hereby authorized to accept in any settlement made under this chapter, refunding bonds of any irrigation district that may be issued in accordance with chapter 87.22 RCW, or any amendment thereto, and he or she is hereby authorized, when in his or her judgment it is to the interest of the state, to participate in the refunding of bonds of an irrigation district held under said chapter 87.22 RCW, or any amendment thereto. [2013 c 23 § 529; 1983 c 167 § 244; 1941 c 39 § 3; 1931 c 43 § 1; 1929 c 121 § 3; Rem. Supp. 1941 § 7530-42. Formerly RCW 87.64.010, part, 87.64.020, and 87.64.030.]

Additional notes found at www.leg.wa.gov

87.64.040 Claim for moneys expended may be settled and compromised. Whenever the department of ecology shall have heretofore entered, or shall hereafter enter, into a contract with an irrigation, diking, or drainage district and shall have expended moneys under said contract, and said district shall be indebted to the state for the moneys so expended, and in the judgment of the director of ecology said district shall have not received benefits equal to the amount of said indebtedness, the director of ecology shall be and is hereby authorized and empowered to settle and compromise the claim of the state against said district upon such terms and for such an amount as he or she shall deem fair and just to the state and the district. [2013 c 23 § 530; 1988 c 127 § 64; 1941 c 39 § 2; 1929 c 121 § 4; Rem. Supp. 1941 § 7530-43.]

Chapter 87.84 RCW

IRRIGATION AND REHABILITATION DISTRICTS

Sections

87.84.070 Special assessments—Notice and election—Collection.

[2013 RCW Supp—page 1082]

87.84.070 Special assessments—Notice and election—Collection. The directors shall be empowered to specially assess land located in the district for benefits thereto taking as a basis the last equalized assessment for county purposes: PROVIDED, That such assessment shall not exceed twenty-five cents per thousand dollars of assessed value upon such assessed valuation without securing authorization by vote of the electors of the district at an election called for that purpose.

The board shall give notice of such an election, for the time and in the manner and form provided for irrigation district elections. The manner of conducting and voting at such an election, opening and closing polls, canvassing the votes, certifying the returns, and declaring the result shall be nearly as practicable the same as in irrigation district elections.

The special assessment provided for herein shall be due and payable at such times and in such amounts as designated by the district directors, which designation shall be made to the county auditor in writing, and the amount so designated shall be added to the general taxes, and entered upon the assessment rolls in his or her office, and collected therewith. [2013 c 23 § 531; 1973 1st ex.s. c 195 § 132; 1961 c 226 § 8.]

Additional notes found at www.leg.wa.gov

Title 88

NAVIGATION AND HARBOR IMPROVEMENTS

Chapters

- 88.02** Vessel registration.
- 88.08** Specific acts prohibited.
- 88.16** Pilotage act.
- 88.24** Wharves and landings.
- 88.26** Private moorage facilities.
- 88.32** River and harbor improvements.

Chapter 88.02 RCW

VESSEL REGISTRATION

(Formerly: Watercraft registration)

Sections

- 88.02.340 Inspection of registration certificates, out-of-state vessels.
- 88.02.380 Penalties—Disposition of moneys collected—Enforcement authority.
- 88.02.550 Registration and display of registration number and decal required—Exemptions.
- 88.02.640 Fees by type—Disposition, distribution.

88.02.340 Inspection of registration certificates, out-of-state vessels. (1) Any person charged with the enforcement of this chapter may inspect the registration certificate of a vessel to ascertain the legal and registered ownership of the vessel. A vessel owner or operator who fails to provide the registration certificate for inspection upon the request of any person charged with enforcement of this chapter may be found to be in violation of this chapter.

(2) The department may require the inspection of vessels that are brought into this state from another state and for which a certificate of title has not been issued and for any other vessel if the department determines that inspection of the vessel will help to verify the accuracy of the information

set forth on the application. [2013 c 291 § 30; 2010 c 161 § 1004.]

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

88.02.380 Penalties—Disposition of moneys collected—Enforcement authority. (1) Except as otherwise provided in this chapter, and, in part, in order to prevent the future potential dereliction or abandonment of a vessel, a violation of this chapter and the rules adopted by the department is a class 2 civil infraction.

(2) A civil infraction issued under this chapter must be processed under chapter 7.80 RCW.

(3) After the subtraction of court costs and administrative collection fees, moneys collected under this section must be credited to the ticketing jurisdiction and used only for the support of the enforcement agency, department, division, or program that issued the violation.

(4) All law enforcement officers may enforce this chapter and the rules adopted by the department within their respective jurisdictions. A city, town, or county may contract with a fire protection district for enforcement of this chapter, and fire protection districts may engage in enforcement activities. [2013 c 291 § 29; 2010 c 161 § 1006; 2006 c 29 § 3; 1993 c 244 § 4; 1987 c 149 § 13; 1984 c 183 § 2; 1983 2nd ex.s. c 3 § 50; 1983 c 7 § 22. Formerly RCW 88.02.110.]

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Intent—1993 c 244: See note following RCW 79A.60.010.

Additional notes found at www.leg.wa.gov

FEE	AMOUNT	AUTHORITY	DISTRIBUTION
(a) Dealer temporary permit	\$5.00	RCW 88.02.800(2)	General fund
(b) Derelict vessel and invasive species removal	Subsection (3) of this section	Subsection (3) of this section	Subsection (3) of this section
(c) Derelict vessel removal surcharge	\$1.00	Subsection (4) of this section	Subsection (4) of this section
(d) Duplicate certificate of title	\$1.25	RCW 88.02.530(1)(c)	General fund
(e) Duplicate registration	\$1.25	RCW 88.02.590(1)(c)	General fund
(f) Filing	RCW 46.17.005	RCW 88.02.560(2)	RCW 46.68.400
(g) License plate technology	RCW 46.17.015	RCW 88.02.560(2)	RCW 46.68.370
(h) License service	RCW 46.17.025	RCW 88.02.560(2)	RCW 46.68.220
(i) Nonresident vessel permit	\$25.00	RCW 88.02.620(3)	Subsection (5) of this section
(j) Quick title service	\$50.00	RCW 88.02.540(3)	Subsection (7) of this section
(k) Registration	\$10.50	RCW 88.02.560(2)	RCW 88.02.650
(l) Replacement decal	\$1.25	RCW 88.02.595(1)(c)	General fund
(m) Title application	\$5.00	RCW 88.02.515	General fund
(n) Transfer	\$1.00	RCW 88.02.560(7)	General fund
(o) Vessel visitor permit	\$30.00	RCW 88.02.610(3)	Subsection (6) of this section

(2) The five dollar dealer temporary permit fee required in subsection (1) of this section must be credited to the payment of registration fees at the time application for registration is made.

(3) The derelict vessel and invasive species removal fee required in subsection (1) of this section is five dollars and must be distributed as follows:

88.02.550 Registration and display of registration number and decal required—Exemptions. (1) Except as provided in this chapter, a person may not own or operate any vessel, including a rented vessel, on the waters of this state unless the vessel has been registered and displays a registration number and a valid decal in accordance with this chapter. A vessel that has or is required to have a valid marine document as a vessel of the United States is only required to display a valid decal.

(2) A vessel numbered in this state under the federal boat safety act of 1971 (85 Stat. 213, 46 U.S.C. 4301 et seq.) is not required to be registered under this chapter until the certificate of number issued for the vessel under the federal boat safety act expires. When registering under this chapter, this type of vessel is subject to the amount of excise tax due under chapter 82.49 RCW that would have been due under chapter 82.49 RCW if the vessel had been registered at the time otherwise required under this chapter. [2013 c 291 § 31; 2010 c 161 § 1017; 2006 c 29 § 1; 1985 c 267 § 1; 1983 2nd ex.s. c 3 § 47; 1983 c 7 § 15. Formerly RCW 88.02.020.]

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Additional notes found at www.leg.wa.gov

88.02.640 Fees by type—Disposition, distribution. (1) In addition to any other fees and taxes required by law, the department, county auditor or other agent, or subagent appointed by the director shall charge the following vessel fees and surcharge:

(a) One dollar and fifty cents must be deposited in the aquatic invasive species prevention account created in RCW 77.12.879;

(b) One dollar must be deposited into the aquatic algae control account created in RCW 43.21A.667;

(c) Fifty cents must be deposited into the aquatic invasive species enforcement account created in RCW 43.43.400; and

(d) Two dollars must be deposited in the derelict vessel removal account created in RCW 79.100.100.

(4) In addition to other fees required in this section, an annual derelict vessel removal surcharge of one dollar must be charged with each vessel registration. The surcharge is to address the significant backlog of derelict vessels accumulated in Washington waters that pose a threat to the health and safety of the people and to the environment and must be deposited into the derelict vessel removal account created in RCW 79.100.100.

(5) The twenty-five dollar nonresident vessel permit fee must be paid by the vessel owner to the department for the cost of providing the identification document by the department. Any moneys remaining from the fee after the payment of costs must be allocated to counties by the state treasurer for approved boating safety programs under RCW 88.02.650.

(6) The thirty dollar vessel visitor permit fee must be distributed as follows:

(a) Five dollars must be deposited in the derelict vessel removal account created in RCW 79.100.100;

(b) The department may keep an amount to cover costs for providing the vessel visitor permit;

(c) Any moneys remaining must be allocated to counties by the state treasurer for approved boating safety programs under RCW 88.02.650; and

(d) Any fees required for licensing agents under RCW 46.17.005 are in addition to any other fee or tax due for the titling and registration of vessels.

(7)(a) The fifty dollar quick title service fee must be distributed as follows:

(i) If the fee is paid to the director, the fee must be deposited to the general fund.

(ii) If the fee is paid to the participating county auditor or other agent or subagent appointed by the director, twenty-five dollars must be deposited to the general fund. The remainder must be retained by the county treasurer in the same manner as other fees collected by the county auditor.

(b) For the purposes of this subsection, "quick title" has the same meaning as in RCW 88.02.540. [2013 c 291 § 1; 2012 c 74 § 16. Prior: 2011 c 326 § 5; 2011 c 171 § 134; 2011 c 169 § 1; 2010 c 161 § 1028.]

Application—Effective date—2011 c 326: See notes following RCW 46.12.555.

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Chapter 88.08 RCW SPECIFIC ACTS PROHIBITED

Sections

88.08.060 Unlicensed pilotage.

88.08.060 Unlicensed pilotage. Every person not duly licensed thereto, who shall pilot or offer to pilot any vessel into, within or out of the waters of Juan de Fuca Strait or Puget Sound, shall be guilty of a misdemeanor: PROVIDED, That nothing herein shall prohibit a master of a vessel acting as his or her own pilot, nor compel a master or owner of any

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vessel to take out a pilot license for that purpose. [2013 c 23 § 532; 1909 c 249 § 293; RRS § 2545. Prior: 1888 p 177 § 18.]

Chapter 88.16 RCW PILOTAGE ACT

Sections

88.16.130 Unlicensed pilot liable for payment of rates—Penalty for refusing to employ licensed pilot.

88.16.130 Unlicensed pilot liable for payment of rates—Penalty for refusing to employ licensed pilot. Any person not holding a license as pilot under the provisions of this chapter who pilots any vessel subject to the provisions of this chapter on waters covered by this chapter shall pay to the board the pilotage rates payable under the provisions of this chapter. Any master or owner of a vessel required to employ a pilot licensed under the provisions of this chapter who refuses to do so when such a pilot is available shall be punished pursuant to RCW 88.16.150 as now or hereafter amended and shall be imprisoned in the county jail of the county wherein he or she is so convicted until said fine and the costs of his or her prosecution are paid. [2013 c 23 § 533; 1977 ex.s. c 337 § 14; 1967 c 15 § 8; 1935 c 18 § 11; RRS § 9871-11. Prior: 1907 c 147 § 4.]

Additional notes found at www.leg.wa.gov

Chapter 88.24 RCW WHARVES AND LANDINGS

Sections

88.24.010 Right of riparian owner to construct—Rates.
88.24.020 County may authorize wharves and prescribe rates.
88.24.030 City or town may authorize wharves—Rates—Liability.

88.24.010 Right of riparian owner to construct—Rates. Any person owning land adjoining any navigable waters or watercourse, within or bordering upon this state, may erect upon his or her own land any wharf or wharves, and may extend them so far into said waters or watercourses as the convenience of shipping may require; and he or she may charge for wharfage such rates as shall be reasonable: PROVIDED, That he or she shall at all times leave sufficient room in the channel for the ordinary purposes of navigation. [2013 c 23 § 534; Code 1881 § 3271; 1863 p 531 § 1; 1860 p 326 § 1; 1854 p 357 § 1; RRS § 9613.]

88.24.020 County may authorize wharves and prescribe rates. (1) Whenever any person shall be desirous of erecting any wharf at the terminus of any public highway, or at any accustomed landing place, he or she may apply to the county commissioners of the proper county, who, if they shall be satisfied that the public convenience requires said wharf, may authorize the same to be erected and kept up for any length of time not exceeding twenty years. And they shall annually prescribe the rates of wharfage and charges thereon, but there shall be no charge for the landing of passengers or their baggage.

(2) No such authority shall be granted to any person other than the owner of the land where the wharf is proposed

to be erected, unless such owner shall neglect to apply for such authority; and whenever application shall be made for such authority by any person other than such owner, the board of county commissioners shall not grant the same unless proof shall be made that the applicant caused notice in writing of his or her intention to make such application, to be given by posting up at least three notices in public places in the neighborhood where the proposed wharf is to be erected and one notice at the county court house, twenty days prior to any regular session of the board of county commissioners at which application shall be made and by serving a copy of said notice in writing upon such owner of the land, if residing in the county, at least ten days before the session of the board of county commissioners at which the application is made.

(3) When such application is heard, if the owner of such land applies for such authority and files his or her undertaking with one or more sureties to be approved by the county commissioners in a sum not less than one hundred dollars nor more than five hundred dollars, to be fixed by the county commissioners, conditioned that such person will erect said wharf within the time therein limited, to be fixed by the county commissioners, and maintain the same and keep said wharf according to law; and if default shall at any time be made in the condition of such undertaking damages not exceeding the penalty may be recovered by any person aggrieved before any court having competent jurisdiction, then said county commissioners shall authorize such owner of the land to erect and keep such wharf.

(4) If such owner of the land does not apply as aforesaid the commissioners may authorize the same to be erected and kept by such applicant upon his or her entering into an undertaking as required of such owner of the land. [2013 c 23 § 535; 1893 c 49 § 1; Code 1881 § 3272; 1863 p 531 § 2; 1854 p 537 § 2; RRS § 9614.]

88.24.030 City or town may authorize wharves—Rates—Liability. Whenever any person or persons shall be desirous of erecting a wharf at the terminus of any street of any incorporated town or city in the state, he or she or they may apply to the municipal authorities of such town or city who, if they shall be satisfied that the public convenience requires said wharf, may authorize the same to be erected and kept in repair for any length of time not exceeding ten years; and every person building, owning or occupying a wharf in this state, upon which wharfage is charged and received, shall be held accountable to the owner or owners, consignees or agents, for any and all damage done to property stored upon, or passing over said wharf, in consequence of the unfinished, incomplete, or insufficient condition of said wharf; and every such person shall post or cause to be posted in a conspicuous place on said wharf the established rates of wharfage, noting passengers and their baggage free. [2013 c 23 § 536; Code 1881 § 3273; 1863 p 531 § 3; RRS § 9615.]

Chapter 88.26 RCW

PRIVATE MOORAGE FACILITIES

Sections

88.26.020 Securing vessels—Notice—Moving vessels ashore—Regaining possession—Abandoned vessels—Public sale.

88.26.020 Securing vessels—Notice—Moving vessels ashore—Regaining possession—Abandoned vessels—Public sale. (1) Any private moorage facility operator may take reasonable measures, including the use of chains, ropes, and locks, or removal from the water, to secure vessels within the private moorage facility so that the vessels are in the possession and control of the operator and cannot be removed from the facility. These procedures may be used if an owner mooring or storing a vessel at the facility fails, after being notified that charges are owing and of the owner's right to commence legal proceedings to contest that such charges are owing, to pay charges owed or to commence legal proceedings. Notification shall be by two separate letters, one sent by first-class mail and one sent by registered mail to the owner and any lienholder of record at the last known address. In the case of a transient vessel, or where no address was furnished by the owner, the operator need not give notice prior to securing the vessel. At the time of securing the vessel, an operator shall attach to the vessel a readily visible notice. The notice shall be of a reasonable size and shall contain the following information:

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

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

(2) A private moorage facility operator, at his or her discretion, may move moored vessels ashore for storage within properties under the operator's control or for storage with a private person under their control as bailees of the private moorage facility, if the vessel is, in the opinion of the operator, a nuisance, in danger of sinking or creating other damage, or is owing charges. The costs of any such procedure shall be paid by the vessel's owner.

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

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

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

operator. The balance shall be refunded immediately to the owner at the last known address.

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

(5) If a vessel moored or stored at a private moorage facility is abandoned, the operator may authorize the public sale of the vessel by authorized personnel, consistent with this section, to the highest and best bidder for cash as follows:

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

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

(c) The proceeds of a sale under this section shall be applied first to the payment of any liens superior to the claim for charges, then to payment of the charges, then to satisfy any other liens on the vessel in the order of their priority. The balance, if any, shall be paid to the owner. If the owner cannot in the exercise of due diligence be located by the operator within one year of the date of the sale, the excess funds from the sale shall revert to the department of revenue under chapter 63.29 RCW. If the sale is for a sum less than the applicable charges, the operator is entitled to assert a claim for deficiency, however, the deficiency judgment shall not exceed the moorage fees owed for the previous six-month period.

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

(e) Either a minimum bid may be established or a letter of credit may be required from the buyer, or both, to discourage the future abandonment of the vessel.

(6) The rights granted to a private moorage facility operator under this section are in addition to any other legal rights an operator may have to hold and sell a vessel and in no manner does this section alter those rights, or affect the priority of other liens on a vessel. [2013 c 291 § 41; 1993 c 474 § 2.]

Chapter 88.32 RCW
RIVER AND HARBOR IMPROVEMENTS

Sections
88.32.020 Improvement commission—Appointment—Oath.
88.32.040 Establishment of assessment district—Assessments—State lands.
88.32.090 Appeal from final assessment.
88.32.100 Lien of assessment—Collection—Payment—Interest.
88.32.140 Bonds—Issuance—Sale—Form.
88.32.160 Bonds—Execution.
88.32.170 Payment in full—Calls for bonds, notice—Bond owners' rights.
88.32.190 Improvement by counties jointly—Procedure.
88.32.200 Improvement by counties jointly—Joint board of equalization.
88.32.210 Improvement by counties jointly—Joint assessment roll—Filing, appeals, subsequent proceedings.

88.32.020 Improvement commission—Appointment—Oath. Whenever the board of county commissioners of any such county shall have adjudged as provided in RCW 88.32.010, said board shall thereupon apply to the person, who, for the time being, shall be judge of the United States district court, for the district within which the county shall be situated, to name eleven reputable citizens and freeholders of such county and file a list thereof with said board of county commissioners. The persons so named, or a majority of them, shall act as a commission, and be known as the "river and harbor improvement commission of county", and shall receive no compensation, except their actual necessary expenses, including necessary clerical assistance, to be audited by the board of county commissioners; and they shall be deemed the agents of the county in the performance of the duties imposed upon them by RCW 88.32.010 through 88.32.220. Each member of such commission shall, before entering upon his or her duties, take and subscribe an oath, substantially as follows:

"State of Washington
County of
} ss.

I, the undersigned, a member of the river and harbor improvement commission of county, to define and establish the assessment district and assess the costs of the following improvement (here give the general description of the improvement), do solemnly swear (or affirm, as the case may be), that I will well and truly discharge my duties as a member of said commission." In case the person who is United States judge shall be unable or decline to act, the board of county commissioners shall name the eleven persons to act as such commission. [2013 c 23 § 537; 1907 c 236 § 2; RRS § 9670.]

88.32.040 Establishment of assessment district—Assessments—State lands. It shall be the duty of such commission to define and establish an assessment district, within such county, comprising all the taxable real property, and also (with the limitations hereinafter expressed) the state shorelands, which shall be specially benefited by said river, lake, canal, or harbor improvement, and to apportion and assess the amount of separate, special, and particular benefits against each lot, block, parcel, or tract of land or shoreland within such district, by reason of such improvement. The commission in making the assessment shall include in the

properties upon which the assessment is laid, all shorelands of the state, whether unsold or under contract of sale and subject to sale by it and as against all purchasers from the state or under contract to purchase such lands, the assessment shall be a charge upon such land and the purchaser's interest therein. The county auditor shall certify to the state commissioner of public lands a schedule of the state shorelands so assessed and of the assessment thereon, and the purchaser shall from time to time pay to the proper county treasurer the sums due and unpaid under such assessment, and at the time of such payment the county treasurer shall give him or her, in addition to a regular receipt for such payment, a certificate that such payment has been made, which certificate the purchaser shall immediately file with the commissioner of public lands, and no patent from the state nor deed shall issue to such purchaser, nor shall any assignment of his or her contract to purchase be approved by the commissioner of public lands until every matured installment of such assessment shall have first been fully paid and satisfied: PROVIDED, HOWEVER, That no such assessment shall create any charge against such shoreland or affect the title thereof as against the state, and the state shall be as free to forfeit or annul such contract and again sell such land as if the assessment had never been made, and in case of such forfeiture or annulment the state shall be free to sell again such land entirely disencumbered and unencumbered of all right and claim of such former purchaser, and such purchaser shall have no right, interest, or claim upon or against such land or the state or such new purchaser or at all, but every such sum paid by such former purchaser upon such assessment shall be utterly forfeited as against him or her, his or her personal representatives and assigns, and shall inure to the benefit of such new purchaser. [2013 c 23 § 538; 1907 c 236 § 3; RRS § 9671. Formerly RCW 88.32.040 and 88.32.050.]

88.32.090 Appeal from final assessment. Any person who feels aggrieved by the final assessment made against any lot, block, or parcel of land owned by him or her may appeal therefrom to the superior court of such county. Such appeal shall be taken within the time, and substantially in the manner prescribed by the laws of this state for appeals from justice's courts. All notices of appeal shall be filed with the board of county commissioners, and served upon the prosecuting attorney of the county. The clerk of the board of county commissioners shall at appellant's expense certify to the superior court so much of the record, as appellant may request, and the cause shall be tried in the superior court de novo.

Any person aggrieved by any final order or judgment, made by the superior court concerning any assessment authorized by RCW 88.32.010 through 88.32.220, may seek appellate review of the order or judgment in accordance with the laws of this state relative to such review, except that review shall be sought within thirty days after the entry of such judgment. [2013 c 23 § 539; 1988 c 202 § 90; 1971 c 81 § 175; 1907 c 236 § 7; RRS § 9675.]

Additional notes found at www.leg.wa.gov

88.32.100 Lien of assessment—Collection—Payment—Interest. The final assessment shall be a lien, paramount to all other liens, except liens for taxes and other special assessments, upon the property assessed, from the time

the assessment roll shall be approved by said board of county commissioners and placed in the hands of the county treasurer, as collector. After said roll shall have been delivered to the county treasurer for collection, he or she shall proceed to collect the same, in the manner as other taxes are collected: PROVIDED, That such treasurer shall give at least ten days' notice in the official newspaper (and shall mail a copy of such notice to the owner of the property assessed, when the post office address of such owner is known, but failure to mail such notice shall not be fatal when publication thereof is made), that such roll has been certified to him or her for collection, and that unless payment be made within thirty days from the date of such notice, that the sum charged against each lot or parcel of land shall be paid in not more than ten equal annual payments, with interest upon the whole sum so charged at a rate not to exceed seven percent per annum. Said interest shall be paid semiannually, and the county treasurer shall proceed to collect the amount due each year by the publication of notice as hereinabove provided. [2013 c 23 § 540; 1907 c 236 § 8; RRS § 9676. Formerly RCW 88.32.100 and 88.32.110.]

88.32.140 Bonds—Issuance—Sale—Form. (1) In all cases, the county, as the agent of the local improvement district, shall, by resolution of its county legislative authority, cause to be issued in the name of the county, the bonds for such local improvement district for the whole estimated cost of such improvement, less such amounts as shall have been paid within the thirty days provided for redemption, as hereinabove specified. Such bonds shall be called "Local Improvement Bonds, District No. . . . , County of , State of Washington", and shall be payable not more than ten years after date, and shall be subject to annual call by the county treasurer, in such manner and amounts as he or she may have cash on hand to pay the same in the respective local improvement fund from which such bonds are payable, interest to be paid at the office of the county treasurer. Such bonds shall be issued and delivered to the contractor for the work from month to month in such amounts as the engineer of the government, in charge of the improvement, shall certify to be due on account of work performed, or, if said county legislative authority resolves so to do, such bonds may be offered for sale after thirty days public notice thereof given, to be delivered to the highest bidder therefor, but in no case shall such bonds be sold for less than par, the proceeds to be applied in payment for such improvement: PROVIDED, That unless the contractor for the work shall agree to take such bonds in payment for his or her work at par, such work shall not be begun until the bonds shall have been sold and the proceeds shall have been paid into a fund to be called "Local Improvement Fund No. . . . , County of", and the owner or owners of such bonds shall look only to such fund for the payment of either the principal or interest of such bonds.

Such bonds shall be issued in denominations of one hundred dollars each, and shall be substantially in the following form:

"Local Improvement Bond, District Number of the County of , State of Washington.

No. . . . N.B. . . .

\$

This bond is not a general debt of the county of and has not been authorized by the voters of said county as a part of its general indebtedness. It is issued in pursuance of an act of the legislature of the state of Washington, passed the day of A.D. 1907, and is a charge against the fund herein specified and its issuance and sale is authorized by the resolution of the county legislative authority, passed on the day of A.D. 1907. The county of, a municipal corporation of the state of Washington, hereby promises to pay to, or bearer, one hundred dollars, lawful money of the United States of America, out of the fund established by resolution of the county legislative authority on the day of, A.D. 19. . ., and known as local improvement fund district number of county, and not otherwise.

"This bond is payable ten years after date, and is subject to annual call by the county treasurer at the expiration of any year before maturity in such manner and amounts as he or she may have cash on hand to pay the same in the said fund from which the same is payable, and shall bear interest at the rate of percent per annum, payable semiannually; both principal and interest payable at the office of the county treasurer. The county legislative authority of said county, as the agent of said local improvement district No., established by resolution No., has caused this bond to be issued in the name of said county, as the bond of said local improvement district, the proceeds thereof to be applied in part payment of so much of the cost of the improvement of the rivers, lakes, canals, or harbors of county, under resolution No., as is to be borne by the owners of property in said local improvement district, and the said local improvement fund, district No. of county, has been established by resolution for said purpose; and the owner or owners of this bond shall look only to said fund for the payment of either the principal or interest of this bond.

"The call for the payment of this bond or any bond, issued on account of said improvement, may be made by the county treasurer by publishing the same in an official newspaper of the county for ten consecutive issues, beginning not more than twenty days before the expiration of any year from date hereof, and if such call be made, interest on this bond shall cease at the date named in such call.

"This bond is one of a series of bonds, aggregating in all the principal sum of dollars, issued for said local improvement district, all of which bonds are subject to the same terms and conditions as herein expressed.

"In witness whereof the said county of has caused these presents to be signed by its chair of its county legislative authority, and countersigned by its county auditor and sealed with its corporate seal, attested by its county clerk, this day of, in the year of our Lord one thousand nine hundred and

The County of
By
Chair County Legislative Authority.

Countersigned, County Auditor.
Attest, Clerk."

The bonds may be in any form, including bearer bonds or registered bonds as provided in RCW 39.46.030.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [2013 c 23 § 541; 1983 c 167 § 245; 1970 ex.s. c 56 § 101; 1969 ex.s. c 232 § 60; 1907 c 236 § 10; RRS § 9678. Formerly RCW 88.32.140 and 88.32.150.]

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.
Additional notes found at www.leg.wa.gov

88.32.160 Bonds—Execution. Each and every bond issued for any such improvement shall be signed by the chair of the county legislative authority and the county auditor, sealed with the corporate seal of the county, and attested by the county clerk. The bonds issued for each local improvement district shall be in the aggregate for such an amount as authorized by the resolution of the county legislative authority with reference to such river, lake, canal or harbor improvement, and each issue of such bonds shall be numbered consecutively, beginning with number 1. [2013 c 23 § 542; 1983 c 167 § 246; 1907 c 236 § 11; RRS § 9679.]

Additional notes found at www.leg.wa.gov

88.32.170 Payment in full—Calls for bonds, notice—Bond owners’ rights. The owner of any lot or parcel of land charged with any assessment as provided for hereinabove, may redeem the same from all liability by paying the entire assessment charged against such lot or parcel of land, or part thereof, without interest, within thirty days after notice to him or her of such assessment, as herein provided, or may redeem the same at any time after the bonds above specified shall have been issued, by paying the full amount of all the principal and interest to the end of the interest year then expiring, or next to expire. The county treasurer shall pay the interest on the bonds authorized to be issued under RCW 88.32.010 through 88.32.220 out of the respective local improvement funds from which they are payable, and whenever there shall be sufficient money in any local improvement fund, against which bonds have been issued under the provisions of RCW 88.32.010 through 88.32.220, over and above the amount necessary for the payment of interest on all unpaid bonds, and sufficient to pay the principal of one or more bonds, the county treasurer shall call in and pay such bonds, provided that such bonds shall be called in and paid in their numerical order: PROVIDED, FURTHER, That such call shall be made by publication in the county official newspaper, on the day following the delinquency of the installment of the assessment, or as soon thereafter as practicable, and shall state that bonds numbers (giving the serial number or numbers of the bonds called), will be paid on the day the interest payment on said bonds shall become due, and interest upon such bonds shall cease upon such date. If the county shall fail, neglect, or refuse to pay said bonds or promptly to collect any of said assessments when due, the owner of any such bonds may proceed in his or her own name to collect such assessment and foreclose the lien thereof in any court of competent jurisdiction, and shall recover in addition to the amount of such bonds and interest thereon, five percent, together with the costs of such suit. Any number of owners of such bonds for any single improvement, may join as plaintiffs and any number of owners of the property on which the same are a lien may be joined as defendants in such suit.

[2013 c 23 § 543; 1983 c 167 § 247; 1907 c 236 § 12; RRS § 9680. Formerly RCW 88.32.120 and 88.32.170.]

Additional notes found at www.leg.wa.gov

88.32.190 Improvement by counties jointly—Procedure. In every case of such joint action, the preliminary procedure of RCW 88.32.010 having been first had in each county severally, the board of county commissioners of the several counties proposing to join shall unite in such an application as is prescribed in RCW 88.32.020, and the application shall be made to any person, who, for the time being, shall be a judge of the United States district court in any district in which such counties, or any of them, may lie, and the list mentioned in RCW 88.32.020 shall be made in as many counterparts as there are counties so joining, and one counterpart shall be filed with the board of county commissioners of each county, and if the person who is such United States judge shall decline or be unable to act, then, the board of such counties shall meet in joint session, at the county seat of such one of the counties as shall be agreed upon and shall organize as a joint board by appointing a chair and clerk, and by resolution in which a majority of all the commissioners present, and at least one commissioner from each county, shall concur, name the eleven persons for the commission, which eleven in such case shall be citizens of the counties concerned, and as nearly as may be the same number from each county. A counterpart of such resolution shall be recorded in the minutes of the proceedings of the board of each county. The commission shall make as many assessment rolls as there are counties joining and one counterpart roll shall be certified by such chair and clerk of the joint board, and by such clerk filed with the board of each of such counties. [2013 c 23 § 544; 1907 c 236 § 14; RRS § 9682.]

88.32.200 Improvement by counties jointly—Joint board of equalization. For purposes of a board of equalization, said boards shall from time to time meet as a joint board as aforesaid, and have a chair and clerk as aforesaid, and for all purposes under RCW 88.32.070 and 88.32.080, in case of counties joining, the word board wherever occurring in said sections shall be interpreted to mean such joint board, and the word clerk shall be deemed to mean the clerk of such joint board, and the posting of notices shall be in at least ten public places in each county, and the publication of the same shall be in a newspaper of each county, and the objections mentioned in RCW 88.32.080 shall be filed with the clerk of the joint board, who shall cause a copy thereof, certified by him or her to be filed with the clerk of the board of county commissioners of the county where the real estate of the party objecting is situated. [2013 c 23 § 545; 1907 c 236 § 15; RRS § 9683.]

88.32.210 Improvement by counties jointly—Joint assessment roll—Filing, appeals, subsequent proceedings. The minutes of the proceedings of the joint board and the assessment roll as finally settled by such board shall be made up in as many counterparts as there are counties joining as aforesaid, and shall be signed by the chair and clerk of said board, and one of said counterparts so signed shall be filed by said clerk with the clerk of the board of county commissioners of each of said counties, and any appeals and subsequent

proceedings under RCW 88.32.090 to 88.32.170, inclusive, as far as relates to real estate in any individual county, shall be as nearly as may be the same as if the local improvement district and bond issue concerned that county only. [2013 c 23 § 546; 1907 c 236 § 16; RRS § 9684.]

Title 89

RECLAMATION, SOIL CONSERVATION, AND LAND SETTLEMENT

Chapters

- 89.08 Conservation districts.**
- 89.12 Reclamation and irrigation districts in reclamation areas.**
- 89.16 Reclamation by state.**
- 89.30 Reclamation districts of one million acres.**

Chapter 89.08 RCW CONSERVATION DISTRICTS

Sections

- 89.08.010 Preamble.
- 89.08.170 Secretary of state's certificate—Change of name.
- 89.08.180 Annexation of territory—Boundary change—Combining two or more districts.
- 89.08.200 Supervisors—Term, vacancies, removal, etc.—Compensation.
- 89.08.210 Powers and duties of supervisors.
- 89.08.215 Treasurer—Powers and duties—Bond.

89.08.010 Preamble. It is hereby declared, as a matter of legislative determination:

(1) That the lands of the state of Washington are among the basic assets of the state and that the preservation of these lands is necessary to protect and promote the health, safety, and general welfare of its people; that improper land-use practices have caused and have contributed to, and are now causing and contributing to, a progressively more serious erosion of the lands of this state by wind and water; that the breaking of natural grass, plant, and forest cover have interfered with the natural factors of soil stabilization, causing loosening of soil and exhaustion of humus, and developing a soil condition that favors erosion; that the topsoil is being blown and washed off of lands; that there has been an accelerated washing of sloping lands; that these processes of erosion by wind and water speed up with removal of absorptive topsoil, causing exposure of less absorptive and less protective but more erosive subsoil; that failure by any land occupier to conserve the soil and control erosion upon his or her lands may cause a washing and blowing of soil from his or her lands onto other lands and makes the conservation of soil and control of erosion on such other lands difficult or impossible, and that extensive denuding of land for development creates critical erosion areas that are difficult to effectively regenerate and the resulting sediment causes extensive pollution of streams, ponds, lakes, and other waters.

(2) That the consequences of such soil erosion in the form of soil blowing and soil washing are the silting and sedimentation of stream channels, reservoirs, dams, ditches, and harbors, and loading the air with soil particles; the loss of fertile soil material in dust storms; the piling up of soil on lower slopes and its deposit over alluvial plains; the reduction in productivity or outright ruin of rich bottom lands by over-

wash of poor subsoil material, sand, and gravel swept out of the hills; deterioration of soil and its fertility, deterioration of crops grown thereon, and declining acre yields despite development of scientific processes for increasing such yields; loss of soil and water which causes destruction of food and cover for wildlife; a blowing and washing of soil into streams which silts over spawning beds, and destroys water plants, diminishing the food supply of fish; a diminishing of the underground water reserve, which causes water shortages, intensifies periods of drought, and causes crop failures; an increase in the speed and volume of rainfall run-off, causing severe and increasing floods, which bring suffering, disease, and death; impoverishment of families attempting to farm eroding and eroded lands; damage to roads, highways, railways, buildings, and other property from floods and from dust storms; and losses in navigation, hydroelectric power, municipal water supply, irrigation developments, farming, and grazing.

(3) That to conserve soil resources and control and prevent soil erosion and prevent flood water and sediment damages, and further agricultural and nonagricultural phases of the conservation, development, utilization, and disposal of water, it is necessary that land-use practices contributing to soil wastage and soil erosion be discouraged and discontinued, and appropriate soil-conserving land-use practices, and works of improvement for flood prevention of agricultural and nonagricultural phases of the conservation, development, utilization, and disposal of water be adopted and carried out; that among the procedures necessary for widespread adoption, are the carrying on of engineering operations such as the construction of terraces, terrace outlets, check-dams, desilting basins, flood water retarding structures, channel floodways, dikes, ponds, ditches, and the like; the utilization of strip cropping, contour cultivating, and contour furrowing; land irrigation; seeding and planting of waste, sloping, abandoned, or eroded lands to water-conserving and erosion-preventing plants, trees, and grasses; forestation and reforestation; rotation of crops; soil stabilizations with trees, grasses, legumes, and other thick-growing, soil-holding crops, retardation of run-off by increasing absorption of rainfall; and retirement from cultivation of steep, highly erosive areas and areas now badly gullied or otherwise eroded.

(4) Whereas, there is a pressing need for the conservation of renewable resources in all areas of the state, whether urban, suburban, or rural, and that the benefits of resource practices, programs, and projects, as carried out by the state conservation commission and by the conservation districts, should be available to all such areas; therefore, it is hereby declared to be the policy of the legislature to provide for the conservation of the renewable resources of this state, and for the control and prevention of soil erosion, and for the prevention of flood water and sediment damages, and for furthering agricultural and nonagricultural phases of conservation, development, utilization, and disposal of water, and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, assist in maintaining the navigability of rivers and harbors, preserve wildlife, protect the tax base, protect public lands, and protect and promote the health, safety, and general welfare of the people of this state. To this end all incorporated cities and towns heretofore excluded from the boundaries of a conservation district estab-

lished pursuant to the provisions of the state conservation district law, as amended, may be approved by the conservation commission as being included in and deemed a part of the district upon receiving a petition for annexation signed by the governing authority of the city or town and the conservation district within the exterior boundaries of which it lies in whole or in part or to which it lies closest. [2013 c 23 § 547; 1973 1st ex.s. c 184 § 2; 1939 c 187 § 2; RRS § 10726-2.]

89.08.170 Secretary of state's certificate—Change of name. If the secretary of state finds that the name of the proposed district is such as will not be confused with that of any other district, he or she shall enter the application and statement in his or her records. If he or she finds the name may be confusing, he or she shall certify that fact to the commission, which shall submit a new name free from such objections, and he or she shall enter the application and statement as modified, in his or her records. Thereupon the district shall be considered organized into a body corporate.

The secretary of state shall then issue to the supervisors a certificate of organization of the district under the seal of the state, and shall record the certificate in his or her office. Proof of the issuance of the certificate shall be evidence of the establishment of the district, and a certified copy of the certificate shall be admissible as evidence and shall be proof of the filing and contents thereof. The name of a conservation district may be changed upon recommendation by the supervisors of a district and approval by the state conservation commission and the secretary of state. The new name shall be recorded by the secretary of state following the same general procedure as for the previous name. [2013 c 23 § 548; 1973 1st ex.s. c 184 § 18; 1961 c 240 § 9; 1955 c 304 § 17. Prior: 1951 c 216 § 1; 1939 c 187 § 5, part; RRS § 10726-5, part.]

89.08.180 Annexation of territory—Boundary change—Combining two or more districts. Territory may be added to an existing district upon filing a petition as in the case of formation with the commission by twenty percent of the voters of the affected area to be included. The same procedure shall be followed as for the creation of the district.

As an alternate procedure, the commission may upon the petition of a majority of the voters in any one or more districts or in unorganized territory adjoining a conservation district change the boundaries of a district, or districts, if such action will promote the practical and feasible administration of such district or districts.

Upon petition of the boards of supervisors of two or more districts, the commission may approve the combining of all or parts of such districts and name the district, or districts, with the approval of the name by the secretary of state. A public hearing and/or a referendum may be held if deemed necessary or desirable by the commission in order to determine the wishes of the voters.

When districts are combined, the joint boards of supervisors will first select a chair, secretary, and other necessary officers and select a regular date for meetings. All elected supervisors will continue to serve as members of the board until the expiration of their current term of office, and/or until the election date nearest their expiration date. All appointed supervisors will continue to serve until the expiration of their

current term of office, at which time the commission will make the necessary appointments. In the event that more than two districts are combined, a similar procedure will be set up and administered by the commission.

When districts are combined or territory is moved from one district to another, the property, records, and accounts of the districts involved shall be distributed to the remaining district or districts as approved by the commission. A new certificate of organization, naming and describing the new district or districts, shall be issued by the secretary of state. [2013 c 23 § 549; 1999 c 305 § 6; 1973 1st ex.s. c 184 § 19; 1961 c 240 § 10; 1955 c 304 § 18. Prior: 1951 c 216 § 2; 1939 c 187 § 5, part; RRS § 10726-5, part.]

89.08.200 Supervisors—Term, vacancies, removal, etc.—Compensation. The term of office of each supervisor shall be three years and until his or her successor is appointed or elected and qualified, except that the supervisors first appointed shall serve for one and two years respectively from the date of their appointments, as designated in their appointments.

In the case of elected supervisors, the term of office of each supervisor shall be three years and until his or her successor is elected and qualified, except that for the first election, the one receiving the largest number of votes shall be elected for three years; the next largest two years; and the third largest one year. Successors shall be elected for three-year terms.

Vacancies in the office of appointed supervisors shall be filled by the state conservation commission. Vacancies in the office of elected supervisors shall be filled by appointment made by the remaining supervisors for the unexpired term.

A majority of the supervisors shall constitute a quorum and the concurrence of a majority is required for any official action or determination.

Supervisors shall serve without compensation, but they shall be entitled to expenses, including traveling expenses, necessarily incurred in discharge of their duties. A supervisor may be removed by the state conservation commission upon notice and hearing, for neglect of duty or malfeasance in office, but for no other reason.

The governing board shall designate a chair from time to time. [2013 c 23 § 550; 1973 1st ex.s. c 184 § 21; 1961 c 240 § 12; 1955 c 304 § 21. Prior: 1949 c 106 § 2, part; 1939 c 187 § 7, part; Rem. Supp. 1949 § 10726-7, part.]

89.08.210 Powers and duties of supervisors. The supervisors may employ a secretary, treasurer, technical experts, and such other officers, agents, and employees, permanent and temporary, as they may require, and determine their qualifications, duties, and compensation. It may call upon the attorney general for legal services, or may employ its own counsel and legal staff. The supervisors may delegate to their chair, to one or more supervisors, or to one or more agents or employees such powers and duties as it deems proper. The supervisors shall furnish to the commission, upon request, copies of such internal rules, regulations, orders, contracts, forms, and other documents as they shall adopt or employ, and such other information concerning their activities as the commission may require in the performance of its duties under chapter 184, Laws of 1973 1st ex. sess.

The supervisors shall provide for the execution of surety bonds for officers and all employees who shall be entrusted with funds or property.

The supervisors shall provide for the keeping of a full and accurate record of all proceedings, resolutions, regulations, and orders issued or adopted. The supervisors shall provide for an annual audit of the accounts of receipts and disbursements in accordance with procedures prescribed by regulations of the commission.

The board may invite the legislative body of any municipality or county near or within the district, to designate a representative to advise and consult with it on all questions of program and policy which may affect the property, water supply, or other interests of such municipality or county. The governing body of a district shall appoint such advisory committees as may be needed to assure the availability of appropriate channels of communication to the board of supervisors, to persons affected by district operations, and to local, regional, state and interstate special-purpose districts and agencies responsible for community planning, zoning, or other resource development activities. The district shall keep such committees informed of its work, and such advisory committees shall submit recommendations from time to time to the board of supervisors. [2013 c 23 § 551; 2000 c 45 § 1; 1973 1st ex.s. c 184 § 22; 1955 c 304 § 22. Prior: 1949 c 106 § 2, part; 1939 c 187 § 7, part; Rem. Supp. 1949 § 10726-7, part.]

89.08.215 Treasurer—Powers and duties—Bond. (1) The treasurer of the county in which a conservation district is located is ex officio treasurer of the district. However, the board of supervisors by resolution may designate some other person having experience in financial or fiscal matters as treasurer of the conservation district. The board of supervisors shall require a bond, with a surety company authorized to do business in the state of Washington, in an amount and under the terms and conditions which the board of supervisors by resolution from time to time finds will protect the district against loss. The premium on this bond shall be paid by the district.

(2) All district funds shall be paid to the treasurer and disbursed only on warrants issued by an auditor appointed by the board of supervisors, upon orders or vouchers approved by it. The treasurer shall establish a conservation district fund into which shall be paid all district funds. The treasurer shall maintain any special funds created by the board of supervisors for the placement of all money as the board of supervisors may, by resolution, direct.

(3) If the treasurer of the district is the treasurer of the county all district funds shall be deposited with the county depositories under the same restrictions, contracts, and security as provided for county depositories. If the treasurer of the district is some other person, all funds shall be deposited in a bank or banks authorized to do business in this state as the board of supervisors, by resolution, designates.

(4) A district may provide and require a reasonable bond of any other person handling moneys or securities of the district, if the district pays the premium.

(5)(a) A district may disburse funds in payment of salaries, wages, and any other approved financial reimbursement to any employee or contractor of the district to any financial

institution for either: (i) Credit to the employees' or contractors' accounts in such financial institution; or (ii) immediate transfer therefrom to the employees' or contractors' accounts in any other financial institutions.

(b) As used in this subsection (5), "financial institution" has the definition in RCW 41.04.240. [2013 c 164 § 2; 2000 c 45 § 2.]

Chapter 89.12 RCW

RECLAMATION AND IRRIGATION DISTRICTS IN RECLAMATION AREAS

Sections

89.12.020	Definitions.
89.12.050	Contracts with United States—Permissible provisions.
89.12.150	Exchange of state and federal lands.

89.12.020 Definitions. As used in this chapter,

The term "secretary" shall mean the secretary of the interior of the United States, or his or her duly authorized representative.

The term "appraised value" shall mean the value of lands within the scope of this chapter appraised or reappraised by the secretary without reference to or increment on account of the irrigation works built or to be built by the United States.

The term "district" shall mean an irrigation or reclamation district governed by this chapter as provided in RCW 89.12.030.

The term "federal reclamation laws" shall mean the act of congress of June 17, 1902 (32 Stat. 388) and acts amendatory thereof or supplemental thereto including the act of congress entitled "An Act to amend the Act approved May 27, 1937 (Ch. 269, 50 Stat. 208), by providing substitute and additional authority for the prevention of speculation in lands of the Columbia Basin project, and substitute an additional authority related to the settlement and development of the project, and for other purposes, enacted and approved in the Seventy-Eighth Session."

The term "lands" shall mean, unless otherwise indicated, lands within the boundaries of a district contracting or intending to contract with the United States under the terms of this chapter.

The term "owner," "landowner," and "any one landowner" shall mean any person, corporation, joint stock association or family owning lands that are within the scope of this chapter.

The term "family" shall mean a group consisting of either or both husband and wife, together with their children under eighteen years of age, or all of such children if both parents are dead, the term "their children" including the issue and lawfully adopted children of either or both husband and wife. Within the meaning of this chapter, lands shall be deemed to be held by a family if held as separate property of husband or wife, or if held as a part or all of their community property, or if they are the property of any or all of their children under eighteen years of age. [2013 c 23 § 552; 1943 c 275 § 3; Rem. Supp. 1943 § 7525-22.]

89.12.050 Contracts with United States—Permissible provisions. (1) A district may enter into repayment and other contracts with the United States under the terms of the federal

reclamation laws in matters relating to federal reclamation projects, and may with respect to lands within its boundaries include in the contract, among others, an agreement that:

(a) The district will not deliver water by means of the project works provided by the United States to or for excess lands not eligible therefor under applicable federal law.

(b) As a condition to receiving water by means of the project works, each excess landowner in the district, unless his or her excess lands are otherwise eligible to receive water under applicable federal law, shall be required to execute a recordable contract covering all of his or her excess lands within the district.

(c) All excess lands within the district not eligible to receive water by means of the project works shall be subject to assessment in the same manner and to the same extent as lands eligible to receive water, subject to such provisions as the secretary may prescribe for postponement in payment of all or part of the assessment but not beyond a date five years from the time water would have become available for such lands had they been eligible therefor.

(d) The secretary is authorized to amend any existing contract, deed, or other document to conform to the provisions of applicable federal law as it now exists. Any such amendment may be filed for record under RCW 89.12.080.

(2) A district may enter into a contract with the United States for the transfer of operations and maintenance of the works of a federal reclamation project, but the contract does not impute to the district negligence for design or construction defects or deficiencies of the transferred works. Any contract, covenant, promise, agreement, or understanding purporting to indemnify against liability for damages caused by or resulting from the negligent acts or omissions of the United States, its employees, or agents is not enforceable unless expressly authorized by state law. [2013 c 177 § 13; 2013 c 23 § 553; 2009 c 145 § 3; 1963 c 3 § 2; 1957 c 165 § 3; 1951 c 200 § 1; 1943 c 275 § 5; Rem. Supp. 1943 § 7525-24.]

Reviser's note: This section was amended by 2013 c 23 § 553 and by 2013 c 177 § 13, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

89.12.150 Exchange of state and federal lands. From and after the date that the consent of the United States shall be given thereto by act of congress, the department of natural resources is authorized, upon request from the secretary of the interior, to cause an appraisal to be made by the board of natural resources of state lands in any division of any federal reclamation project which the secretary of the interior shall advise the department that he or she desires to have subdivided into farm units of class referred to in RCW 89.12.140, and also to cause to be appraised by the board of natural resources such public lands of the United States on the same project, or elsewhere in the state of Washington, as the secretary of the interior may propose to exchange for such state land, and when the secretary of the interior shall have secured from congress authority to make such exchange the department is authorized to exchange such state lands in any federal reclamation project for public lands of the United States on the same project or elsewhere in the state of Washington of approximately equal appraised valuation, and in making such

exchange is authorized to execute suitable instruments in writing conveying or relinquishing to the United States such state lands and accepting in lieu thereof such public land of approximately equal appraised valuation. [2013 c 23 § 554; 1988 c 128 § 75; 1927 c 246 § 2; RRS § 7402-281.]

Chapter 89.16 RCW

RECLAMATION BY STATE

Sections

- 89.16.040 Payments from account—Reclamation districts specified—Rehabilitation of existing projects.
 89.16.045 Loans from account—Contracts—Repayment.
 89.16.050 Powers and duties of director of ecology.

89.16.040 Payments from account—Reclamation districts specified—Rehabilitation of existing projects.

From the moneys appropriated from the reclamation account there shall be paid, upon vouchers approved by the director of ecology, the administrative expenses of the director under this chapter and such amounts as are found necessary for the investigation and survey of reclamation projects proposed to be financed in whole or in part by the director, and such amounts as may be authorized by him or her for the reclamation of lands in diking, diking improvement, drainage, drainage improvement, diking and drainage, diking and drainage improvement, irrigation and irrigation improvement districts, and such other districts as are authorized by law for the reclamation or development of waste or undeveloped lands or the rehabilitation of existing reclamation projects, and all such districts and improvement districts shall, for the purposes of this chapter be known as reclamation districts. [2013 c 23 § 555; 1981 c 216 § 2; 1972 ex.s. c 51 § 3; 1959 c 104 § 4. Prior: 1919 c 158 § 4, part; RRS § 3007, part.]

89.16.045 Loans from account—Contracts—Repayment.

Notwithstanding any other provisions of this chapter, the director of ecology may, by written contract with a reclamation district, loan moneys from the reclamation account to said district for use in financing a project of construction, reconstruction or improvement of district facilities, or a project of additions to such facilities. No such contract shall exceed fifty thousand dollars per project or a term of ten years, or provide for an interest rate of more than eight percent per annum. The director shall not execute any contract as provided in this section until he or she determines that the project for which the moneys are furnished is within the scope of the district's powers to undertake, that the project is feasible, that its construction is in the best interest of the state and the district, and that the district proposing the project is in a sound financial condition and capable of repaying the loan with interest in not more than ten annual payments. Any district is empowered to enter into a contract, as provided for in this section, and to levy assessments based on the special benefits accruing to lands within the district as are necessary to satisfy the contract, when a resolution of the governing body of the reclamation district authorizing its execution is approved by the body: PROVIDED, That no district shall be empowered to execute with the director any such contract during the term of any previously executed contract autho-

rized by this section. [2013 c 23 § 556; 1972 ex.s. c 51 § 4; 1967 c 181 § 1.]

89.16.050 Powers and duties of director of ecology.

In carrying out the purposes of this chapter, the director of the department of ecology of the state of Washington shall be authorized and empowered:

To make surveys and investigations of the wholly or partially unreclaimed and undeveloped lands in this state and to determine the relative agricultural values, productiveness and uses, and the feasibility and cost of reclamation and development thereof;

To formulate and adopt a sound policy for the reclamation and development of the agricultural resources of the state, and from time to time select for reclamation and development such lands as may be deemed advisable, and the director may in his or her discretion advise as to the formation and assist in the organization of reclamation districts under the laws of this state;

To purchase the bonds of any reclamation district whose project is approved by the director and which is found to be upon a sound financial basis, to contract with any such district for making surveys and furnishing engineering plans and supervision for the construction of its project, or for constructing or completing its project and to advance money to the credit of the district for any or all of such purposes, and to accept the bonds, notes, or warrants of such district in payment therefor, and to expend the moneys appropriated from the reclamation account in the purchase of such bonds, notes, or warrants or in carrying out such contracts: PROVIDED, That interest not to exceed the annual rate provided for in the bonds, notes, or warrants agreed to be purchased, shall be charged and received for all moneys advanced to the district prior to the delivery of the bonds, notes, or warrants and the amount of such interest shall be included in the purchase price of such bonds, notes, or warrants: PROVIDED FURTHER, That no district, the bonds, notes, or warrants of which have been purchased by the state under the provisions of the state reclamation act, shall thereafter during the life of said bonds, notes, or warrants make expenditures of any kind from the bond or warrant funds of the district or incur obligations chargeable against such funds or issue any additional notes without previous written approval of the director of ecology of the state of Washington, and any obligations incurred without such approval shall be void;

To sell and dispose of any reclamation district bonds acquired by the director, at public or private sale, and to pay the proceeds of such sale into the reclamation account: PROVIDED, That such bonds shall not be sold for less than the purchase price plus accrued interest, except in case of a sale to an agency supplied with money by the United States of America, or to the United States of America in furtherance of refunding operations of any irrigation district, diking or drainage district, or diking or drainage improvement district, now pending or hereafter carried on by such district, in which case the director shall have authority to sell any bonds of such district owned by the state of Washington under the provisions of the state reclamation act, to the United States of America, or other federal agency on such terms as said United States of America, or other federal agency shall prescribe for bonds of the same issue of such district as that held

by the state of Washington in connection with such refunding operations;

To borrow money upon the security of any bonds, including refunding bonds, of any reclamation district, acquired by the director, on such terms and rate of interest and over such period of time as the director may see fit, and to hypothecate and pledge reclamation district bonds or refunding bonds acquired by the director as security for such loan. Such loans shall have, as their sole security, the bonds so pledged and the revenues therefrom, and the director shall not have authority to pledge the general credit of the state of Washington: PROVIDED, That in reloading any money so borrowed, or obtained from a sale of bonds it shall be the duty of the director to fix such rates of interest as will prevent impairment of the reclamation revolving account;

To purchase delinquent general tax or delinquent special assessment certificates chargeable against lands included within any reclamation district obligated to the state under the provisions of the state reclamation act, and to purchase lands included in such districts and placed on sale on account of delinquent taxes or delinquent assessments with the same rights, privileges, and powers with respect thereto as a private holder and owner of said certificates, or as a private purchaser of said lands: PROVIDED, That the director shall be entitled to a delinquent tax certificate upon application to the proper county treasurer therefor without the necessity of a resolution of the county legislative authority authorizing the issuance of certificates of delinquency required by law in the case of the sale of such certificates to private purchasers;

To sell said delinquent certificates or the lands acquired at sale on account of delinquent taxes or delinquent assessments at public or private sale, and on such conditions as the director shall determine;

To, whenever the director shall deem it advisable, require any district with which he or she may contract, to provide such safeguards as he or she may deem necessary to assure bona fide settlement and development of the lands within such district, by securing from the owners of lands therein agreements to limit the amount of their holdings to such acreage as they can properly farm and to sell their excess land holdings at reasonable prices;

To employ all necessary experts, assistants, and employees and fix their compensation and to enter into any and all contracts and agreements necessary to carry out the purposes of this chapter;

To have the assistance, cooperation and services of, and the use of the records and files in, all the departments and institutions of the state, particularly the office of the commissioner of public lands, the state department of agriculture, Washington State University, and the University of Washington; and all state officers and the governing authorities of all state institutions are hereby authorized and directed to cooperate with the director in furthering the purpose of this chapter;

To cooperate with the United States in any plan of land reclamation, land settlement or agricultural development which the congress of the United States may provide and which may effect the development of agricultural resources within the state of Washington, and the director shall have full power to carry out the provisions of any cooperative land settlement act that may be enacted by the United States.

[2013 c 23 § 557; 1983 c 167 § 248; 1977 c 75 § 93; 1972 ex.s. c 51 § 5; 1943 c 279 § 1; 1935 c 7 § 1; 1933 ex.s. c 13 § 1; 1923 c 132 § 1; 1919 c 158 § 5; RRS § 3008.]

Additional notes found at www.leg.wa.gov

Chapter 89.30 RCW RECLAMATION DISTRICTS OF ONE MILLION ACRES

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89.30.025 Possessory interest in federal lands—Water rent, credit for prior payment. Lands held by private persons under possessory rights from the federal government may be included within the operation of the district, and as soon as such lands are held under title of private ownership, the owner thereof shall be entitled to receive his or her proportion of water as in case of other landowners upon payment by him or her of such sums as shall be determined by the district board and at the time to be fixed by said district board, which sum shall be such equitable amount as such lands should pay having regard to placing said lands on the

basis of equality with other lands in the district as to benefits received, and giving credit if equitable for any sums paid as water rent by the occupant of said lands prior to the vesting of private ownership, and such lands shall also become subject to all taxes and assessments of the district thereafter imposed. [2013 c 23 § 558; 1927 c 254 § 9; RRS § 7402-9. Formerly RCW 89.20.240.]

89.30.034 Petition on separate sheets—Withdrawals.

The petition for organization of such reclamation district shall consist of any number of separate instruments of uniform similarity, numbered consecutively. For convenience, lands represented on said instruments may be grouped separately according to the county in which said lands are situated. No petitioner shall have the right to withdraw his or her name from the petition after the same has been filed with said county board. [2013 c 23 § 559; 1927 c 254 § 12; RRS § 7402-12. Formerly RCW 89.20.540.]

89.30.055 Commission—Creation—Composition.

Upon the giving of notice of hearing on the petition by the clerk of the county board aforesaid, there is hereby authorized and created a commission composed of the chair of the board of county commissioners of each of the counties in which any of the lands to be included in the proposed reclamation district are situated, and of the state director of ecology, which commission shall consider and determine said petition. [2013 c 23 § 560; 1988 c 127 § 70; 1933 c 149 § 5; 1927 c 254 § 19; RRS § 7402-19. Formerly RCW 89.20.700.]

89.30.058 Commission—Chair—Clerk—Quorum.

The state director of ecology shall be ex officio chair of said commission, and the clerk of the county board of the county in which the petition is filed, shall be ex officio clerk of said commission. A majority of the members of said commission shall constitute a quorum for the transaction or exercise of any of its powers, functions, duties and business. [2013 c 23 § 561; 1988 c 127 § 71; 1933 c 149 § 6; 1927 c 254 § 20; RRS § 7402-20. Formerly RCW 89.20.710, part.]

89.30.109 Certified statement to be filed for record.

It shall be the duty of the clerk of the board of county commissioners of every county in which any lands included in the district are situated forthwith to certify and file for record in the county auditor's office of his or her county, a statement to the effect that, under the provisions of this chapter, certain lands (describing them in township and range and in case of smaller bodies of land in legal subdivisions or fractions thereof) were, by order of the board of county commissioners of county (naming the county) entered on the day of (naming the day, month and year) included in the reclamation district (using the name designated in the order of the county board establishing the district). Said statement certified by the clerk of the county board shall be entitled to record in the office of the county auditor without payment of filing or recording fee. [2013 c 23 § 562; 1927 c 254 § 37; RRS § 7402-37. Formerly RCW 89.20.930.]

89.30.229 Board of directors—Term of office. Except as herein otherwise provided, the term of the office of direc-

tor shall be six years from and after the second Monday in January next succeeding his or her election. [2013 c 23 § 563; 1927 c 254 § 77; RRS § 7402-77. Formerly RCW 89.22.050, part.]

89.30.259 Directors—Oath—Bond. Each director shall take and subscribe an official oath for the faithful discharge of the duties of his or her office and shall execute an official bond to the district in the sum of twenty-five hundred dollars conditioned for the faithful discharge of his or her office, which bond shall be approved by the judge of the superior court of the county where the organization of the district was effected, and said oath and bond shall be recorded in the office of the clerk of the superior court and filed with the secretary of the district. [2013 c 23 § 564; 1927 c 254 § 87; RRS § 7402-87. Formerly RCW 89.22.060.]

89.30.265 Additional official bonds when fiscal agent of United States.

In case any district authorized in this chapter is appointed fiscal agent of the United States or is authorized by the United States in connection with any irrigation project in which the United States is interested to make collections of money for or on behalf of the United States, such secretary and each such director and the county treasurer of the county where the organization of the district was effected shall each execute a further additional official bond in such sum respectively as the secretary of the interior may require conditioned for the faithful discharge of the duties of his or her respective office and the faithful discharge by the district of its duties as fiscal or other agent of the United States in such appointment or authorization; such additional bonds to be approved, recorded, filed, and paid for as herein provided for other official bonds. [2013 c 23 § 565; 1927 c 254 § 89; RRS § 7402-89. Formerly RCW 89.22.300.]

89.30.301 Interest in contracts prohibited—Penalty.

No director or any other officer named in this chapter shall in any manner be interested, directly or indirectly in any contract awarded or to be awarded by the board, or in the profits to be derived therefrom; and for any violation of this provision, such officer shall be deemed guilty of a misdemeanor, and such conviction shall work a forfeiture of his or her office, and he or she shall be punished by a fine not exceeding five hundred dollars or by imprisonment in the county jail not exceeding six months, or by both fine and imprisonment: PROVIDED, That nothing in this section contained shall be construed to prevent any district officer from being employed by the district as a day laborer. [2013 c 23 § 566; 1927 c 254 § 101; RRS § 7402-101. Formerly RCW 89.22.150.]

89.30.304 Delivery of records, etc., to successor.

Every person, upon the expiration or sooner termination of his or her term of office as an officer of the district, shall immediately turn over and deliver, under oath, to his or her successor in office, all records, books, papers, and other property under his or her control and belonging to such office. In case of the death of any officer, his or her legal representative shall turn over and deliver such records, books, papers, and other property to the successor in office of such deceased person. [2013 c 23 § 567; 1927 c 254 § 102; RRS § 7402-102. Formerly RCW 89.22.160.]

89.30.307 Employees on termination to deliver records to board—Penalty. Every person hired by the district and having in his or her custody or under his or her control, in connection with his or her contract of hire, any records, books, papers, or other property belonging to the district shall immediately upon the expiration of his or her services, turn over and deliver, under oath, to the district board or any member thereof, all such records, books, papers, or other property. Any person violating any of the provisions of this section shall be guilty of a misdemeanor. [2013 c 23 § 568; 1927 c 254 § 103; RRS § 7402-103. Formerly RCW 89.22.170.]

89.30.313 Liability of county treasurers. Any county treasurer collecting or handling funds of the district shall be liable upon his or her official bond and to criminal prosecution for malfeasance, misfeasance, or nonfeasance in office relative to any of his or her duties prescribed herein. [2013 c 23 § 569; 1927 c 254 § 105; RRS § 7402-105. Formerly RCW 89.22.470.]

89.30.316 County treasurers to collect assessments. It shall be the duty of the county treasurer of each county in which lands of the district are located to collect and receipt for all assessments and taxes levied as in this chapter provided, and he or she shall account to the district for all interest received on such funds from any public depository with which the same may be deposited. [2013 c 23 § 570; 1927 c 254 § 106; RRS § 7402-106. Formerly RCW 89.22.420.]

89.30.322 Claims against district. Any claim against the district shall be presented to the district board for allowance or rejection. Upon allowance the claim shall be attached to a voucher verified by the claimant or his or her agent and approved by the president and countersigned by the secretary and directed to the county auditor of the county in which the organization of the reclamation district was effected, for the issuance of a warrant against the proper fund of the district in payment of said claim. [2013 c 23 § 571; 1927 c 254 § 108; RRS § 7402-108. Formerly RCW 89.20.060.]

89.30.325 Disbursement of funds by county treasurer. Said county treasurer shall pay out the moneys received or deposited with him or her or any portion thereof upon warrants issued by the county auditor against the proper funds of the district except the sums to be paid out of the bond fund for principal and interest payments on bonds. [2013 c 23 § 572; 1983 c 167 § 249; 1927 c 254 § 109; RRS § 7402-109. Formerly RCW 89.22.450.]

Additional notes found at www.leg.wa.gov

89.30.328 Treasurer's monthly report. The said treasurer shall report in writing during the first week in each month to the board of directors of the district the amount of money held by him or her, the amount in each fund, the amount of receipts for the month preceding in each fund, and the amount or amounts paid out of each fund, and said report shall be filed with the secretary of the district. [2013 c 23 § 573; 1927 c 254 § 110; RRS § 7402-110. Formerly RCW 89.22.440.]

89.30.352 Elections—List of registered voters. The registration clerk of any county voting precinct, partially included in a reclamation district voting precinct, is hereby authorized and it shall be his or her duty to prepare and certify at the expense of the district a poll list of all registered voters of said reclamation district voting precinct and to attach the same to the poll books for his or her county voting precinct. [2013 c 23 § 574; 1927 c 254 § 118; RRS § 7402-118. Formerly RCW 89.22.690.]

89.30.367 Elections—Abstract of result. Immediately upon conclusion of the canvass of the returns of the reclamation district election held in the precincts located in his or her county, the county auditor shall mail to the chair of said district board, an abstract of the result of said district election in his or her county. [2013 c 23 § 575; 1927 c 254 § 123; RRS § 7402-123. Formerly RCW 89.22.740, part.]

89.30.382 Declaration of candidacy for board—Fee. Any qualified resident elector of any director district which is entitled at that time to elect a candidate for the office of reclamation district director may become a candidate for such office by filing, at least thirty days prior to the election, his or her declaration of candidacy with the county auditor of his or her county and by paying a fee of one dollar for said filing. [2013 c 23 § 576; 1927 c 254 § 128; RRS § 7402-128. Formerly RCW 89.22.620.]

89.30.565 Negotiable bonds of general improvement or divisional district—Moneys paid to county treasurer. The proceeds of bond sales for cash shall be paid by the purchaser to the county treasurer of the county in which the organization of the district was effected or to his or her duly authorized agent and credited to the proper fund. [2013 c 23 § 577; 1927 c 254 § 189; RRS § 7402-189. Formerly RCW 89.26.560.]

89.30.604 Assessments in general improvement or divisional district—Changes on roll to be noted—Completed roll to county treasurers. The secretary shall be present during the sessions of the board of equalization, and note all changes made in the valuation of property and in the names of the persons whose property is assessed and on or before the first day of January next following, he or she shall complete the assessment roll as finally equalized by the board and deliver the segregations of the same to the respective county treasurers concerned. [2013 c 23 § 578; 1927 c 254 § 202; RRS § 7402-202. Formerly RCW 89.26.800.]

89.30.625 Assessments in general improvement or divisional district—County treasurer may perform duties of district secretary, when. In case of the neglect or refusal of the secretary of the reclamation district to perform the duties imposed by law, then the treasurer of the county in which the organization of the reclamation district was effected may perform such duties and shall be accountable therefor on his or her official bond as in other cases. [2013 c 23 § 579; 1927 c 254 § 209; RRS § 7402-209. Formerly RCW 89.22.460.]

89.30.649 Installment payments—Statement of assessments levied to be furnished on request. It shall be the duty of the county treasurer of the county in which any land in the general improvement or divisional district is located, to furnish upon request of the owner or any person interested, a statement showing any and all assessments levied as shown by the assessment roll in his or her office upon land described in such request and all statements of general taxes covering any land in such district shall be accompanied by a statement showing the condition of district assessments against such lands: PROVIDED, That the failure of the county treasurer to render any statement herein required of him or her, shall not render invalid any assessments made for any general improvement or divisional district or proceeding had for the enforcement and collection of such assessments pursuant to this chapter. [2013 c 23 § 580; 1927 c 254 § 217; RRS § 7402-217. Formerly RCW 89.28.260.]

89.30.652 Installment payments—County treasurers to make monthly remittances to district treasurer. It shall be the duty of the county treasurer of any county other than the county in which the organization of the reclamation district was effected to make monthly remittances to the county treasurer of the county in which the organization of the reclamation district was effected, covering all amounts collected by him or her for any said general improvement or divisional district during the preceding month. [2013 c 23 § 581; 1927 c 254 § 218; RRS § 7402-218. Formerly RCW 89.22.430.]

89.30.655 Delinquency and sale in general improvement and divisional districts—List to be posted. On or before the thirtieth day of June in each year each respective county treasurer concerned shall post the delinquency list which must contain the names of persons and the descriptions of the property delinquent and the amount of assessments, interest, and costs opposite each name and the description in all cases where payment of fifty percent or more of the assessment against any tract of land has not been made on or before the thirty-first day of May next preceding. Likewise on or before the fifteenth day of December in each year he or she must post the delinquency list of all persons delinquent in the payment of the final installment of the fifty percent of said assessments as in this chapter provided. [2013 c 23 § 582; 1927 c 254 § 219; RRS § 7402-219. Formerly RCW 89.28.400.]

89.30.670 Delinquency and sale in general improvement and divisional districts—How conducted. On the day fixed for the sale or on some subsequent day to which the treasurer may have postponed it, of which postponement he or she must give notice at the time of making such postponement, and between the hours of ten o'clock a.m. and three o'clock p.m., the county treasurer making the sale must commence the same beginning at the head of the list and continuing alphabetically or in numerical order of the parcels, lots, and blocks until completed. [2013 c 23 § 583; 1927 c 254 § 224; RRS § 7402-224. Formerly RCW 89.28.460.]

89.30.676 Delinquency and sale in general improvement and divisional districts—Designation of portion to be sold—Sale by parts. The owner or person in possession

of any real estate offered for sale for assessments thereon may designate in writing to the county treasurer by whom the sale is to be made and prior to the sale, what portion of the property he or she wishes sold, if less than the whole, but if the owner or possessor does not, then the treasurer may designate it and the person who will take the least quantity of the land or in case an undivided interest is assessed then the smallest portion of the interest, and pay the assessment, interest, and cost due including one dollar to the treasurer for a duplicate of the certificate of sale, is the purchaser. The treasurer shall account to the district for said one dollar. [2013 c 23 § 584; 1927 c 254 § 226; RRS § 7402-226. Formerly RCW 89.28.470.]

89.30.685 Delinquency and sale in general improvement and divisional districts—Entry of sale when district is purchaser—Credit. In case the district is the purchaser, the treasurer shall make an entry "sold to the district", and he or she shall receive proper credit for the amount of the sale in his or her settlement with the district. [2013 c 23 § 585; 1927 c 254 § 229; RRS § 7402-229. Formerly RCW 89.28.500.]

89.30.700 Delinquency and sale in general improvement and divisional districts—Disposition of proceeds of sale or lease by district. All moneys received by the reclamation district for transfers of certificates of sale, or through sale or lease of property acquired on account of sales for delinquent assessments, shall be paid to the county treasurer of the county in which the lands involved are situated and by him or her credited to the funds for which the assessments were levied in proportion to the right of each fund respectively. [2013 c 23 § 586; 1927 c 254 § 234; RRS § 7402-234. Formerly RCW 89.28.840.]

89.30.709 Delinquency and sale in general improvement and divisional districts—Certificate of sale—Form, filing, delivery. The certificate of sale must be signed by the treasurer making the sale and filed in his or her office. A duplicate of said certificate shall be delivered to any purchaser, other than the district. [2013 c 23 § 587; 1927 c 254 § 237; RRS § 7402-237. Formerly RCW 89.28.530.]

89.30.721 Delinquency and sale in general improvement and divisional districts—Redemption of property sold. A redemption of the property sold may be made by the owner or any person on behalf and in the name of the owner or by any party in interest within one year from the date of purchase by paying the amount of the purchase price, cost of certificate and interest and the amount of any assessments which any such purchaser may have paid thereon after purchase by him or her together with like interest on such amount, and if the reclamation district is the purchaser, the redemptioner shall pay in addition to the purchase price and interest, the amount of any assessments levied against said land during the period of redemption and which are at that time delinquent. [2013 c 23 § 588; 1927 c 254 § 241; RRS § 7402-241. Formerly RCW 89.28.700.]

89.30.724 Delinquency and sale in general improvement and divisional districts—Redemption in coin to treasurer—To whom credited. Redemption must be made

in gold or silver coin, as provided for the collection of state and county taxes, and the county treasurer must credit the amount paid to the person named in the certificate or his or her assignee and pay it on demand to such person or his or her assignee. No redemption shall be made except to the county treasurer of the county in which the land is situated. [2013 c 23 § 589; 1927 c 254 § 242; RRS § 7402-242. Formerly RCW 89.28.710.]

89.30.730 Delinquency and sale in general improvement and divisional districts—Deed in absence of redemption, contents. If the property is not redeemed within one year from the date of sale, the county treasurer of the county in which the land sold is situated, must make to the purchaser or his or her assignee a deed of the property reciting in the deed substantially the matters contained in the certificate and that no person redeemed the property during the time allowed by law for its redemption. [2013 c 23 § 590; 1927 c 254 § 244; RRS § 7402-244. Formerly RCW 89.28.730.]

89.30.790 Tolls for electricity and water—Toll collector's bond. Any officer of the district collecting tolls as herein provided, shall be required to give a surety bond in double the probable amount of monthly collections conditioned that he or she will faithfully account to the reclamation district for all tolls collected under the provisions of this chapter. [2013 c 23 § 591; 1927 c 254 § 264; RRS § 7402-264. Formerly RCW 89.26.050.]

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90.03.665	Certified water right examiners—Fees—Rules.
90.03.675	Storm water retention ponds—Mosquito abatement.

90.03.040 Eminent domain—Use of water declared public use. The beneficial use of water is hereby declared to be a public use, and any person may exercise the right of eminent domain to acquire any property or rights now or hereafter existing when found necessary for the storage of water for, or the application of water to, any beneficial use, including the right to enlarge existing structures employed for the public purposes mentioned in this chapter and use the same in common with the former owner, and including the right and power to condemn an inferior use of water for a superior use. In condemnation proceedings the court shall determine what use will be for the greatest public benefit, and that use shall be deemed a superior one: PROVIDED, That no property right in water or the use of water shall be acquired hereunder by condemnation for irrigation purposes, which shall deprive any person of such quantity of water as may be reasonably necessary for the irrigation of his or her land then under irrigation to the full extent of the soil, by the most economical method of artificial irrigation applicable to such land according to the usual methods of artificial irrigation employed in the vicinity where such land is situated. In any case, the court shall determine what is the most economical method of irrigation. Such property or rights shall be acquired in the manner provided by law for the taking of private property for public use by private corporations. [2013 c 23 § 592; 1917 c 117 § 4; RRS § 7354. Formerly RCW 90.04.030.]

Eminent domain by corporations: Chapter 8.20 RCW.

90.03.070 Water masters—Duties—Office space and equipment—Clerical assistance. It shall be the duty of the water master, acting under the direction of the department, to divide in whole or in part, the water supply of his or her district among the several water conduits and reservoirs using said supply, according to the right and priority of each, respectively. He or she shall divide, regulate, and control the use of water within his or her district by such regulation of headgates, conduits, and reservoirs as shall be necessary to prevent the use of water in excess of the amount to which the owner of the right is lawfully entitled. Whenever, in the pursuance of his or her duties, the water master regulates a headgate of a water conduit or the controlling works of a reservoir, he or she shall attach to such headgate or controlling works a written notice, properly dated and signed, stating that such headgate or controlling works has been properly regulated and is wholly under his or her control and such notice shall be a legal notice to all parties. In addition to dividing the available waters and supervising the stream patroller in his or her district, he or she shall enforce such rules and regulations as the department shall from time to time prescribe.

The county or counties in which water master districts are created shall depute the water masters appointed hereunder, and may without charge provide to each water master suitable office space, supplies, equipment, and clerical assistance as are necessary to the water master in the performance of his or her duties. [2013 c 23 § 593; 1987 c 109 § 70; 1967

c 80 § 2; 1917 c 117 § 10; RRS § 7360. Formerly RCW 90.08.020.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

Water master's power of arrest: RCW 90.03.090.

90.03.210 Determination of water rights—Interim regulation of water—Appeals. (1) During the pendency of such adjudication proceedings prior to judgment or upon review by an appellate court, the stream or other water involved shall be regulated or partially regulated according to the schedule of rights specified in the department's report upon an order of the court authorizing such regulation: PROVIDED, Any interested party may file a bond and obtain an order staying the regulation of said stream as to him or her, in which case the court shall make such order regarding the regulation of the stream or other water as he or she may deem just. The bond shall be filed within five days following the service of notice of appeal in an amount to be fixed by the court and with sureties satisfactory to the court, conditioned to perform the judgment of the court.

(2) Any appeal of a decision of the department on an application to change or transfer a water right subject to an adjudication that is being litigated actively shall be conducted as follows:

(a) The appeal shall be filed with the court conducting the adjudication and served under RCW 34.05.542(3). The content of the notice of appeal shall conform to RCW 34.05.546. Standing to appeal shall be based on the requirements of RCW 34.05.530 and is not limited to parties to the adjudication.

(b) If the appeal includes a challenge to the portion of the department's decision that pertains to tentative determinations of the validity and extent of the water right, review of those tentative determinations shall be conducted by the court consistent with the provisions of RCW 34.05.510 through 34.05.598, except that the review shall be de novo.

(c) If the appeal includes a challenge to any portion of the department's decision other than the tentative determinations of the validity and extent of the right, the court must certify to the pollution control hearings board for review and decision those portions of the department's decision. Review by the pollution control hearings board shall be conducted consistent with chapter 43.21B RCW and the board's implementing regulations, except that the requirements for filing, service, and content of the notice of appeal shall be governed by (a) of this subsection. Any party to an appeal may move the court to certify portions of the appeal to the pollution control hearings board, but the appellant must file a motion for certification no later than ninety days after the appeal is filed under this section.

(d) Appeals shall be scheduled to afford all parties full opportunity to participate before the superior court and the pollution control hearings board.

(e) Any person wishing to appeal the decision of the board made under (c) of this subsection shall seek review of the decision in accordance with chapter 34.05 RCW, except that the petition for review must be filed with the superior court conducting the adjudication.

(3) Nothing in this section shall be construed to affect or modify any treaty or other federal rights of an Indian tribe, or

the rights of any federal agency or other person or entity arising under federal law. Nothing in this section is intended or shall be construed as affecting or modifying any existing right of a federally recognized Indian tribe to protect from impairment its federally reserved water rights in federal court. [2013 c 23 § 594; 2009 c 332 § 14; 2001 c 220 § 5; 1988 c 202 § 92; 1987 c 109 § 80; 1921 c 103 § 1; RRS § 7374. Formerly RCW 90.12.110.]

Intent—Construction—Effective date—2001 c 220: See notes following RCW 43.21B.110.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

Additional notes found at www.leg.wa.gov

90.03.220 Determination of water rights—Failure to appear—Estoppel. Whenever proceedings shall be instituted for the determination of the rights to the use of water, any defendant who shall fail to appear in such proceedings, after legal service, and submit proof of his or her claim, shall be estopped from subsequently asserting any right to the use of such water embraced in such proceeding, except as determined by such decree. [2013 c 23 § 595; 1917 c 117 § 24; RRS § 7375. Formerly RCW 90.12.120.]

90.03.250 Appropriation procedure—Application for permit—Temporary permit. Any person, municipal corporation, firm, irrigation district, association, corporation or water users' association hereafter desiring to appropriate water for a beneficial use shall make an application to the department for a permit to make such appropriation, and shall not use or divert such waters until he or she has received a permit from the department as in this chapter provided. The construction of any ditch, canal or works, or performing any work in connection with said construction or appropriation, or the use of any waters, shall not be an appropriation of such water nor an act for the purpose of appropriating water unless a permit to make said appropriation has first been granted by the department: PROVIDED, That a temporary permit may be granted upon a proper showing made to the department to be valid only during the pendency of such application for a permit unless sooner revoked by the department: PROVIDED, FURTHER, That nothing in this chapter contained shall be deemed to affect RCW 90.40.010 through 90.40.080 except that the notice and certificate therein provided for in RCW 90.40.030 shall be addressed to the department, and the department shall exercise the powers and perform the duties prescribed by RCW 90.40.030. [2013 c 23 § 596; 1987 c 109 § 83; 1917 c 117 § 27; RRS § 7378. Formerly RCW 90.20.010.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

Schedule of fees: RCW 90.03.470.

90.03.270 Appropriation procedure—Record of application. Upon receipt of an application it shall be the duty of the department to make an endorsement thereon of the date of its receipt, and to keep a record of same. If upon examination, the application is found to be defective, it shall be returned to the applicant for correction or completion, and the date and the reasons for the return thereof shall be endorsed thereon and made a record in his or her office. No

application shall lose its priority of filing on account of such defects, provided acceptable maps, drawings, and such data as is required by the department shall be filed with the department within such reasonable time as it shall require. [2013 c 23 § 597; 1987 c 109 § 85; 1917 c 117 § 29; RRS § 7380. Formerly RCW 90.20.030.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.03.410 Crimes against water code—Interference with works—Wrongful use of water—Property destruction—Penalty. (1) Any person or persons who shall willfully interfere with, or injure or destroy any dam, dike, headgate, weir, canal or reservoir, flume, or other structure or appliance for the diversion, carriage, storage, apportionment, or measurement of water for irrigation, reclamation, power, or other beneficial uses, or who shall willfully use or conduct water into or through his or her ditch, which has been lawfully denied him or her by the water master or other competent authority, or shall willfully injure or destroy any telegraph, telephone, or electric transmission line, or any other property owned, occupied, or controlled by any person, association, or corporation, or by the United States and used in connection with said beneficial use of water, shall be guilty of a misdemeanor or, if there is actual physical injury to or destruction of any real or personal property, of property destruction and shall incur the penalties set forth in *RCW 9.61.070.

(2) Any person or persons who shall willfully or unlawfully take or use water, or conduct the same into his or her ditch or to his or her land, or land occupied by him or her, and for such purpose shall cut, dig, break down, or open any headgate, bank, embankment, canal or reservoir, flume, or conduit, or interfere with, injure, or destroy any weir, measuring box, or other appliance for the apportionment and measurement of water, or unlawfully take or cause to run or pour out of such structure or appliance any water, shall be guilty of a misdemeanor or, if there is actual physical injury to or destruction of any real or personal property, of property destruction and shall incur the penalties set forth in *RCW 9.61.070.

(3) The use of water through such structure or structures, appliance or appliances hereinbefore named after its or their having been interfered with, injured or destroyed, shall be prima facie evidence of the guilt of the person using it. [2013 c 23 § 598; 1971 ex.s. c 152 § 8; 1921 c 103 § 2; 1917 c 117 § 41; RRS § 7393. Formerly RCW 90.32.020.]

*Reviser's note: RCW 9.61.070 was repealed by 1975 1st ex.s. c 260 § 9A.92.010, effective July 1, 1976.

90.03.440 Partnership ditches—Procedure for division of water between joint owners. When two or more persons, joint owners in an irrigation ditch or reservoir, not incorporated, or their lessees, are unable to agree relative to the division or distribution of water received through their ditch or from their reservoir, and where there is no disagreement as to the ownership of said water, it shall be lawful for any such owner or owners, his or her or their lessee or lessees, or either of them, to apply to the department, in writing, setting forth such fact and giving such information as shall enable the department to estimate the probable expense of

such service, asking the department to appoint some suitable person to take charge of such ditch or reservoir for the purpose of making a just division or distribution of the water from the same to the parties entitled to the use thereof. The department shall upon the receipt of such application notify the applicant of the probable expense of such division and upon receipt of certified check for said amount, the department shall appoint a suitable person to make such division. The person so appointed shall take exclusive charge of such ditch or reservoir for the purpose of dividing the water therefrom in accordance with the established rights of the diverters therefrom, and continue the said work until the necessity therefor shall cease to exist. The expense of such investigation and division shall be a charge upon all of the co-owners and the person advancing the payment to the department shall be entitled to recover in any court of competent jurisdiction from his or her co-owners their proportionate share of the expense. [2013 c 23 § 599; 1987 c 109 § 97; 1919 c 71 § 4; RRS § 7396. Formerly RCW 90.28.130.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.03.450 Partnership ditches—Lien for labor performed. Upon the failure of any co-owner to pay his or her proportionate share of such expense as mentioned in RCW 90.03.430 within thirty days after receiving a statement of the same as performed by his or her co-owner or owners, such person or persons so performing such labor may secure payment of said claim by filing an itemized and sworn statement thereof, setting forth the date of the performance and the nature of the labor so performed, with the county auditor of the county wherein said ditch is situated, and when so filed it shall constitute a valid lien against the interest of such person or persons who shall fail to perform their proportionate share of the work requisite to the proper maintenance of said ditch, which said lien when so taken may be enforced in the same manner as provided by law for the enforcement of mechanics' and builders' liens. [2013 c 23 § 600; 1919 c 71 § 5; RRS § 7397. Formerly RCW 90.28.120.]

Mechanics' and materialmen's liens: Chapter 60.04 RCW.

90.03.665 Certified water right examiners—Fees—Rules. (1) The department shall establish and maintain a list of certified water right examiners. Certified water right examiners on the list are eligible to perform final proof examinations of permitted water uses leading to the issuance of a water right certificate under RCW 90.03.330. The list must be updated annually and must be made available to the public through written and electronic media.

(2) In order to qualify, an individual must be registered in Washington as a professional engineer, professional land surveyor, or registered hydrogeologist, or an individual must demonstrate at least five years of applicable experience to the department, or be a board member of a water conservancy board. Qualified individuals must also pass a written examination prior to being certified by the department. Such an examination must be administered by either the department or an entity formally approved by the department. Each certified water right examiner must demonstrate knowledge and competency regarding:

- (a) Water law in the state of Washington;

- (b) Measurement of the flow of water through open channels and enclosed pipes;
- (c) Water use and water level reporting;
- (d) Estimation of the capacity of reservoirs and ponds;
- (e) Irrigation crop water requirements;
- (f) Aerial photo interpretation;
- (g) Legal descriptions of land parcels;
- (h) Location of land and water infrastructure through the use of maps and global positioning;
- (i) Proper construction and sealing of well bores; and
- (j) Other topics related to the preparation and certification of water rights in Washington state.

(3) Except as provided in subsection (9) of this section, upon completion of a water appropriation and putting water to beneficial use, in order to receive a final water right certificate, the permit holder must secure the services of a certified water right examiner who has been tested and certified by the department. The examiner shall carry out a final examination of the project to verify its completion and to determine and document for the permit holder and the department the amount of water that has been appropriated for beneficial use, the location of diversion or withdrawal and conveyance facilities, and the actual place of use. The examiner shall take measurements or make estimates of the maximum diversion or withdrawal, the capacity of water storage facilities, the acreage irrigated, the type and number of residences served, the type and number of stock watered, and other information relevant to making a final determination of the amount of water beneficially used. The examiner shall take photographs of the facilities to document the use or uses of water and the photographs must be submitted with the examiner's report to the department. The department shall specify the format and required content of the reports and may provide a form for that purpose.

(4) The department may suspend or revoke a certification based on poor performance, malfeasance, failure to acquire continuing education credits, or excessive complaints from the examiner's customers. The department may require the retesting of an examiner. The department may interview any examiner to determine whether the person is qualified for this work. The department shall spot-check the work of examiners to ensure that the public is being competently served. Any person aggrieved by an order of the department including the granting, denial, revocation, or suspension of a certificate issued by the department under this chapter may appeal pursuant to chapter 43.21B RCW.

(5) The decision regarding whether to issue a final water right certificate is solely the responsibility and function of the department.

(6) The department shall make its final decision under RCW 90.03.330 within sixty days of the date of receipt of the proof of examination from the certified water right examiner, unless otherwise requested by the applicant or returned for correction by the department. The department may return an initial proof of examination for correction within thirty days of the department's receipt of such initial proof from a certified water right examiner. Such proof must be returned to both the certified water right examiner and the applicant. Within thirty days of the department's receipt of such returned proof from the certified water right examiner, the

department shall make its final decision under RCW 90.03.330, unless otherwise requested by the applicant.

(7) Each certified water right examiner must complete eight hours annually of qualifying continuing education in the water resources field. The department shall determine and specify the qualifying continuing education and shall inform examiners of the opportunities. The department shall track whether examiners are current in their continuing education and may suspend the certification of an examiner who has not complied with the continuing education requirement.

(8) Each certified water right examiner must furnish evidence of insurance or financial responsibility in a form acceptable to the department.

(9) The department may waive the requirement to secure the services of a certified water right examiner in situations in which the department has already conducted a final proof of examination or finds it unnecessary for purposes of issuing a certificate of water right.

(10) The department shall establish and collect fees for the examination, certification, and renewal of certification of water right examiners. Revenue collected from these fees must be deposited into the water rights processing account created in RCW 90.03.650. Pursuant to RCW 43.135.055, the department is authorized to set fees for examination, certification, and renewal of certification for water right examiners.

(11) The department may adopt rules appropriate to carry out the purposes of this section. [2013 c 70 § 1; 2010 c 285 § 7.]

Intent—2010 c 285: See note following RCW 90.03.265.

90.03.675 Storm water retention ponds—Mosquito abatement. (1) A county, city, town, water-sewer district, or flood control zone district constructing, improving, operating, or maintaining storm water control facilities under chapter 35.67, 35.92, 36.89, 36.94, 57.08, or 86.15 RCW that include storm water retention ponds, also known as wet ponds, wet retention ponds, or wet extended detention ponds, as part of a storm water control facility for which the primary function of the pond is to detain storm water, must:

(a) Consider and to the extent possible consistent with department design guidelines, and without compromising the intended function of the storm water retention pond, construct storm water retention ponds to maintain and control vegetation to minimize mosquito propagation;

(b) Consult with the local mosquito control district, where established, in the development of construction plans that include storm water retention ponds; and

(c) Provide for maintenance and control of vegetation growth in storm water retention ponds to reduce mosquito habitat and inhibit mosquito propagation without compromising the intended function of a storm water retention pond.

(2) A county, city, town, water-sewer district, or flood control zone district operating or maintaining storm water control facilities must, except where mosquito control districts are established, when notified by the department of health or a local health jurisdiction of the positive identification of west nile virus or other mosquito-borne human disease viruses in mosquitoes, birds, or mammals, including humans, consult with the department of health or a mosquito control district concerning which integrated pest manage-

ment strategies, as defined under chapter 17.15 RCW, for mosquito control or abatement in storm water retention ponds would be most effective to prevent the spread of the disease.

(3) Where a mosquito control district is established, when notified by the department of health or a local health jurisdiction of the positive identification of west nile virus or other mosquito-borne human disease viruses in mosquitoes, birds, or mammals, including humans, the mosquito control district is responsible for mosquito control or abatement in storm water retention ponds. [2013 c 209 § 1.]

Chapter 90.08 RCW STREAM PATROLLERS

Sections

90.08.040	Stream patroller—Appointment—Powers.
90.08.050	Stream patrollers—Compensation, travel expenses.
90.08.060	Stream patrollers—Users to share in payment of compensation.
90.08.070	Right of county to sue user for unpaid share of expenses.

90.08.040 Stream patroller—Appointment—Powers.

Where water rights of a stream have been adjudicated a stream patroller shall be appointed by the director of the department of ecology upon application of water users having adjudicated water rights in each particular water resource making a reasonable showing of the necessity therefor, which application shall have been approved by the district water master if one has been appointed, at such time, for such stream, and for such periods of service as local conditions may indicate to be necessary to provide the most practical supervision and to secure to water users and owners the best protection in their rights.

The stream patroller shall have the same powers as a water master appointed under RCW 90.03.060, but his or her district shall be confined to the regulation of waters of a designated stream or streams. Such patroller shall be under the supervision of the director or his or her designated representative. He or she shall also enforce such special rules and regulations as the director may prescribe from time to time. [2013 c 23 § 601; 1977 c 22 § 1; 1925 ex.s. c 162 § 1; RRS § 7351-1.]

Water masters

appointment, compensation: RCW 90.03.060.

duties: RCW 90.03.070.

power of arrest: RCW 90.03.090.

90.08.050 Stream patrollers—Compensation, travel expenses. Each stream patroller shall receive a wage per day for each day actually employed in the duties of his or her office, or if employed by the month, he or she shall receive a salary per month, which wage or salary shall be fixed in the manner provided by law for the fixing of the salaries or compensation of other state officers or employees, plus travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended, to be paid by the county in which the work is performed. In case the service extends over more than one county, each county shall pay its equitable part of such wage to be apportioned by the director. He or she shall be reimbursed for actual necessary expenses when absent from his or her designated headquarters in the performance of his or her duties, such expense to be paid by

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the county in which he or she renders the service. The accounts of the stream patroller shall be audited and certified by the director and the county auditor shall issue a warrant therefor upon the current expense fund. [2013 c 23 § 602; 1977 c 22 § 2; 1975-'76 2nd ex.s. c 34 § 180; 1947 c 123 § 1; 1925 ex.s. c 162 § 2; Rem. Supp. 1947 § 7351-2.]

Public officers, salaries and fees: Chapter 42.16 RCW.

State government, salaries and expenses: Chapter 43.03 RCW.

Additional notes found at www.leg.wa.gov

90.08.060 Stream patrollers—Users to share in payment of compensation. The salary of the stream patroller shall be borne by the water users receiving the benefits and shall be paid to the county or counties in the following manner:

The county or counties may assess each water user for his or her proportionate share of the total stream patroller expense in the same ratio that the amount of water diverted by him or her bears to the total amount diverted from the stream during each season, on an annual basis, to recover all such county expenses. The stream patroller shall keep an accurate record of the amount of water diverted by each water user coming under his or her supervision. On the first of each month the stream patroller shall present his or her record of water diversion to the county or counties for the preceding month. Where the water users are organized into an irrigation district or water users' association, such organization may enter into an agreement with the county or counties for direct payment to the stream patroller in order to minimize administrative costs. [2013 c 23 § 603; 1977 c 22 § 3; 1925 ex.s. c 162 § 3; RRS § 7351-3.]

Irrigation districts generally: Chapter 87.03 RCW.

90.08.070 Right of county to sue user for unpaid share of expenses. Upon failure of any water user to pay his or her proportionate share of the expense referred to in RCW 90.08.050 and 90.08.060, the county or counties shall be entitled to sue for and recover any such unpaid portion in any court of competent jurisdiction. [2013 c 23 § 604; 1977 c 22 § 4; 1925 ex.s. c 162 § 4; RRS § 7351-4.]

Chapter 90.14 RCW WATER RIGHTS—REGISTRATION— WAIVER AND RELINQUISHMENT, ETC.

Sections

90.14.061	Statement of claim—Filing procedure—Processing of claim—Fee.
90.14.101	Notice of chapter provisions—How given—Requirements.
90.14.130	Reversion of rights to state due to nonuse—Notice by order—Relinquishment determinations—Appeal.
90.14.170	Relinquishment of right for abandonment or failure to beneficially use without sufficient cause—Rights acquired due to ownership of land abutting stream, lake, or watercourse.

90.14.061 Statement of claim—Filing procedure—Processing of claim—Fee. Filing of a statement of a claim shall take place and be completed upon receipt by the department of ecology, at its office in Olympia, of an original statement signed by the claimant or his or her authorized agent, and two copies thereof. Any person required to file hereunder may file through a designated representative. A com-

pany, district, public or municipal corporation, or the United States when furnishing to persons water pertaining to water rights required to be filed under RCW 90.14.041, shall have the right to file one claim on behalf of said persons on a form prepared by the department for the total benefits of each person served; provided that a separate claim shall be filed by such company, district, public or private corporation, or the United States for each operating unit of the filing entity providing such water and for each water source. Within thirty days after receipt of a statement of claim the department shall acknowledge the same by a notation on one copy indicating receipt thereof and the date of receipt, together with the wording of the first sentence of RCW 90.14.081, and shall return said copy by certified or registered mail to the claimant at the address set forth in the statement of claim. No statement of claim shall be accepted for filing by the department of ecology unless accompanied by a two dollar filing fee. [2013 c 23 § 605; 1988 c 127 § 74; 1969 ex.s. c 284 § 15.]

Additional notes found at www.leg.wa.gov

90.14.101 Notice of chapter provisions—How given—Requirements. To insure that all persons referred to in RCW 90.14.031 and 90.14.041 are notified of the registration provisions of this chapter, the department of ecology is directed to give notice of the registration provisions of this chapter as follows:

(1) It shall cause a notice in writing to be placed in a prominent and conspicuous place in all newspapers of the state having a circulation of more than fifty thousand copies for each week day, and in at least one newspaper published in each county of the state, at least once each year for five consecutive years.

(2) It shall cause a notice substantially the same as a notice in writing to be broadcast by each commercial television station operating in the United States and viewed in the state, and by at least one commercial radio station operating from each county of the state having such a station regularly at six month intervals for five consecutive years.

(3) It shall cause a notice in writing to be placed in a prominent and conspicuous location in each county court house in the state.

(4) The county treasurer of each county shall enclose with each mailing of one or more statements of taxes due issued in 1972 a copy of a notice in writing and a declaration that it shall be the duty of the recipient of the statement of taxes due to forward the notice to the beneficial owner of the property. A sufficient number of copies of the notice and declaration shall be supplied to each county treasurer by the director of ecology before the fifteenth day of January, 1972. In the implementation of this subsection the department of ecology shall provide reimbursement to the county treasurer for the reasonable additional costs, if any there may be, incurred by said treasurer arising from the inclusion of a notice in writing as required herein.

(5) It shall provide copies of the notice in writing to the press services with offices located in Thurston county during January of the years 1970, 1971, 1972, 1973, and 1974.

The director of the department may also in his or her discretion give notice in any other manner which will carry out the purposes of this section. Where notice in writing is given pursuant to subsections (1) and (3) of this section, RCW

90.14.041, 90.14.051, and 90.14.071 shall be set forth and quoted in full. [2013 c 23 § 606; 1988 c 127 § 76; 1969 ex.s. c 284 § 19.]

Reviser's note: "this 1969 amendatory act" has been changed to "this chapter" in the first paragraph. "This 1969 amendatory act" [1969 ex.s. c 284] consists of RCW 90.48.290, former RCW 90.48.295, since repealed, RCW 90.22.010 through 90.22.040, 90.14.031 through 90.14.121, 43.27A.190 through 43.27A.220, 43.27A.075, and repeals RCW 43.21.145 and 90.14.030 through 90.14.120.

Additional notes found at www.leg.wa.gov

90.14.130 Reversion of rights to state due to non-use—Notice by order—Relinquishment determinations—Appeal. When it appears to the department of ecology that a person entitled to the use of water has not beneficially used his or her water right or some portion thereof, and it appears that said right has or may have reverted to the state because of such nonuse, as provided by RCW 90.14.160, 90.14.170, or 90.14.180, the department of ecology shall notify such person by order: PROVIDED, That where a company, association, district, or the United States has filed a blanket claim under the provisions of *RCW 90.14.060 for the total benefits of those served by it, the notice shall be served on such company, association, district or the United States and not upon any of its individual water users who may not have used the water or some portion thereof which they were entitled to use. The order shall contain: (1) A description of the water right, including the approximate location of the point of diversion, the general description of the lands or places where such waters were used, the water source, the amount involved, the purpose of use, and the apparent authority upon which the right is based; (2) a statement that unless sufficient cause be shown on appeal the water right will be declared relinquished; and (3) a statement that such order may be appealed to the pollution control hearings board. Any person aggrieved by such an order may appeal it to the pollution control hearings board pursuant to RCW 43.21B.310. The order shall be served by registered or certified mail to the last known address of the person and be posted at the point of division or withdrawal. The order by itself shall not alter the recipient's right to use water, if any. [2013 c 23 § 607; 1987 c 109 § 13; 1967 c 233 § 13.]

***Reviser's note:** RCW 90.14.060 was repealed by 1969 ex.s. c 284 § 23, which act added new sections relating to the registration of claims for water rights as codified in this chapter.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

Proceedings under this section deemed adjudicative—Application of RCW sections to specific proceedings: RCW 90.14.200.

90.14.170 Relinquishment of right for abandonment or failure to beneficially use without sufficient cause—Rights acquired due to ownership of land abutting stream, lake, or watercourse. Any person entitled to divert or withdraw waters of the state by virtue of his or her ownership of land abutting a stream, lake, or watercourse, who abandons the same, or who voluntarily fails, without sufficient cause, to beneficially use all or any part of said right to withdraw or divert said water for any period of five successive years after July 1, 1967, shall relinquish such right or portion thereof, and such right or portion thereof shall revert to the state, and the waters affected by said right shall become

available for appropriation in accordance with the provisions of RCW 90.03.250. [2013 c 23 § 608; 1967 c 233 § 17.]

Application to Yakima river basin trust water rights: RCW 90.38.040.

Availability for other uses qualified: RCW 90.14.160.

Implementation and enforcement of chapter—Application of RCW sections to specific proceedings: RCW 90.14.200.

Additional notes found at www.leg.wa.gov

Chapter 90.24 RCW

REGULATION OF OUTFLOW OF LAKES

Sections

90.24.020	Contents of petition.
90.24.050	Devices to protect the fish—Cost—Special fund.

90.24.020 Contents of petition. Such petition shall contain a complete description of the property surrounding said lake with the number of front feet contained in each tract with the name of the owner thereof and his or her address together with a brief statement of the reasons and necessity for such application; that the level sought to be established will in no wise interfere with the navigability of said lake or in any manner affect or interfere with fish or game fish which may be then contained or may thereafter be deposited in said lake, but that in order to protect fish or game fish in said lake the construction of fish ladders or other devices may be required to conserve and protect such fish or game fish, then in that event the property owners to be benefited by the establishment of said water level in such lake shall be required to pay the cost thereof, in proportion to lineal feet of water front owned by each. [2013 c 23 § 609; 1939 c 107 § 3; RRS § 7388-2.]

90.24.050 Devices to protect the fish—Cost—Special fund. In the event the court shall find that to protect fish and game fish in said lake that fish ladders or other devices should be constructed therein or that other construction shall be necessary in order to maintain the determined lake level, the court shall find the proper device to be constructed, the probable cost thereof and by its order and judgment shall apportion the cost thereof among the persons whose property abuts on said lake in proportion to the lineal feet of waterfront owned by each, which sum so found shall constitute a lien against said real property and shall be paid to the county treasurer and by him or her placed in a special fund to be known as "Lake Improvement Fund." The director of ecology shall appoint a suitable person to be compensated by the property owners to regulate the determined level as decreed by the court. [2013 c 23 § 610; 1988 c 127 § 82; 1939 c 107 § 6; RRS § 7388-5.]

Chapter 90.38 RCW

YAKIMA RIVER BASIN WATER RIGHTS

Sections

90.38.005	Findings—Purpose.
90.38.010	Definitions.
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90.38.120	Legislative intent—Cost to implement the integrated plan.
90.38.130	Authorization to purchase land—Management and disposal of land.
90.38.900	Existing policies not replaced.
90.38.902	Existing rights not impaired.

90.38.005 Findings—Purpose. (1) The legislature finds that:

(a) Under present physical conditions in the Yakima river basin there is an insufficient supply of ground and surface water to satisfy the present needs of the basin, and that the general health, welfare, and safety of the people of the Yakima river basin depend upon the conservation, management, development, and optimum use of all the basin's water resources;

(b) The future competition for water among municipal, domestic, industrial, agricultural, and instream water interests in the Yakima river basin will be intensified by continued population growth, and by changes in climate and precipitation anticipated to reduce the basin's snow pack and thereby reduce the total water supply available to existing water users, instream flows, and carryover storage;

(c) To address the challenges described in this subsection, congress has enacted several bills to promote Yakima river basin water enhancement, each of which was urged for enactment by this state, the United States has completed a study of ways to provide needed waters through improvements of the federal water project presently existing in the Yakima river basin, and federal, tribal, state, and local cooperators have developed an integrated water resource management plan for improving water supply, habitat, and stream flow conditions in the Yakima river basin;

(d) As part of the Yakima river basin water enhancement project, the United States department of the interior's bureau of reclamation is now seeking funding to support implementation of the integrated water resource management plan for the Yakima river basin, which was jointly prepared by the Washington state department of ecology and the United States bureau of reclamation and published in a final programmatic environmental impact statement in March 2012;

(e) The interests of the state will be served by developing programs, in cooperation with the United States and the various water users in the basin, that increase the overall ability to manage basin waters in order to better satisfy both present and future needs for water in the Yakima river basin;

(f) The interests of the state will also be served through coordination of federal and state policies and procedures in order to develop and implement projects within the framework of the integrated water resource management plan for the Yakima river basin. The pace of integrated plan implementation over the long term depends upon adequate funding and is subject to the availability of amounts appropriated for this purpose;

(g) The current real estate market provides opportunities to acquire community forest lands that are useful for protecting and enhancing watershed function at affordable prices;

(h) Although significant benefits are anticipated to result from the implementation of the Yakima integrated plan, in

light of its substantial costs and the state's limited capacity to absorb them within existing resources, there is a need to identify and evaluate potential new state and local revenue sources to assist in paying the state and local share of implementation costs.

(2) It is the purpose of this chapter, consistent with these findings, to:

(a) Improve the ability of the state to work with the United States and various water users of the Yakima river basin in a program designed to satisfy both existing rights, and other presently unmet as well as future needs of the basin;

(b) Establish legislative intent to promote timely and effective implementation of the integrated plan in the Yakima river basin, and to promote the aggressive pursuit of water supply solutions that provide concurrent benefits to both instream and out-of-stream uses in the Yakima river basin as rapidly as possible; and

(c) Take advantage of affordable real estate prices to acquire community forest lands that are useful for protecting and enhancing watershed function.

(3) The provisions of this chapter apply only to waters of the Yakima river basin. [2013 2nd sp.s. c 11 § 1; 1989 c 429 § 1.]

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

(1) "Department" means the department of ecology.

(2) "Integrated plan" means the Yakima river basin integrated water resource management plan developed through a consensus-based approach by a diverse work group of representatives of the Yakama Nation, federal, state, county, and city governments, environmental organizations, and irrigation districts, which is to be implemented consistent with congressional Yakima river basin water enhancement project enactments and for which the final programmatic environmental impact statement was made available for review through public notice published in the federal register (77 FR 12076 (2012)).

(3) "Net water savings" means the amount of water that through hydrological analysis is determined to be conserved and usable for other purposes without impairing existing water rights, reducing the ability to deliver water, or reducing the supply of water that otherwise would have been available to other water users.

(4) "Trust water right" means that portion of an existing water right, constituting net water savings, that is no longer required to be diverted for beneficial use due to the installation of a water conservation project that improves an existing system. The term "trust water right" also applies to any other water right acquired by the department under this chapter for management in the Yakima river basin trust water rights program.

(5) "Water conservation project" means any project funded to further the purposes of this chapter and that achieves physical or operational improvements of efficiency in existing systems for diversion, conveyance, or application of water under existing water rights.

(6) "Water supply facility permit and funding milestone" means a date prior to June 30, 2025, when required permits

have been approved, and funding has been secured to begin construction on one or more water supply facilities designed to provide at least two hundred fourteen thousand acre feet of water to be used for instream and out-of-stream uses.

(7) "Yakima river basin water enhancement project" means a series of congressional enactments, originally initiated by the United States congress in 1979 under P.L. 96-162, with subsequent federal implementing legislation being passed in 1984 under section 109 of P.L. 98-381 to promote fish passage improvements, and in 1994 under P.L. 103-434, as amended by P.L. 105-62 in 1997 and P.L. 106-372 in 2000, to promote water conservation, water supply, habitat, and stream enhancement improvements in the Yakima river basin. [2013 2nd sp.s. c 11 § 2; 1989 c 429 § 2.]

90.38.060 Integrated water resource management plan. The department is authorized to implement the integrated water resource management plan in the Yakima river basin, through a coordinated effort of affected federal, state, and local agencies and resources, to develop water supply solutions that provide concurrent benefits to both instream and out-of-stream uses, and to address a variety of water resource and ecosystem problems affecting fish passage, habitat functions, and agricultural, municipal, and domestic water supply in the Yakima river basin, consistent with the integrated plan.

(1) Authorized department actions include, but are not limited to:

(a) Accepting funds from any entity, public or private, as necessary to implement the objectives of this chapter;

(b) Assessing, planning, and developing projects under the Yakima river basin integrated water resource management plan, or for any other action designed to provide access to new water supplies within the Yakima river basin, consistent with the integrated plan and including but not limited to: Enhanced water conservation and efficiency measures, water reallocation markets, in-basin surface and groundwater storage facilities, fish passage at existing in-basin reservoirs, structural and operational modifications to existing facilities, habitat protection and restoration, and general watershed enhancements as necessary to implement the objectives of this chapter and the integrated plan; and

(c) Entering into contracts to ensure the effective delivery of water and to provide for the design and construction of facilities necessary to implement the objectives of the integrated plan and this chapter.

(2) Consistent with the integrated plan, the goals and objectives of department actions authorized under this chapter include, but are not limited to:

(a) Protection, mitigation, and enhancement of fish and wildlife through improved water management; improved instream flows; improved water quality; protection, creation, and enhancement of wetlands; improved fish passage, and by other appropriate means of habitat improvement, including the protection and enhancement of natural wetlands, floodplains, and groundwater storage systems;

(b) Improved water availability and reliability, and improved efficiency of water delivery and use, to enhance basin water supplies for agricultural irrigation, municipal, commercial, industrial, domestic, and environmental water uses;

(c) Establishment of more efficient water markets and more effective operational and structural changes to manage variability of water supplies and to prepare for the uncertainties of climate change, including but not limited to the facilitation of water banking, water right transfers, dry year options, the voluntary sale and lease of land, water, or water rights from any entity or individual willing to limit or forego water use on a temporary or permanent basis, and any other innovative water allocation tools used to maximize the utility of existing Yakima river basin water supplies, as long as the establishment and use of these tools is consistent with the integrated plan.

(3) Water supplies secured through the development of new storage facilities or expansion of existing storage facilities made possible with funding from the Yakima integrated plan implementation account, the Yakima integrated plan implementation taxable bond account, and the Yakima integrated plan implementation revenue recovery account must be allocated for out-of-stream uses and to augment instream flows consistent with the Yakima river basin integrated water resource management plan. Water to be made available to benefit out-of-stream uses under this subsection, but not yet appropriated, must be temporarily available to augment instream flows to the extent that it does not impair existing water rights and is consistent with the integrated plan. [2013 2nd sp.s. c 11 § 3.]

90.38.070 Yakima integrated plan implementation account. (1) The Yakima integrated plan implementation account is created in the state treasury. All receipts from direct appropriations from the legislature, moneys directed to the account pursuant to this chapter, or moneys directed to the account from any other sources must be deposited in the account. The account is intended to fund projects using tax exempt bonds. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only as provided in this section. Interest earned by deposits in the account will be retained in the account.

(2) Expenditures from the account created in this section may be used to assess, plan, and develop projects under the Yakima river basin integrated water resource management plan or for any other actions designed to provide access to new water supplies within the Yakima river basin for both instream and out-of-stream uses, consistent with the integrated plan and the authorities, goals, and objectives set forth in RCW 90.38.060.

(3)(a) Funds may not be expended from the account for the construction of a new storage facility until the department evaluates the following:

- (i) Water uses to be served by the facility;
- (ii) The quantity of water necessary to meet the needs of those uses;
- (iii) The benefits and costs to the state of serving those uses, including short-term and long-term economic, cultural, and environmental effects; and
- (iv) Alternative means of supplying water to meet those uses, including the costs of those alternatives and an analysis of the extent to which the long-term water supply needs are able to be met using those alternatives.

(b) The department may rely on studies and information developed through compliance with other state and federal

requirements and other sources. The department shall compile its findings and conclusions and provide a summary of the information it reviewed.

(c) Before finalizing its evaluation under the provisions of this subsection, the department shall make the preliminary evaluation available to the public. Public comment may be made to the department within thirty days of the date the preliminary evaluation is made public.

(4) For water supplies developed under the integrated plan to support future municipal and domestic water needs, the department shall give preference to other entities in managing water service contracts. Where the department determines that the management of such contracts by other entities is not feasible or suitable, the department may enter into water service contracts with applicants receiving water from the program to recover all or a portion of the cost of developing water supplies made possible with funding from the account created in this section. The department may deny an application if the applicant does not enter into a water service contract. Revenue collected from water service contracts must be deposited into the Yakima integrated plan implementation revenue recovery account created in RCW 90.38.090. The department may adopt rules describing the methodology as to how charges will be established and direct costs recovered for water supply developed under the Yakima river basin integrated water resource management plan implementation program. [2013 2nd sp.s. c 11 § 4.]

90.38.080 Yakima integrated plan implementation taxable bond account. (1) The Yakima integrated plan implementation taxable bond account is created in the state treasury. All receipts from direct appropriations from the legislature, moneys directed to the account pursuant to this chapter, or moneys directed to the account from any other sources must be deposited in the account. The account is intended to fund projects using taxable bonds. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only as provided in this section. Interest earned by deposits in the account will be retained in the account.

(2) Expenditures from the account created in this section may be used to assess, plan, and develop projects under the Yakima river basin integrated water resource management plan or for any other actions designed to provide access to new water supplies within the Yakima river basin for both instream and out-of-stream uses, consistent with the integrated plan and the authorities, goals, and objectives set forth in RCW 90.38.060.

(3)(a) Funds may not be expended from the account for the construction of a new storage facility until the department evaluates the following:

- (i) Water uses to be served by the facility;
- (ii) The quantity of water necessary to meet the needs of those uses;
- (iii) The benefits and costs to the state of serving those uses, including short-term and long-term economic, cultural, and environmental effects; and
- (iv) Alternative means of supplying water to meet those uses, including the costs of those alternatives and an analysis of the extent to which the long-term water supply needs are able to be met using those alternatives.

(b) The department may rely on studies and information developed through compliance with other state and federal requirements and other sources. The department shall compile its findings and conclusions and provide a summary of the information it reviewed.

(c) Before finalizing its evaluation under the provisions of this subsection, the department shall make the preliminary evaluation available to the public. Public comment may be made to the department within thirty days of the date the preliminary evaluation is made public.

(4) For water supplies developed under the integrated plan to support future municipal and domestic water needs, the department shall give preference to other entities in managing water service contracts. Where the department determines that the management of such contracts by other entities is not feasible or suitable, the department may enter into water service contracts with applicants receiving water from the program to recover all or a portion of the cost of developing water supplies made possible with funding from the account created in this section. The department may deny an application if the applicant does not enter into a water service contract. Revenue collected from water service contracts must be deposited into the Yakima integrated plan implementation revenue recovery account created in RCW 90.38.090. The department may adopt rules describing the methodology as to how charges will be established and direct costs recovered for water supply developed under the Yakima river basin integrated water resource management plan implementation program. [2013 2nd sp.s. c 11 § 5.]

90.38.090 Yakima integrated plan implementation revenue recovery account. (1) The Yakima integrated plan implementation revenue recovery account is created in the state treasury. All receipts from direct appropriations from the legislature, moneys directed to the account pursuant to this chapter, or moneys directed to the account from any other sources must be deposited in the account. The account is intended to fund projects using revenues from water service contracts as authorized in this chapter. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only as provided in this section. Interest earned by deposits in the account will be retained in the account.

(2) Expenditures from the account created in this section may be used to assess, plan, and develop projects under the Yakima river basin integrated water resource management plan or for any other actions designed to provide access to new water supplies within the Yakima river basin for both instream and out-of-stream uses, consistent with the integrated plan and the authorities, goals, and objectives set forth in RCW 90.38.060.

(3)(a) Funds may not be expended from the account for the construction of a new storage facility until the department evaluates the following:

- (i) Water uses to be served by the facility;
- (ii) The quantity of water necessary to meet the needs of those uses;
- (iii) The benefits and costs to the state of serving those uses, including short-term and long-term economic, cultural, and environmental effects; and

(iv) Alternative means of supplying water to meet those uses, including the costs of those alternatives and an analysis of the extent to which the long-term water supply needs are able to be met using those alternatives.

(b) The department may rely on studies and information developed through compliance with other state and federal requirements and other sources. The department shall compile its findings and conclusions and provide a summary of the information it reviewed.

(c) Before finalizing its evaluation under the provisions of this subsection, the department shall make the preliminary evaluation available to the public. Public comment may be made to the department within thirty days of the date the preliminary evaluation is made public.

(4) For water supplies developed under the integrated plan to support future municipal and domestic water needs in the Yakima basin, the department shall give preference to other entities in managing water service contracts. Where the department determines that the management of such contracts by other entities is not feasible or suitable, the department may enter into water service contracts with applicants receiving water from the program to recover all or a portion of the cost of developing water supplies made possible with funding from the account created in this section. The department may deny an application if the applicant does not enter into a water service contract. Revenue collected from water service contracts must be deposited into the Yakima integrated plan implementation revenue recovery account created in this section. The department may adopt rules describing the methodology as to how charges will be established and direct costs recovered for water supply developed under the Yakima river basin integrated water resource management plan implementation program. [2013 2nd sp.s. c 11 § 6.]

90.38.100 Report to the legislature and governor. (Expires December 31, 2045.) (1) By December 1, 2015, and by December 1st of every odd-numbered year thereafter, and in compliance with RCW 43.01.036, the department, in consultation with the United States bureau of reclamation, the Yakama Nation, Yakima river basin local governments, and key basin stakeholders, shall provide a Yakima river basin integrated water resource management plan implementation status report to the legislature and to the governor that includes: A description of measures that have been funded and implemented in the Yakima river basin and their effectiveness in meeting the objectives of chapter 11, Laws of 2013 2nd sp. sess., a project funding list that represents the state's percentage cost share to implement the integrated plan measures for the current biennium and cost estimates for subsequent biennia, a description of progress toward concurrent realization of the integrated plan's fish passage, watershed enhancement, and water supply goals, and an annual summary of all associated costs to develop and implement projects within the framework of the integrated water resource management plan for the Yakima river basin.

(2) The status report required in this section for December 1, 2021, must include a statement of progress in achieving the water supply facility permit and funding milestone, as defined in RCW 90.38.010. If, after a good faith effort to achieve the water supply facility permit and funding mile-

stone, it appears that the milestone cannot or may not be met, the department, in consultation with the United States bureau of reclamation, the Yakama Nation, Yakima river basin local governments, and key basin stakeholders, shall provide a detailed description of the impediments to achieving the milestone, describe the strategy for resolving the identified impediments, and, if necessary, recommend modifications to the milestone.

(3) This section expires December 31, 2045. [2013 2nd sp.s. c 11 § 9.]

90.38.110 Construction of a water supply project—Prior review by the state of Washington water research center. (Expires July 1, 2025.) (1) Prior to the appropriation of funding for the construction of a water supply project proposed in the integrated plan with a cost of greater than one hundred million dollars, the state of Washington water research center shall review, evaluate, and prepare comments on the cost benefit analysis prepared for the project by the department and the United States bureau of reclamation.

(2) To the greatest extent possible, the center must use information from existing studies, supplemented by primary research, to measure and evaluate each project's benefits and costs.

(3) The center must measure and report the economic benefits of each project subject to subsection (1) of this section, so that it is clear the extent to which an individual project is expected to result in increases in fish populations, increases in the reliability of irrigation water during severe drought years, and improvements in municipal and domestic water supply.

(4) The center may enter into agreements with other state universities and with private consultants as needed to accomplish the scope of work.

(5) The center may consult, as necessary, with the department of ecology and the Yakima river basin water enhancement project work group.

(6) No more than twelve percent of any appropriations provided for the implementation of this section may be retained for administrative overhead expenses.

(7) This section expires July 1, 2025. [2013 2nd sp.s. c 11 § 10.]

90.38.120 Legislative intent—Cost to implement the integrated plan. (1)(a) It is the intent of the legislature for the state to pay its fair share of the cost to implement the integrated plan. At least one-half of the total costs to finance the implementation of the integrated plan must be funded through federal, private, and other nonstate sources, including a significant contribution of funding from local project beneficiaries. This section applies to the total costs of the integrated plan and not to individual projects within the plan.

(b) The state's continuing support for the integrated plan shall be formally reevaluated independently by the governor and the legislature if, after December 31, 2021, and periodically thereafter, the actual funding provided through nonstate sources is less than one-half of all costs and if funding from local project beneficiaries does not comprise a significant portion of the nonstate sources.

(2) The department shall deliver, consistent with the intent of this section, a cost estimate and financing plan that

addresses the total estimated cost to implement the integrated plan and analyzes various financing options. The cost estimate and financing plan must include a description of state expenditures as of September 28, 2013, incurred implementing the integrated plan and proposed state expenditures in the 2015-2017 biennium and beyond with proposed financing sources for each project.

(3) In addition, the office of the state treasurer shall prepare supplementary chapters to the cost estimate and financing plan for the department that:

(a) Identifies and evaluates potential new state financing sources to pay for the state's contribution towards the overall costs of the Yakima integrated plan's implementation;

(b) Identifies and evaluates potential new local financing sources to pay for a significant local contribution towards the overall costs of the Yakima integrated plan's implementation;

(c) Considers the viability, and evaluates the advantages and disadvantages of various financing mechanisms such as revenue bonds, general obligation bonds, and other financing models;

(d) Identifies past, current, and anticipated future costs that will be, or are anticipated to be, paid by nonstate sources such as federal sources, private sources, and local sources; and

(e) Considers how cost overruns of projects associated with the integrated plan could affect long-term financing of the overall integrated plan and provides options for how cost overruns can be addressed.

(4) The department may, in the sole discretion of the department, contract with state universities or private consultants for any part of the cost estimate and financing plan required under this section.

(5) The initial cost estimate and financing plan required by this section must be provided to the governor and the legislature, consistent with RCW 43.01.036, by no later than December 15, 2014, for consideration in preparing the 2015-2017 biennial budget and future budgets. The cost estimate and financing plan must be updated by September 1st of each successive even-numbered year. [2013 2nd sp.s. c 11 § 11.]

90.38.130 Authorization to purchase land—Management and disposal of land. (1) Subject to the availability of amounts appropriated for this specific purpose, the department of natural resources is authorized to purchase land to be held in the community forest trust under RCW 79.155.040 to serve the purposes of the community forest trust including the protection of Yakima river basin functioning, without complying with the requirements of RCW 79.155.030(1), 79.155.060, or 79.155.070, relating to the identification, prioritization, local commitment, and financial contribution normally prerequisite to nominating and acquiring community forest trust lands. The purchase must be reviewed and approved by the board of natural resources. In its evaluation of this acquisition pursuant to RCW 79.155.040(3), the board is relieved from considering the criteria for identifying and prioritizing land set forth in RCW 79.155.050. Once purchased, the land must be managed by the department of natural resources in consultation with the department of fish and wildlife. Any investment in the land purchase with funds

belonging to the common school trust constitutes a loan from the irreducible principal of the common school trust and may only be made if first determined to be a prudent investment by the board of natural resources. An annual interest payment on the loan of nine percent must be paid, with six percent deposited into the common school construction account and three percent deposited into the real property replacement account. Interest begins to accrue on the date the land purchase is completed and is due and payable July 1st following the completion of the state fiscal year. The principal of the loan must be repaid in accordance with the provisions of subsection (3) of this section.

(2) The land purchased under this authority must be managed under a transitional postacquisition management plan during the period between the date of purchase and the water supply facility permit and funding milestone or until June 30, 2025, whichever is sooner. The plan must be consistent with RCW 79.155.080(1), provided that the lands acquired as community forest trust lands are not required to generate financial support for their management as would otherwise be required by RCW 79.155.020(2), 79.155.030(2)(d), and 79.155.080(3), and provided further that the authority granted to the department to divest of the property under RCW 79.155.080(4) does not apply to these lands. The department of natural resources must develop the transitional postacquisition management plan in consultation with the department of fish and wildlife.

(a) The plan must ensure that the land is managed in a manner that is consistent with the Yakima basin integrated plan principles for forest land acquisitions, including the following:

(i) To protect and enhance the water supply and protect the watershed;

(ii) To maintain working lands for forestry and grazing while protecting key watershed functions and aquatic habitat;

(iii) To maintain and where possible expand recreational opportunities consistent with watershed protection, for activities such as hiking, fishing, hunting, horseback riding, camping, birding, and snowmobiling;

(iv) To conserve and restore vital habitat for fish, including steelhead, spring chinook, and bull trout, and wildlife, including deer, elk, large predators, and spotted owls; and

(v) To support a strong community partnership, in which the Yakama Nation, residents, business owners, local governments, conservation groups, and others provide advice about ongoing land management.

(b) The department of natural resources, in consultation with the department of fish and wildlife, must establish the Teanaway community forest advisory committee that includes representatives from the department of ecology, the local community, land conservation organizations, the Yakama Nation, the Kittitas county commission, and local agricultural interests.

(c) By June 30, 2015, the department of natural resources must complete the transitional postacquisition management plan with a public process that involves interested stakeholders, particularly residents from Kittitas county, friends of the Teanaway, back country horsemen, off-road vehicle and snowmobile users, a representative from Kittitas field and stream, hikers and wildlife watchers, and ranchers who graze cattle.

(3) After the water supply facility permit and funding milestone or June 30, 2025, whichever is sooner, the land must be disposed of in the following manner:

(a) If the water supply facility permit and funding milestone conditions have been met, the land remains in the community forest trust and the transitional postacquisition management plan must be converted to a permanent postacquisition management plan with whatever updates and amendments are periodically adopted. Under these conditions, the remaining principal of any investment in the land purchased with funds belonging to the common school trust must be repaid to the real property replacement account.

(b) If the water supply facility permit and funding milestone conditions have not been met, the board of natural resources must decide between the following dispositions of the land:

(i) Deposit of the entire amount of land purchased into the ownership of the common school trust for management or disposition for the benefit of the common schools; or

(ii) Disposition under the terms of (a) of this subsection. [2013 2nd sp.s. c 11 § 12.]

90.38.900 Existing policies not replaced. The policies and purposes of this chapter shall not be construed as replacing or amending the policies or the purposes for which funds available under chapter 43.83B, 43.99E, or 90.90 RCW may be used within or without the Yakima river basin. [2013 2nd sp.s. c 11 § 7; 1989 c 429 § 7.]

90.38.902 Existing rights not impaired. (1) Nothing in this chapter shall authorize the impairment of, or operate to impair, any existing water rights.

(2) Nothing in this chapter may be construed to limit, impair, waive, abrogate, or diminish:

(a) Any treaty or other rights of the Yakama Nation;

(b) Any powers, rights, or authorities conferred upon irrigation districts under existing law;

(c) Any rights or jurisdictions of the United States, the state of Washington, or other person or entity over waters in the Yakima river basin. [2013 2nd sp.s. c 11 § 8; 1989 c 429 § 9.]

Chapter 90.44 RCW

REGULATION OF PUBLIC GROUNDWATERS

Sections

90.44.110	Waste of water prohibited—Exceptions.
90.44.130	Priorities as between appropriators—Department in charge of groundwater withdrawals—Establishment and modification of groundwater areas and depth zones—Declarations by claimant of artificially stored water.

90.44.110 Waste of water prohibited—Exceptions. No public groundwaters that have been withdrawn shall be wasted without economical beneficial use. The department shall require all wells producing waters which contaminate other waters to be plugged or capped. The department shall also require all flowing wells to be so capped or equipped with valves that the flow of water can be completely stopped when the wells are not in use under the terms of their respective permits or approved declarations of vested rights. Likewise, the department shall also require both flowing and non-

flowing wells to be so constructed and maintained as to prevent the waste of public groundwaters through leaky casings, pipes, fittings, valves, or pumps—either above or below the land surface: PROVIDED, HOWEVER, That the withdrawal of reasonable quantities of public groundwater in connection with the construction, development, testing, or repair of a well shall not be construed as waste; also, that the inadvertent loss of such water owing to breakage of a pump, valve, pipe, or fitting shall not be construed as waste if reasonable diligence is shown by the permittee in effecting the necessary repair.

In the issuance of an original permit, or of an amendment to an original permit or certificate of vested right to withdraw and appropriate public groundwaters under the provisions of this chapter, the department may, as in his or her judgment is necessary, specify for the proposed well or wells or other works a manner of construction adequate to accomplish the provisions of this section. [2013 c 23 § 611; 1987 c 109 § 114; 1949 c 63 § 1; 1945 c 263 § 11; Rem. Supp. 1949 § 7400-11.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

90.44.130 Priorities as between appropriators—Department in charge of groundwater withdrawals—Establishment and modification of groundwater areas and depth zones—Declarations by claimant of artificially stored water. As between appropriators of public groundwater, the prior appropriator shall as against subsequent appropriators from the same groundwater body be entitled to the preferred use of such groundwater to the extent of his or her appropriation and beneficial use, and shall enjoy the right to have any withdrawals by a subsequent appropriator of groundwater limited to an amount that will maintain and provide a safe sustaining yield in the amount of the prior appropriation. The department shall have jurisdiction over the withdrawals of groundwater and shall administer the groundwater rights under the principle just set forth, and it shall have the jurisdiction to limit withdrawals by appropriators of groundwater so as to enforce the maintenance of a safe sustaining yield from the groundwater body. For this purpose, the department shall have authority and it shall be its duty from time to time, as adequate factual data become available, to designate groundwater areas or subareas, to designate separate depth zones within any such area or subarea, or to modify the boundaries of such existing area, or subarea, or zones to the end that the withdrawals therefrom may be administratively controlled as prescribed in RCW 90.44.180 in order that overdraft of public groundwaters may be prevented so far as is feasible. Each such area or zone shall, as nearly as known facts permit, be so designated as to enclose a single and distinct body of public groundwater. Each such subarea may be so designated as to enclose all or any part of a distinct body of public groundwater, as the department deems will most effectively accomplish the purposes of this chapter.

Designation of, or modification of the boundaries of such a groundwater area, subarea, or zone may be proposed by the department on its own motion or by petition to the department signed by at least fifty or one-fourth, whichever is the lesser number, of the users of groundwater in a proposed groundwater area, subarea, or zone. Before any proposed

groundwater area, subarea, or zone shall be designated, or before the boundaries or any existing groundwater area, subarea, or zone shall be modified the department shall publish a notice setting forth: (1) In terms of the appropriate legal subdivisions a description of all lands enclosed within the proposed area, subarea, or zone, or within the area, subarea, or zone whose boundaries are proposed to be modified; (2) the object of the proposed designation or modification of boundaries; and (3) the day and hour, and the place where written objections may be submitted and heard. Such notice shall be published in three consecutive weekly issues of a newspaper of general circulation in the county or counties containing all or the greater portion of the lands involved, and the newspaper of publication shall be selected by the department. Publication as just prescribed shall be construed as sufficient notice to the landowners and water users concerned.

Objections having been heard as herein provided, the department shall make and file in its office written findings of fact with respect to the proposed designation or modification and, if the findings are in the affirmative, shall also enter a written order designating the groundwater area, or subarea, or zone or modifying the boundaries of the existing area, subarea, or zone. Such findings and order shall also be published substantially in the manner herein prescribed for notice of hearing, and when so published shall be final and conclusive unless an appeal therefrom is taken within the period and in the manner prescribed by RCW 43.21B.310. Publication of such findings and order shall give force and effect to the remaining provisions of this section and to the provisions of RCW 90.44.180, with respect to the particular area, subarea, or zone.

Priorities of right to withdraw public groundwater shall be established separately for each groundwater area, subarea, or zone and, as between such rights, the first in time shall be the superior in right. The priority of the right acquired under a certificate of groundwater right shall be the date of filing of the original application for a withdrawal with the department, or the date or approximate date of the earliest beneficial use of water as set forth in a certificate of a vested groundwater right, under the provisions of RCW 90.44.090.

Within ninety days after the designation of a groundwater area, subarea, or zone as herein provided, any person, firm, or corporation then claiming to be the owner of artificially stored groundwater within such area, subarea, or zone shall file a certified declaration to that effect with the department on a form prescribed by the department. Such declaration shall cover: (1) The location and description of the works by whose operation such artificial groundwater storage is purported to have been created, and the name or names of the owner or owners thereof; (2) a description of the lands purported to be underlain by such artificially stored groundwater, and the name or names of the owner or owners thereof; (3) the amount of such water claimed; (4) the date or approximate date of the earliest artificial storage; (5) evidence competent to show that the water claimed is in fact water that would have been dissipated naturally except for artificial improvements by the claimant; and (6) such additional factual information as reasonably may be required by the department. If any of the purported artificially stored groundwater has been or then is being withdrawn, the claimant also shall file (1) the declarations which this chapter requires of claim-

ants to a vested right to withdraw public groundwaters, and (2) evidence competent to show that none of the water withdrawn under those declarations is in fact public groundwater from the area, subarea, or zone concerned: PROVIDED, HOWEVER, That in case of failure to file a declaration within the ninety-day period herein provided, the claimant may apply to the department for a reasonable extension of time, which shall not exceed two additional years and which shall be granted only upon a showing of good cause for such failure.

Following publication of the declaration and findings— as in the case of an original application, permit, or certificate of right to appropriate public groundwaters—the department shall accept or reject such declaration or declarations with respect to ownership or withdrawal of artificially stored groundwater. Acceptance of such declaration or declarations by the department shall convey to the declarant no right to withdraw public groundwaters from the particular area, subarea, or zone, nor to impair existing or subsequent rights to such public waters.

Any person, firm, or corporation hereafter claiming to be the owner of groundwater within a designated groundwater area, subarea, or zone by virtue of its artificial storage subsequent to such designation shall, within three years following the earliest artificial storage file a declaration of claim with the department, as herein prescribed for claims based on artificial storage prior to such designation: PROVIDED, HOWEVER, That in case of such failure the claimant may apply to the department for a reasonable extension of time, which shall not exceed two additional years and which shall be granted upon a showing of good cause for such failure.

Any person, firm, or corporation hereafter withdrawing groundwater claimed to be owned by virtue of artificial storage subsequent to designation of the relevant groundwater area, subarea, or zone shall, within ninety days following the earliest such withdrawal, file with the department the declarations required by this chapter with respect to withdrawals of public groundwater. [2013 c 23 § 612; 1987 c 109 § 116; 1947 c 122 § 4; 1945 c 263 § 12; Rem. Supp. 1947 § 7400-12. Formerly RCW 90.44.130 through 90.44.170.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

Chapter 90.48 RCW

WATER POLLUTION CONTROL

Sections

90.48.095 Authority of department to compel attendance and testimony of witnesses, production of books and papers—Contempt proceedings to enforce—Fees.

90.48.095 Authority of department to compel attendance and testimony of witnesses, production of books and papers—Contempt proceedings to enforce—Fees. In carrying out the purposes of this chapter or chapter 90.56 RCW the department shall, in conjunction with either the adoption of rules, consideration of an application for a waste discharge permit or the termination or modification of such permit, or proceedings in adjudicative hearings, have the authority to issue process and subpoena witnesses effective throughout the state on its own behalf or that of an interested

party, compel their attendance, administer oaths, take the testimony of any person under oath and, in connection therewith require the production for examination of any books or papers relating to the matter under consideration by the department. In case of disobedience on the part of any person to comply with any subpoena issued by the department, or on the refusal of any witness to testify to any matters regarding which he or she may be lawfully interrogated, it shall be the duty of the superior court of any county, or of the judge thereof, on application of the department, to compel obedience by proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein. In connection with the authority granted under this section no witness or other person shall be required to divulge trade secrets or secret processes. Persons responding to a subpoena as provided herein shall be entitled to fees as are witnesses in superior court. [2013 c 23 § 613; 1991 c 200 § 1103; 1987 c 109 § 128; 1967 c 13 § 9.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

Additional notes found at www.leg.wa.gov

Chapter 90.50A RCW

WATER POLLUTION CONTROL FACILITIES— FEDERAL CAPITALIZATION GRANTS

Sections

90.50A.010 Definitions.

90.50A.090 Water pollution control revolving administration account—Creation—Report to the legislature.

90.50A.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Debt service" means the total of all principal, interest, and administration charges associated with a water pollution control revolving fund loan that must be repaid to the department by the public body.

(2) "Department" means the department of ecology.

(3) "Eligible cost" means the cost of that portion of a water pollution control facility or activity that can be financed under this chapter.

(4) "Federal capitalization grants" means grants from the federal government provided by the water quality act of 1987 (P.L. 100-4).

(5) "Fund" means the water pollution control revolving fund in the custody of the state treasurer.

(6) "Nonpoint source water pollution" means pollution that enters any waters of the state from any dispersed water-based or land-use activities, including, but not limited to, atmospheric deposition, surface water runoff from agricultural lands, urban areas, and forest lands, subsurface or underground sources, and discharges from boats or other marine vessels.

(7) "Public body" means the state of Washington or any agency, county, city or town, other political subdivision, municipal corporation or quasi-municipal corporation, and those Indian tribes now or hereafter recognized as such by the federal government.

(8) "Water pollution" means such contamination, or other alteration of the physical, chemical, or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental, or injurious to the public health, safety, or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish, or other aquatic life.

(9) "Water pollution control activities" means actions taken by a public body for the following purposes: (a) To control nonpoint sources of water pollution; (b) to develop and implement a comprehensive management plan for estuaries; and (c) to maintain or improve water quality through the use of water pollution control facilities or other means.

(10) "Water pollution control facility" or "water pollution control facilities" means any facilities or systems owned or operated by a public body for the control, collection, storage, treatment, disposal, or recycling of wastewater, including but not limited to sanitary sewage, storm water, combined sewer overflows, residential, commercial, industrial, and agricultural wastes, which are causing water quality degradation due to concentrations of conventional, nonconventional, or toxic pollutants. Water pollution control facilities include all equipment, utilities, structures, real property, and interests in and improvements on real property necessary for or incidental to such purpose. Water pollution control facilities also include such facilities, equipment, and collection systems as are necessary to protect federally designated sole source aquifers. [2013 c 96 § 1; 1988 c 284 § 2.]

90.50A.090 Water pollution control revolving administration account—Creation—Report to the legislature.

(1) The water pollution control revolving administration account is created in the state treasury. All receipts from charges authorized in this section must be deposited in the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only in a manner consistent with this section.

(2) The department is authorized to assess administration charges as a portion of the debt service for loans issued under the water pollution control revolving fund created in RCW 90.50A.020. The sole purpose of assessing administration charges is to predictably and adequately fund the department's costs of administering the water pollution control revolving fund loan program, as identified in subsection (5) of this section. The department must assess administration charges on each water pollution control revolving fund loan at the point the loan enters repayment status, after July 28, 2013, and rule changes are adopted to implement the administration charge. Loans that are at an interest rate below the established administration charge rate are exempt from the administration charge.

(3) The water pollution control revolving administration account consists of:

(a) Any administration charge levied by the department in conjunction with administration of the water pollution control revolving fund; and

(b) Any other revenues derived from gifts, grants, or bequests pledged to the state for the purpose of administering the water pollution control revolving fund.

(4) The state treasurer may invest and reinvest moneys in the water pollution control revolving administration account in the manner provided by law. All earnings from such investment and reinvestment must be credited to the water pollution control revolving administration account.

(5) Moneys in the water pollution control revolving administration account are to be used for the following water pollution [control] revolving fund loan program costs:

(a) Administration costs associated with conducting application processes, managing contracts, collecting loan repayments, managing the revolving fund, providing technical assistance, and meeting state and federal reporting requirements; and

(b) Information and data system costs associated with loan tracking and fund management.

(6) Each biennium, the department may spend from the water pollution control revolving administration account an amount no greater than four percent of the water pollution control revolving fund new capital appropriation.

(7) For its 2017-2019 biennial operating budget submittal, and every biennium thereafter, the department must compare the projected water pollution control revolving administration account balance and the projected administration charge income with projected program costs, including an adequate working capital reserve as defined by the office of financial management. In its submittal to the office of financial management, the department may:

(a) Find that the projected administration charge income is inadequate to fund the cost of administering the program, and that the rate of the charge must be increased. However, the administration charge may never exceed one percent on the declining principal loan balance;

(b) Find that the projected administration charge income exceeds what is needed to fund the cost of administering the program, and that the rate of the charge must be decreased;

(c) Find that there is an excess balance in the revolving administration account, and that the excess must be transferred to the water pollution control revolving fund to be used for loans; or

(d) Find that there is no need for any rate adjustments or balance transfers.

(8) At the point where the water pollution control revolving administration account adequately covers the program administration costs, the department may no longer use the federal administration allowance. If a federal capitalization grant is awarded after that point, all federal capitalization dollars must be used for making loans.

(9) By December 1, 2018, the department must submit to the appropriate legislative fiscal committees a report on implementation of the administration charge, including information on: The amount of income the administration charge has produced since its inception; the uses and adequacy of the income for administrative costs; any excess balances that have been transferred to the water pollution control revolving fund; and any additional sources that the department is using for program administration. [2013 c 96 § 2.]

Chapter 90.56 RCW**OIL AND HAZARDOUS SUBSTANCE SPILL
PREVENTION AND RESPONSE**

Sections

90.56.410 Right of entry and access to records pertinent to investigations.

90.56.410 Right of entry and access to records pertinent to investigations. (1) The department, through its duly authorized representatives, shall have the power to enter upon any private or public property, including the boarding of any ship, at any reasonable time, and the owner, managing agent, master, or occupant of such property shall permit such entry for the purpose of investigating conditions relating to violations or possible violations of this chapter, and to have access to any pertinent records relating to such property, including but not limited to operation and maintenance records and logs. The authority granted in this section shall not be construed to require any person to divulge trade secrets or secret processes. The director may issue subpoenas for the production of any books, records, documents, or witnesses in any hearing conducted pursuant to this chapter.

(2) The department may utilize the authority granted to it in RCW 79.100.140 for the purposes of mitigating a potential threat to health, safety, or the environment from a vessel. [2013 c 291 § 36; 1990 c 116 § 23; 1987 c 109 § 151; 1969 ex.s. c 133 § 8. Formerly RCW 90.48.355.]

Findings—Severability—1990 c 116: See notes following RCW 90.56.210.

**Purpose—Short title—Construction—Rules—Severability—Cap-
tions—1987 c 109:** See notes following RCW 43.21B.001.

Chapter 90.58 RCW**SHORELINE MANAGEMENT ACT OF 1971**

Sections

90.58.170 Shorelines hearings board—Established—Members—
Chair—Quorum for decision—Expenses of members.

**90.58.170 Shorelines hearings board—Established—
Members—Chair—Quorum for decision—Expenses of
members.** A shorelines hearings board sitting as a quasi-
judicial body is hereby established within the environmental
and land use hearings office under *RCW 43.21B.005. The
shorelines hearings board shall be made up of six members:
Three members shall be members of the pollution control
hearings board; two members, one appointed by the associa-
tion of Washington cities and one appointed by the associa-
tion of county commissioners, both to serve at the pleasure of
the associations; and the commissioner of public lands or his
or her designee. The chair of the pollution control hearings
board shall be the chair of the shorelines hearings board.
Except as provided in RCW 90.58.185, a decision must be
agreed to by at least four members of the board to be final.
The members of the shorelines hearings board shall receive
the compensation, travel, and subsistence expenses as pro-
vided in RCW 43.03.050 and 43.03.060. [2013 c 23 § 614;
1994 c 253 § 1; 1988 c 128 § 76; 1979 ex.s. c 47 § 6; 1971
ex.s. c 286 § 17.]

***Reviser's note:** RCW 43.21B.005 was amended by 2010 c 210 § 4,
changing the "environmental hearings office" to the "environmental and land
use hearings office", effective July 1, 2011.

Intent—1979 ex.s. c 47: See note following RCW 43.21B.005.

Chapter 90.76 RCW**UNDERGROUND STORAGE TANKS**

Sections

90.76.010 Definitions.

90.76.020 Department's powers and duties—Rule-making authority.

90.76.010 Definitions. (1) The definitions in this sec-
tion apply throughout this chapter unless the context clearly
requires otherwise.

(a) "Department" means the department of ecology.

(b) "Director" means the director of the department.

(c) "Facility compliance tag" means a marker, con-
structed of metal, plastic, or other durable material, that
clearly identifies all qualifying underground storage tanks on
the particular site for which it is issued.

(d) "Federal act" means the federal resource conserva-
tion and recovery act, as amended (42 U.S.C. Sec. 6901, et
seq.).

(e) "Federal regulations" means the underground storage
tanks regulations (40 C.F.R. Secs. 280 and 281) adopted by
the United States environmental protection agency under the
federal act.

(f) "License" means the business license underground
storage tank endorsement issued by the department of reve-
nue under chapter 19.02 RCW.

(g) "Underground storage tank compliance act of 2005"
means Title XV and subtitle B of P.L. 109-58 (42 U.S.C. Sec.
15801 et seq.) which have amended the federal resource con-
servation and recovery act's subtitle I.

(h) "Underground storage tank system" means an under-
ground storage tank, connected underground piping, under-
ground ancillary equipment, and containment system, if any.

(2) Except as provided in this section and any rules
adopted by the department under this chapter, the definitions
contained in the federal regulations apply to the terms in this
chapter. [2013 c 144 § 53; 2011 c 298 § 39; 2007 c 147 § 2;
1998 c 155 § 1; 1989 c 346 § 2.]

Sunset Act application: See note following chapter digest.

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

**90.76.020 Department's powers and duties—Rule-
making authority.** (1) The department must adopt rules
establishing requirements for all underground storage tanks
that are regulated under the federal act, taking into account
the various classes or categories of tanks to be regulated. The
rules must be consistent with and no less stringent than the
federal regulations and the underground storage tank compli-
ance act of 2005 and consist of requirements for the follow-
ing:

(a) New underground storage tank system design, con-
struction, installation, and notification;

(b) Upgrading existing underground storage tank sys-
tems;

(c) General operating requirements;

(d) Release detection;

(e) Release reporting;

(f) Out-of-service underground storage tank systems and closure;

(g) Financial responsibility for underground storage tanks containing regulated substances; and

(h) Groundwater protection measures, including secondary containment and monitoring for installation or replacement of all underground storage tank systems or components, such as tanks and piping, installed after July 1, 2007, and under dispenser spill containment for installation or replacement of all dispenser systems installed after July 1, 2007.

(2) The department must adopt rules:

(a) Establishing physical site criteria to be used in designating local environmentally sensitive areas;

(b) Establishing procedures for local government application for this designation; and

(c) Establishing procedures for local government adoption and department approval of rules more stringent than the statewide standards in these designated areas.

(3) The department must establish by rule an administrative and enforcement program that is consistent with and no less stringent than the program required under the federal regulations in the areas of:

(a) Compliance monitoring, including procedures for recordkeeping and a program for systematic inspections;

(b) Enforcement;

(c) Public participation;

(d) Information sharing;

(e) Owner and operator training; and

(f) Delivery prohibition for underground storage tank systems or facilities that are determined by the department to be ineligible to receive regulated substances.

(4) The department must establish a program that provides for the annual licensing of underground storage tanks. The license must take the form of a tank endorsement on the facility's annual business license issued by the department of revenue under chapter 19.02 RCW. A tank is not eligible for a license unless the owner or operator can demonstrate compliance with the requirements of this chapter and the annual tank fees have been remitted. The department may revoke a tank license if a facility is not in compliance with this chapter, or any rules adopted under this chapter. The business license must be displayed by the tank owner or operator in a location clearly identifiable.

(5)(a) The department must issue a one-time "facility compliance tag" to underground storage tank facilities that have installed the equipment required to meet corrosion protection, spill prevention, overflow prevention, leak detection standards, have demonstrated financial responsibility, and have paid annual tank fees. The facility must continue to maintain compliance with corrosion protection, spill prevention, overflow prevention, and leak detection standards, financial responsibility, and have remitted annual tank fees to display a facility compliance tag. The facility compliance tag must be displayed on or near the fire emergency shutoff device, or in the absence of such a device in close proximity to the fill pipes and clearly identifiable to persons delivering regulated substance to underground storage tanks.

(b) The department may revoke a facility compliance tag if a facility is not in compliance with the requirements of this chapter, or any rules adopted under this chapter.

(6) The department may place a red tag on a tank at a facility if the department determines that the owner or operator is not in compliance with this chapter or the rules adopted under this chapter regarding the compliance requirements related to that tank. Removal of a red tag without authorization from the department is a violation of this chapter.

(7) The department may establish programs to certify persons who install or decommission underground storage tank systems or conduct inspections, testing, closure, cathodic protection, interior tank lining, corrective action, site assessments, or other activities required under this chapter. Certification programs must be designed to ensure that each certification will be effective in all jurisdictions of the state.

(8) When adopting rules under this chapter, the department must consult with the state building code council to ensure coordination with the building and fire codes adopted under chapter 19.27 RCW. [2013 c 144 § 54; 2011 c 298 § 40; 2007 c 147 § 3; 1998 c 155 § 2; 1989 c 346 § 3.]

Sunset Act application: See note following chapter digest.

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

Title 91

WATERWAYS

Chapters

91.08 Public waterways.

Chapter 91.08 RCW

PUBLIC WATERWAYS

Sections

91.08.030	Petition—By whom signed—Contents—Notice of filing—Discharge of proceedings.
91.08.080	Hearing—Findings—Order.
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91.08.590	Payment of assessments by satisfying judgment.
91.08.600	Purchase of filling material.
91.08.620	Unclaimed funds, disposal of.

91.08.030 Petition—By whom signed—Contents—Notice of filing—Discharge of proceedings. The plan of such proposed waterway shall be presented to the board by a written petition of owners of lands which it is represented

will be improved by the construction, deepening or widening of such waterway; and such petition shall be signed by the owners of thirty-five percent or more of the area of lands in the district, and shall be verified by one or more of the petitioners to the effect that the signatures attached are the genuine signature of the persons or corporations signing the same. Each petitioner shall add a description of the lands he or she owns. If petitioners are unmarried persons they shall so state. If lands are owned by married persons, husband and wife shall join in the petition. If a petitioner is a corporation, the signature shall be accompanied by a certified copy of a resolution of the board of directors or trustees of the corporation authorizing the person signing the petition for the corporation to execute it. If lands included in the petition are owned by minors, insane persons, or other persons under guardianship in this state, the petition may be signed by the guardians of such persons: PROVIDED, That the signature be accompanied by a certified copy of an order of the superior court having the guardianship of such person in charge, authorizing the guardian to sign the petition. A petition may consist of one or more separate papers or sheets which are identified with the subject matter.

The petitioners shall file with the board, with their petition, a map of the lands in the district and a statement showing each separate ownership of lands as shown by the public records of the county, and their location in the county, with the names of the owners as shown by such records, and the location of the proposed waterway if a new waterway is to be constructed. If an existing waterway is to be deepened the map shall show its location, and if it is to be widened the map shall show its location and the extent to which it is to be widened. With the petition there shall also be presented satisfactory evidence from the real property records of the county that the petitioners are severally the owners in fee simple of their respective tracts of land, and that all taxes and assessments due thereon are paid. If it is proposed that any lands in the district shall be filled with the material dug or dredged from such waterway, the petition shall so state, and the map of the district and plan of the improvement shall show the location, depth, and yardage of such fill. The petition may also fix the price per cubic yard at which such fill shall be charged to the land filled, which charge shall be added to the assessment for the improvement to be made upon such lands and be paid as a part thereof. If the price of filling is not fixed by the petition it may be fixed by the board.

At any time after the filing of such petition one or more of the petitioners may file and record in the office of the auditor of the county, notice of the pendency of the proceeding, describing the boundaries of the proposed district, and from the time of such filing all persons shall be deemed to have notice of the pendency of the proceeding and be bound thereby. Upon the hearing upon such petition, hereinafter provided, if the same be denied any person interested may file in the office of said county auditor a certified copy of the order denying the same, whereupon the auditor shall enter the discharge of the notice of the pendency of the proceeding on the margin of the record thereof. And the like discharge may be filed whenever the proceeding is terminated for any other reason. [2013 c 23 § 615; 1911 c 23 § 3; RRS § 9779. Formerly RCW 91.08.030, 91.08.040, and 91.08.050.]

91.08.080 Hearing—Findings—Order. At the time and place prescribed in the said notice any owner of land within said proposed improvement district may file with the board his or her written consent to the proposed improvement, and he or she shall then be considered as a petitioner; and if the owners of more than one half of the lands within the district, including the lands represented by the petition, shall assent to the prayer of said petition, the board shall then proceed to hear and consider any objections which may have been filed at that or any previous time, and may adjourn such hearing from day to day. If the board after full hearing on the merits of the proposed waterway shall be satisfied that the same will be of benefit to the public interests, and that private benefit will result to the lands within the district sufficient to equal the cost of the proposed improvement, they may make findings accordingly and declare their intention to establish the waterway district under the name of the ". . . . Waterway District" and make the improvement as prayed for; but if the owners of less than one half of the lands in the district shall assent to the creation thereof and the making of the proposed improvement, the board shall deny the petition and the proceeding shall be dismissed. [2013 c 23 § 616; 1911 c 23 § 6; RRS § 9782.]

91.08.130 Eminent domain—Petition to condemn. The board shall file a petition, verified by its chair and signed by the prosecuting attorney, in the superior court of the county, praying that the property described may be taken or damaged for the purpose specified and that compensation therefor be ascertained by a jury or by the court in case a jury be waived. Such petition shall allege the creation of the waterway district and contain a copy of the order directing the proceeding, a reasonably accurate description of the lots or parcels of land or other property which will be taken or damaged, and the names of the owners and occupants of said lands and of said persons having any interest therein so far as known to the said board, or as appears from the records in the office of the county auditor. [2013 c 23 § 617; 1911 c 23 § 11; RRS § 9787.]

91.08.150 Eminent domain—Service in case of public lands—Legal counsel. In case the land or other property sought to be taken or damaged is state land, the summons and copy of petition shall be served upon the commissioner of public lands; if it is county land it shall be served upon the county auditor, and if school land, upon the county auditor and the chair of the board of directors of the school district. Service upon other parties defendant, public or private, shall be made in the same manner as is or shall be provided by law for service of summons in other civil actions. If the state is made a defendant the attorney general shall represent it. If the county is a defendant the court shall appoint an attorney to represent it at all stages of the proceedings, and may allow him or her compensation for his or her services as costs of the proceeding. [2013 c 23 § 618; 1911 c 23 § 13; RRS § 9789.]

Civil procedure—Commencement of actions: Chapter 4.28 RCW.

Department of natural resources to exercise powers and duties—Indemnification of private parties: RCW 43.30.411.

Eminent domain where state land is involved: RCW 8.28.010.

Public lands treated as private lands: RCW 91.08.570.

91.08.170 Eminent domain—New parties may be admitted. The jury or court shall also ascertain the just compensation to be paid to any person found to have an interest in any lot or parcel of land or property which may be taken or damaged for such improvement, whether or not such person's name or such lot or parcel of land or other property is mentioned or described in said petition: PROVIDED, That such person shall first be admitted as a party defendant to such suit by such court and shall file a statement of his or her interest in, and a description of, the lot or parcel of land or other property in respect to which he or she claims compensation. [2013 c 23 § 619; 1911 c 23 § 15; RRS § 9791.]

Procedure after findings: RCW 91.08.210.

Substitute defendant: RCW 91.08.220.

91.08.220 Eminent domain—Substitution of new owner as defendant. The court shall have power at any time, upon proof that any defendant who has not been served with process has ceased to be an owner since the filing of such petition, to substitute the new owner as a defendant, and after due service of the summons and petition upon him or her proceed as though he or she had been a party in the first instance; and the court may upon any finding of the jury, or at any time during the course of the proceedings, enter every such order, rule, judgment, or decree as the nature of the case may require. [2013 c 23 § 620; 1911 c 23 § 20; RRS § 9796.]

New parties may be admitted: RCW 91.08.170.

Procedure after findings: RCW 91.08.210.

91.08.250 Eminent domain—Finality of judgment—Appellate review—Waiver of review. Any final judgment rendered by said court upon the findings of the court or a jury, shall be the lawful and sufficient condemnation of the land or property to be taken, or of the right to damage the same in the manner proposed, upon the payment of the amount of such findings and all costs which shall be taxed as in other civil cases: PROVIDED, That in case any defendant recovers no award, no costs shall be taxed. Such judgment shall be final and conclusive as to the damages caused by such improvement, unless appellate review is sought, and no review shall delay proceedings under the order of said board if it shall pay into court for the owners and parties interested, as directed by the court, the amount of the judgment and costs; but such board after making such payment into court shall be liable to such owner or owners, or parties interested, for the payment of any further compensation which may at any time be finally awarded to such parties seeking review in said proceeding, and his or her costs, and shall pay the same on the rendition of judgment therefor and abide any rule or order of the court in relation to the matter in controversy. In case of review by the supreme court or the court of appeals of the state, the money so paid into the superior court by the board, as aforesaid, shall remain in the custody of said superior court until the final determination of the proceedings. If the owner of the land, real estate, premises, or other property, accepts the sum awarded by the jury or the court, he or she shall be deemed thereby to have waived conclusively appellate review and final judgment may be rendered in the superior court as in other cases. [2013 c 23 § 621; 1988 c 202 § 94; 1971 c 81 § 180; 1911 c 23 § 23; RRS § 9799.]

Rules of court: Cf. RAP 2.5(b).

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Appellate review: RCW 91.08.580.

Civil procedure—Costs: Chapter 4.84 RCW.

Additional notes found at www.leg.wa.gov

91.08.280 Assessment procedure—Oath and compensation of commissioners. Said commissioners, before entering upon their duties, shall take and subscribe an oath that they will faithfully perform the duties of the office to which they are appointed, and will to the best of their abilities make true and impartial assessments according to the law. Every commissioner shall receive compensation at the rate of five dollars per day for each day actually spent in making the assessment herein provided for, upon his or her filing in the proceeding a verified statement showing the number of days he or she has actually spent therein; and upon the approval of said statement by the judge of the court in which the proceeding is pending, the board shall issue a warrant in the amount so approved, upon the special fund created to pay the awards and costs of said proceeding; and the fees of such commissioners so paid, and all expenses returned by them and allowed by the court shall be included in the cost and expense of such proceeding. [2013 c 23 § 623; 1911 c 23 § 26; RRS § 9802.]

91.08.340 Assessment procedure—Hearing—Findings—Judgment. Any person interested in any property assessed and desiring to object to the assessment thereon, shall file his or her objections to such report at any time before the day set for hearing said roll, and serve a copy thereof upon the prosecuting attorney. As to all property to the assessment upon which no objections are filed and served, as herein provided, default may be entered and the assessment confirmed by the court. On the hearing of objections the report of the commissioners shall be competent evidence to support the assessment, but either party may introduce such other evidence as may tend to establish the right of the matter. The hearing shall be conducted as in other cases at law tried by the court without a jury; and if it shall appear that the property of the objector is assessed more or less than it will be benefited, or more or less than its proportionate share of the cost of the condemnation and improvement, the court shall so find, and it shall also find the amount in which said property ought to be assessed and correct the assessment accordingly. Judgment shall be entered confirming the assessment roll as originally filed or as corrected, as the case may require. [2013 c 23 § 624; 1911 c 23 § 32; RRS § 9808.]

Civil procedure: Title 4 RCW.

91.08.370 Assessment procedure—Roll certified to treasurer—Interest on assessment upon appeal. The clerk of the court in which such judgment is rendered shall certify a copy of the assessment roll as confirmed, and of the judgment confirming the same, to the treasurer of the county, or if there has been an appeal taken from any part of such judgment, then he or she shall certify such part of the roll and judgment as is not included in such appeal, and the remainder when final judgment is entered: PROVIDED, That if upon such appeal the judgment of the superior court shall be affirmed, the assessments on such property as to which appeal has been taken shall bear interest at the same rate and from the same date which other assessments not paid within

the time hereafter provided shall bear. Such copy of the assessment roll shall be sufficient warrant to the county treasurer to collect the assessments therein specified in the manner hereinafter provided. [2013 c 23 § 625; 1911 c 23 § 35; RRS § 9811.]

91.08.390 Payment of assessment—Alternate methods. The owner of any land charged with an assessment under this chapter, may discharge the same from all liability for the cost of such condemnation and improvement by paying the entire assessment charged against his or her land, without interest, within the time fixed by the notice of the county treasurer for the payment thereof; or within said time he or she may pay a part of such assessment and allow the remainder to continue as an assessment upon his or her land to be collected and paid as hereinafter provided; or within said time he or she may pay the entire assessment per square foot upon any part of his or her land, providing that he or she shall when paying such partial assessment give to the treasurer a description of the tract paid for. [2013 c 23 § 626; 1911 c 23 § 37; RRS § 9813.]

Payment of assessments by satisfying judgment: RCW 91.08.590.

91.08.400 Payment of assessment—Record of payment without interest. When any assessment shall be paid either in full or in part only, within the time for payment without interest fixed by his or her notice, the treasurer shall note the fact of such payment opposite the assessment. [2013 c 23 § 627; 1911 c 23 § 38; RRS § 9814.]

91.08.410 Payment of assessment—Installments—Collection. Immediately after the expiration of the time fixed by his or her notice for payment of assessments without interest, the treasurer shall divide the several assessments which remain unpaid in whole or in part into ten equal amounts or installments, as near as may be, without fractional cents, and enter said installments upon the roll opposite the several assessments, numbering the same from one to ten successively. And thereafter said treasurer shall annually for ten years, before the time fixed by law for the collection of state and county taxes, add one of the said assessment installments with interest for one year from the expiration of the time for payment without interest, or of the anniversary thereof, at a rate determined by the board on the entire unpaid assessment, to the tax levied upon the property assessed, where said tax appears upon the county tax roll, and collect said installment and interest, without reduction of percentage for prepayment, at the same time and in the same manner as state and county taxes are collected. And after delinquency said installments and interest shall be subject to the same charges for increased interest and penalties as are other delinquent taxes. But no tax sale of lands assessed under this chapter shall discharge the same from the lien of any unpaid installments of the assessment against it until all installments and interest are fully paid. [2013 c 23 § 628; 1981 c 156 § 34; 1911 c 23 § 39; RRS § 9815.]

Collection of taxes: Chapter 84.56 RCW.

91.08.430 Payment of assessment—Payment in full or in part—Interest—Segregation. The owner of any lands assessed under this chapter may at any time after the time

fixed by the treasurer's notice for payment without interest, discharge his or her lands from the unpaid assessment by paying the principal of all installments unpaid with interest thereon at a rate determined by the board to the next anniversary of the time fixed as aforesaid; or he or she may pay one or more installments, with like interest, beginning with installment number ten and continuing in the inverse numerical order of installments. The successor in title to any part of his or her lands may have the proportionate assessment segregated on the roll and charged to such part upon his or her producing to the treasurer his or her recorded deed to such part. [2013 c 23 § 629; 1981 c 156 § 35; 1911 c 23 § 41; RRS § 9817.]

91.08.460 Payment of assessment—Treasurer's report. Immediately after expiration of the time fixed by the treasurer for the payment of assessments levied under this chapter, he or she shall report to the board in writing the sum collected by him or her and in his or her hands to the credit of the assessment roll; and thereafter and on or before the first days of January and July in each year he or she shall make written reports to said board of the sums collected by him or her upon said roll, stating in detail the amount of principal, interest, and penalty so collected, the amount of principal remaining uncollected, and also, in detail, the principal and interest paid out by him or her under authority of the board, and the balance in his or her hands to the credit of the roll. [2013 c 23 § 630; 1911 c 23 § 44; RRS § 9820.]

91.08.500 Bonds—Payment. The treasurer shall pay the interest on the bonds authorized to be issued by this chapter, on presentation of matured coupons therefor, out of the funds of the district in his or her hands. Whenever there shall be sufficient money in any such fund (not less than one thousand dollars) over and above sufficient for the payment of matured interest on all outstanding bonds, to pay the principal of one or more bonds, the treasurer shall call in and pay the bonds in their numerical order: PROVIDED, That the call for bonds shall be made by publication in the official newspaper of the county within five days after the semiannual interest period, and shall state that bonds numbered (giving the serial numbers of the bonds called) will be paid on presentation; and that after a date named, not more than fifteen days thereafter, interest on the bonds called shall cease. [2013 c 23 § 631; 1985 c 469 § 98; 1911 c 23 § 49; RRS § 9825.]

91.08.510 Bonds—Recourse of owner limited to special assessment—Bond to so state. The owner of any bond issued under authority of this chapter shall not have any claim therefor against any person, body, or corporation, except from the special assessment made for the improvement for which such bond was issued; but his or her remedy in case of nonpayment shall be confined to the enforcement of such assessment. A copy of this section shall be plainly written, printed, or engraved on each bond so issued. [2013 c 23 § 632; 1983 c 167 § 269; 1911 c 23 § 50; RRS § 9826.]

Additional notes found at www.leg.wa.gov

91.08.550 Warrants. The indebtedness of any such district on contracts, or upon employment or for supplies, shall

be paid by warrants on the district fund only, to be issued by the board upon allowed written claims. Such warrants shall be in form the same as county warrants, or as nearly the same as may be practicable; shall draw the legal rate of interest from the date of their presentation to the county treasurer for payment, and shall be signed by the chair and attested by the clerk: PROVIDED, That no warrants shall be issued in payment of any indebtedness of such district for less than the face or par value. [2013 c 23 § 633; 1911 c 23 § 54; RRS § 9830.]

Public contracts and indebtedness—Interest rate on warrants: Chapter 39.56 RCW.

91.08.560 Warrants—Payment. All warrants issued under RCW 91.08.550 may be presented by the holders thereof to the county treasurer, who shall pay them or endorse thereon the date of presentation for payment and if the same are not paid, and the reason for their nonpayment; and no warrant shall draw interest until it is so presented and endorsed by the county treasurer. It shall be the duty of the treasurer from time to time, when he or she has sufficient funds in his or her hands for the purpose, to give notice to warrant holders to present their warrants for payment; such notice to be given by advertisement in the county newspaper. And thirty days after the first publication of said notice the warrants called shall cease to bear interest. Said notice shall be published once each week for two weeks consecutively, and such warrants shall be called and paid in the order of their endorsement. [2013 c 23 § 634; 1911 c 23 § 55; RRS § 9831.]

91.08.590 Payment of assessments by satisfying judgment. Any defendant in a condemnation proceeding under this chapter, whose remaining land, or whose other lands in the district, shall be assessed for benefits arising from the improvement, may pay his or her assessments in full, if they be less than his or her condemnation judgment, at or before the time fixed by the treasurer for the payment of assessments without interest, by satisfying his or her judgment upon the judgment docket and producing to the treasurer the certificate of the county clerk that the judgment has been satisfied. And if his or her assessments be greater than his or her condemnation judgments he or she may, within the same time, pay his or her assessment to the extent of his or her judgment by the like satisfaction and the like production of the clerk's certificate to the treasurer. In each case the treasurer shall note the payment and the manner thereof on the assessment roll and report the same to the board. [2013 c 23 § 635; 1911 c 23 § 59; RRS § 9835.]

Payment of assessment: RCW 91.08.390 through 91.08.460.

91.08.600 Purchase of filling material. At any time before the completion of excavations required for the construction, deepening, or widening of a waterway under this chapter, when there will be surplus material dug or dredged from such waterway, any owner of land within the district, for the filling of whose land no provision has theretofore been made, may have such surplus material delivered upon his or her land for filling purposes upon paying the cost of such delivery in a sum to be fixed by the board. The sum so fixed shall be paid to the treasurer at such time and in such manner

as the board may prescribe, and shall be credited to the district fund. [2013 c 23 § 636; 1911 c 23 § 60; RRS § 9836.]

91.08.620 Unclaimed funds, disposal of. Should any sum of money paid into court as compensation or damages for land or property taken or damaged in any condemnation proceeding under this chapter be uncalled for the period of two years, the county clerk shall satisfy the judgment therefor and pay the money in his or her hands to the treasurer for the road fund of the county. But upon application to the board of county commissioners within four years after such payment, the party entitled thereto shall be paid such money by the county without interest: PROVIDED, That if any such party, being a natural person, was under legal disabilities when such money was paid to the treasurer, the time within which he or she or his or her legal representatives shall make application for the payment thereof shall not expire until one year after his or her death or the removal of his or her disabilities. [2013 c 23 § 637; 1911 c 23 § 62; RRS § 9838.]